



Colorado Bridge Enterprise and High Performance Transportation Enterprise: Request for Proposals to Design, Build, Finance, Operate and Maintain the Central 70 Project



INSTRUCTIONS TO PROPOSERS

RFP Issued: September 15 and 29, 2015
Addendum No. 1 issued December 23, 2015
Addendum No. 2 issued February 23, 2016

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Technical Proposal Deadline: December 15, 2016 at 2:00 p.m. Denver, Colorado Time
Financial Proposal Deadline: February 28, 2017 at 2:00 p.m. Denver, Colorado Time

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EXECUTIVE SUMMARY

1. INTRODUCTION

- 1.1 Colorado's Transportation Commission (the "Transportation Commission") is the State's transportation policy decision-making body. The Colorado Department of Transportation ("CDOT") manages the State's transportation system under the direction of the Transportation Commission. The Transportation Commission has delegated responsibility for the procurement of the Project (as defined in Section 1.2 of this Executive Summary) to the Colorado Bridge Enterprise ("BE") and the High Performance Transportation Enterprise ("HPTE"), each of which is a government-owned business within CDOT and, in the case of HPTE, is a division of CDOT. For purposes of this ITP, HPTE and BE are collectively referred to as the "Procuring Authorities".¹
- 1.2 At the direction of the Transportation Commission, and acting in collaboration with CDOT, the Procuring Authorities are procuring the potential design, construction, financing, operation and maintenance of a portion of the I-70 East Corridor (as defined in Section 1 of Part A) as further described in Section 2.2 of Part B (the "Project").
- 1.3 On March 25, 2015, the Procuring Authorities issued a Request for Qualifications (as modified by the addendum thereto dated May 29, 2015, the "RFQ") for the procurement of the Project. Pursuant to the RFQ, the Procuring Authorities invited entities or groups of entities (each company, team or Joint Venture acting together for such purpose, a "Prospective Proposer") interested in competing for the Project to submit statements of qualifications (such statements, including any supplemental materials and information submitted or provided by a Prospective Proposer in accordance with the RFQ, each a "SOQ" and, collectively, the "SOQs").
- 1.4 On June 22, 2015, five Prospective Proposers responded to the RFQ by submitting SOQs. After the Procuring Authorities evaluated each SOQ, on July 24, 2015, they announced that a short-list of four Prospective Proposers would be eligible to proceed to the next phase of the Project procurement process (each such eligible Prospective Proposer, a "Proposer" and, collectively, the "Proposers"). Such short-list consists of the following Proposers (in alphabetical order):²
- 5280 Connectors
 - Front Range Mobility Group
 - I-70 Mile High Partners
 - Kiewit / Meridiam Partners
- 1.5 This document, the Instructions to Proposers (as modified by any Addenda (which Addenda are listed for convenience on the cover hereof), this "ITP"), sets out the rules that govern the second stage of the Project procurement process, as further described in Section 2.3 of this Executive Summary.

2. PROCUREMENT PROCESS

- 2.1 The Procuring Authorities have elected to proceed with a three stage procurement process for the Project. The anticipated schedule for this process is set out in Section 1.2 of Part C.
- 2.2 The first stage of the procurement process began with the issuance of the RFQ and concluded with the identification of Prospective Proposers eligible to proceed to the second stage of the process.

¹ See Section 2.2 of Part A with respect to the interpretation of references to Procuring Authorities throughout this ITP.

² The membership and other details concerning Prospective Proposers that submitted SOQs, and of the Proposers subsequently identified by the Procuring Authorities as eligible to proceed to the next phase of the Project procurement process, are available on the Project Website.

- 2.3 The second stage of the procurement process:
- a. begins with the issuance of this ITP. This ITP forms part of the Procuring Authorities' Request for Proposals for the Project (the "RFP"). The components of the RFP are:
 - i. this ITP; and
 - ii. the draft Project Agreement to be issued in an Addendum to this ITP (as modified by any subsequent Addenda, the "Project Agreement"), which agreement the Procuring Authorities expect to enter into with Developer (as defined in Section 2.4 of this Executive Summary); and
 - b. is anticipated to conclude with the selection by the Procuring Authorities of a Proposer as the Preferred Proposer following the evaluation, in accordance with Section 6 of Part C, of all Proposals (as defined in Section 1 of Part A) submitted by Proposers in response to the RFP.
- 2.4 The third stage of the procurement process will follow selection of a Preferred Proposer and will include:
- a. the execution of the Project Agreement by the Procuring Authorities and a special-purpose entity (the "Developer") to be formed and owned by the Equity Members (as defined in Section 1 of Part A) of the Preferred Proposer; and
 - b. following the execution of the Project Agreement, Developer achieving closing of its financing of the Project and proceeding with work on the Project under the terms of the Project Agreement.

3. RELATIONSHIP OF THE PROCUREMENT PROCESS TO THE NEPA PROCESS³

- 3.1 Concurrently with the procurement process outlined in Section 2 of this Executive Summary, CDOT and the Federal Highway Administration ("FHWA") are proceeding with a review of the I-70 East Corridor in accordance with the National Environmental Policy Act of 1969 ("NEPA"). With the release of the I-70 East Final Environmental Impact Statement dated January 2016, CDOT and FHWA have identified the "Partial Cover Lowered Alternative with Managed Lanes Option" (for ease of reference, this ITP simply refers to this solution as the "Partial Cover Lowered Alternative") as the "preferred alternative".
- 3.2 The RFP assumes that this NEPA review process will conclude with the issuance of a Record of Decision by FHWA approving the first phase of the Partial Cover Lowered Alternative, and the scope of work for the Project, as reflected in the RFP, corresponds to the same.
- 3.3 Federal law⁴ permits CDOT, and the Procuring Authorities, to pursue the Project procurement process prior to the conclusion of the NEPA process. At the same time, Federal regulations limit the involvement of private partners in the environmental review process itself. Further, prior to completion of the NEPA process, a private partner, such as Developer, cannot complete the final design of a project, proceed with construction or take any other action that may bias the NEPA process towards a particular alternative.⁵ CDOT, and the Procuring Authorities, are complying and will continue to comply with these requirements and limitations. As such, the Procuring Authorities will not select a Preferred Proposer or enter into the Project Agreement prior to the issuance of a Record of Decision under NEPA.
- 3.4 Although CDOT cannot definitively commit to the Partial Cover Lowered Alternative, or any other alternative, until the conclusion of the NEPA process (which process was described in Section 2.1 of Part B of the RFP, and is further described in Section 2.2 of Part B of this ITP), the Procuring

³ Note that the NEPA process will continue to refer to "I-70 East" to remain consistent with the public process. The Central 70 project, which is the subject of the procurement governed by the RFP, would be the first phase (Phase 1) of the I-70 East project to be implemented and would be the subject of the Record of Decision expected to be published in September 2016.

⁴ See 23 CFR § 636.109.

⁵ 23 CFR 636.109(b).

Authorities have determined that it is appropriate, and in the public interest, to prepare for the possibility that the Partial Cover Lowered Alternative ultimately receives approval by proceeding with the issuance of the RFP. The potential benefits of this approach include that it:

- a. enables the Procuring Authorities and CDOT to more rapidly address risks associated with the aging I-70 viaduct;
- b. allows the State to make use of favorable financial and fiscal conditions to maximize the extent of improvements available by proceeding with these improvements sooner rather than later;
- c. is anticipated to mitigate the risk of long-range escalation of construction costs;
- d. allows the Procuring Authorities and CDOT to relatively more quickly improve mobility in a critical segment of the State's transportation system; and
- e. allows the Procuring Authorities and CDOT, working with other key stakeholders, to relatively more quickly improve neighborhood connectivity and address quality of life concerns.

4. ALIGNMENT OF PROCUREMENT PROCESS WITH THE PUBLIC INTEREST

Throughout the procurement process the Procuring Authorities have used, and will continue to use, various methods to protect the public interest. These methods include the following:

- a. establishing the Project Goals (as defined in Section 1.1 of Part B);
- b. maintaining control over the RFQ and RFP processes and, through those processes, the resulting terms of any future Project Agreement, including the ability:
 - i. to choose to include, or not include, particular contract terms in the Project Agreement; and
 - ii. under the terms of the Project Agreement, to evaluate compliance by Developer with applicable laws, permitting and regulatory regimes, third party agreements and contractually mandated performance standards;
- c. requiring Prospective Proposers to submit detailed information regarding their professional qualifications in their SOQs, and thereafter requiring Proposers to submit detailed information regarding their pricing and approach to the Project in their Proposals, in both cases, evaluating such information in accordance with criteria established by the Procuring Authorities;
- d. requiring Prospective Proposers and Proposers to comply with certain procedural requirements and to meet with the Procuring Authorities periodically as part of the procurement process;
- e. holding public meetings and periodically releasing other information to the public in accordance with the principles of transparency, open government and accountability discussed in Section 1.2 of Part B, subject to the application of limited, legally permitted confidentiality restrictions as needed to enable a fair and competitive bidding process; and
- f. maintaining the right to refine, suspend or terminate the Project procurement process.

5. HOW TO USE THIS ITP

The following table identifies key elements of the ITP that are relevant to Proposers and that may be of interest to members of the public.

Subject Matter	Relevant Part(s) of ITP
Definitions of Capitalized Terms	See <u>Part A</u> for: <ul style="list-style-type: none"> • a reference index of capitalized words and phrases and their

Subject Matter	Relevant Part(s) of ITP
and Rules of Interpretation	<p>associated meanings; and</p> <ul style="list-style-type: none"> • a set of rules addressing how to consistently interpret certain types of terms, phrases and grammatical structures throughout this ITP.
Background Information on the Project	<p>See <u>Part B</u> for:</p> <ul style="list-style-type: none"> • the Project Goals; • the Procuring Authorities' statement of commitment to the principles of transparency, open government and accountability; and • a high level summary of factual information concerning the current status of the Project and its financing.
The Procurement Process	<p>See <u>Part C</u> and <u>Part D</u>:</p> <ul style="list-style-type: none"> • <u>Sections 1, 2, 3 and 4</u> of <u>Part C</u> describe the procurement process (including the anticipated Procurement Schedule), outline Proposers' opportunities to conduct due diligence on the Project and identify certain pre-Proposal submissions (a number of which are required to be in the forms provided in <u>Part G</u>); • <u>Section 5</u> of <u>Part C</u> sets out the rules for the submission of Proposals (the contents of which must comply with <u>Part F</u> and, as applicable, contain materials and information in the forms provided in <u>Part H</u>); • <u>Sections 6 and 7</u> of <u>Part C</u> outline the process that the Procuring Authorities will use to evaluate and score Proposals for the purpose of selecting the Preferred Proposer, as well as the process to finalize and execute the Project Agreement with the Developer established by such Preferred Proposer; and • <u>Part D</u> sets out the procedural rules with which Proposers are required to comply throughout the procurement process, as well as the Procuring Authorities' reserved rights to enable them to manage the procurement process in the public interest.
Evaluation Criteria	<p>See <u>Part E</u>, which sets out the criteria that the Procuring Authorities will use to evaluate and score the Proposals in accordance with <u>Section 6</u> of <u>Part C</u> for the purpose of selecting the Preferred Proposer.</p>
Proposal Submission Requirements	<p>See <u>Part F</u>, which sets out (i) the general instructions for, and certain specific instructions in relation to each of, the Administrative and Technical Proposal and the Financial Proposal, which, although separately submitted, together will comprise a Proposer's Proposal and (ii) the required structure and detailed contents for both such Proposal components.</p>

PART A: DEFINITIONS AND RULES OF INTERPRETATION

1. DEFINITIONS

Except as otherwise specified herein or as the context may otherwise require, the following terms have the respective meanings set out below when used in this ITP and, in addition, terms defined in the Project Agreement shall, when used in this ITP (and not otherwise defined in the ITP), have the respective meanings given to them in the Project Agreement.

<u>“Addendum”</u>	means any document issued by the Procuring Authorities after the initial issuance date of this ITP that modifies the RFP and specifies that it is an Addendum to the RFP.
<u>“Administrative and Technical Pass/Fail Criteria”</u>	has the meaning given to it in <u>Section 1 of Part E</u> .
<u>“Administrative and Technical Proposal”</u>	means that portion of the Proposal prepared in accordance with the <u>Administrative and Technical Proposal Submission Requirements</u> , including any directly associated supplemental materials and information submitted or provided by a Proposer in accordance with this ITP on or after the Administrative and Technical Proposal Deadline.
<u>“Administrative and Technical Proposal Letter”</u>	means the letter submitted by a Proposer in accordance with <u>Section 1.1 of the Administrative and Technical Proposal Submission Requirements</u> .
<u>“Administrative and Technical Proposal Submission Requirements”</u>	means the requirements set out in <u>Section 4 of Part F</u> .
<u>“Affiliate”</u>	means, in relation to any Person: <ol style="list-style-type: none">(a) any other Person having Control of that Person;(b) any other Person over whom that Person has Control;(c) any Person over whom any other Person referred to in paragraph (a) of this definition also has Control; or(d) any Financially Responsible Party for such Person, where “Control” of a Person by another Person means that other Person (whether alone or with others, and whether directly or indirectly at any tier): (i) holds the majority of voting rights in the controlled Person; (ii) has the right to appoint the majority of the board of directors (or equivalent) of that controlled Person; and/or (iii) exercises direct or indirect control over that controlled Person’s affairs.
<u>“Aggregate Technical Substantive P/F Score”</u>	has the meaning given to it in <u>Section 6.3.2.c.ii of Part C</u> .
<u>“Alternative Technical Concept” or “ATC”</u>	has the meaning given to it in <u>Section 3.1.1 of Part C</u> .
<u>“Annex”</u>	means any of the annexes set out in <u>Part G</u> .
<u>“Approved Organizational Change”</u>	means an Organizational Change approved by the Procuring Authorities pursuant to <u>Section 4.4.3 of Part C</u> and <u>Section 1.4 of Part D</u> .

<u>“Assumptions Book”</u>	has the meaning given to it in <u>Section 6.9.2</u> of the <u>Financial Proposal Submission Requirements</u> .
<u>“ATC Submission”</u>	has the meaning given to it in <u>Section 3.1.2</u> of <u>Part C</u> .
<u>“ATC Submission Deadlines”</u>	means the First ATC Submission Deadline, the Second ATC Submission Deadline, the Third ATC Submission Deadline and the Final ATC Submission Deadline.
<u>“ATC Submission Form”</u>	means <u>Annex 3</u> (<i>Alternative Technical Concept Submission Form</i>).
<u>“Bank Debt Rates”</u>	means the Benchmark Interest Rate(s) selected by a Proposer and subsequently approved by the Procuring Authorities in accordance with <u>Section 4.2.3.c</u> of <u>Part C</u> in respect of any Bank Financing.
<u>“Bank Financing”</u>	means any Project Debt financing to be provided by a commercial bank or similar institution (other than in the form of a Bond Financing or TIFIA Financing) that is, or is intended to be, assumed in a Proposer's Financial Proposal and Base Financial Model.
<u>“Base Financial Model”</u>	has the meaning given to it in <u>Section 6.9.1</u> of the <u>Financial Proposal Submission Requirements</u> .
<u>“Base MPP”</u>	means the lower of: <ul style="list-style-type: none">(a) the amount stated by a Proposer as the Base MPP in the completed <u>Form D-1</u> (<i>Base MPP Proposal</i>) submitted in its Financial Proposal in accordance with <u>Section 6.1</u> of the <u>Financial Proposal Submission Requirements</u>; and(b) the Base MPP proposed by a Proposer as determined in accordance with such Proposer's Base Financial Model.
<u>“Base MPP Upset Limit”</u>	has the meaning set out in instruction (1) to <u>Form D-1</u> (<i>Base MPP Proposal</i>).
<u>“Baseline Credit Spread”</u>	has the meaning given to it in <u>Section 4.2.3.c.ii</u> of <u>Part C</u> .
<u>“Baseline Substantial Completion Date”</u>	means the date stated by a Proposer as the Baseline Substantial Completion Date in the completed <u>Form D-3</u> (<i>Financing Plan Dates</i>) submitted in its Financial Proposal in accordance with <u>Section 6.3</u> of the <u>Financial Proposal Submission Requirements</u> , being: <ul style="list-style-type: none">(a) the date that Proposer projects that all Substantial Completion Conditions will be satisfied pursuant to the Project Agreement; and(b) the same as the date therefor stated in such Proposer's Technical Proposal Appendix C submitted in its Administrative and Technical Proposal in accordance with <u>Section 2.1.10</u> of the <u>Administrative and Technical Proposal Submission Requirements</u>, provided that, for the purposes of Administrative and Technical Pass/Fail Criteria number (5) and <u>Section 2.2.1.b.iii</u> of the <u>Technical Proposal Instructions</u> , such term means the date stated therefor in such Technical Proposal Appendix C.
<u>“Baseline TIFIA Term”</u>	has the meaning given to it in <u>Section 3.3.3</u> of <u>Part B</u> .

Sheet"

"Baseline Yield Curve" has the meaning given to it in Section 4.2.3.c.ii of Part C.

"BE" has the meaning given to it in Section 1.1 of the Executive Summary.

"Benchmark Index" means any of the indices listed in paragraphs (a) to (f) of the definition of Benchmark Interest Rates in this Section 1 of this Part A.

"Benchmark Interest Rates" the publicly documented interest rates of each maturity included in the following indices:

- (a) the LIBOR swap spot curve, as provided by Bloomberg;
- (b) the LIBOR swap forward curves, as provided by Bloomberg;
- (c) the U.S. Spot Treasury Yield Curve;
- (d) the Municipal Market Data (MMD) Benchmark, as provided by Thomson Reuters;
- (e) the Securities Industry and Financial Markets Association (SIFMA) Municipal Swap Index (formerly known as the Bond Market Association (BMA) Municipal Swap Index); and
- (f) the State and Local Government Series (SLGS) index, as provided by the US Treasury.

"Best Value Score" has the meaning given to it in Section 6.3.5.b of Part C.

"Best Value Scoring" means the scoring of Proposals to be conducted by the Procuring Authorities in accordance with Section 6.3.5.b of Part C.

"Bond Financing" means any Project Debt financing to be provided through the capital markets issuance (including through a private placement) of either:

- (a) tax-exempt bonds by the PABs Issuer, the proceeds of which bonds are to be used for a defined, tax-qualified purpose by Developer as a private entity, acting as the conduit borrower; or
- (b) taxable bonds,

that, in the case of (a) or (b), is, or is intended to be, assumed in a Proposer's Financial Proposal and Base Financial Model.

"Bond Rates" means the Benchmark Interest Rate(s) selected by a Proposer and subsequently approved by the Procuring Authorities in accordance with Section 4.2.3.c of Part C in respect of any Bond Financing.

"CDOT" has the meaning given to it in Section 1.1 of the Executive Summary.

"City of Denver" means the City and County of Denver.

"Conceptual ATC" means an Alternative Technical Concept that, as submitted in the form of an ATC Submission Form, contains all the information required by Parts A and B, but not Part C, of that form.

"Confidential Contents" means, together, the indexes submitted by Proposer in

<u>Indices</u>	accordance with <u>Section 1.2</u> of the <u>Administrative and Technical Proposal Submission Requirements</u> and <u>Section 4.2</u> of the <u>Financial Proposal Submission Requirements</u> .
<u>"CORA"</u>	means the Colorado Open Records Act, C.R.S. §§ 24-72-201, et seq.
<u>"CORA Exempt Materials"</u>	means any trade secrets, privileged information and confidential commercial, financial, geological or geophysical data exempt from public disclosure under C.R.S. §§ 24-72-204(3)(a)(IV) or information that is otherwise exempt from disclosure under CORA.
<u>"Core Proposer Team Member"</u>	means each of: (a) the Equity Members; (b) the Lead Contractor; (c) the Lead Engineer; (d) the Lead Operator; and (e) any Financially Responsible Party, in each case either: (i) as identified in Proposer's SOQ, unless replaced in accordance with an Approved Organizational Change; or (ii) as identified in an Approved Organizational Change as a new or replacement Core Proposer Team Member.
<u>"DBE"</u>	means a disadvantaged business enterprise.
<u>"Debt Commitment Letter"</u>	has the meaning given to it in <u>Section 5.2.1</u> of the <u>Financial Proposal Submission Requirements</u> .
<u>"Debt Term Sheet"</u>	has the meaning given to it in <u>Section 5.2.2</u> of the <u>Financial Proposal Submission Requirements</u> .
<u>"Design Exception"</u>	means an aspect of a design which does not conform to the minimum criteria specified in the standards, policies and standard specifications set out in 23 CFR 625 and the 2005 AASHTO "A Policy on Design Standards Interstate System", which non-conformance requires approval by the Procuring Authorities and/or FHWA.
<u>"Detailed ATC"</u>	means an Alternative Technical Concept that, as submitted in the form of an ATC Submission Form, contains all the information required by <u>Parts A, B, and C</u> of that form.
<u>"Developer"</u>	has the meaning given to it in <u>Section 2.4</u> of the <u>Executive Summary</u> .
<u>"EIS"</u>	has the meaning given to it in <u>Section 2.2.1</u> of <u>Part B</u> .
<u>"Eligible Proposer"</u>	means a Proposer that submits both: (a) an Administrative and Technical Proposal that: (i) subject to the Reserved Rights, passes all Administrative and Technical Proposal Pass/Fail Criteria in accordance with <u>Section 6.3.1</u> of

	<p><u>Part C</u>; and</p> <p>(ii) passes the Technical Substantive P/F Evaluation in accordance with <u>Section 6.3.2.c.iii</u> of <u>Part C</u>; and</p> <p>(b) a Financial Proposal that, subject to the Reserved Rights, passes all Financial Pass/Fail Criteria.</p>
<p><u>“Equity Member”</u></p>	<p>means each member of the Proposer team that will contribute equity (directly or indirectly) to Developer as part of the financing of the Project.</p>
<p><u>“ESB”</u></p>	<p>means an emerging small business.</p>
<p><u>“Final ATC Submission Deadline”</u></p>	<p>has the meaning given to it in the Procurement Schedule.</p>
<p><u>“Final RFP Comment Deadline”</u></p>	<p>has the meaning given to it in the Procurement Schedule.</p>
<p><u>“Financial Capacity Updates”</u></p>	<p>means the information required to be submitted by a Proposer in accordance with <u>Section 3</u> of the <u>Administrative and Technical Proposal Submission Requirements</u> and <u>Section 4.6</u> of the <u>Financial Proposal Submission Requirements</u>.</p>
<p><u>“Financial Pass/Fail Criteria”</u></p>	<p>has the meaning given to it in <u>Section 1</u> of <u>Part E</u>.</p>
<p><u>“Financial Proposal”</u></p>	<p>means that portion of the Proposal prepared in accordance with the <u>Financial Proposal Submission Requirements</u>, including any directly associated supplemental materials and information submitted or provided by a Proposer in accordance with this ITP on or after the Financial Proposal Deadline.</p>
<p><u>“Financial Proposal Deadline”</u></p>	<p>has the meaning given to it in the Procurement Schedule.</p>
<p><u>“Financial Proposal Forms”</u></p>	<p>means the template Forms set out in <u>Annex D (Financial Proposal Forms)</u>.</p>
<p><u>“Financial Proposal Instructions”</u></p>	<p>means the instructions set out in <u>Section 3</u> of <u>Part F</u>.</p>
<p><u>“Financial Proposal Letter”</u></p>	<p>means the letter submitted by a Proposer in accordance with <u>Section 4.1</u> of the <u>Financial Proposal Submission Requirements</u>.</p>
<p><u>“Financial Proposal Submission Requirements”</u></p>	<p>means the requirements set out in <u>Section 5</u> of <u>Part E</u>.</p>
<p><u>“Financially Responsible Party”</u></p>	<p>means each parent company or other entity (in either case, if any) that provided a letter of support in accordance with (a) <u>Section 3.1</u> of the <u>Volume 2 Requirements</u> (as defined in the RFQ), (b) <u>Section 7.1.2.c</u> of <u>Part B</u> of the RFQ or (c) <u>Section 4.4</u> of <u>Part C</u> and <u>Annex 5</u>.</p>
<p><u>“Financial Score”</u></p>	<p>has the meaning given to it in <u>Section 6.3.4.a</u> of <u>Part C</u>.</p>
<p><u>“Financing Plan”</u></p>	<p>has the meaning given to it in <u>Section 5.1</u> of the <u>Financial Proposal Submission Requirements</u>.</p>
<p><u>“First ATC Submission Deadline”</u></p>	<p>has the meaning given to it in the Procurement Schedule.</p>

<u>“First Commercial/Legal RFP Comment Deadline”</u>	has the meaning given to it in the Procurement Schedule.
<u>“First Technical RFP Comment Deadline”</u>	has the meaning given to it in the Procurement Schedule.
<u>“Form”</u>	means any of the forms set out in <u>Part H</u> .
<u>“Fourth ATC Submission Deadline”</u>	has the meaning given to it in the Procurement Schedule.
<u>“GAAP”</u>	means Generally Accepted Accounting Principles in the US as in effect from time to time.
<u>“General Proposal Instructions”</u>	means the instructions set out in <u>Section 1</u> of <u>Part F</u> .
<u>“HPTe”</u>	has the meaning given to it in <u>Section 1.1</u> of the <u>Executive Summary</u> .
<u>“HPTe Open Records Policy”</u>	has the meaning given to it in <u>Section 1.2.2.b</u> of <u>Part B</u> .
<u>“HPTe Transparency Policy”</u>	has the meaning given to it in <u>Section 1.2.2.a</u> of <u>Part B</u> .
<u>“IAA”</u>	has the meaning given to it in <u>Section 2.3.5</u> of <u>Part B</u> .
<u>“I-70 East Corridor”</u>	means I-70 between I-25 and Tower Road in Greater Denver, Colorado.
<u>“IDP Meeting”</u>	has the meaning given to it in <u>Section 2.4.2.a</u> of <u>Part C</u>
<u>“IFRS”</u>	has the meaning given to it in <u>Section 3.1.1.g</u> of the <u>Financial Proposal Instructions</u> .
<u>“Individual Technical Substantive P/F Score”</u>	has the meaning given to it in <u>Section 6.3.2.c.i</u> of <u>Part C</u> .
<u>“Information Barrier”</u>	means, with respect to any Person, the implementation of internal safeguards and confidentiality protection protocols (including, where appropriate, the exclusion of involvement of any individual who himself or herself has consulted or advised on, or has or may have non-public knowledge of, the Project or the RFP as a result of such Person being, or having been directly or indirectly, engaged by another Proposer (or any of such other Proposer’s Core Proposer Team Members or Affiliates) or, as the case may be, either of the Procuring Authorities, CDOT or any other Governmental Authority), which safeguards and protocols are customary and appropriate for the relevant industry of such Person and this Project.
<u>“Interest Rate and Credit Spread Protection Period”</u>	means the period from the Interest Rate and Credit Spread Protection Start Time to and including: <ul style="list-style-type: none">(a) with respect to the Bank Debt Rate(s) applicable to any Bank Financing, the earlier of (i) Financial Close and (ii) the date at which the majority of the principal amount of such Bank Financing is hedged by Developer;(b) with respect to the TIFIA Rate applicable to any TIFIA Financing, the date that any loan agreement evidencing TIFIA Financing is entered into between Developer and

US DOT; and

- (c) with respect to (i) the Bond Rate(s) and (ii) credit spreads (to the extent such spreads are uncommitted) applicable to any Bond Financing, the date of the signing of the bond purchase agreement among Developer, the underwriters as bond purchasers and, if applicable, the PABs Issuer.

<u>“Interest Rate and Credit Spread Protection Start Time”</u>	means 3:00 pm Eastern Standard Time on the date that is 10 Working Days prior to the date on which the Financial Proposal Deadline occurs.
<u>“Interest Rate and Credit Spread Submittal”</u>	means a submittal in the form of <u>Annex 4 (Interest Rate and Credit Spread Submittal Form)</u> .
<u>“ITP”</u>	has the meaning given to it in <u>Section 1.5</u> of the <u>Executive Summary</u> .
<u>“Joint Venture”</u>	means a consortium, partnership, joint venture or any other unincorporated grouping acting together for a common purpose.
<u>“Key Personnel Change”</u>	has the meaning given to it in <u>Section 1.4.b</u> of <u>Part D</u> .
<u>“Key Personnel Deadline”</u>	has the meaning given to it in the Procurement Schedule.
<u>“Key Personnel Form”</u>	means a completed form in the form of <u>Annex 6 (Key Personnel Form)</u> .
<u>“Lead Contractor”</u> ⁶	means the single entity or Joint Venture that will be primarily responsible for construction of the Project. If this role will be performed by a Joint Venture, then all members or partners of that Joint Venture will be considered to be the Lead Contractor and, consequently, each of them will be considered to be Core Proposer Team Members.
<u>“Lead Engineer”</u> ⁷	means the single entity or Joint Venture that will be primarily responsible for engineering and design of the Project. If this role will be performed by a Joint Venture, then all members or partners of that Joint Venture will be considered to be the Lead Engineer and, consequently, each of them will be considered to be Core Proposer Team Members.
<u>“Lead Operator”</u> ⁸	means the single entity or Joint Venture that will be primarily responsible for operations, maintenance and/or renewal work in connection with the Project. If this role will be performed by a Joint Venture, then all members or partners of that Joint Venture will be considered to be the Lead Operator and, consequently, each of them will be considered to be Core Proposer Team

⁶ The Procuring Authorities anticipate that the Lead Contractor will be the Construction Contractor for purposes of the Project Agreement. If this is not the case (e.g. if the role of the Construction Contractor will be split between the Lead Contractor and the Lead Engineer, which would both directly contract with the Developer), then prior to execution of the Project Agreement the Procuring Authorities may adjust the terms of the Project Agreement as needed to reflect the Preferred Proposer’s contracting arrangements.

⁷ The Procuring Authorities anticipate that the Lead Engineer will be a Subcontractor to the Construction Contractor for purposes of the Project Agreement. If this is not the case (e.g. if the role of the Construction Contractor will be split between the Lead Contractor and the Lead Engineer, which would both directly contract with the Developer), then prior to execution of the Project Agreement the Procuring Authorities may adjust the terms of the Project Agreement as needed to reflect the Preferred Proposer’s contracting arrangements.

⁸ The Procuring Authorities anticipate that the Lead Operator will be the O&M Contractor for purposes of the Project Agreement. If this is not the case (e.g. if the Developer will self-perform a portion of the O&M Work), then prior to execution of the Project Agreement the Procuring Authorities may adjust the terms of the Project Agreement as needed to reflect the Preferred Proposer’s contracting arrangements.

	Members.
	If any or all of the role of the Lead Operator will be self-performed by Developer, then, for the purposes of the Proposal Submission Requirements and the Procuring Authorities' review and evaluation of Proposals, the Equity Members of the relevant Proposer will, in addition to being considered as Equity Members, also be considered to be a Joint Venture that must submit the same information that is required by the Proposal Submission Requirements to be submitted in respect of a Lead Operator, to the extent of such self-performance.
<u>"Lowest Eligible Base MPP"</u>	means the lowest Base MPP submitted by any Eligible Proposer.
<u>"MaxPP"</u>	means the maximum Performance Payment that can be earned by Developer in any Contract Year following Substantial Completion as calculated in accordance with <u>Section 2</u> of <u>Part 2</u> of <u>Schedule 6</u> (<i>Performance Mechanism</i>) to the Project Agreement.
<u>"NEPA"</u>	has the meaning given to it in <u>Section 3.1</u> of the <u>Executive Summary</u> .
<u>"Notice of Award"</u>	has the meaning given to it in <u>Section 7.1.2</u> of <u>Part C</u> .
<u>"Official Representative"</u>	has the meaning given to it in <u>Section 1.1.1.a</u> of <u>Part D</u> .
<u>"One-on-One Meetings"</u>	has the meaning given to it in <u>Section 2.4.1.a</u> of <u>Part C</u> .
<u>"Organizational Change"</u>	has the meaning given to it in <u>Section 1.4.a</u> of <u>Part D</u> .
<u>"Oversized Materials"</u>	means drawings, schematics, organizational charts or schedules.
<u>"Oversized Page"</u>	means a 11" x 17" sized white piece of paper with at least 1" margins, or the digital equivalent, that: (a) uses fonts that are (i) no smaller than 8-point and (ii) any of standard-form Arial, Helvetica or Times New Roman; and (b) contains only Oversized Materials.
<u>"PABs"</u>	has the meaning given to it in <u>Section 3.2.1</u> of <u>Part B</u> .
<u>"PABs Issuer"</u>	has the meaning given to it in <u>Section 3.2.1</u> of <u>Part B</u> .
<u>"Partial Cover Lowered Alternative"</u>	has the meaning given to it in <u>Section 3.2</u> of the <u>Executive Summary</u> .
<u>"Pass/Fail Evaluation Criteria"</u>	has the meaning given to it in <u>Section 1</u> of <u>Part E</u> .
<u>"Pass/Fail Evaluations"</u>	means the evaluations of the Administrative and Technical Proposal and the Financial Proposal for compliance with the applicable Pass/Fail Evaluation Criteria to be conducted by the Procuring Authorities in accordance with, respectively, <u>Sections 6.3.1</u> and <u>6.3.3</u> of <u>Part C</u> .
<u>"Physical Due Diligence"</u>	has the meaning given to it in <u>Section 2.3.1.a</u> of <u>Part C</u> .
<u>"Physical Due Diligence Request Deadline"</u>	has the meaning given to it in the Procurement Schedule.
<u>"Preferred Proposer"</u>	means the Eligible Proposer that is publicly identified as the Preferred Proposer in a Notice of Award, or any replacement

	subsequently identified by the Procuring Authorities in accordance with <u>Section 7.3.3 of Part C</u> .
<u>"Preliminary Organizational Conflict of Interest Disclosure"</u>	has the meaning given to it in <u>Section 1.3.1.c of Part D</u> .
<u>"Pre-Proposal Submission"</u>	has the meaning given to it in <u>Section 4.1.1 of Part C</u> .
<u>"Procurement Schedule"</u>	has the meaning given to it in <u>Section 1.2 of Part C</u> .
<u>"Procuring Authorities"</u>	has the meaning given to it in <u>Section 1.1 of the Executive Summary</u> .
<u>"Procuring Authorities' Contact Person"</u>	has the meaning given to it in <u>Section 1.1.2.c of Part D</u> .
<u>"Project"</u>	has the meaning given to it in <u>Section 1.2 of the Executive Summary</u> .
<u>"Project Agreement"</u>	has the meaning given to it in <u>Section 2.3.a.ii of the Executive Summary</u> .
<u>"Project Goals"</u>	has the meaning given to it in <u>Section 1.1 of Part B</u> .
<u>"Project Information"</u>	has the meaning given to it in <u>Section 2.5.1.a.i of Part C</u> .
<u>"Project Website"</u>	has the meaning given to it in <u>Section 2.1.2 of Part B</u> .
<u>"Proposal"</u>	means the proposal submitted by a Proposer in response to the RFP, which will be comprised of (a) an Administrative and Technical Proposal and (b) a Financial Proposal.
<u>"Proposal Letter"</u>	means either the Administrative and Technical Proposal Letter or the Financial Proposal Letter.
<u>"Proposal Schedule"</u>	means the draft Baseline Schedule submitted by a Proposer as Technical Proposal Appendix C in accordance with <u>Section 2.3.3 of the Technical Proposal Instructions</u> .
<u>"Proposal Security"</u>	means the letter(s) of credit that a Proposer submits to the Procuring Authorities with its Financial Proposal in accordance with <u>Section 4.3 of the Financial Proposal Submission Requirements</u> .
<u>"Proposal Submission Location"</u>	has the meaning given to it in <u>Section 5.1.1.a of Part C</u> .
<u>"Proposal Submission Requirements"</u>	means the Administrative and Technical Proposal Submission Requirements and the Financial Proposal Submission Requirements.
<u>"Proposal Validity Period"</u>	means, with respect to each Proposal, the period commencing at the Financial Proposal Deadline and ending on (and including) the earliest of: <ul style="list-style-type: none">(a) 180 Calendar Days after the Financial Proposal Deadline;(b) the date on which the Procuring Authorities inform the Proposer that submitted such Proposal by written notice that it is not an Eligible Proposer;(c) with respect to any Eligible Proposer that is not the Preferred Proposer, the date on which the Procuring Authorities

execute the Project Agreement to be entered into with the Preferred Proposer's Developer as contemplated by Section 7.3.2 of Part C; and

- (d) the date on which the Procuring Authorities publicly announce the cancellation of the procurement process described in this ITP.

"Proposer" has the meaning given to it in Section 1.4 of the Executive Summary.

"Proposer Material Adverse Change" means:

- (a) a change that has occurred, or is anticipated, in the business, operations, financial condition, liabilities or capitalization of any Core Proposer Team Member; or
(b) any other condition or circumstance related to any Core Proposer Team Member,

which, in any such case, has a material adverse impact on Proposer's financial and/or technical capacity to design, construct, finance, operate and maintain the Project as contemplated by the terms of the Project Agreement.

"Proposer Update Deadline" has the meaning given to it in the Procurement Schedule.

"Proposer Update Submission" means a submittal in the form of Annex 5 (Proposer Update Submission Form).

"Prospective Proposer" has the meaning given to it in Section 1.3 of the Executive Summary.

"Protest Review Committee" means the committee established by the Procuring Authorities to resolve any protest filed in accordance with Section 7.4.1 of Part C.

"Public Access Inspections" has the meaning given to it in Section 2.3.1.b.ii of Part C.

"Public Disclosure Deadline" means the Public Disclosure Technical Proposal Deadline or the Public Disclosure Financial Proposal Deadline, as applicable.

"Public Disclosure Financial Proposal" has the meaning given to it in Section 1.5.2.a of Part D.

"Public Disclosure Financial Proposal Deadline" has the meaning given to it in the Procurement Schedule.

"Public Disclosure SOQs" has the meaning given to it in the RFQ.

"Public Disclosure Technical Proposal" has the meaning given to it in Section 1.5.2.a of Part D.

"Public Disclosure Technical Proposal Deadline" has the meaning given to it in the Procurement Schedule.

"Public Statement" has the meaning given to it in Section 1.5.3 of Part D.

"Reserved Rights" means the Procuring Authorities' reserved rights under Section 2 of Part D.

<u>“Restricted Access Inspections”</u>	has the meaning given to it in <u>Section 2.3.1.b.i</u> of <u>Part C</u> .
<u>“Restricted Contact Period”</u>	has the meaning given to it in <u>Section 1.1.2.a</u> of <u>Part D</u> .
<u>“RFP”</u>	has the meaning given to it in <u>Section 2.3</u> of the <u>Executive Summary</u> .
<u>“RFP Comment Deadlines”</u>	means the First Commercial/Legal RFP Comment Deadline, the First Technical RFP Comment Deadline, the Second RFP Comment Deadline, the Third RFP Comment Deadline and the Final RFP Comment Deadline.
<u>“RFP Comments”</u>	has the meaning given to it in <u>Section 2.2.1.a</u> of <u>Part C</u> .
<u>“RFQ”</u>	has the meaning given to it in <u>Section 1.3</u> of the <u>Executive Summary</u> .
<u>“ROD”</u>	has the meaning given to it in <u>Section 2.2.1</u> of <u>Part B</u> .
<u>“Schedule Score”</u>	has the meaning given to it in <u>Section 6.3.4.b</u> of <u>Part C</u> .
<u>“Scored Construction Period”</u>	means the number of Calendar Days from (and excluding) July 1, 2017 to (and including) an Eligible Proposer’s Baseline Substantial Completion Date minus 1095.
<u>“Second ATC Submission Deadline”</u>	has the meaning given to it in the Procurement Schedule.
<u>“Second RFP Comment Deadline”</u>	has the meaning given to it in the Procurement Schedule.
<u>“Secure Project DMS”</u>	has the meaning given to it in <u>Section 2.1.3</u> of <u>Part B</u> .
<u>“Shortest Scored Construction Period”</u>	means the lowest Scored Construction Period stated in a Financial Proposal submitted by any Eligible Proposer.
<u>“SOQ”</u>	has the meaning given to it in <u>Section 1.2</u> of the <u>Executive Summary</u> .
<u>“Standard Page”</u>	means a 8-1/2” x 11” sized piece of white paper with at least 1” margins, or the digital equivalent, that, subject to the pre-formatting of any Annex or Form, uses: <ul style="list-style-type: none">(a) fonts that are (i) no smaller than 11-point (or 8-point in any table, graphic or chart), (ii) any of standard-form Arial, Helvetica or Times New Roman and (iii) displayed or printed in black (other than in any heading, table or graphic); and(b) “single line” spacing (paragraph formatting) 0 points before each line, 6 points after each line (other than in any table, graphic or chart).
<u>“State”</u>	means the State of Colorado.
<u>“Stipend Agreement”</u>	means an agreement in the form of <u>Form H</u> (<i>Stipend Agreement</i>).
<u>“Stipend Payment”</u>	has the meaning given to it in <u>Section 5.5</u> of <u>Part C</u> .
<u>“Substantive Evaluations”</u>	means: <ul style="list-style-type: none">(a) the evaluation and scoring of Administrative and Technical Proposals to be conducted by the Procuring Authorities in

	accordance with <u>Section 6.3.2</u> of <u>Part C</u> ; and
(b)	the scoring of Financial Proposals to be conducted by the Procuring Authorities in accordance with <u>Section 6.3.4</u> of <u>Part C</u> .
<u>“Supplemental Due Diligence Activities”</u>	has the meaning given to it in <u>Section 2.3.1.b.ii</u> of <u>Part C</u> .
<u>“Supplemental Due Diligence Request”</u>	means a request in the form of <u>Annex 2</u> (<i>Supplemental Due Diligence Request Form</i>).
<u>“Technical Evaluation Criteria”</u>	has the meaning given to it in <u>Section 2</u> of <u>Part E</u> .
<u>“Technical Proposal”</u>	has the meaning given to it in <u>Section 2.1</u> of the <u>Administrative and Technical Proposal Submission Requirements</u> .
<u>“Technical Proposal Appendices”</u>	means the appendices to the Technical Proposal required to be submitted as part of a Proposer’s Administrative and Technical Proposal pursuant to <u>Section 2.3</u> of the <u>Technical Proposal Instructions</u> .
<u>“Technical Proposal Deadline”</u>	has the meaning given to it in the Procurement Schedule.
<u>“Technical Proposal Instructions”</u>	means the instructions set out in <u>Section 2</u> of <u>Part F</u> .
<u>“Technical Proposal Scoring Element”</u>	means each element of a Proposer's Technical Proposal specified in the "Technical Proposal Scoring Element" column in the Technical Proposal Scoring Table.
<u>“Technical Proposal Scoring Table”</u>	means the table set out in <u>Section 2</u> of <u>Part E</u> .
<u>“Technical Score”</u>	has the meaning given to it in <u>Section 6.3.5.a</u> of <u>Part C</u> .
<u>“Technical Substantive P/F Evaluation”</u>	means the evaluation and scoring of Technical Proposals to be conducted by the Procuring Authorities in accordance with <u>Section 6.3.2</u> of <u>Part C</u> .
<u>“Third ATC Submission Deadline”</u>	has the meaning given to it in the Procurement Schedule.
<u>“Third RFP Comment Deadline”</u>	has the meaning given to it in the Procurement Schedule.
<u>“TIFIA Financing”</u>	means any debt financing to be provided by the US DOT pursuant to TIFIA that is assumed, or is intended to be, in a Proposer's Financial Proposal and Base Financial Model.
<u>“TIFIA JPO”</u>	means the TIFIA Joint Program Office within the US DOT.
<u>“TIFIA Rate”</u>	means the fixed interest rate applicable to any TIFIA Financing as specified in the Baseline TIFIA Term Sheet. ⁹
<u>“Topic Meeting”</u>	has the meaning given to it in <u>Section 2.4.3.a</u> of <u>Part C</u> .

⁹ Proposers to note that it is the current expectation of the Procuring Authorities that the rate will be equal to the fixed interest rate applicable to any TIFIA Financing, calculated by adding one basis point (0.01%) to the rate of securities of a similar maturity as published at the time of the Interest Rate and Credit Spread Protection Start Time for the Interest Rate and Credit Spread Submittal and on the TIFIA Rate fixing date in the United States Treasury Bureau of Public Debt’s daily rate table for State and Local Government Services (SLGS) securities located on the Internet at <http://treasurydirect.gov/GA-SL/SLGS/selectSLGSDate.htm>.

<u>“Transportation Commission”</u>	has the meaning given to it in <u>Section 1.1</u> of the <u>Executive Summary</u> .
<u>“Volume”</u>	means any of Volume 1, Volume 2, Volume 3, Volume 4, Volume 5 and Volume 6.
<u>“Volume 1”</u>	has the meaning given to it in <u>Section 1.2.2.a.i.A</u> of the <u>General Proposal Instructions</u> .
<u>“Volume 2”</u>	has the meaning given to it in <u>Section 1.2.2.a.i.B</u> of the <u>General Proposal Instructions</u> .
<u>“Volume 3”</u>	has the meaning given to it in <u>Section 1.2.2.a.i.C</u> of the <u>General Proposal Instructions</u> .
<u>“Volume 4”</u>	has the meaning given to it in <u>Section 1.2.2.a.ii.A</u> of the <u>General Proposal Instructions</u> .
<u>“Volume 5”</u>	has the meaning given to it in <u>Section 1.2.2.a.ii.B</u> of the <u>General Proposal Instructions</u> .
<u>“Volume 6”</u>	has the meaning given to it in <u>Section 1.2.2.a.ii.C</u> of the <u>General Proposal Instructions</u> .

2. RULES OF INTERPRETATION

2.1 ITP Supersedes RFQ

To the extent that this ITP contains information or instructions in addition to, different from, or inconsistent or conflicting with, the equivalent information and instructions set out in the RFQ, this ITP shall govern.

2.2 References to the Procuring Authorities

2.2.1. While, for ease of reference, HPTE and BE are collectively referred to as “Procuring Authorities”, either one of them may act for both of them in their capacity as Procuring Authorities under this ITP unless otherwise expressly provided.

2.2.2. Any reference in this ITP to the Procuring Authorities having the right to exercise their “discretion” means the Procuring Authorities (including either one of them acting on behalf of both of them in accordance with Section 2.2.1 of this Part A) having the right to exercise their sole and absolute discretion in regard to a particular decision or action, including the ability to refrain from taking any action and the ability (where appropriate) to impose any conditions in the exercise of such discretion.

2.3 Interpretation of Certain References, Terms, Phrases and Types of Language

2.3.1. Headings and Other Internal References

- a. Headings are inserted for convenience only and shall not affect interpretation of this ITP.
- b. Except as otherwise expressly provided in this ITP, a reference to any Section, Part, Form, Annex or Exhibit within this ITP, is a reference to such Section or Part of, or Form or Annex set out in, or Exhibit to, this ITP.

2.3.2. Common Terms

- a. When there are references with general words followed by a list, or a reference to a list, to make it clear that those general words “include” the matters set out in that list, then the contents of the list shall not, and shall not be deemed to, limit the generality of those general words.
- b. The singular includes the plural and vice versa.

- c. The word “promptly” means as soon as reasonably practicable in light of then-prevailing circumstances.

2.3.3. Professional Language and Terms of Art

Except as otherwise expressly provided in this ITP:

- a. words and phrases not otherwise defined herein:
 - i. that have well-known technical or construction industry meanings shall be construed pursuant to such recognized meanings; and
 - ii. of an accounting or financial nature shall be construed pursuant to GAAP, in each case taking into account the context in which such words and phrases are used;
- b. all statements of or references to, dollar amounts or money in this ITP, including references to “\$” and “dollars”, are to the lawful currency of the United States of America.

2.3.4. References to Agreements, Documents and Laws

Except as otherwise expressly provided in this ITP, any reference:

- a. to an agreement or other document shall be considered to be a reference to such agreement or other document (including any schedules, annexes or exhibits thereto) as it may be amended, modified or supplemented from time to time in accordance with its terms; and
- b. to any Law shall be construed as a reference to such law, enactment, order, regulation or instrument as amended, replaced, consolidated or re-enacted from time to time.

PART B: PROJECT INFORMATION

1. PROJECT GOALS AND TRANSPARENCY

1.1 Project Goals

Reflecting the multi-year planning process that has led to the RFP, the Procuring Authorities and CDOT established goals for this Project. These goals (the “Project Goals”), which are not listed in order of priority or importance, are as follows:

- a. Optimize the scope of the transportation and supporting infrastructure delivered through the Project in order to promote corridor-wide economic and community vitality.
- b. Optimize operating and life cycle maintenance costs by delivering a Project using quality design, materials and techniques.
- c. Minimize impacts to the traveling public, businesses and nearby communities during and after construction.
- d. Once operational, ensure reliable travel speeds in the managed lanes and, for all lanes, a minimum appropriate standard of maintenance.
- e. Utilize a collaborative process to enhance community values and Project benefits.
- f. Protect the safety of the workforce and public.

1.2 Commitment to Transparency

1.2.1. Overview

- a. The Procuring Authorities are committed to transparency during the procurement process for the Project and throughout its design, construction, financing, operation and maintenance. This commitment builds upon HPTE’s general policies governing transparency and open records, which, as they relate to the RFP, are outlined in Sections 1.2.2 through 1.2.4 of this Part B.
- b. The Procuring Authorities have already taken steps to prioritize transparency, open government and accountability in accordance with this commitment, for example by holding public meetings as detailed in Section 1.2.3.a of this Part B and by releasing to the public, on the Project Website, information related to the RFQ phase of the Project (including information relating to the Prospective Proposers and their Public Disclosure SOQs).
- c. The Procuring Authorities will continue to prioritize transparency, open government and accountability throughout the remainder of the Project, including by requiring Developer to comply with relevant provisions in the Project Agreement (including Part G (*Public Oversight*) thereof and Schedule 14 (*Strategic Communications*) thereto).

1.2.2. Transparency and Open Records Policies

- a. On August 19, 2015, HPTE’s board adopted a First Amended Transparency Policy (the “HPTE Transparency Policy”) to ensure transparency and accountability for, and public participation in, any public-private partnership entered into by HPTE.¹⁰
- b. On August 19, 2015, HPTE’s board adopted an Open Records Policy Relating to Public-Private Partnerships (the “HPTE Open Records Policy”) to further ensure transparency

¹⁰ The HPTE First Amended Transparency Policy is available at: www.coloradodot.info/programs/high-performance-transportation-enterprise-hpte/about-us/rules-policy.

and the efficient and orderly disclosure of public documents produced over the course of the development and implementation of any public-private partnership.¹¹

- c. BE will follow both the HPTE Transparency Policy and the HPTE Open Records Policy for purposes of the Project.

1.2.3. Public Meetings

- a. The HPTE Transparency Policy calls for HPTE, in coordination with interested local governments, to hold a minimum of three public town hall meetings in relation to a potential public-private partnership, such as the Project. Consistent with this policy, the Procuring Authorities have held or intend to hold the following public town hall meetings, which include an additional meeting beyond the minimum called for under the HPTE Transparency Policy:

Public Meetings	Status for the Central 70 Project
<u>First Meeting</u> During the "visioning" stage of the Project.	Telephone town hall meeting held on June 25, 2014 and a town hall meeting held on July 8, 2014.
<u>Second Meeting</u> Prior to issuance of a draft RFQ for the Project.	Telephone town hall meeting held on October 16, 2014 and a town hall meeting held on November 5, 2014.
<u>Third Meeting</u> Prior to issuance of a draft RFP for the Project.	Town hall meetings held on August 17, 19 and 20, 2015 and a telephone town hall meeting held on August 18, 2015.
<u>Fourth Meeting</u> After preparation of, but prior to issuance of, a final RFP for the Project.	To be held at the appropriate time.

The Procuring Authorities consider the meetings required under the HPTE Transparency Policy as just one element of their commitment to transparency. They have therefore engaged in additional public engagement activities. These additional activities have included the conduct of related online surveys and the publication of documents explaining the purpose of the RFQ and the RFP.

- b. The meetings referred to in Section 1.2.3.a of this Part B have been and will:
 - i. be held either at a location near the primary communities expected to be affected by the Project or at such other forums as HPTE (in consultation with CDOT and BE) have deemed or may deem appropriate to provide access to the public;
 - ii. allow for comment, input and questions from the public and response from staff or board members of the Procuring Authorities; and
 - iii. update the public on additional developments regarding the Project and other information as required by, or consistent with, the HPTE Transparency Policy.
- c. All meetings held in accordance with Section 1.2.3.a of this Part B have been or will be preceded by full and timely notice. This includes posting notice on the Project Website and providing notice to appropriate media, to members of the General Assembly whose districts include any geographic area located within the expected boundaries of the Project and to the county/municipal governing bodies of those geographic areas.

¹¹ The HPTE Open Records Policy Relating to Public-Private Partnerships is available at: www.coloradodot.info/programs/high-performance-transportation-enterprise-hpte/about-us/rules-policy.

1.2.4. Open Records during Procurement

In accordance with the HPTE Transparency Policy and the HPTE Open Records Policy:

- a. the Procuring Authorities have released to the public on the Project Website and through other means:
 - i. the RFQ;
 - ii. certain information related to the RFQ phase of the Project (including details of the Prospective Proposers and their Public Disclosure SOQs);
 - iii. this ITP; and
 - iv. various reports, presentations and materials related to the Project;
- b. in addition to the foregoing, the Procuring Authorities are and will be making available, on an ongoing basis, other information relating to the Project that will assist the public in understanding the Project and in considering meaningful comments, including posting on the Project Website all Addenda to the RFP which will include the draft Project Agreement and each updated draft of this ITP and the Project Agreement;
- c. after the Project Agreement is executed, the Procuring Authorities will post on the Project Website the fully executed agreement together with a summary of the key terms of such agreement, in each case save to the extent contemplated otherwise by Section 1.5 of Part D;
- d. the Procuring Authorities have included provisions in this ITP (including Section 1.5 of Part D) to facilitate the public disclosure of information provided by Proposers; and
- e. the Procuring Authorities have included provisions in the Project Agreement to ensure that Developer's records and conduct are transparent to, and subject to the review of, the Procuring Authorities, as well as to promote the dissemination of certain information regarding the Project and Developer's activities to the public.

2. PROJECT INFORMATION

2.1 Overview

- 2.1.1. The Procuring Authorities intend that the following Sections 2.2 and 2.3 of this Part B provide, respectively:
 - a. a brief overview of the Project scope of work (the full scope of work to be performed by Developer is set out in the Project Agreement); and
 - b. updates on select aspects of the Project (including on developments since the issuance of the RFQ).
- 2.1.2. In addition, the Procuring Authorities have assembled and made publicly available other documents and information relating to the Project at: central70.codot.gov (the "Project Website").
- 2.1.3. Notwithstanding the public nature of the Project Website, the Procuring Authorities recognize that a competitive and secure procurement process requires confidential communications and disclosures with and to Proposers and the Preferred Proposer. Accordingly, to the extent necessary to preserve confidentiality for such purposes, the Procuring Authorities have established a limited-access Aconex document management and communications system (the "Secure Project DMS") for Proposers and otherwise reserve the right to conduct direct written or oral communications with Proposers, including with the Preferred Proposer.
- 2.1.4. The Procuring Authorities also expect Proposers to review the proposed terms of the Project Agreement and all Reference Documents as part of their due diligence of the Project. Section 2 of Part C provides further information on the Proposer due diligence process.

2.2 NEPA Process and Scope of Project¹²

- 2.2.1. The Procuring Authorities expect that the ongoing I-70 East NEPA process will identify the key components of the ultimate planned-for improvements to the I-70 East Corridor. CDOT has identified the Partial Cover Lowered Alternative as the “preferred alternative” in the I-70 East Final Environmental Impact Statement (“EIS”) pursuant to NEPA. However, no final decision to approve an alternative may occur pursuant to NEPA until the publication of a Record of Decision (“ROD”).
- 2.2.2. It is currently anticipated that the ROD will follow a phased approach to account for current projections of the scope of the project that is needed and can be procured at this time. The Procuring Authorities have developed the RFP based on the expectation that the scope of the Construction Work to be performed by the Developer under the Project Agreement will be based on the anticipated ROD “Phase 1” project. Therefore, the physical boundaries of the Partial Cover Lowered Alternative as reflected in the current I-70 East NEPA documents include areas that are beyond the scope of work to be performed by Developer under the Project Agreement as part of the Project. The I-70 East NEPA review of the fuller scope of work, which includes all the ultimate planned-for improvements to the I-70 East Corridor, reflects various considerations, including the long-term planning benefits that CDOT has identified in considering a broader scope of work than it might procure in the near term.
- 2.2.3. Notwithstanding the foregoing, the scope of work reflected in the RFP remains subject to change prior to finalization of the ROD(s). Since issuance of the initial draft of this ITP, CDOT and FHWA published the final EIS on January 15, 2016.
- 2.2.4. The Procuring Authorities will not identify a Preferred Proposer in accordance with Section 7.1 of Part C prior to issuance of the ROD for the “Phase 1” project, as development of the Project may only proceed following the issuance of one or more RODs formalizing the results of the I-70 East EIS NEPA review process.

2.3 Project Status

2.3.1. Right of Way Acquisition

In addition to its existing I-70 East Corridor right-of-way, CDOT has been acquiring the additional parcels of land that it expects to make available to Developer under the terms of the Project Agreement. Appendix A to Schedule 18 (Right-of-Way) to the Project Agreement includes information regarding the status of the acquisitions and future scheduled acquisitions of parcels that will comprise the Right-of-Way.

2.3.2. Drainage

The Project will involve addressing on-site and off-site drainage elements. Section 8 (Drainage) of Schedule 10 (Design and Construction Requirements) of the Project Agreement sets out the currently anticipated scope of work for Developer as it relates to drainage. The Procuring Authorities may provide further updates to Proposers regarding Developer’s scope of work for the Project drainage system, including insofar as it may be impacted by any work undertaken by the City of Denver with respect to its separate implementation of projects to improve drainage throughout northeast Denver, during the procurement process.

2.3.3. Utility and Railroad Agreements

The Procuring Authorities, together with CDOT, are currently in discussions with Utility Owners and Railroads that will be affected by the Project. These discussions concern coordination of the Project with the potentially affected Utility Owners and Railroads. The Procuring Authorities expect that this on-going coordination work will continue throughout the draft RFP process. Negotiations are ongoing with the Utility Owners and Railroads in relation to the terms of their applicable URAs and RRAs. In both cases, the Procuring Authorities anticipate providing Proposers with copies of the URAs and RRAs as Reference Documents. Sections 4 (Utilities)

¹² See footnote on Section 3 of the Executive Summary.

and 10 (Railroads) of Schedule 10 (Design and Construction Requirements) to the Project Agreement provide additional information regarding coordination with Utility Owners and Railroads.

2.3.4. Third Party Agreements

An Intergovernmental Agreement, effective September 14, 2015, has been entered into between CDOT, HPTE, BE and the City of Denver, a copy of which has been included in the Reference Documents.

The Procuring Authorities are currently negotiating a Memorandum of Agreement with School District No. 1 of the City and County of Denver (the “DPS IGA”), but such agreement has not been finalized yet. The DPS IGA will be included in the Reference Documents during the course of the procurement process.

The Procuring Authorities intend to enter into an agreement with a third party with respect to the maintenance of the Cover but such agreement has not been finalized yet. This agreement will be included in the Reference Documents during the course of the procurement process.

2.3.5. Intra-agency Agreement among CDOT, HPTE and BE

CDOT, HPTE and BE anticipate entering into an Intra-agency agreement (the “IAA”) in order to memorialize each party's role in the management of the Project, as well as to further define the operational and financial obligations of each party with respect to the Project. For certainty however, the terms of the IAA will not affect the obligations of the Enterprises owed to Developer under the Project Agreement, but will only regulate the relationship between each of the parties to the IAA. The IAA will be included in the Reference Documents during the course of the procurement process.

2.3.6. Civil Rights and Workforce Matters

In anticipation of the opportunities presented by the Project for small and disadvantaged businesses and the local workforce, the CDOT Civil Rights and Business Resource Center has undertaken a transparent project goal setting process conducted in accordance with 49 CFR 26.45, including consultation with representative groups and interested stakeholders, in order to meet the following goals, each of which shall be measured in accordance with Schedule 15 (Federal and State Requirements) to the Project Agreement:

Small Business and Workforce Development Goals				
	Disadvantaged Business Enterprise	Emerging Small Business	On-the-Job-Training	Local Hiring
Construction Period				
Design Services	11.6%	3%	N/A	TBD ¹³
Other Construction Work	12.5%	3%	105,000 employment hours	
Operating Period				
Routine Maintenance	N/A	\$510,000 (indexed) every three years	N/A	N/A
Renewal Work	TBD Triennially	N/A	TBD ¹⁴	N/A

¹³ To be provided in a future Addendum.

¹⁴ To be provided in a future Addendum.

2.3.7. Community Development Programs

- a. The Procuring Authorities have heard from local communities an interest in the development of certain programs to address community development needs, including programs relating to:
 - i. business retention, particularly during the Construction Period;
 - ii. creation of small businesses and community-based businesses, with consideration of programs such as revolving loan funds and direct grants;
 - iii. creation of job opportunities and new skill development;
 - iv. provision of community and neighborhood enhancements;
 - v. the utilization of educational opportunities the Project can provide, ranging from math and early engineering concepts, to environmental issues, to construction of the Project itself; and
 - vi. working with one or more community-based non-profits to fund and carry on such community development activities.
- b. The Procuring Authorities will be requiring Developer to assume certain obligations (in Schedule 15 (Federal and State Requirements) to the Project Agreement) that will assist in the establishment and development of such programs. By way of example only, such obligations may relate to:
 - i. the establishment and funding of a community development fund for projects or programs that advance the well-being of, and assets available to, local residents;
 - ii. the development and implementation of educational programs for the students of Swansea Elementary School; and
 - iii. the provision of support for a workforce development program to be established by CDOT.¹⁵

3. FINANCIAL INFORMATION

3.1 Sources of Funds

Details of the sources of funds that the Procuring Authorities anticipate using to fund their payment obligations under the Project Agreement are set out in the memorandum entitled "I-70 East Project – Sources and Flow of Funds" posted on the Project Website.

3.2 Private Activity Bonds

- 3.2.1. In July 2015, BE applied for a provisional allocation of up to \$725,000,000 of private activity bonds ("PABs") from US DOT.¹⁶ On November 24, 2015, US DOT provisionally allocated up to \$725,000,000 in PABs for the Project. If the Preferred Proposer elects to include PABs in its Financial Proposal, BE will act as the conduit issuer (the "PABs Issuer") of the PABs for the Project, the proceeds of which are to be used for a defined, tax-qualified purpose by Developer as a private entity, acting as the conduit borrower. Each Proposer may, but is not obliged to, assume the use of all or a portion of such PABs allocation, once allocated, in its Financial Proposal.¹⁷

¹⁵ Additional details will be included in a subsequent Addendum (including by way of amendments to Schedule 15 to the Project Agreement).

¹⁶ This authority relates to private activity bonds that are "exempt facility bonds", the proceeds of which are to be used on "qualified highway or surface freight transfer facilities" pursuant to 26 U.S. Code § 142(a)(15) and (m).

¹⁷ The Procuring Authorities will provide updates to Proposers on this application process during the course of the procurement.

- 3.2.2. Subject only to Section 27.4 of, and Schedule 1 (Financial Close) to¹⁸, the Project Agreement, any Proposer that assumes the future use of PABs in its Proposal shall:
- a. comply with Section 4.4 of Part C with respect to the selection of its underwriter(s);
 - b. be responsible for (i) complying with any requirements of State and Federal tax laws associated with such use, (ii) obtaining any necessary or desirable ratings, bond counsel opinions and/or credit enhancement and (iii) satisfying any conditions placed on the use of the allocation by US DOT and/or the PABs Issuer;
 - c. be solely responsible for the payment of all fees, costs and expenses associated with the issuance and ongoing administration of PABs, including (i) those for the PABs Issuer's outside counsel and other advisors (all of which the PABs Issuer may select in its discretion, notwithstanding Proposer's responsibility for associated fees, costs and expenses), provided that BE will not charge any upfront or continuing fees that might otherwise be chargeable by BE in its capacity as the PABs Issuer and (ii) by way of reimbursement to the Procuring Authorities and/or CDOT of any such fees, costs and expenses previously paid, such payment or reimbursement to be made on Financial Close; and
 - d. bear all financial closing risk associated with a potential PABs issuance.
- 3.2.3. To assist Proposers in preparing their Financial Proposals, but without prejudice to Section 3.2.2.c of this Part B, no later than 45 Calendar Days prior to the Financial Proposal Deadline, the Procuring Authorities expect to deliver to Proposers a notice which they anticipate will set out non-binding estimates for certain fees, costs and expenses associated with the issuance of PABs, together with guidance on the inputs that are the basis for determining such estimates.

3.3 TIFIA Financing

- 3.3.1. On March 24, 2015, the Procuring Authorities submitted an initial letter of interest to the TIFIA JPO for a TIFIA direct loan of up to \$450,000,000 for the Project.
- 3.3.2. On August 12, 2015, the Procuring Authorities received a response from the TIFIA JPO authorizing the Project to advance to the next phase in the TIFIA review process.¹⁹
- 3.3.3. Once available, the Procuring Authorities will release to Proposers a draft term sheet for a prospective TIFIA Financing of the Project (the most recent version thereof issued to Proposers from time to time pursuant to an Addendum, the "Baseline TIFIA Term Sheet") in the form of a new Exhibit 1 (Baseline TIFIA Term Sheet) to this ITP. As an Exhibit to this ITP, Proposers will be entitled to submit RFP Comments to the Procuring Authorities (but not the TIFIA JPO) on such term sheet. The Procuring Authorities, acting reasonably, may raise such comments during the course of their interaction with the TIFIA JPO and thereafter introduce amendments to the Baseline TIFIA Term Sheet based on feedback from the TIFIA JPO. In addition, the Procuring Authorities may elect to arrange a single round of one-on-one meetings involving Proposers and the TIFIA JPO.
- 3.3.4. Subject only to Section 27.4 of, and Schedule 1 (Financial Close) to²⁰, the Project Agreement, any Proposer that assumes the use of a TIFIA Financing in its Proposal shall:

¹⁸ Pursuant to Section 27.4 of, and Schedule 1 (Financial Close) to, the Project Agreement: (a) the Enterprises shall agree to use Reasonable Efforts in order to assist Developer's efforts to achieve Financial Close; (b) the Enterprises shall be responsible for satisfying certain conditions precedent to Financial Close (e.g. entry into agreements with post-closing obligations, including the Lenders Direct Agreement, any agreement to which BE is a party as PABs Issuer and any continuing disclosure agreement); and (c) Developer shall be relieved from the consequences of certain "Key Financial Events", including due to delays in issuance, or failures to issue, PABs that are attributed to BE as PABs Issuer.

¹⁹ The Procuring Authorities will provide Proposers with regular updates on the status of this process during the course of the procurement, including as to the final quantum of the available TIFIA Financing.

²⁰ See footnote to Section 3.2.2 of this Part B.

- a. be solely responsible for finalizing and entering into a TIFIA Financing credit agreement with the US DOT, including by:
 - i. meeting with the TIFIA JPO to present its Proposal shortly following selection as the Preferred Proposer; and
 - ii. satisfying all US DOT requirements in connection with the TIFIA Financing, including by providing the TIFIA JPO with all required due diligence materials,²¹ provided that during the course of working directly with the TIFIA JPO the Preferred Proposer shall provide the Procuring Authorities with regular written updates in accordance with Section 1.1.3.b of Part D;
 - b. be solely responsible for the payment of all fees, costs and expenses associated with the origination, credit processing and ongoing administration of any TIFIA Financing, including (i) those for the TIFIA JPO's or US DOT's outside counsel and other advisors (all of which the TIFIA JPO or US DOT may select in its discretion, notwithstanding the Proposer's responsibility for associated fees, costs and expenses) and (ii) by way of reimbursement to US DOT and/or the Procuring Authorities and/or CDOT of any such fees, costs and expenses, previously paid, such payment or reimbursement to be made on Financial Close;
 - c. share with the Procuring Authorities the financial impact of any net benefit of any negotiated betterments in the final terms of its TIFIA Financing relative to those set out in the Baseline TIFIA Term Sheet, with the Procuring Authorities' share being 85% of the net benefit as calculated under Schedule 1 (*Financial Close*) to the Project Agreement; and
 - d. bear all financial closing risk associated with a potential TIFIA Financing.
- 3.3.5. To assist Proposers in preparing their Financial Proposals, but without prejudice to Section 3.3.4.b of this Part B, no later than 45 Calendar Days prior to the Financial Proposal Deadline, the Procuring Authorities expect to deliver to Proposers a notice which they anticipate will set out non-binding estimates for certain fees, costs and expenses associated with the TIFIA Financing, together with guidance on the inputs that are the basis for determining such estimates.
- 3.3.6. Proposers should note that, for purposes of sizing the TIFIA Financing, FHWA's Colorado Division has verified that \$343,920,000²² of the Procuring Authorities' direct costs are eligible to be funded by the TIFIA Financing. However, such amount remains subject to acceptance by the TIFIA JPO. This amount is not required to be reimbursed or financed by Developer.

3.4 Disclaimer of PABs and TIFIA Loan Terms and Availability

- 3.4.1. Notwithstanding the arrangements made by the Procuring Authorities, and the participation of the Procuring Authorities in any future arrangements, for a potential PABs issuance described in Section 3.2 of this Part B and/or for a potential TIFIA Financing described in Section 3.3 of this Part B, which arrangements have been or will be made for the benefit of the Project and not for Proposers, if a Proposer elects to assume the use of PABs and/or TIFIA Financing in its Financial Proposal, it does so at its own risk and cost, subject only to Schedule 1 (*Financial Close*) to the Project Agreement.
- 3.4.2. Neither Procuring Authority nor CDOT makes any representation as to, or otherwise guarantees:

²¹ The Procuring Authorities expect, but cannot guarantee, that these might include key contract information in the form of draft contracts or detailed term sheets, lenders' insurance and technical advisor reports, equity subscription agreements, management contracts or detailed term sheets and opinions or reports on tax and accounting methodologies. The Procuring Authorities also expect that the TIFIA JPO will require consultant reports to be co-addressed to it and/or the US DOT.

²² If there are any changes to this amount following further discussions with TIFIA JPO and FHWA, the Procuring Authorities will inform Proposers of such changes. Proposers should note that this amount includes the \$25,000,000 payable to the Procuring Authorities on Financial Close pursuant to Section 3.7 of Part B.

- a. whether PABs can be issued, or a credit agreement for a TIFIA Financing can be entered into, for the Project;
 - b. the amount of PABs that can be issued or TIFIA Financing credit capacity that can be committed for the Project; or
 - c. the permitted uses of proceeds of any PABs issuance or TIFIA Financing to finance the Project, including in the case of a PABs issuance as a matter of Federal tax law.
- 3.4.3. Each Proposer should seek the advice of its own legal, financial and tax advisors on the matters referred to in Sections 3.4.2.a to c of this Part B.

3.5 Federal Funding Requirements

- 3.5.1. As described in this Section 3 of this Part B, the Procuring Authorities expect that the Project will be funded in part through the use of Federal funds. Accordingly, applicable Federal law and regulations will apply to the Project's procurement and the resulting Project Agreement.
- 3.5.2. In accordance with Federal statutes and regulations, no party shall discriminate on the basis of race, color, national origin, sex, age or disability against any person or business in the award and administration of the Project.
- 3.5.3. In accordance with their Reserved Rights, the Procuring Authorities may modify the RFP and the procurement process described herein to address any concerns, conditions or requirements of FHWA or applicable Federal law.

3.6 Restrictions on Communications with US DOT and FHWA

Reflecting the anticipated use of Federal funds on the Project as well as Federal involvement in the NEPA process, Proposers should note that, pursuant to Section 1.1.2.e of Part D (but subject to Section 1.1.3 of Part D), the Procuring Authorities have restricted communications by Proposers with FHWA and US DOT (including the TIFIA JPO). These restrictions include communications on matters related to the use of PABs and/or TIFIA Financing in relation to the Project.

3.7 Preferred Proposer Reimbursement of Costs

In addition to its responsibility for payment of the fees, costs and expenses referred to in Sections 3.2.2.c and 3.3.4.b of this Part B (as reflected in Schedule 1 (Financial Close) to the Project Agreement), the Preferred Proposer (or its Developer) shall pay the Procuring Authorities, on Financial Close, an amount of \$25,000,000 as payment for, and/or reimbursement of, costs incurred by the Procuring Authorities and/or CDOT in connection with the procurement process described in this ITP.

PART C: PROCUREMENT PROCESS

1. OVERVIEW OF PROCUREMENT PROCESS

1.1 Statutory Position and Procurement Guidelines

- 1.1.1. Although the Procuring Authorities are not bound by the general Colorado Procurement Code, HPTE previously adopted "Project Proposal Guidelines".²³ BE's board has approved the use by BE of HPTE's guidelines for this Project.
- 1.1.2. These guidelines contemplate that HPTE, in this case acting together with BE, will issue such solicitation documents, and adopt such a process, as it determines to be in the best interests of the State and the public under the circumstances. In doing so, it will also take into account the Project's unique characteristics and goals.
- 1.1.3. In making decisions regarding such matters with respect to this Project, the Procuring Authorities' have established objectives that include achieving the Project Goals, encouraging competition and ensuring both transparency and the non-discriminatory treatment of Proposers.

1.2 Procurement Schedule

The Procuring Authorities expect to carry out the Project procurement process in accordance with the following schedule (the "Procurement Schedule"). This schedule remains subject to adjustment (a) through the issuance of Addenda in accordance with Section 1.3 of this Part C, (b) through a separate written notice to Proposers or (c) by the Procuring Authorities exercising any applicable Reserved Right.²⁴

Event	Date/Time ²⁵
RFQ Process (completed)	
Industry Forum	March 11-12, 2015
RFQ Issued	March 25, 2015
RFQ Addendum No. 1 Issued	May 29, 2015
Submission of SOQs in response to RFQ	June 22, 2015
Announcement of Short-listed Proposers	July 24, 2015
Public Release of Materials Related to the RFQ Process	September 2, 2015
RFP Process	
First Draft RFP Process (completed)	
Issuance of first draft ITP	September 15, 2015
Issuance of first draft Project Agreement	September 29, 2015

²³ See: www.codot.gov/programs/high-performance-transportation-enterprise-hpte/procurement/HPTE%20-%20Procurement%20Guidelines%20v.2.pdf

²⁴ For ease of reference, each RFP Addendum containing a revised form of the RFP is colloquially referred to in the Procurement Schedule as a first, second or third "draft", or as the "final" version, of the RFP.

²⁵ Unless otherwise specified, all specific times are in Denver, Colorado time.

Event	Date/Time²⁵
Deadline for Proposers to submit commercial/legal RFP Comments on first draft RFP (the " <u>First Commercial/Legal RFP Comment Deadline</u> ") ²⁶	October 27, 2015 at 9:00 am
One-on-One Meetings with Proposers regarding submitted commercial/legal RFP Comments	Week commencing November 9, 2015
Deadline for Proposers to submit technical RFP Comments on first draft RFP (the " <u>First Technical RFP Comment Deadline</u> ") ²⁷	November 16, 2015 at 9:00 am
First Deadline for Proposers to submit ATC Submissions (the " <u>First ATC Submission Deadline</u> ")	November 16, 2015 at 9:00 am
One-on-One Meetings with Proposers regarding submitted technical RFP Comments and ATC Submissions	Week commencing December 7, 2015
Issuance of final EIS under NEPA	January 15, 2016
Deadline for Proposers to submit initial Supplemental Due Diligence Requests for Physical Due Diligence (the " <u>Initial Physical Due Diligence Request Deadline</u> ")	January 22, 2016 at 9:00 am
Second Draft RFP Process	
Issuance of second draft RFP to Proposers	February 23, 2016
Topic Meetings with UPRR and BNSF	March 30 and 31, 2016
Deadline for Proposers to submit RFP Comments on second draft RFP (the " <u>Second RFP Comment Deadline</u> ") ²⁸	March 31, 2016 at 9:00 am
Topic meetings with Denver Water and Denver Wastewater	April 5, 2016
Deadline for Proposers to submit ATC Submissions (the " <u>Second ATC Submission Deadline</u> ")	April 12, 2016 at 9:00 am
One-on-One Meetings with Proposers regarding RFP Comments and ATC Submissions	Week commencing April 25, 2016
Third Draft RFP Process	
Issuance of third draft RFP to Proposers	June 14, 2016

²⁶ For purposes of this deadline, "commercial/legal RFP Comments" means comments that are required to be included in Part 1 (ITP Comments) or Part 2 (Project Agreement Comments) of the RFP Comment Submission Form in Annex 1.

²⁷ For purposes of this deadline, "technical RFP Comments" means comments that are required to be included in Part 3 (Technical Provisions Comments) of the RFP Comment Submission Form in Annex 1.

²⁸ For purposes of this deadline, and all subsequent RFP Comment Deadlines, Proposers are required to submit commercial/legal and technical RFP Comments in the same submission.

Event	Date/Time ²⁵
Deadline for Proposers to submit RFP Comments on third draft RFP (the " <u>Third RFP Comment Deadline</u> ")	July 14, 2016 at 9:00 am
Deadline for Proposers to submit ATC Submissions (the " <u>Third ATC Submission Deadline</u> ")	July 14, 2016 at 9:00 am
Deadline for Proposers to submit final Supplemental Due Diligence Requests for Physical Due Diligence (the " <u>Final Physical Due Diligence Request Deadline</u> ")	July 15, 2016 at 9:00 am
One-on-One Meetings with Proposers regarding RFP Comments and ATC Submissions	Week commencing August 8, 2016
IDP Meetings with Proposers	Week commencing August 8, 2016
Deadline for Proposers to submit ATC Submissions (the " <u>Fourth ATC Submission Deadline</u> ")	August 31, 2016 at 9:00 am
One-on-One Meetings with Proposers regarding Fourth ATC Submissions	Week commencing September 19, 2016
Final RFP Process	
Anticipated issuance of Phase 1 ROD under NEPA	September 2016
Deadline for Proposers to submit Preliminary Organizational Conflict of Interest Disclosures in accordance with Section 1.3.1.c of Part D	October 2016
Deadline to submit Key Personnel Forms (" <u>Key Personnel Deadline</u> ")	October 2016
Issuance of final RFP	October 18, 2016
Deadline for Proposers to submit RFP Comments on final RFP (the " <u>Final RFP Comment Deadline</u> ")	October 25, 2016 at 9:00 am
Deadline for Proposers to submit ATC submissions (the " <u>Final ATC Submission Deadline</u> ")	October 25, 2016 at 9:00 am
Deadline to submit Proposer Update Submissions (the " <u>Proposer Update Deadline</u> ")	November 1, 2016 at 9:00 am
Deadline for Proposers to submit Supplemental Due Diligence Requests for Restricted Access Inspections and Public Access Inspections	November 1, 2016 at 9:00 am

Event	Date/Time ²⁵
Final One-on-One Meetings with Proposers as needed regarding RFP Comments and, at the discretion of the Procuring Authorities, ATC Submissions	Week commencing November 7, 2016
Setting Date (as defined in the Project Agreement)	November 15, 2016
Deadline for Proposers to submit Administrative and Technical Proposals (the “ <u>Technical Proposal Deadline</u> ”)	December 15, 2016 at 2:00 pm
Deadline for Proposers to submit Public Disclosure Technical Proposal (“ <u>Public Disclosure Technical Proposal Deadline</u> ”)	10 Working Days after Technical Proposal Deadline at 4:00 pm
Expected release of estimated PABs Financing and TIFIA Financing fees, costs and expenses in accordance with <u>Section 3.2.3</u> and <u>Section 3.3.5</u> of this <u>Part B</u>	45 Calendar Days prior to Financial Proposal Deadline
Date for Proposer submission of “dry run” Interest Rate and Credit Spread Submittal in accordance with <u>Section 4.2.2.a</u> of <u>Part C</u>	Within 20 Working Days prior to Financial Proposal Deadline
Procuring Authority response to “dry run” Interest Rate and Credit Spread Submittal in accordance with <u>Section 4.2.2.b</u> of <u>Part C</u>	Within 20 Working Days prior to Financial Proposal Deadline
Date for Proposer submission of “final” Interest Rate and Credit Spread Submittal in accordance with <u>Section 4.2.3.a</u> of <u>Part C</u>	10 Working Days prior to Financial Proposal Deadline by 3.00 pm EST
Procuring Authority response to “final” Interest Rate and Credit Spread Submittal in accordance with <u>Section 4.2.3.c</u> of <u>Part C</u>	7 Working Days prior to Financial Proposal Deadline by 3.00 pm EST
Deadline for Proposers to submit Financial Proposals (the “ <u>Financial Proposal Deadline</u> ”)	February 28, 2017 at 2:00pm
Deadline for Proposers to submit Public Disclosure Financial Proposals (“ <u>Public Disclosure Financial Proposal Deadline</u> ”)	5 Working Days after Financial Proposal Deadline at 4:00 pm
Preferred Proposer Selection; Commercial Close and Financial Close	
Announcement of Preferred Proposer	March 17, 2017
Execution of the Project Agreement in accordance with <u>Section 7.3.2</u> of <u>Part C</u>	April 2017
Financial close (i.e. first disbursement of debt under the Preferred Proposer’s financing plan)	July 2017
Public Release of Materials Related to the RFP Process	No earlier than execution of the Project Agreement

1.3 Modification through Addenda

- 1.3.1. Without limiting the exercise by the Procuring Authorities of any of the Reserved Rights, the Procuring Authorities may issue Addenda modifying the RFP.
- 1.3.2. Notwithstanding any election by the Procuring Authorities to communicate the publication of any such Addenda to Proposers through other means, including through the Secure Project DMS, the sole official notice of issuance of any such Addenda will be by the posting of such Addenda on the Project Website, which is equally available to both Proposers and interested members of the public. Proposers are solely responsible for monitoring the Project Website to ensure that they have received any and all such Addenda.
- 1.3.3. The Procuring Authorities will not be bound by any (a) oral communications or (b) written communications, interpretations or clarifications, which written communications do not otherwise constitute an Addendum.
- 1.3.4. A Proposer's submission of a Proposal shall be deemed to constitute an acknowledgement of notice of receipt of all Addenda issued on or prior to the date of submission of such Proposal.

2. PROPOSER DUE DILIGENCE AND SUBMITTALS

2.1 General Principles

- 2.1.1. Except to the extent expressly provided for in this ITP and under the terms of the Project Agreement (as executed), each Proposer is solely responsible, at its own cost and expense, for:
 - a. conducting its own due diligence of the Project and the RFP;
 - b. preparing and submitting (i) all Pre-Proposal Submissions as and when required during the procurement process described in this ITP and (ii) its Proposal;
 - c. complying with applicable law throughout the course of the procurement process described in this ITP;
 - d. if selected as the Preferred Proposer in accordance with Section 7.1 of this Part C, (i) establishing its Developer, (ii) finalizing the terms of the Project Agreement in accordance with the RFP and procuring its execution by its Developer, (iii) achieving Financial Close and (iv) procuring the performance of its Developer's obligations under the Project Agreement on the basis of its Proposal.
- 2.1.2. In order to provide Proposers with sufficient opportunities to conduct due diligence for the Project and prepare their Pre-Proposal Submissions and Proposals, the Procuring Authorities:
 - a. invite Proposers to:
 - i. submit RFP Comments and Supplemental Due Diligence Requests;
 - ii. attend pre-Proposal meetings with the Procuring Authorities, CDOT and, at the election of the Procuring Authorities, certain third parties; and
 - iii. review Reference Documents that the Procuring Authorities are providing as supplements to this RFP,in each case as further detailed in this Section 2 of this Part C; and
 - b. invite Proposers to conduct such other due diligence as they determine is appropriate in their discretion, to the extent not regulated or prohibited by the terms of this ITP.

2.2 Comments on RFP

2.2.1. General Requirements for Preparation and Delivery of RFP Comments

- a. Proposers may submit written comments, questions and/or requests for clarification (collectively, "RFP Comments") relating to the RFP, including any Addenda, to the Procuring Authorities at any time prior to the Final RFP Comment Deadline.

- b. Notwithstanding the Final RFP Comment Deadline, Proposers are encouraged to submit RFP Comments with respect to a particular draft of the RFP as and when they are ready for submission,²⁹ and in any case on or before the applicable RFP Comment Deadline specified in the Procurement Schedule. The Procuring Authorities reserve the right to defer consideration of any RFP Comments with respect to a particular draft of the RFP submitted prior to the applicable RFP Comment Deadline until such deadline occurs.
- c. All RFP Comment submissions shall:
 - i. comply with Section 1.1.1 of Part E, to the extent applicable;
 - ii. be in the form of Annex 1 (RFP Comment Submission Form); and
 - iii. be written so as not to identify the Proposer in the body of the question (other than in the case of RFP Comments that the Proposer identifies as CORA Exempt Materials in accordance with Section 1.5.5.b of Part D).
- d. Proposers should assume that the Procuring Authorities will not consider any RFP Comments that are:
 - i. submitted after the Final RFP Comment Deadline, except reasonable logistical questions received after such deadline the response to which may be necessary to facilitate timely and compliant delivery of Proposals;
 - ii. telephone or oral comments; or
 - iii. submitted (A) by a person other than an Official Representative or (B) to a person other than the Procuring Authorities' Contact Person.

2.2.2. Categorization of RFP Comments

In accordance with the instructions provided in Annex 1 (RFP Comment Submission Form), Proposers shall categorize their comments by reference to one of four categories: Categories "A", "B" and "C" correspond to different types of substantive comments and Category "D" corresponds to drafting comments.

2.2.3. Limits on RFP Comments

- a. The Procuring Authorities are not imposing a limit on the number of RFP Comments that a Proposer may submit on the first draft RFP, although the Procuring Authorities reserve the right to impose such a limit on subsequent drafts of the RFP (or parts thereof) in a future Addendum.
- b. Notwithstanding the absence of any such limit on the initial or subsequent drafts of the RFP, the Procuring Authorities emphasize to Proposers the importance of reasonableness and proportionality when considering:
 - i. whether to submit RFP Comments,
 - ii. the necessary length and complexity of RFP Comments that they do submit, and
 - iii. how to categorize such comments. The Procuring Authorities reserve the right to defer consideration of any RFP Comments that they determine, in their discretion, materially deviate from these principles until they have had an opportunity to discuss such concerns with the relevant Proposer at a One-on-One Meeting.

2.2.4. Responses to RFP Comments

- a. The Procuring Authorities intend to primarily, if not exclusively, address RFP Comments within an Addendum, by way of an amendment to this ITP and/or the Project Agreement,

²⁹ To the extent reasonably practical, substantively related comments should be delivered simultaneously.

- that by its terms either reflects, or declines to reflect, a response to the substance of such comments.
- b. The Procuring Authorities may also, in their discretion, respond directly to RFP Comments when they determine that doing so would benefit the procurement process described in this ITP.
 - c. Subject to Section 2.2.4.d of this Part C, any direct responses to RFP Comments by the Procuring Authorities will be in writing and will be digitally released or delivered to the Proposers, in the Procuring Authorities' discretion, on the Secure Project DMS, by email or otherwise.³⁰ In responding to RFP Comments, the Procuring Authorities may rephrase them as they deem appropriate and they may consolidate similar comments. The Procuring Authorities may also create and answer questions independent of those submitted by Proposers.
 - d. To the extent that the Procuring Authorities decide, in their discretion, to respond to any RFP Comment identified by a Proposer, or deemed by the Procuring Authorities, as containing CORA Exempt Materials, the Procuring Authorities intend to provide an individual response to the relevant Proposer. In regard to such comments, Proposers should note that, in accordance with Section 1.2 of Part B, the Procuring Authorities are strongly committed to the principle of transparency. Without denying Proposers the opportunity to protect CORA Exempt Materials from any public disclosure, the submission of which information or data may in certain instances allow the Procuring Authorities to consider an RFP Comment that might not otherwise have been submitted, Proposers are encouraged to consider transparency interests before identifying any RFP Comment as containing CORA Exempt Materials.

2.3 Supplemental Due Diligence Requests

2.3.1. Proposers shall not:

- a. conduct intrusive investigations related to the Project, including supplemental borings, water sampling or other activities deemed inappropriate by the Procuring Authorities in their discretion ("Physical Due Diligence");
- b. access any part of the expected project Right-of-Way or other areas for the purpose of carrying out non-intrusive investigations:
 - i. to the extent such areas are not physically and/or legally accessible to members of the general public ("Restricted Access Inspections"); and
 - ii. if such areas are physically and legally accessible to members of the general public, to the extent such inspections (A) would be functionally distinguishable from the lawful activities of most other users of such areas and/or (B) would require the use of specialized equipment ("Public Access Inspections" and, together with Physical Due Diligence and Restricted Access Inspections, "Supplemental Due Diligence Activities"),

unless and until the Procuring Authorities have approved such investigation in accordance with this Section 2.3 of this Part C.

2.3.2. Proposers may submit Supplemental Due Diligence Requests for Physical Due Diligence to the Procuring Authorities at any time prior to the Final Physical Due Diligence Request Deadline and for Restricted Access Inspections and Public Access Inspections at any time prior to the deadline therefor specified in the Procurement Schedule, provided that:

- a. the Procuring Authorities will consider Supplemental Due Diligence Requests for Physical Due Diligence to be conducted by either the Procuring Authorities on behalf of all

³⁰ At the conclusion of the procurement process all RFP Comments, and any Procuring Authority responses, that do not constitute CORA Exempt Materials will be released to the public in accordance with Section 1.5.4 of Part D.

Proposers, or by Proposers themselves, provided that, in accordance with Section 2.3.4 of this Part C, the Procuring Authorities may, in their discretion, approve such a request with a modification as to the party that will perform such Physical Due Diligence;

- b. the Procuring Authorities reserve the right to reject any Supplemental Due Diligence Request, including on the basis that such request is excessive in scope or otherwise unreasonable (taking into account all other Supplemental Due Diligence Requests submitted by the same Proposer); and
 - c. Proposers shall be responsible for all costs and expenses and for securing any required third party consents or permits necessary for them to conduct any approved Supplemental Due Diligence Activities, except to the extent (i) the results of any Physical Due Diligence are made available to all Proposers, in which case the Procuring Authorities shall be responsible for all such costs and expenses and for securing any required third party consents or permits, or (ii) expressly agreed otherwise by the Procuring Authorities (for example, the Procuring Authorities may, but shall not be obliged to, agree otherwise in relation to any Physical Due Diligence that they agree to conduct themselves).
- 2.3.3. All Supplemental Due Diligence Requests shall be submitted in the form of Annex 2 (*Supplemental Due Diligence Request Form*).
- 2.3.4. Subject to Section 2.3.5 of this Part C, the Procuring Authorities will use reasonable efforts to provide a Proposer with written feedback on any Supplemental Due Diligence Request promptly following receipt. The Procuring Authorities may approve (with or without conditions or modifications) or disapprove any such request in their discretion.
- 2.3.5. Subject to Section 1.5 of Part D, the Procuring Authorities will use reasonable efforts to maintain the confidentiality of any Supplemental Due Diligence Request during the procurement process described in this ITP, provided that:
- a. based on the Supplemental Due Diligence Requests, the Procuring Authorities may respond to a Proposer's request for Restricted Access Inspections or Public Access Inspections by providing all Proposers with such access, either collectively or individually at different times; and
 - b. the Procuring Authorities will make available to all Proposers, as Project Information, the results of any Physical Due Diligence that the Procuring Authorities conduct in response to a Supplemental Due Diligence Request (without identifying the Proposer that submitted such request).

2.4 One-on-One Meetings

2.4.1. Organization of One-on-One Meetings

- a. The Procuring Authorities will provide each Proposer with opportunities to discuss the RFP and such Proposer's RFP Comments and, in accordance with Section 3.2 of this Part C, ATC Submissions, at in-person meetings in Denver ("One-on-One Meetings").
- b. One-on-One Meetings will be held at the invitation of the Procuring Authorities.³¹ The Procurement Schedule lists the anticipated dates for certain One-on-One Meetings. The Procuring Authorities reserve the right to cancel or reschedule any anticipated One-on-One Meetings or to require or invite attendance at additional One-on-One Meetings.

³¹ Details of the date, place and duration of, and any limitation on the number of attendees at, any such meetings, as well as any other logistical details (which potentially may include amendments to the rules that would otherwise apply to such meetings in accordance with this ITP) will be provided by the Procuring Authorities to Proposers in writing in advance thereof.

2.4.2. Design Presentation Meetings

- a. The Procuring Authorities anticipate inviting each Proposer to attend a meeting, at the time specified in the Procurement Schedule, to deliver a presentation of its initial conceptual design (an "IDP Meeting").
- b. The purpose of each IDP Meeting will be:
 - i. to allow Proposer to present its design in its then current development stage in order to demonstrate its understanding of, and responsiveness to, the Project design criteria and the scope of the Construction Work;
 - ii. to assist the Procuring Authorities in understanding any issues raised by Proposer with respect to the development of its design and the scope of the Construction Work; and
 - iii. to provide the Procuring Authorities with the context of Proposer's initial design when they are reviewing ATC Submissions.
- c. Presentations made at IDP Meetings shall at a minimum address, and demonstrate Proposer's understanding of and approach to complying with, the relevant provisions of Schedule 10 (Design and Construction Requirements) to the Project Agreement that relate to, each of the following topics:
 - i. Roadway Design: conceptual design with key plans and drawings that show the following:
 - A. proposed horizontal alignment of the I-70 Mainline, cross-streets, local infrastructure, interchange ramps/access points;
 - B. proposed locations of structures including bridges, the Cover structure and retaining walls;
 - C. proposed location of major drainage elements including stormwater management ponds, major culverts, municipal drains and pumping stations (if any);
 - D. proposed locations of key utility infrastructure;
 - E. proposed location of other design elements such as landscaping, urban design and noise barriers;
 - F. proposed vertical profile for I-70 Mainline, cross-streets, local infrastructure and interchange ramps/access points; and
 - G. other typical sections for the I-70 Mainline components as appropriate;
 - ii. Management of Traffic: approach to managing public and construction traffic during the Construction Period;
 - iii. Cover Structure Design: conceptual design of the Cover structure including general arrangement drawings, plans, elevation, and typical section(s), including design concept for the urban features on top of the Cover structure and approach to complying with Section 12 (Cover MEP System) of Schedule 10 (Design and Construction Requirements) to the Project Agreement;
 - iv. Railroad Structure Design: conceptual design of railroad structures including general arrangement drawings, plans, elevation, and typical section(s); and
 - v. Drainage Design: conceptual design of drainage elements including new elements and modifications to existing elements,and, in addressing each of such topics, Proposer shall, where applicable, identify its proposed use of approved ATCs.

- d. No later than five Working Days prior to its IDP Meeting, Proposer shall submit an agenda for such meeting to the Procuring Authorities, such agenda to (i) include each of the topics specified in Section 2.4.2.c of this Part C, (ii) specify any other topics that Proposer elects to present on and (iii) specify the proposed attendees from Proposer (and their respective organizations) at such meeting. If the Procuring Authorities have any comments or questions on the agenda submitted by any Proposer, they will use reasonable efforts to notify such Proposer thereof no later than two Working Days prior to such meeting.
- e. The Procuring Authorities will confirm the timing and duration of such meeting when they issue the IDP Meeting invitation (which invitation shall also provide further relevant logistical details).
- f. At (but not prior to) their IDP Meetings, Proposers shall provide such materials in the form of slide decks, narratives and/or drawings as they consider appropriate to the Procuring Authorities (in such numbers as notified in advance by the Procuring Authorities to Proposers). Such materials shall not be retained by the Procuring Authorities after such meetings.

2.4.3. Topic Meetings

- a. Subject to Section 2.4.3.b of this Part C, the Procuring Authorities reserve the right to invite Proposers to attend meetings (each a “Topic Meeting”) in the form of, or as part of otherwise scheduled, One-on-One Meetings. The purpose of any Topic Meetings would be to provide Proposers with an opportunity to discuss specific topics relating to their due diligence on the RFP and the Project. The Procuring Authorities invite Proposers to suggest topics for discussion at Topic Meetings through the submission of RFP Comments.
- b. In the Procuring Authorities’ discretion, any Topic Meeting may be held in part or in whole as an open forum for all Proposers to attend simultaneously, provided that attendance at any such open forum would be optional.

2.4.4. Agenda for One-on-One Meetings

- a. Except in relation to IDP Meetings (in relation to which Section 2.4.2.d of this Part C shall apply) Proposers are required to submit a brief agenda for each One-on-One Meeting no later than:
 - i. the second Working Day after the RFP Comment Deadline that immediately precedes such One-on-One Meeting; or
 - ii. the date and time otherwise specified by the Procuring Authorities’ in their invitation to attend any One-on-One Meeting.
- b. Meeting agendas shall include cross-references to a Proposer’s RFP Comments, but they shall not incorporate, recite or substantively add to such comments.

2.4.5. Confidentiality of One-on-One Meetings

While the Procuring Authorities intend that the discussions in any One-on-One Meetings will be confidential to the meeting participants, subject always to Section 3.4 of this Part C, the Procuring Authorities reserve the right:

- a. in the interests of ensuring a transparent and non-discriminatory procurement process, to disclose to all Proposers any issues raised during any such meeting, including through the issuance of an Addendum, except to the extent that the Procuring Authorities determine, in their sole discretion, that such disclosure would reveal the identity of the Proposer that raised such issue, constitute a disclosure of CORA Exempt Materials or contradict the confidentiality provisions that apply to a Proposer’s ATCs in accordance with Section 3.4 of this Part C; and

- b. to share information, comments or feedback received during any One-on-One Meeting with CDOT, the Transportation Commission, other representatives of the State, the FHWA or, subject to such Person's prior agreement to appropriate confidentiality and non-disclosure restrictions, the City of Denver or other Governmental Authorities.

2.4.6. Other Rules Governing One-on-One Meetings

All One-on-One Meetings shall be subject to the following additional rules:

- a. subject to Section 2.4.2.f of this Part C, Proposers shall not be permitted to submit to the Procuring Authorities any written work product at such One-on-One Meetings except for exact copies of materials that were previously submitted in accordance with this ITP;
- b. the Procuring Authorities may invite third party Governmental Authorities, such as the FHWA, the Office of the Governor, the Office of the State Controller, the State Attorney General's Office, and, subject to prior agreement to appropriate confidentiality and non-disclosure restrictions, the City of Denver, to attend One-on-One Meetings;
- c. no binding decisions regarding the RFP will be made by the Procuring Authorities in any One-on-One Meeting;
- d. no oral statement made by or on behalf of the Procuring Authorities in any One-on-One Meeting, or included in a written record of such meeting, will constitute:
 - i. an Addendum or other waiver or exercise of any Reserved Right; or
 - ii. an indication of preference or acceptance or rejection of anything said, done or presented; and
- e. for certainty, the evaluation of Proposals will be based on the information provided in the Proposals and not on the conduct of Proposers or discussions that occur during any One-on-One Meeting (including, for certainty, any IDP Meeting or Topic Meeting).

2.5 Reliance on RFP Documents

2.5.1. Subject to the terms of the Project Agreement as executed:

- a. neither Procuring Authority:
 - i. makes (or shall be deemed to have made) any representation, warranty or guarantee as to the accuracy, completeness, utility or relevance of any Reference Document or information made available on the Project Website, referred to in the RFP (including on third party websites) or otherwise made available by either Procuring Authority, CDOT, the State or any other public body or organization to Proposers in connection with this Project ("Project Information");
 - ii. has (or shall be deemed to have) any obligation to update any Project Information, the contents of which may reflect information available as of the date that it was prepared or as of such other date indicated therein; or
 - iii. shall be responsible or liable (or be deemed to be responsible or liable) for any lack of accuracy, completeness, utility or relevance of, or for any interpretations of or conclusions drawn from, any Project Information; and
- b. Proposers:
 - i. shall assume full responsibility for their use of any Project Information; and
 - ii. shall not be entitled to rely, and shall be deemed not to have relied, on any Project Information.

2.5.2. Notwithstanding Section 2.5.1 of this Part C, for purposes of submitting binding Proposals each Proposer may assume that Developer will be entitled to rely on Project Information to the extent expressly provided for in the Project Agreement as executed.

3. ALTERNATIVE TECHNICAL CONCEPTS

3.1 ATC Submission Process

- 3.1.1. The Procuring Authorities encourage Proposers to identify alternative technical concepts that are not, unless and until approved by the Procuring Authorities in accordance with Section 3.3.1 of this Part C, otherwise permitted by the terms of the Project Agreement (“Alternative Technical Concepts” or “ATCs”), but only to the extent that a Proposer reasonably anticipates that the incorporation of such an ATC in its Proposal will provide an equal or better technical solution than the one being replaced or modified (by way of example only, if such solution results in any one or more of the following: innovation, increased flexibility, cost savings or time reductions in the design and construction or operation and maintenance of the Project, in any such case, which may result in better value for the public).
- 3.1.2. A Proposer may request that the Procuring Authorities review a particular ATC by submitting an ATC Submission Form with respect to such concept (each such submission, an “ATC Submission”):
- a. the principal purpose of an ATC Submission in respect of a Conceptual ATC is to provide a Proposer with an opportunity to receive feedback from the Procuring Authorities on the concept of a proposed ATC prior to such Proposer deciding whether to submit a Detailed ATC; and
 - b. the principal purpose of an ATC Submission in respect of a Detailed ATC is to provide the Procuring Authorities with sufficient information to make a determination whether or not to approve the relevant ATC for incorporation, at a Proposer’s discretion, in such Proposer’s Proposal.
- 3.1.3. Proposers may submit ATC Submissions to the Procuring Authorities at any time prior to the Final ATC Submission Deadline, provided that:
- a. the Procuring Authorities reserve the right to defer consideration of any ATC Submission submitted prior to any ATC Submission Deadline until the next deadline occurs or until such later time as the Procuring Authorities are in a position to make a determination on such ATC Submission; and
 - b. during the period commencing after the Third ATC Submission Deadline and ending on the Final ATC Submission Deadline, Proposers may only submit (or re-submit) Detailed ATCs (and not Conceptual ATCs).

3.2 ATC Discussions at One-on-One Meetings

- 3.2.1. In accordance with the instructions provided in the ATC Submission Form, in any ATC Submission a Proposer shall indicate whether it requests that such submission be discussed with Procuring Authorities at a One-on-One Meeting. The Procuring Authorities also reserve the right to require a Proposer, subject to prior written notice, to be prepared to discuss any ATC Submission at a One-on-One Meeting, which submission the Proposer has not previously requested be the subject of such a discussion.
- 3.2.2. ATC discussions will be subject to the same rules that apply to One-on-One Meetings in accordance with Section 2.4 of this Part C.

3.3 Responses to ATC Submissions

- 3.3.1. The Procuring Authorities will use reasonable efforts to provide a Proposer with the following written feedback on an ATC Submission within 15 Working Days following the later of (x) the date the relevant ATC Submission was submitted and (y) the One-on-One Meeting at which such submission is discussed:
- a. for Conceptual ATCs:
 - i. unconditional approval and waiver of requirement for re-submission as a Detailed ATC;

- ii. unconditional approval for re-submission as a Detailed ATC;
 - iii. conditional approval for re-submission as a Detailed ATC, subject to modifications and/or conditions;
 - iv. disapproval, with or without guidance that such ATC can be re-submitted under any circumstance;
 - v. notification that the inclusion of the proposed ATC in the Proposer's Proposal is already permitted under the terms of the RFP, and therefore does not qualify as an ATC (and will not be treated as such for purposes of Section 3.4 of this Part C); or
 - vi. notification that (subject to compliance with the confidentiality requirements set out in Section 3.4 of this Part C), the Procuring Authorities are considering amending (for the benefit of all Proposers) the terms of the RFP that are the subject-matter of the proposed ATC; and
- b. for Detailed ATCs:
- i. unconditional approval;
 - ii. conditional approval, subject to modifications and/or conditions;
 - iii. disapproval, with or without guidance that such ATC can be re-submitted under any circumstance; or
 - iv. notification that the incorporation of the proposed ATC in the Proposer's Proposal is already permitted under the terms of the RFP, and therefore does not qualify as an ATC (and will not be treated as such for purposes of Section 3.4 of this Part C).
- 3.3.2. In addition, in relation to an ATC Submission to be discussed at a One-on-One Meeting, the Procuring Authorities will use reasonable efforts to provide a Proposer with preliminary written feedback on such submission prior to the meeting.
- 3.4 Confidentiality**
- 3.4.1. Subject to Sections 3.4.2, 3.4.3, 3.4.4 and 3.5.1 of this Part C, in accordance with 23 CFR 636.209(b)(2) the Procuring Authorities will maintain the confidentiality of each ATC Submission except:
- a. to the extent that disclosure is necessary to maintain compliance with Federal or State permitting and/or other legal requirements (including under CORA) necessary for the delivery of the Project;
 - b. to FHWA and the City of Denver, which will be involved in the review of ATC Submissions by the Procuring Authorities; or
 - c. to certain other Persons in accordance with Sections 2.4.5.b and 2.4.6.b of this Part C in connection with any One-on-One Meetings at which such ATC Submissions are discussed.
- 3.4.2. If disclosure of an ATC is required in accordance with Section 3.4.1.a of this Part C prior to the Administrative and Technical Proposal Deadline, the Procuring Authorities will, in accordance with 23 CFR 636.209(b)(2), amend the RFP by releasing the minimal amount of information necessary to ensure:
- a. compliance with the relevant requirements; and
 - b. that all Proposers are aware of such amendments to the RFP.
- 3.4.3. Following the issuance of the Notice of Award, the Procuring Authorities may, in their discretion, share with the Preferred Proposer any ATC that was previously submitted by another Proposer (whether or not incorporated by such other Proposer in its Proposal), provided that such other

Proposer submitted an executed Stipend Agreement in accordance with Section 5.5.a.i of this Part C.

- 3.4.4. Notwithstanding the foregoing Sections 3.4.1, 3.4.2 and 3.4.3 of this Part C, the Procuring Authorities may modify the RFP following receipt of any ATC Submission:
- a. to correct an error, omission or ambiguity in the RFP, which modification may render an ATC contained in such submission no longer applicable; and
 - b. to reflect the ATC (in whole or in part) that is contained in such submission to the extent the Procuring Authorities concurrently or previously considered and evaluated such concept.

3.5 Incorporation of ATCs into Project Agreement

- 3.5.1. Subject to Section 3.4 of this Part C, the Procuring Authorities' approval (with or without conditions) of a Detailed ATC in accordance with Section 3.3.1.b.i or ii of this Part C or of a Conceptual ATC in accordance with Section 3.3.1.a.i of this Part C will constitute a modification of those requirements of the RFP that are the subject of such Proposal, but only:
- a. with respect to the Proposer that submitted such ATC;
 - b. if such Proposer incorporates the approved ATC in its Proposal in accordance with Section 2.2 of the Administrative and Technical Proposal Submission Requirements; and
 - c. to the extent specified in such approval.
- 3.5.2. Each Proposer will be responsible for ensuring that its Proposal complies with the RFP as modified by an ATC that it incorporates in its Proposal. In the event that the Procuring Authorities' approval of an ATC is subject to any condition and/or implementation of such ATC will require a third party (including governmental) approval, the relevant Proposer shall be solely responsible for satisfying such condition(s) and or/ obtaining any such approval(s). If any required condition is not met and/or approval is not subsequently granted, the Preferred Proposer, and its Developer, shall comply with the requirements of the RFP (unmodified by such ATC) without compensation, time extension or relief.

4. PRE-PROPOSAL SUBMISSIONS

4.1 General Instructions

- 4.1.1. In accordance with this ITP:
- a. Proposers are required to submit the following submissions to the Procuring Authorities that are separate from their Proposals:
 - i. agendas for One-on-One Meetings (see Section 2.4.2.d and 2.4.4 of this Part C);
 - ii. interest rate and credit spread submittals (see Sections 4.2.2 and 4.2.3 of this Part C);
 - iii. Key Personnel Forms requesting approval of the individuals proposed by Proposers to fill each of the Key Personnel positions specified in Annex 6 (Key Personnel Form) (see Section 4.3.1 of this Part C);
 - iv. Proposer Update Submissions requesting approval of a model auditor and the model auditor's terms of engagement (see Section 4.4 of this Part C); and
 - v. Preliminary Organizational Conflict of Interest Disclosures (see Sections 1.3.1.b and 1.3.1.c of Part D).
 - b. Proposers may submit the following submissions to the Procuring Authorities that are separate from their Proposals:
 - i. RFP Comments (see Section 2.2 of this Part C);

- ii. Supplemental Due Diligence Requests (see Section 2.3 of this Part C);
- iii. ATC Submissions (see Section 3 of this Part C); and
- iv. Proposer Update Submissions (other than requests for approval of a model auditor) (see Section 4.4 of this Part C).

Each of the submissions referred to in this Section 4.1.1 of this Part C is a “Pre-Proposal Submission”.

4.1.2. Each Pre-Proposal Submission shall:

- a. comply with the applicable instructions in Section 1.1 of Part F;
- b. if required to be submitted as a completed Annex, comply with the instructions provided in that Annex; and
- c. be submitted by the Proposer’s Official Representative to the Procuring Authorities’ Contact Person using the Secure Project DMS with the subject line and electronic file name to both begin with “Central 70 Project – [Proposer Name] – [name of submission e.g. RFP Comments, Supplemental Due Diligence Request etc.] – No. []³²”.

4.2 Interest Rate and Credit Spread Protection

4.2.1. Statement of Approach

The Procuring Authorities recognize that Proposers cannot bear all the risk associated with fluctuations in market interest rates and/or credit spreads during the Interest Rate and Credit Spread Protection Period without having an adverse effect on value for money. Therefore, subject to Proposer’s waiver right under Section 4.2.4 of this Part C, pursuant to Annex A of Schedule 1 (*Financial Close*) to the Project Agreement, the Procuring Authorities will assume:

- a. market interest rate fluctuation risk (and corresponding potential benefits):
 - i. with respect to the Bank Debt Rate(s) applicable to any Bank Financing;
 - ii. with respect to the TIFIA Rate applicable to any TIFIA Financing; and
 - iii. with respect to the Bond Rate(s) applicable to any Bond Financing; and
- b. credit spread pricing fluctuation risk (and corresponding potential benefits) with respect to the Bond Rate(s) applicable to any Bond Financing (excluding any private placement that is not also an offering under Rule 144A and Regulation S of the Securities Act of 1933, for which credit spread pricing fluctuation risk protection is not provided) that does not include committed credit spreads,

for the duration of the Interest Rate and Credit Spread Protection Period, in each case as and to the extent provided for in Schedule 1 (*Financial Close*) to the Project Agreement.

4.2.2. Dry Run of Interest Rate and Credit Spread Submittal Process

In accordance with procedures (including as to timetable) to be notified to Proposers by the Procuring Authorities in advance, the Procuring Authorities intend to hold one or more dry runs of the Interest Rate and Credit Spread Submittal process that is set out in Section 4.2.3 of this Part C as follows:

- a. Proposers will be required to submit a draft Interest Rate and Credit Spread Submittal to the Procuring Authorities on a non-binding basis on such dates and at such times notified to Proposers by the Procuring Authorities (it currently being anticipated by the Procuring Authorities that such dry run(s) take place during the period indicated in the Procurement Schedule), which submittal must reflect interest rates and credit spreads that are current as of the date and time submitted; and

³² Sequential numbering should be used by Proposers for each category of Pre-Proposal Submission.

- b. the Procuring Authorities shall thereafter (i) provide to each Proposer general feedback on its submission, including the proposed Benchmark Interest Rate(s), and (ii) issue to all Proposers a common baseline yield curve and set of baseline credit spreads, in all cases on a non-binding basis.

4.2.3. Interest Rate and Credit Spread Submittal Process

- a. Subject to Section 4.2.4 of this Part C, Proposers are required to submit an Interest Rate and Credit Spread Submittal to the Procuring Authorities no later than the Interest Rate and Credit Spread Protection Start Time which submittal must reflect interest rates and credit spreads that are current as of the Interest Rate and Credit Spread Protection Start Time.
- b. Following receipt of any Proposer's Interest Rate and Credit Spread Submittal, the Procuring Authorities may in their discretion:
 - i. request clarifications;
 - ii. discuss the submittal with Proposer and Proposer's underwriters to the extent that such submittal includes a request for credit spread protection; and
 - iii. extend the date by which the Procuring Authorities have agreed to otherwise approve the Benchmark Interest Rate(s), indices and credit spreads proposed in such submittal in accordance with Section 4.2.3.c of this Part C as reasonably necessary to resolve a request for clarification or other issue, provided that any resulting delay in approval shall not affect the Interest Rate and Credit Spread Protection Start Time.
- c. Subject to Section 4.2.3.b of this Part C, no later than the date and time indicated in the Procurement Schedule, the Procuring Authorities intend to:
 - i. approve the Benchmark Interest Rate(s) and indices as proposed by each Proposer in its Interest Rate and Credit Spread Submittal and as subsequently verified by the Procuring Authorities, following which each Proposer shall (to the extent applicable) use such approved Benchmark Interest Rate(s) in its Financial Proposal and Base Financial Model; and
 - ii. issue to Proposers a common baseline yield curve (the "Baseline Yield Curve") and set of baseline credit spreads (the "Baseline Credit Spreads") for the range of maturities, ratings and types of bonds that will serve as the basis for credit spread risk sharing calculations in accordance with Annex A of Schedule 1 (Financial Close) to the Project Agreement, and which Baseline Yield Curve and Baseline Credit Spreads:
 - A. the Procuring Authorities will develop based on the Interest Rate and Credit Spread Submittals as well as independent market data and comparable bond pricing analysis;
 - B. will not include coupon or term structure information; and
 - C. in the case of the Baseline Yield Curve, will (I) include yields for each semi-annual maturity and (II) be provided in a similar format to Table 3 of set out in Annex 4 (Interest Rate and Credit Spread Submittal Form).

provided that, for certainty, a Proposer may submit a "Proposer Basis Scale" by including a completed form D-6 (*Proposer Basis Scale*) in its Financial Proposal in accordance with Section 6.6 of the Financial Proposal Submission Requirements that are less than those in the Baseline Yield Curve and Baseline Credit Spreads.

4.2.4. Waiver of Interest Rate and Credit Spread Protection

- a. A Proposer may waive potential interest rate and/or credit spread protection under Schedule 1 (Financial Close) to the Project Agreement.
- b. Any Proposer that chooses to waive such protection shall (i) indicate such waiver in its Interest Rate and Credit Spread Submittal in accordance with the instructions provided in Annex 4 (Interest Rate and Credit Spread Submittal Form) and (ii) incorporate its own interest rate and/or credit spread assumptions into its Financial Proposal and Base Financial Model.

4.3 Key Personnel

4.3.1. Each Proposer is required to submit to the Procuring Authorities a completed Key Personnel Form by the Key Personnel Deadline.

4.3.2. The Procuring Authorities will use reasonable efforts to provide each Proposer with one of the following written responses (acting in their discretion) in relation to each individual identified in such Proposer's Key Personnel Form within 15 Working Days after the Key Personnel Deadline or, if earlier, after the date of such Proposer's submission:

- a. approval (with or without conditions); or
- b. disapproval (with reasons),

provided that, notwithstanding that the Procuring Authorities reserve the right to withhold their approval to each individual in their discretion, the Procuring Authorities expect that they will base their decision as to whether to approve such individual on:

- i. whether the appointment of such individual to fill the relevant Key Personnel position would:
 - A. result in any organizational conflict of interest as described in 2 C.C.R. 601-15 Sec. 7 or as defined under 23 CFR § 636.116; or
 - B. cause the Proposer to be in violation of another provision of this ITP;
- ii. whether the individual would satisfy the requirements that apply to the relevant position as set out in Schedule 27 (Key Personnel) to the Project Agreement; and/or
- iii. any other factors that the Procuring Authorities consider relevant or material.

4.4 Proposer Update Submission and Approval Process

4.4.1. Each Proposer is required to submit to the Procuring Authorities one or more Proposer Update Submissions requesting the approval of its model auditor, any Organizational Change or any Key Personnel Change, or the verification of any underwriter(s).

4.4.2. Proposers may submit a Proposer Update Submission at any time prior to the Proposer Update Deadline.

4.4.3. The Procuring Authorities will use reasonable efforts to provide a Proposer with one of the following written responses within 15 Working Days after receipt of any Proposer Update Submission:

- a. with respect to a Proposer's model auditor, any Organizational Change or any Key Personnel Change, approval (with or without conditions) of, a request for additional information or clarifications in relation to or disapproval of the appointment or change that is the subject of such submission:
 - i. acting reasonably with respect to (A) the approval of the identity of the model auditor (provided that the proposed model auditor complies with the requirements set out in instruction (4) of Annex 5 (Proposer Update Submission Form)) and (B) the terms of engagement of the model auditor (which terms are required to

- comply with Attachment A (Mandatory Model Auditor Engagement Terms) to Annex 5 (Proposer Update Submission Form)); and
- ii. subject to Section 4.4.4 of this Part C, acting in their discretion with respect to any Organizational Change or any Key Personnel Change; and
- b. with respect to a Proposer's underwriter(s), verification that the appointment that is the subject of such submission complies, or notice that the submission does not comply, with the requirements set out in instruction (4) to Annex 5 (Proposer Update Submission Form), or a request for additional information or clarifications in relation to such submission.
- 4.4.4. Notwithstanding that the Procuring Authorities reserve the right to withhold their approval to any Organizational Change or Key Personnel Change in their discretion, the Procuring Authorities expect that they will base their decision as to whether to approve a proposed Organizational Change or Key Personnel Change on:
- a. whether the proposed change would:
 - i. render the Proposer materially different from or less qualified than the Proposer originally selected under the RFQ as eligible to participate in the RFP process;
 - ii. result in any organizational conflict of interest as described in 2 C.C.R. 601-15 Sec. 7 or as defined under 23 CFR § 636.116;
 - iii. in the case of a Key Personnel Change, result in the individual proposed to fill the relevant Key Personnel position not satisfying the requirements that apply to that position as set out in Schedule 27 (Key Personnel) to the Project Agreement; and/or
 - iv. cause the Proposer to be in violation of another provision of this ITP; and/or
 - b. any other factors that the Procuring Authorities consider relevant or material.

5. PROPOSAL SUBMISSION REQUIREMENTS

5.1 Delivery Timing and Procedure

5.1.1. Location and Manner of Delivery

- a. Administrative and Technical Proposals and Financial Proposals shall be physically delivered to:

High Performance Transportation Enterprise and Colorado Bridge Enterprise
c/o Colorado Department of Transportation
2000 S. Holly Street, Denver, CO, 80222
Attention: Central 70 Project Coordinator (the "Proposal Submission Location").
- b. All packages constituting the Proposal shall be divided by Volume into sealed containers (i.e. separate containers for each Volume of the Administrative and Technical Proposal and each Volume of the Financial Proposal) and individually labeled as follows:

Central 70 Project: [*Administrative and Technical / Financial*] Proposal: [*Proposer's Name*]
Contents: [*One Original*] [and] [*Number*] Copies] of Volume [].

5.1.2. Timeliness of Delivery

- a. Each of the Administrative and Technical Proposals and the Financial Proposals will be accepted by the Procuring Authorities at the Proposal Submission Location during the hours of 9:00 a.m. to 4:00 p.m., Denver, Colorado time, on any Working Day, up to and including (but not after) the date and time specified in the Procurement Schedule as:
 - i. with respect to Administrative and Technical Proposals, the Technical Proposal Deadline; and

- ii. with respect to Financial Proposals, the Financial Proposal Deadline.
- b. The Procuring Authorities will not unseal any Administrative and Technical Proposals prior to the Technical Proposal Deadline or any Financial Proposals prior to the Financial Proposal Deadline.
- c. Any Administrative and Technical Proposal or Financial Proposal received after the relevant deadline should be accompanied by a separate envelope containing a written explanation as to the reason for such delay. Notwithstanding such written explanation, such submission will (unless the Procuring Authorities waive such delay in their discretion and in accordance with applicable law) be rejected and returned unopened, other than with respect to the written explanation, to the relevant Proposer.

5.1.3. **Withdrawal of Proposals**

- a. If a Proposer submits its Administrative and Technical Proposal or its Financial Proposal prior to the applicable deadline, such a Proposer may by written notice to the Procuring Authorities withdraw:
 - i. its Administrative and Technical Proposal, at any time prior to the Technical Proposal Deadline; and/or
 - ii. its Financial Proposal, at any time prior to the Financial Proposal Deadline,in each case by means of a written request signed by its Official Representative. A withdrawal in accordance with this Section 5.1.3.a of this Part C will not prejudice the right of a Proposer to resubmit its Administrative and Technical Proposal and/or its Financial Proposal (inclusive of any modifications as the Proposer may incorporate in its discretion), as applicable, in accordance with Section 5.1.2.a of this Part C.
- b. A Proposer may also by written notice to the Procuring Authorities, signed by its Official Representative, withdraw its Administrative and Technical Proposal and, if previously submitted, its Financial Proposal, at any time after the Technical Proposal Deadline and prior to the Financial Proposal Deadline. Submission of a notice of withdrawal pursuant to this Section 5.1.3.b of this Part C will disqualify the Proposer from further participation in the procurement of the Project.

5.1.4. **Confirmation of, and Responsibility for, Delivery**

- a. Acknowledgment of receipt of each of the Administrative and Technical Proposal and the Financial Proposal from a Proposer will be evidenced by the issuance of a written receipt by the Procuring Authorities' Contact Person or such person's designee.
- b. Notwithstanding the provision by the Procuring Authorities of such a receipt, Proposer is solely responsible for ensuring that the Procuring Authorities receive such Proposer's Administrative and Technical Proposal and Financial Proposal by the applicable deadline at the Proposal Submission Location. Postmarking prior to the Technical Proposal Deadline or the Financial Proposal Deadline, as applicable, will not of itself evidence compliance by a Proposer with Section 5.1.2.a of this Part C. Such compliance shall only be evidenced by the issuance by the Procuring Authorities of a written receipt of a Proposal. The Procuring Authorities shall not be responsible for any delays in delivery, regardless of the cause.

5.2 **Substantive Proposal Requirements**

5.2.1. Each Proposer should refer to:

- a. the General Proposal Instructions, the Technical Proposal Instructions and the Administrative and Technical Proposal Submission Requirements, together with the relevant Forms set out in Part H (including the instructions provided in such Forms), when developing its Administrative and Technical Proposal; and

- b. the General Proposal Instructions, the Financial Proposal Instructions and the Financial Proposal Submission Requirements, together with the relevant Forms set out in Part H (including the instructions provided in such Forms), when developing its Financial Proposal.
- 5.2.2. Each Proposer, and not the Procuring Authorities, will be responsible for any errors, omissions, assumptions, inaccuracies or incomplete statements in its Proposal, including as such may result from a misinterpretation of or oversight involving (a) any of the instructions and requirements referred to in Section 5.2.1 of this Part C, (b) any other provision of the RFP and/or (c) any Project Information. Furthermore, notwithstanding the delivery of the model auditor report in accordance with Section 6.9.3 of the Financial Proposal Submission Requirements, each Proposer shall be entirely responsible for ensuring the correctness and accuracy of its Base Financial Model. No Proposer will be entitled to any increase in a Milestone Payment, its Base MPP or a Performance Payment, or to any modification to any provision of the Project Agreement based on the results of its Base Financial Model audit or a discovery of one or more erroneous inputs or formulae. The Procuring Authorities reserve the right to direct an adjustment to the Preferred Proposer's or Developer's Base MPP to address any error identified in the Base Financial Model, if such adjustment would result in an overall decrease in Performance Payment amounts.
- 5.2.3. The Procuring Authorities expect that a Proposal submitted in full compliance with the RFP will provide enough information to allow the Procuring Authorities to evaluate and score such Proposal in accordance with Section 6 of this Part C and, on such basis, select a Preferred Proposer in accordance with Sections 6 and 7.1 of this Part C. If a Proposer believes that the guidance provided in this ITP does not provide sufficient clarity as to the information that is required to enable the Procuring Authorities to conduct their evaluation and scoring and to select a Preferred Proposer, then such Proposer should submit one or more related RFP Comments to such effect in accordance with Section 2.2 of this Part C.

5.3 Proposal Validity Period

- 5.3.1. Each Proposal shall remain valid for acceptance by the Procuring Authorities for the duration of the Proposal Validity Period, provided that any Proposer may elect, in its sole discretion, to extend the validity of its Proposal beyond the date on which the Proposal Validity Period with respect to such Proposal would otherwise expire in accordance with the definition of Proposal Validity Period in Section 1 of Part A.
- 5.3.2. Any Proposer that agrees to extend the validity of its Proposal in accordance with Section 5.3.1 of this Part C will, as a condition to the Procuring Authorities' acceptance thereof, submit amended and/or replaced forms of Proposal Security that reflect such extended validity period.

5.4 Proposal Security

5.4.1 Form of Proposal Security

- a. Each Proposer is required to submit Proposal Security as part of its Financial Proposal in accordance with Section 4.3 of the Financial Proposal Submission Requirements.
- b. If at any time an issuer of Proposal Security ceases to be an Eligible Financial Institution, the affected Proposer shall promptly notify the Procuring Authorities of such cessation. No later than 20 Working Days following the Proposer becoming aware of such cessation, the Proposer is required to submit to the Procuring Authorities replacement Proposal Security issued by an Eligible Financial Institution that, together with all other outstanding and valid (and not replaced) Proposal Security, fully satisfies the requirements of Section 4.3 of the Financial Proposal Submission Requirements. Following the Procuring Authorities' receipt of such replacement Proposal Security, they shall promptly return the replaced portion of the Proposal Security to the Proposer.

5.4.2. Forfeiture of Proposal Security

- a. In submitting a Proposal, each Proposer understands and agrees that the Procuring Authorities will be entitled to draw on such Proposer's Proposal Security in its entirety if, and only if, the Proposer does any one or more of the following:
 - i. withdraws, or attempts to withdraw, any part or all of its Proposal Security during the Proposal Validity Period without the prior written consent of the Procuring Authorities, other than pursuant to Section 5.4.1.b of this Part C;
 - ii. fails to comply with Section 5.4.1.b of this Part C;
 - iii. refuses or fails to enter into the Project Agreement in its form as of the Technical Proposal Deadline (subject to any changes agreed by the Procuring Authorities and Proposer after such date in accordance with Sections 7.2.1, 7.2.2 and 7.2.3 of this Part C) or otherwise fails to comply with such Sections;
 - iv. is deemed to have not negotiated in good faith in accordance with Section 7.2.4 of this Part C;
 - v. refuses or fails to perform any of the acts or to furnish any of the documents required to be performed and delivered in accordance with, or otherwise fails to comply with, Section 7.3.1 or 7.3.4 of this Part C; or
 - vi. prior to execution of the Project Agreement, withdraws or attempts to withdraw, or refuses or fails to meet any commitments made in, its Proposal that were to be fulfilled prior to execution of the Project Agreement.
- b. The Procuring Authorities will not be entitled to draw on a Proposer's Proposal Security if such Proposer is unable to comply with any modifications made to the RFP pursuant to the Reserved Rights after submission of such Proposal Security to the extent that such Proposer does not agree to such modifications and, as a result, withdraws its Proposal.
- c. Without limiting the Reserved Rights, following a draw on the Preferred Proposer's Proposal Security, the Procuring Authorities may identify the next highest-ranked Proposer, select it as the Preferred Proposer and proceed to execute a Project Agreement with that Proposer's Developer in accordance with Sections 7.2 and 7.3 of this Part C.

5.4.3. Return of Proposal Security

- a. The Procuring Authorities will retain the Proposal Security submitted by each Proposer (other than the Preferred Proposer) until the end of such Proposer's Proposal Validity Period. Thereafter, the Procuring Authorities will return the Proposal Security to the relevant Proposer promptly, excluding any Proposal Security previously drawn upon in full by the Procuring Authorities.
- b. The Procuring Authorities will return the Proposal Security to the Preferred Proposer promptly after the Preferred Proposer has fully complied with its obligations under Section 7.3.1 of this Part C.

5.5 Stipend

- a. In consideration for a Proposer transferring certain intellectual property rights to the Procuring Authorities, the Procuring Authorities offer to pay a stipend payment in the amount specified below (a "Stipend Payment") to each Proposer that:
 - i. submits an executed Stipend Agreement at any time after the issuance of the final RFP and not later than the Technical Proposal Deadline;
 - ii. unless the Procuring Authorities have publicly announced the cancellation of the procurement process described in this ITP prior to the Technical Proposal Deadline, submits an Administrative and Technical Proposal which is responsive

to, and compliant with, the RFP (including being compliant with all Administrative and Technical Pass/Fail Criteria and passing the Technical Substantive P/F Evaluation), as determined by the Procuring Authorities in their discretion; and

- iii. unless the Procuring Authorities have publicly announced the cancellation of the procurement process described in this ITP prior to the Financial Proposal Deadline, submits a Financial Proposal which is responsive to, and compliant with, the RFP (including being compliant with all Financial Pass/Fail Criteria), as determined by the Procuring Authorities in their discretion;

in the amount of:

- iv. \$1,000,000, following the public announcement by the Procuring Authorities of the cancellation of the procurement process described in this ITP after the issuance of the final RFP but prior to the Technical Proposal Deadline; or
- v. \$2,000,000, following:
 - A. the public announcement by the Procuring Authorities of the cancellation of the procurement process described in this ITP after the Technical Proposal Deadline;
 - B. the public announcement by the Procuring Authorities of a Preferred Proposer that is not such Proposer; or
 - C. following the public announcement by the Procuring Authorities of the cancellation of the procurement process described in this ITP after the Financial Proposal Deadline, unless such Proposer was selected as the Preferred Proposer and then the Procuring Authorities become entitled to draw on Proposer's Proposal Security in accordance with Section 5.4.2.a of Part C (in which event, for certainty, the Procuring Authorities shall have no obligation to pay a Stipend Payment to such Proposer).
- b. For certainty, if the Procuring Authorities cancel the procurement process for any reason prior to the issuance of the final RFP, the Procuring Authorities shall not be obliged to pay a Stipend Payment to any Proposer and shall not be responsible, in whole or in part, for any costs incurred by any Proposer as a result of its participation in the procurement process described herein.

6. EVALUATION PROCESS

6.1 Overview

The Procuring Authorities will use the following multi-stage process, described in further detail in Section 6.3 of this Part C, to evaluate and score Proposals:

- a. evaluation of Administrative and Technical Proposals which shall consist of:
 - i. the Pass/Fail Evaluation of each such proposal; and
 - ii. the Substantive Evaluation (including the Technical Substantive P/F Evaluation) of each such proposal;
- b. evaluation of Financial Proposals which shall consist of:
 - i. the Pass/Fail Evaluation of each such proposal; and
 - ii. the Substantive Evaluation of each such proposal; and
- c. Best Value Scoring of Proposals.

6.2 Conducting the Evaluation Process

6.2.1. Use of Evaluation Committees

The Procuring Authorities anticipate utilizing one or more committees representing different skillsets, knowledge and experience to conduct the Pass/Fail Evaluations and the Substantive Evaluations in accordance with Section 6.3 of this Part C.

6.2.2. Requests for Additional Information

- a. The Procuring Authorities may, at any time during the evaluation process:
 - i. request written clarification or additional information from a Proposer;
 - ii. request a Proposer to verify or certify certain aspects of its Proposal, including through an oral interview (in person or remotely held); or
 - iii. contact firm and personnel references supplied by a Proposer, as well as request additional references not initially provided by a Proposer.
- b. The scope and length of, and topics to be addressed in, any response to such a request from the Procuring Authorities will be subject to the Procuring Authorities' discretion.
- c. The Procuring Authorities may make and retain a written record of any oral presentation or interview conducted in accordance with Sections 6.2.2.a or 6.2.3 of this Part C, including as required to comply with 23 CFR 636.111(b) with respect to any oral presentations or interviews that are used as a substitute for, or augmentation of, written information, to the extent the Procuring Authorities may choose to rely on such information in their evaluation process.

6.2.3. Interviews

- a. In accordance with Section 6.2.2.a of this Part C, the Procuring Authorities reserve the right to interview some or all Proposers after receiving Administrative and Technical Proposals, but prior to the Financial Proposal Deadline. Participation in any requested interview by representatives of any specifically requested Core Proposer Team Member is one of the Administrative and Technical Pass/Fail Criteria, although the absence of any particular individual will not result in a "fail" for that criterion.
- b. The sole purpose of any such interview will be to enable the Procuring Authorities to resolve questions related to the review, evaluation and scoring of Administrative and Technical Proposals.
- c. Additional details regarding interviews, including any procedures to maintain confidentiality and/or enhance transparency, will be provided at the time that such interviews are requested.

6.2.4. Exercise of Discretion in Evaluation Process

- a. The evaluation and scoring of Proposals and ranking of Proposers in accordance with Section 6.3 of this Part C will be conducted at the discretion of the Procuring Authorities (with assistance from the committees referred to in Section 6.2.1 of this Part C and such professional and other advisors as the Procuring Authorities may designate).
- b. Proposers should note that, unless expressly permitted by this ITP:
 - i. any failure to fully disclose requested information;
 - ii. any incomplete, inaccurate, materially misleading or non-responsive submissions; or
 - iii. any conditional or qualified submissions (i.e., "to our knowledge", "to the extent of available information", "such information is not readily available", "such information is not maintained in the manner requested", etc.) to requests or questions posed;

may, in the discretion of the Procuring Authorities, lead to (x) a “fail” as part of the Pass/Fail Evaluations, (y) disqualification of a Proposer or a relevant Core Proposer Team Member from the procurement process and/or (z) a relatively lower score as part of the Substantive Evaluations.

6.3 Proposal Evaluation and Scoring Process

6.3.1. Administrative and Technical Proposal Pass/Fail Evaluation

The Procuring Authorities shall consider whether each Administrative and Technical Proposal complies with all Administrative and Technical Pass/Fail Criteria. Subject to the Reserved Rights, the Procuring Authorities shall consider full compliance with any such Pass/Fail Evaluation Criteria as a “pass” with respect to the relevant criterion, and anything less than full compliance as a “failure”. A “failure” or potential “failure” on any one of these criteria may result in the Procuring Authorities:

- a. not evaluating and/or scoring (i) the relevant Administrative and Technical Proposal further and/or (ii) any Financial Proposal submitted by the Proposer that submitted such Administrative and Technical Proposal; or
- b. evaluating and scoring the relevant Administrative and Technical Proposal and/or Financial Proposal pending investigation and resolution of any potential “failure” in accordance with this ITP.

6.3.2. Administrative and Technical Proposal Substantive Evaluation and Scoring

- a. Subject to the Procuring Authorities’ rights in accordance with Section 6.3.1 of this Part C and the Reserved Rights, the Procuring Authorities shall substantively evaluate each Administrative and Technical Proposal by considering the merits of each Proposer’s Technical Proposal (including the net benefits of any approved ATCs incorporated therein) by reference to the Technical Evaluation Criteria.
- b. The evaluations referred to in Section 6.3.2.a of this Part C shall conclude with the scoring process described in Section 6.3.2.c of this Part C.
- c. The scoring process shall consist of the following three steps:
 - i. first, the Procuring Authorities shall assign a score (an “Individual Technical Substantive P/F Score”) of up to 100 points to each Technical Proposal Scoring Element included in the relevant Technical Proposal;
 - ii. second, the Procuring Authorities shall calculate the overall score (the “Aggregate Technical Substantive P/F Score”) for each Technical Proposal, by aggregating the Individual Technical Substantive P/F Scores assigned to each Technical Proposal Scoring Element included in the relevant Technical Proposal, with the maximum Aggregate Technical Substantive P/F Score for any Technical Proposal being 600 points; and
 - iii. third, the Procuring Authorities shall determine whether each Technical Proposal has “passed” the Technical Substantive P/F Evaluation, with a “pass” being achieved if both of the following conditions have been satisfied:
 - A. an Individual Technical Substantive P/F Score of 70 or more points has been assigned to any four or more of the Technical Proposal Scoring Elements included in the relevant Technical Proposal; and
 - B. the Aggregate Technical Substantive P/F Score assigned to the relevant Technical Proposal is 420 or more points.

6.3.3. Financial Proposal Pass/Fail Evaluation

- a. Following the completion of the scoring process described in Section 6.3.2.c of this Part C, and subject to the final sentence of Section 6.3.3.b of this Part C, the Procuring

Authorities shall only evaluate and score, in accordance with Sections 6.3.3.b and 6.3.4 of this Part C, Financial Proposals submitted by Proposers that have submitted:

- i. an Administrative and Technical Proposal that passed all Administrative and Technical Pass/Fail Criteria in accordance with Section 6.3.1 of this Part C; and
 - ii. a Technical Proposal that passed the Technical Substantive P/F Evaluation in accordance with Section 6.3.2.c.iii of this Part C.
- b. The Procuring Authorities shall consider whether each Financial Proposal submitted by a Proposer that satisfied the requirements specified in Section 6.3.3.a of this Part C complies with all Financial Pass/Fail Criteria. Subject to the Reserved Rights, the Procuring Authorities shall consider full compliance with any such Pass/Fail Evaluation Criteria as a “pass” with respect to the relevant criterion, and anything less than full compliance as a “failure”. A “failure” or potential “failure” on any one of these criteria may result in the Procuring Authorities:
- i. not evaluating and/or scoring the relevant Financial Proposal further; or
 - ii. evaluating and/or scoring the relevant Financial Proposal pending investigation and resolution of any potential “failure” in accordance with this ITP.

6.3.4. Financial Proposal Scoring

Subject to the Procuring Authorities’ rights in accordance with Section 6.3.3 of this Part C and the Reserved Rights, the Procuring Authorities shall:

- a. calculate a score (the “Financial Score”) for each Financial Proposal submitted by an Eligible Proposer, determined by comparing such Eligible Proposer’s Base MPP with the Lowest Eligible Base MPP in accordance with the following formula, where the highest possible score will be 65 points:

$$\text{Financial Score} = \frac{\text{Lowest Eligible Base MPP}}{\text{Eligible Proposer's Base MPP}} \times 65$$

- b. calculate a score (the “Schedule Score”) for each Financial Proposal submitted by an Eligible Proposer, determined by comparing such Eligible Proposer’s Scored Construction Period with the Shortest Scored Construction Period in accordance with the following formula, where the highest possible score will be 5 points:

$$\text{Schedule Score} = \frac{\text{Shortest Scored Construction Period}}{\text{Eligible Proposer's Scored Construction Period}} \times 5$$

6.3.5. Best Value Scoring

- a. After calculating the Financial Score and the Schedule Score for the Financial Proposal submitted by each Eligible Proposer, the Procuring Authorities shall calculate a score (the “Technical Score”) for each Technical Proposal submitted by an Eligible Proposer in accordance with the following formula, where the highest possible score will be 30 points:

$$\text{Technical Score} = \sum_{1}^{n=6} \frac{\text{IndTechSubP/FScore}_n}{100} \times \text{TechScore}_n$$

where:

- n = Technical Proposal Scoring Element *n* as identified in the first column of the Technical Proposal Scoring Table;
- IndTechSubP/FScore_n = the Individual Technical Substantive P/F Score assigned to Technical Proposal Scoring Element *n*; and

TechScore_n = the number of points set out against Technical Proposal Scoring Element *n* in the column headed “Max. Points for Technical Score” in the Technical Proposal Scoring Table.

- b. The Procuring Authorities shall calculate a score (the “Best Value Score”) for the Proposal submitted by each Eligible Proposer, which score shall be calculated in accordance with the following formula, where the highest possible score will be 100 points:

$$\text{Best Value Score} = \text{Technical Score} + \text{Schedule Score} + \text{Financial Score}$$

7. SELECTION AND POST-SELECTION PROCESS

7.1 Selection and Announcement of Preferred Proposer

- 7.1.1. Subject to the Reserved Rights, the Procuring Authorities intend to select the Proposer that submitted the Proposal that received the highest Best Value Score in accordance with Section 6.3.5 of this Part C as the Preferred Proposer.
- 7.1.2. The Procuring Authorities will (in one or more notices) notify each Proposer and the public of the results of the evaluations and scoring conducted in accordance with Section 6 of this Part C, including the identity of the Preferred Proposer (the notice identifying the Preferred Proposer, the “Notice of Award”).

7.2 Finalization of the Project Agreement for Execution

- 7.2.1. Under the terms of the Proposal Letters, each Proposer will commit to enter into the Project Agreement substantially in the form provided in the RFP, without any revisions except:
- a. minor modifications necessary to create a complete and legally binding contract, including modifications to address drafting issues, clarifications or any conflicts between or within documents, or the equivalent of one of these;
 - b. modifications to those Project Agreement provisions that, as indicated in the form of Project Agreement included in the RFP, require information that can only be provided after the Preferred Proposer has been approved, provided that such modifications are consistent with the terms of the RFP in the Procuring Authorities' reasonable discretion; and
 - c. modifications necessary to incorporate terms or concepts provided in the Preferred Proposer's Proposal, including ATCs, which have been approved or required by the Procuring Authority for inclusion in the Project Agreement in accordance with this ITP.
- 7.2.2. The Procuring Authorities may, in their discretion, initiate or agree to engage in negotiations with the Preferred Proposer to modify terms of the Project Agreement other than in accordance with Section 7.2.1 of this Part C. Negotiations (if any) will be limited to those issues or provisions that the Procuring Authorities identify to the Preferred Proposer as permissible issues or provisions for negotiation. The Procuring Authorities may, in their discretion, terminate such negotiations at any time and require the Preferred Proposer to enter into the Project Agreement in its form as of the Financial Proposal Deadline (subject to any changes agreed by the Procuring Authorities and Proposer in accordance with Section 7.2.1 of this Part C) in accordance with Section 7.3.1 of this Part C.
- 7.2.3. The Procuring Authorities may, in their discretion, require the Preferred Proposer to attend in-person meetings in Denver and/or teleconference calls in order to confirm final Project Agreement revisions to the extent permitted under Section 7.2.1 of this Part C or as part of any negotiations held in accordance with Section 7.2.2 of this Part C.
- 7.2.4. For purposes of Section 5.4.2.a.iv of this Part C, the Preferred Proposer will be deemed not to have negotiated in good faith if it fails to attend and actively participate in reasonably scheduled negotiation meetings or teleconference calls with the Procuring Authorities or insists (other than

as a reasonable condition to acceptance of a revision proposed by the Procuring Authorities that is outside the scope of Section 7.2.1 of this Part C) upon terms or conditions that are:

- a. materially inconsistent with the Preferred Proposer's Proposal; or
- b. unrelated to the issues or provisions identified by the Procuring Authorities in accordance with Section 7.2.2 of this Part C.

7.3 Execution of the Project Agreement

7.3.1. Within 30 Working Days after release of the Notice of Award (or such longer period as the Procuring Authorities may determine, in their discretion), the Preferred Proposer is required to submit to the Procuring Authorities:

- a. certified copies of Developer's organizational documents, including but not limited to any articles of incorporation, bylaws, partnership agreement, joint venture agreement and/or other appropriate organizational documents and statement of foreign entity authority, if applicable;
- b. evidence of all necessary company or partnership action by Developer to authorize the execution, delivery and performance of the Project Agreement;
- c. evidence as to the authority, power, and capacity of the individuals executing the Project Agreement on behalf of Developer;
- d. subject to the Procuring Authorities having previously provided to the Preferred Proposer execution copies of the same, or otherwise arranged with the Preferred Proposer for the production of the same:
 - i. the Project Agreement; and
 - ii. the Financial Model Escrow Agreement,in each case duly executed by Developer;
- e. notice of the name and address of Developer's agent for service of legal process, if any, and Developer's Federal Internal Revenue Service employer identification number;
- f. the Financial Close Security, which shall be:
 - i. in the form of one or more letters of credit issued by an Eligible Financial Institution in the form of Form F (Standby Letter of Credit), or otherwise in such other form as the Procuring Authorities, in their discretion, may approve in writing prior to the Financial Proposal Deadline; and
 - ii. in the aggregate amount of \$20,000,000;
- g. execution copies of the Construction Contract and the O&M Contract reflecting terms that comply with Section 17.1 of, and Part A of Schedule 16 (Mandatory Terms) to, the Project Agreement; and
- h. all documents required to be delivered by Developer concurrently with or prior to execution of the Project Agreement in accordance with its terms,

in each case in compliance with, and not inconsistent with, the requirements and terms of the RFP.

7.3.2. Subject to the Preferred Proposer's compliance with Section 7.3.1 of this Part C, the Procuring Authorities will be required to submit the Project Agreement fully executed by Developer and the Procuring Authorities to the Office of State Controller for countersignature. In no event will the Procuring Authorities be bound by, or liable for, any obligations set out in the Project Agreement unless and until such agreement has been executed by the Procuring Authorities and approved and countersigned by the Office of State Controller.

- 7.3.3. If the Preferred Proposer fails to comply with Sections 7.3.1 or 7.3.4 of this Part C, or does any of the other acts or omissions referenced in Section 5.4.2 of this Part C, the Procuring Authorities may, subject to the exercise of any Reserved Rights:
- a. draw on the Preferred Proposer's Proposal Security in its entirety, and the Preferred Proposer will not be entitled to the Stipend Payment under its Stipend Agreement; and
 - b. revoke the Notice of the Award and issue a new Notice of Award in accordance with Section 7.1.2 of this Part C identifying as the Preferred Proposer the Eligible Proposer that submitted the next highest Best Value Score relative to the Preferred Proposer previously identified in the revoked Notice of Award.
- 7.3.4. If, prior to the Procuring Authorities' counter-execution of the Project Agreement in accordance with Section 7.3.2 of this Part C, a Proposer Material Adverse Change occurs or exists, the Preferred Proposer shall notify the Procuring Authorities of such occurrence or existence. If the Preferred Proposer provides such a notification to the Procuring Authorities or they otherwise become aware of the occurrence or existence of any Proposer Material Adverse Change, the Procuring Authorities will consider whether such Proposer Material Adverse Change would have resulted in the Preferred Proposer receiving a "fail" for Pass/Fail Evaluation Criteria number (7) and/or Pass/Fail Evaluation Criteria number (15). If the Procuring Authorities determine that the Preferred Proposer would have received a "fail", they may, in their sole discretion, require the Preferred Proposer to submit additional security or take other measures to maintain its "pass" rating, or take other action as deemed appropriate by the Procuring Authorities. Should the Preferred Proposer fail to take action within 10 Calendar Days of delivery of notice from the Procuring Authorities identifying the required action (or such longer time as may be allowed by the Procuring Authorities in their sole discretion), the Procuring Authorities may exercise their rights under Section 7.3.3 of this Part C.

7.4 Protest Procedures and Debriefings

7.4.1. Protest procedures

- a. Only Proposers (and not individual Core Proposer Team Members) are permitted to file protests regarding the RFP process in accordance with this Section 7.4.1 of this Part C.
- b. Any protests regarding the RFP process, including the selection of the Preferred Proposer, shall be hand delivered to the Procuring Authorities' Contact Person no later than 14 Calendar Days after the date of the initial Notice of Award. Any Proposer submitting such a protest is responsible for obtaining proof of delivery.
- c. Any protest must include the following in order to be considered complete and delivered by the deadline specified in Section 7.4.1.b of this Part C:
 - i. the name of the Proposer that is making the protest;
 - ii. a succinct statement of the grounds, legal authority and factual basis for such protest; and
 - iii. all documentation required to establish the merits of the protest.
- d. Unless the Protest Review Committee decides otherwise in its discretion, no hearing will be held on the protest and the Protest Review Committee shall decide it on the basis of the written submissions received from the protesting Proposer. The Protest Review Committee (and/or its designees) may, in its discretion, discuss the protest with the protesting Proposer, the Procuring Authorities' advisors and other State entities or their representatives.
- e. Any additional information regarding the protest requested from the protesting Proposer by the Protest Review Committee or its designees shall be submitted within the time period requested in order to expedite resolution of the protest. If any party fails to expeditiously comply with any request for information, the protest may be resolved without such information.

7.4.2. Debriefings

- a. At a time determined appropriate by the Procuring Authorities after Financial Close, the Procuring Authorities will conduct a debriefing for any Proposer upon request.
- b. In a debriefing, the Procuring Authorities will discuss the strengths and weaknesses of that Proposer's Proposal, but the Procuring Authorities will not disclose or discuss any confidential information relating to any other Proposer or another Proposer's Proposal.
- c. By requesting and participating in any debriefing session, a Proposer and each of its Core Proposer Team Members will be deemed to have waived any right to use any information provided by the Procuring Authorities in good faith during such a debriefing against the Procuring Authorities or their representatives in any way whatsoever, including in any protest or legal action.

PART D: PROCUREMENT RULES AND RESERVED RIGHTS

1. PROCUREMENT RULES

1.1 Communications

1.1.1. Proposer Contacts

- a. Each Proposer previously identified a single contact person for that prospective Proposer team (such person or any replacement notified to the Procuring Authorities pursuant to Section 1.1.1.d of this Part D, the “Official Representative”).
- b. Subject to Section 1.1.2.c of this Part D, all communications by the Proposer with the Procuring Authorities in relation to the RFP (other than during meetings between the Procuring Authorities and a Proposer as contemplated in this ITP or as expressly permitted otherwise by the Procuring Authorities) shall be made:
 - i. by the Official Representative to the Procuring Authorities’ Contact Person; and
 - ii. using the Secure Project DMS in accordance with the instructions separately provided to Proposers.
- c. All communications by the Procuring Authorities with a Proposer in relation to the RFP (other than during meetings between the Procuring Authorities and a Proposer as contemplated in this ITP or as expressly permitted otherwise by the Procuring Authorities) will be made to the Official Representative.
- d. Proposers may update the identity of such Official Representative from time to time by notifying the Procuring Authorities’ Contact Person through the Secure Project DMS of the name, title, mailing address, phone numbers (work and cell), email address and fax number (if any) of the replacement Official Representative. Such replacements may be made on a time-limited basis, as needed, to address temporary unavailability of a Proposer’s primary Official Representative, provided that the Proposer notifies the Procuring Authorities of the start and end date for such time-limited replacement.

1.1.2. General Rules for Contact and Communications

- a. Commencing with the issuance of the RFQ and continuing until the earliest of:
 - i. execution of the Project Agreement;
 - ii. public non-acceptance of all Proposals by the Procuring Authorities;
 - iii. public cancellation of the procurement process described in this ITP by the Procuring Authorities; or
 - iv. with respect to a Proposer, such Proposer being informed in writing by the Procuring Authorities that it has been disqualified or is otherwise considered removed from further involvement in the procurement process as a Proposer, (such period of time, the “Restricted Contact Period”), the rules of contact in this Section 1.1.2 of this Part D have applied and will continue to apply to Proposers.
- b. For purposes of this Section 1.1.2:
 - i. references to Proposers include their Core Proposer Team Members and representatives (including all Key Personnel, advisors and consultants and sub-contractors); and
 - ii. contact and communications are deemed to include:
 - A. face-to-face meetings;

- B. telephone and videoconference discussions;
 - C. facsimile, email, directed social media messaging, mobile text or equivalent transmissions; and
 - D. any publication by print, website, broadcast social media messaging, video or audio mass communication or equivalent digital transmission which the Procuring Authorities conclude in their discretion was intended to circumvent the above restrictions.
- c. The Procuring Authorities shall be the sole contacts for Proposers with respect to the Project and the RFP (but subject always to the exceptions in Sections 1.1.2.d.iv and v of this Part D). Proposers shall correspond with the Procuring Authorities regarding the Project and the RFP only through the Procuring Authorities' designated representative(s) by using the Secure Project DMS (or through any other individual(s) authorized by the designated representative on a limited basis from time to time). The designated representative is:
- Nicholas Farber
Enterprise Specialist
High Performance Transportation Enterprise
4201 E. Arkansas Ave., Room 230
Denver, CO 80222
(720) 248-8544
dot_central70project@state.co.us
- (as updated by the Procuring Authorities from time to time, the "Procuring Authorities' Contact Person").
- d. No Proposer shall have any direct or indirect contact or communications regarding the Project and the RFP with:
- i. subject to Section 5.3.2.c of the RFQ, another Proposer or any Core Proposer Team Member or representative (including Key Personnel, advisors and consultants and sub-contractors) of another Proposer;
 - ii. any member of HPTe or its Board, BE or its Board, CDOT, the Transportation Commission or the State Attorney General's office; or
 - iii. any employees, advisors, contractors or consultants of the foregoing involved with the procurement of the Project (including those referenced in Section 1.3.1.d of this Part D),
- except for:
- iv. with respect to Section 1.1.2.d.i of this Part D, contacts made prior to SOQ submission that related solely to bona fide inquiries regarding the formation of Prospective Proposer teams; and/or
 - v. contact or communications expressly permitted by the terms of this ITP (including pursuant to the proviso to Section 1.1.2.f of this Part D and Sections 1.3.1.e and 1.3.2 of this Part D) or in any written notice from the Procuring Authorities.
- e. Subject to the exceptions referred to in Section 1.1.2.d.v of this Part D, Proposers shall not directly or indirectly contact or communicate with the following identified stakeholders regarding the Project or the RFP, including employees, representatives or members, or consultants or advisors, of the stakeholders listed below (provided that, with respect to consultants and advisors, such restrictions on contact and communications only apply to the extent any such consultant or advisor provides or has provided services related to the Project or the RFP, subject to any permitted exception pursuant to Section 1.3.1.e of this Part D):
- i. the State and any divisions or departments of the State;

- ii. DRCOG or any member thereof, including the City of Denver, Commerce City, the City of Aurora and Adams County;
- iii. subject to Section 1.1.3 of this Part D, any office of the US DOT;
- iv. subject to Section 1.1.3 of this Part D, FHWA;
- v. any railroad that operates in the I-70 East Corridor, including the Union Pacific Railroad, BNSF Market Lead and Denver Rock Island Railroad;
- vi. environmental, regulatory and permitting agencies;
- vii. Denver Public Schools or Swansea Elementary School;
- viii. Denver International Airport;
- ix. Regional Transportation District; and
- x. to the extent not otherwise listed above under i. through ix., owners of properties that are identified in Schedule 18 (*Right of Way*) to the Project Agreement.

For certainty, Proposers may, subject to prior written notice to the Procuring Authorities, contact and communicate with Utility Owners that are not part of the City of Denver and Farmers Reservoir & Irrigation Company with respect to the Burlington Canal, provided that (A) such contact or communications do not seek to influence or seek information concerning ongoing negotiations relating to the terms of the URAs and (B) a representative of the Procuring Authorities is present, or participates in, all such contact or communications.

- f. In order to ensure that, among other things, the procurement process described in this ITP is implemented in a fair, competitive and transparent manner, the Procuring Authorities will provide any necessary intermediary coordination during the procurement process between Proposers, on the one hand, and the stakeholders and related Persons who are the subject of the restrictions in Section 1.1.2.e of this Part D, on the other hand, provided that Proposers are permitted to submit written requests to the Procuring Authorities for their approval, to be given in their discretion, to:
 - i. engage a consultant or advisory firm that also acts for any such stakeholder in connection with the Project or the RFP, subject to such firm's implementation of Information Barriers; and
 - ii. engage in Procuring Authority monitored contact or communications with any such stakeholder or related Person.

1.1.3. Rules for Contact and Communications with US DOT and FHWA

- a. Without limiting the generality of Section 1.1.2 of this Part D, and subject to Section 1.1.3.b of this Part D, Proposers shall not (unless expressly permitted otherwise by the Procuring Authorities) directly or indirectly contact any FHWA or US DOT office (including the TIFIA JPO) or any representative, advisor or consultant of FHWA or the US DOT (including of the TIFIA JPO) regarding TIFIA's standard forms of credit agreement and term sheet, the TIFIA application process, the Baseline TIFIA Term Sheet, any application for a PABs allocation for the Project, any other applications that may be submitted to FHWA or the US DOT (including through the TIFIA JPO) in relation to the Project and any matter otherwise related to the subject of any such TIFIA, PABs or other application related to the Project, excluding only ancillary interactions at public forums or as part of public rulemaking comment processes.
- b. Following selection of a Preferred Proposer, the Procuring Authorities will permit the Preferred Proposer (if it elected to assume a TIFIA Financing in its Financial Proposal) to communicate directly with the TIFIA JPO, subject to the Preferred Proposer providing the Procuring Authorities with written progress updates on the TIFIA Financing no less than

bi-weekly, as well as an opportunity to attend any (in person or telephone) meetings between the Preferred Proposer and the TIFIA JPO.

1.1.4. Official Communications

- a. Any official information regarding the Project will be disseminated from the Procuring Authorities either:
 - i. from an official email account or on agency letterhead, in either case from the Procuring Authorities' Contact Person (or designee) or the director of either of the Procuring Authorities;
 - ii. through a posting on either the Project Website or the Secure Project DMS.
- b. The Procuring Authorities will not be (and shall be deemed not to be) responsible for, and Proposers may not rely (and shall be deemed not to have relied) on, any oral or written communication or contact or any other information or exchange that occurs outside the official processes contemplated by this ITP.

1.2 Restrictions on Supplemental Due Diligence Activities

Proposers shall not conduct any Supplemental Due Diligence Activities unless and until the Procuring Authorities have approved such activities in accordance with Section 2.3 of Part C.

1.3 Organizational Conflicts of Interest and Limits on Proposer Team Membership

1.3.1. Organizational Conflicts of Interest

- a. Proposers' attention is directed to the conflict of interest rules set out in 2 C.C.R. 601-15 Sec. 7 and 23 CFR § 636, Subpart A, including 23 CFR § 636.116. 23 CFR § 636, Subpart A is expected to apply to the procurement process described in this ITP to the extent that Federal funds are assumed to be used and 23 CFR § 636.103 defines an "organizational conflict of interest" as follows:

"Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the owner, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage."
- b. Each Proposer is required to submit to the Procuring Authorities information concerning organizational conflicts of interest as described in 2 C.C.R. 601-15 Sec. 7 and as defined under 23 CFR § 636.116 and disclose all relevant facts concerning any past, present or currently planned interests that may present an organizational conflict of interest (i) at any time during the Restricted Contact Period, as soon as such conflict is discovered, and (ii) in its Administrative and Technical Proposal in accordance with Section 1.3 of the Administrative and Technical Proposal Submission Requirements (which requirement may be satisfied by inclusion of a confirmation that no such organizational conflicts of interest exist in relation to such Proposer).
- c. In order to facilitate compliance with Section 1.3.1.b of this Part D, but without prejudice to Section 1.3.1.b(i) of this Part D, each Proposer shall submit to the Procuring Authorities for discussion and evaluation a preliminary disclosure (a "Preliminary Organizational Conflict of Interest Disclosure") of any potential or actual organizational conflict of interest of which Proposer is aware at the date of such submission or confirmation that no such conflict of interest exists as at such date, which submission shall:
 - i. be submitted to the Procuring Authorities no later than the deadline specified in the Procurement Schedule;
 - ii. in form and content comply with Section 1.3 of the Administrative and Technical Proposal Submission Requirements; and

- iii. to facilitate the Procuring Authorities' review of such submission, include a completed version of column 1 of the tables set out in Parts 1 and 2 of Annex A to Form A-1 (Administrative and Technical Proposal Letter) in Part H.

The Procuring Authorities will use reasonable efforts to respond to any such submission promptly in order to enable a Proposer to consider such response in preparing its Proposal and/or address any concerns raised by the Procuring Authorities. If a Proposer becomes aware of a potential or actual organizational conflict of interest after the deadline for submission of a Preliminary Organizational Conflict of Interest Disclosure specified in the Procurement Schedule it shall submit, in accordance with Section 1.3.1.b(i) of this Part D, a disclosure thereof to the Procuring Authorities, although the Procuring Authorities cannot commit to consider or respond to such disclosure prior to the Administrative and Technical Proposal Deadline.

- d. During the Restricted Contact Period, each Proposer is prohibited from:
 - i. directly or indirectly receiving any advice relating to the Project or the RFP from;
or
 - ii. including as Core Proposer Team Member or contractor, subcontractor, advisor, consultant or subconsultant to the Proposer or any Core Proposer Team Member,

any Person with an organizational conflict of interest as described in 2 C.C.R. 601-15 Sec. 7 or as defined under 23 CFR § 636.116, including:

- A. Macquarie Capital;
- B. Atkins;
- C. Altus Group Limited;
- D. Kaplan Kirsch & Rockwell LLP;
- E. Freshfields Bruckhaus Deringer US LLP;
- F. Strategies 360;
- G. Communication Infrastructure Group, LLC;
- H. Yeh and Associates, Inc.;
- I. E-470;
- J. Michael Major d/b/a Major Enterprises;
- K. Design Workshop, Inc.;
- L. Kutak Rock LLP;³³
- M. Pinyon Environmental, Inc.;
- N. KPMG, LLP;
- O. Apex Design, PC;
- P. Cook Advisory Services, Inc.;
- Q. any other Person that, to the best of Proposer's knowledge and belief:
 - (l) subject to Section 1.3.1.e of this Part D, was engaged by HPTE, CDOT, BE or the State, or any of the entities listed in this Section 1.3.1.d of this Part D, in connection with the Project, the RFQ or the RFP; or

³³ Kutak Rock LLP has been appointed as issuer counsel and disclosure counsel by the PABs Issuer.

- (II) had access to non-public information regarding the same by virtue of an otherwise unrelated engagement; and
- R. Affiliates of any Person listed in this Section 1.3.1.d of this Part D.
- e. Proposers should note, in connection with Section 1.3.1.d of this Part D, that the Procuring Authorities and CDOT have provided or will provide Persons previously engaged by Atkins with a letter confirming that such Person is permitted to be a member of, or advise, a Proposer or any Core Proposer Team Member. Proposers should confirm that any potentially relevant entity with which it is considering a relationship has received such a letter.
- f. Proposers are advised that this Section 1.3.1 of this Part D is intended to augment applicable Federal and state law, including Federal organizational conflict of interest laws and rules and the laws and rules relating to NEPA. Such applicable law will also apply to Proposer teams and teaming and may additionally preclude certain firms and their entities from participating on a Proposer team.

1.3.2. Other Limitations on Proposer Team Membership

- a. To ensure a fair and competitive procurement process:
 - i. Core Proposer Team Members of any Proposer, and each of their Affiliates, are prohibited from participating, in any capacity, on another Proposer team during the course of the procurement process described in this ITP; and
 - ii. without prejudice to Section 1.3.1 of this Part D, a Proposer (including through any Core Proposer Team Member or any of their Affiliates) may engage any (A) Subcontractor of any tier below the Principal Subcontractors (which Subcontractor is not a Core Proposer Team Member), (B) financial, technical, insurance, legal, public relations or other specialist advisor, (C) commercial bank, arranger, underwriter, placement agent or other potential provider or arranger of financing or (D) any DBE or ESB (to the extent not otherwise already covered by (A), (B) or (C)), on a non-exclusive basis (as between such Proposer and another Proposer), provided that such engagement is made subject to such engaged Person implementing Information Barriers prior to entering into any separate engagement with another Proposer (including through any Core Proposer Team Member or any of their Affiliates), which Information Barriers shall be acceptable to the Procuring Authorities in their discretion.
- b. In the context of Section 1.3.2.a of this Part D:
 - i. Proposers are prohibited from engaging:
 - A. more than two underwriters,
 - B. any commercial banks; and
 - C. any monoline insurers;on an exclusive basis, provided that Proposers may engage a set of team members within an institution described in Sections 1.3.2.b.A, B or C of this Part D on an exclusive basis (subject always to the proviso to Section 1.3.2.a.ii of this Part D); and
 - ii. unless otherwise prohibited under Sections 1.3.2.a.i and 1.3.2.b.i of this Part D for reasons unrelated to a Person's status as a DBE or ESB, Proposers may enter into and maintain exclusivity arrangements with DBEs and ESBs, recognizing that, in the interests of a competitive procurement that maximizes opportunities for DBEs and ESBs to meaningfully participate in the Project, the Procuring Authorities discourage Proposers from seeking out and entering into exclusivity arrangements with two or more DBEs and/or ESBs that provide similar services.

1.4 Changes in Proposer Organization and Key Personnel

No Proposer:

- a. shall:
 - i. add, delete or substitute Core Proposer Team Members (excluding Key Personnel) specifically identified in its SOQ;
 - ii. materially alter the relationships or responsibilities among the Core Proposer Team Members or with any Affiliate of a Core Proposer Team Member the experience of which Affiliate was included in Proposer's SOQ in accordance with Section 4.1 of the Volume 1 Requirements (as defined in the RFQ) as compared to how such relationships and responsibilities were described in its SOQ; or
 - iii. otherwise reorganize its team to the extent that such reorganization would render the organizational charts and descriptions provided in its SOQ inaccurate or incomplete,(any of i, ii and iii, an "Organizational Change"); or
- b. shall substitute Key Personnel or materially alter the responsibilities of such Key Personnel (a "Key Personnel Change");

at any time during the procurement process described in this ITP except:

- c. in accordance with Section 4.3 or 4.4 of Part C; or
- d. after the Proposer Update Deadline but prior to execution and effectiveness of the Project Agreement, subject to the Procuring Authorities' approval, in their discretion,

provided that Proposers shall not be permitted to propose (expressly or by implication) any Organizational Change or Key Personnel Change in either their Administrative and Technical Proposals or their Financial Proposals.

1.5 Confidentiality and Public Disclosure

1.5.1. Compliance with CORA

- a. Once submitted, the Proposals (including ATCs incorporated therein), any RFP Comments and any other information, materials or data provided by Proposers:
 - i. will become the property of the Procuring Authorities;
 - ii. subject to Section 1.5.5.d of this Part D with respect to RFP Comments, may not be returned to Proposers; and
 - iii. will be subject to CORA.
- b. All Proposers should thoroughly familiarize themselves with CORA and all other potentially applicable regulations and statutes related to confidentiality and public disclosure.
- c. CORA provides for certain exceptions where information, materials or data provided to a State agency may not be produced in response to an open records request. The Procuring Authorities will not advise a submitting party as to the nature or content of information or documents entitled to protection as CORA Exempt Materials or under other applicable laws, as to the interpretation of CORA or such laws or as to the definition of trade secret or any related concept. The Procuring Authorities reserve the right to disagree with a Proposer's assessment regarding confidentiality or the proprietary nature of CORA Exempt Materials in the interest of complying with CORA or any other applicable law.
- d. Proposers should furthermore be aware that information, materials and data submitted by Proposers may be made available to Federal and State government representatives

(including of FHWA and US DOT (including the TIFIA JPO)) as well as to select public authorities that have executed non-disclosure agreements with HPTE, BE and/or CDOT. The Procuring Authorities intend to follow the HPTE Open Records Policy to protect information that is exempt from disclosure under the Federal Freedom of Information Act and/or CORA.

1.5.2. Proposal Preparation and Release of Public Disclosure Proposal

- a. Each Proposer that submits an Administrative and Technical Proposal or a Financial Proposal shall prepare a redacted version thereof (the “Public Disclosure Technical Proposal” and the “Public Disclosure Financial Proposal”, respectively), which redacted versions must be identical to the previously submitted Administrative and Technical Proposal or Financial Proposal, respectively, other than redactions that only exclude CORA Exempt Materials as previously identified in Proposer’s Confidential Contents Indices. If the Procuring Authorities disagree with any such redaction, they shall consult with the relevant Proposer in relation to such redaction prior to the release of the Public Disclosure Technical Proposal or the Public Disclosure Financial Proposal, as applicable.
- b. No later than the applicable Public Disclosure Deadline, each Proposer shall deliver one digital copy and two physical copies of its Public Disclosure Technical Proposal or Public Disclosure Financial Proposal, as applicable, to the Proposal Submission Location. The copies shall be:
 - i. in the same digital and physical formats as are required for the Proposal under the General Proposal Instructions, provided that the digital copy shall be a single (searchable) pdf of the complete Public Disclosure Technical Proposal or Public Disclosure Financial Proposal, as the case may be (in each case, including the same indexation of sections as provided for in the physical copies); and
 - ii. accompanied by the following written certification from Proposer’s Official Representative:

“In connection with the Instructions to Proposers to Design, Build, Finance, Operate and Maintain the Central 70 Project dated [date] (as amended) (the “ITP”) issued by the High Performance Transportation Enterprise and the Colorado Bridge Enterprise in relation to the Central 70 Project (as defined therein), under penalty of perjury I hereby certify on behalf of [Proposer] (the “Proposer”) that the enclosed digital and physical copies of Proposer’s Public Disclosure [Technical] [Financial] Proposal (as defined in the ITP) have been prepared in compliance with Section 1.5.2 of Part D of the ITP, and I further acknowledge that the Procuring Authorities are relying on my certification to this effect.”
- c. If a Proposer does not comply with this Section 1.5.2 of this Part D, such non-compliance may, in the discretion of the Procuring Authorities, be treated as a “fail” for purposes of the Pass/Fail Evaluations, unless no later than five Working Days after the applicable Public Disclosure Deadline such Proposer authorizes the Procuring Authorities in writing to release its entire Administrative and Technical Proposal or Financial Proposal, as the case may be.
- d. The Procuring Authorities, in conjunction with the State’s Attorney General’s office, may review each of the Public Disclosure Technical Proposal and the Public Disclosure Financial Proposal to determine whether they agree that the redactions accurately reflect information, materials and data that constitutes or does not constitute CORA Exempt Material, provided that the results of such review shall not constitute a definitive determination that the information, materials or data (and, consequently, the designations in the Confidential Contents Indices) constitutes CORA Exempt Material.
- e. No earlier than execution of the Project Agreement by all parties thereto, the Procuring Authorities expect to release each of the Public Disclosure Technical Proposals and the

Public Disclosure Financial Proposals to the public, including by posting their contents on the Project Website. The Procuring Authorities, in consultation with the State's Attorney General's office, may modify the timing and/or extent of any such release as may be necessary or desirable to comply with CORA and to protect the integrity of the competitive bidding process.

1.5.3. Public Statements

In accordance with Section 4.2.1 of the Financial Proposal Submission Requirements, each Proposer shall include in its Financial Proposal a statement suitable for release to the public by the Procuring Authorities at any time following the Financial Proposal Deadline (the "Public Statement"), which statement shall:

- a. identify its Core Proposer Team Members, including their roles in Proposer's team;
- b. summarize key elements of Proposer's Technical Proposal, including any major or unique elements thereof;
- c. summarize key elements of Proposer's approach to engaging with stakeholders and the public, including any unique or innovative approaches to communications and community outreach;
- d. summarize key elements of Proposer's approach to engaging DBEs, ESBs and the local workforce, including any unique or innovative approaches thereto;
- e. summarize key elements of Proposer's approach to environmental mitigation during construction, including any unique or innovative approaches thereto; and
- f. be limited in page length in accordance with Section 4.2.1 of the Financial Proposal Submission Requirements,

with the understanding that the Procuring Authorities may or may not publicly release such statements, in whole or in part. The Procuring Authorities shall not make any amendments to such statements prior to release (including deleting any part thereof, but excluding formatting changes) without prior discussion with, and approval from, the relevant Proposer.

1.5.4. Final Release of All Other Non-CORA Exempt Materials

After a Project Agreement has come into effect or, if no Project Agreement comes into effect, after a final determination is made by the Procuring Authorities not to proceed with the procurement process described in this ITP, then in either case any previously undisclosed information and materials submitted by Proposers (including any previously undisclosed RFP Comments) will become public record and open to inspection, other than any CORA Exempt Materials.

1.5.5. Submission of Confidential and Proprietary Information

- a. If a Proposer believes that any portion of its Proposal contains CORA Exempt Materials:
 - i. the Proposer must, as applicable, include a Confidential Contents Index in the form of Form B (*Confidential Contents Index*) in Volume 1 of its Administrative and Technical Proposal in accordance with Section 1.2 of the Administrative and Technical Proposal Submission Requirements and in Volume 4 of its Financial Proposal in accordance with Section 4.2 of the Financial Proposal Submission Requirements, as applicable; and
 - ii. to the extent practical and for ease of disclosure, prepare and compile its Proposal such that CORA Exempt Materials do not appear on the same page as information or materials that are not CORA Exempt Materials.
- b. In the event that a Proposer submits information or materials other than in its Administrative and Technical Proposal submitted immediately prior to the Technical Proposal Deadline or its Financial Proposal submitted immediately prior to the Financial Proposal Deadline, including any submission in response to Procuring Authorities'

request in accordance with Section 6.2.2 of Part C and including any Pre-Proposal Submission, that it believes constitute CORA Exempt Materials, then it shall mark each document containing such information or materials “CONFIDENTIAL AND PROPRIETARY” in the header of each affected page (or, for partially affected pages, within the page in such a manner that makes clear where such information or materials begin and end). In addition, a Proposer must include with such submission a statement as to whether it believes that such information or materials are CORA Exempt Materials for a certain period of time (to be specified) or permanently, together with a brief explanation of the basis for such belief.

- c. No designation by a Proposer of information or materials as CORA Exempt Materials will be:
 - i. binding on the Procuring Authorities; or
 - ii. determinative of any issue relating to the application of, or treatment of such information or materials under, CORA or any other applicable law.
- d. The Procuring Authorities reserve the right to disagree with a Proposer’s assessment as to whether any information or materials submitted by it pursuant to this ITP contains CORA Exempt Materials, including taking into account the interest of protecting the integrity of the competitive bidding process. If the Procuring Authorities disagree with a Proposer’s assessment, the Procuring Authorities will inform the relevant Proposer of their determination and, in the case of RFP Comments submitted by a Proposer, will either (A) allow the Proposer to withdraw the relevant RFP Comment, rephrase it or have it answered non-confidentially (with the understanding that the Procuring Authorities cannot guarantee that the original RFP Comment will not still be subject to disclosure under CORA or any other applicable law) and/or (B) if the Procuring Authorities determine that it is appropriate to provide a general response to the relevant RFP Comment to all Proposers, the Procuring Authorities may modify the RFP Comment as released in any general response document to remove information that the Procuring Authorities determine in their discretion constitutes CORA Exempt Materials.
- e. The Procuring Authorities will notify a Proposer if either (i) a request is made under CORA or any other applicable law for information or materials that a Proposer has identified as CORA Exempt Materials or (ii) any Procuring Authority denial of such request is challenged, so that such Proposer may take any action it deems necessary to defend the challenge. The relevant Proposer, not the Procuring Authorities or CDOT, shall be responsible for the costs associated with defending any request for disclosure of any information or materials claimed by Proposer to be CORA Exempt Materials. In connection with this obligation, such Proposer shall:
 - i. use its best efforts to assist the Procuring Authorities and the State in such defense;
 - ii. indemnify the Procuring Authorities and the State for any costs and expenses incurred by them in such defense; and
 - iii. at the Procuring Authorities’ or the Attorney General’s request, intervene in any such defense at its own cost and expense.

1.6 Disqualification for Non-compliance

Any violation by any Proposer or other Person of, or failure to comply with, this ITP may, in the Procuring Authorities’ discretion, result in the relevant (a) Proposer, (b) Person and/or (c) Proposer with which such Person is affiliated being disqualified from further participation in the procurement process described in this ITP or the Project.

2. PROCURING AUTHORITY RIGHTS

2.1 Reservation of Rights

In connection with the procurement process described in this ITP, the Procuring Authorities reserve to themselves, and on behalf of each of CDOT and the State, any and all of the rights set out in Sections 2.1a to 2.1g of this Part D and any other rights available to them under applicable law and/or regulations (any of which rights shall be exercisable by either Procuring Authority (or, on its behalf, by CDOT or the State) in the Procuring Authorities' discretion, with or without cause and with or without notice). The rights referred to in the preceding sentence include the right to:

- a. modify and/or delay the procurement process described in this ITP (including, if applicable, as previously modified in accordance with this Section 2.1) to address:
 - i. applicable law;
 - ii. the best interests of HPTE, CDOT, BE and the State;
 - iii. changes that arise, directly or indirectly, from the NEPA process; and/or
 - iv. any concerns, conditions or requirements of FHWA, US DOT or any other Federal department or agency;
- b. in reviewing and/or evaluating any Proposal:
 - i. appoint evaluation committees to review Proposals and seek the assistance of outside technical, financial, legal and other experts and consultants;
 - ii. waive deficiencies, mistakes, clerical errors or irregularities, omissions, non-conformities or discrepancies in such Proposal, accept and review such Proposal even if the Procuring Authorities could otherwise have determined that such Proposal had failed the Pass/Fail Evaluations or permit clarifications or additional information to be submitted with respect to such Proposal;
 - iii. make independent calculations with respect to numbers and calculations submitted in such Proposal for purposes of their evaluation;
 - iv. require confirmation of information submitted by the relevant Proposer or require additional information from such Proposer concerning its Proposal;
 - v. seek or obtain data from any source that has the potential to improve the Procuring Authorities' understanding and evaluation of such Proposal; and/or
 - vi. if:
 - A. only one Proposal is received;
 - B. the Procuring Authorities only identify one Proposer that satisfies the requirements specified in Section 6.3.3.a of Part C; or
 - C. the Procuring Authorities only identify one Proposer as an Eligible Proposer,then the Procuring Authorities may take such steps as appear to be appropriate to it under the circumstances, including:
 - D. modifying any provision of the RFP;
 - E. seeking additional or updated Proposals, information or clarifications from other Proposers; or
 - F. terminating the procurement process described in this ITP;
- c. in otherwise conducting the procurement process described in this ITP:
 - i. reject any and all submittals, responses and Proposals received at any time;

- ii. not select any Proposer as an Eligible Proposer or as a Preferred Proposer;
 - iii. add as a Proposer any Prospective Proposer that submitted a SOQ in order to replace a previously selected short-listed Proposer that withdraws or is disqualified from participation in the procurement process described in this ITP;
 - iv. engage in negotiations with the highest-ranked Eligible Proposer (based on its Best Value Score) or with any other Proposer;
 - v. negotiate with a Proposer without being bound by any provision in the RFP or its Proposal; and/or
 - vi. disqualify any Proposer from the procurement process for violating any rules or requirements of the procurement process specified in (A) this ITP, (B) any other communication from the Procuring Authorities or (C) applicable law;
- d. procure and develop the Project, including any portion thereof, in any manner that they deem necessary, including the right to:
- i. modify the scope, structure, schedule and/or specific terms of, or cancel the procurement process described in this ITP in whole or in part at any time prior to the execution by the Procuring Authorities of a Project Agreement, without incurring any cost obligations or liabilities, except to the extent provided for in any executed Stipend Agreement;
 - ii. issue Addenda;
 - iii. issue a new request for qualifications, instructions to proposers or request for proposals after cancellation of the procurement process described in this ITP;
 - iv. not pursue TIFIA credit approval or a PABs allocation, or not pursue other financing or public funding for the Project on behalf of Proposers, other than as it may commit itself under the terms of the Project Agreement;
 - v. elect not to commence or continue Project Agreement negotiations with the then Preferred Proposer or any other Proposer, and/or suspend or terminate Project Agreement negotiations at any time; and/or
 - vi. develop some or all of the Project themselves or through another State entity;
- e. if the Procuring Authorities are unable to negotiate a Project Agreement to their satisfaction with the Preferred Proposer, to:
- i. negotiate with the next highest-ranked Eligible Proposer;
 - ii. seek amended, revised or supplemented Proposals from any or all Proposers;
 - iii. cancel the procurement process described in this ITP;
 - iv. pursue the development of the Project through a procurement or contracting approach not expressly anticipated by the RFP; and/or
 - v. exercise such other rights under Colorado law as they deem appropriate;
- f. exercise any other right available to the Procuring Authorities under this ITP or to the Procuring Authorities, CDOT and/or the State under applicable laws and/or regulations; and/or
- g. exercise their discretion in relation to the matters that are the subject of the RFP as they consider necessary or expedient in the light of all circumstances prevailing at the time which the Procuring Authorities consider to be relevant.

2.2 No Commitment

This RFP does not commit or bind the Procuring Authorities to enter into a contract or proceed with the procurement process described in this ITP. Neither Procuring Authority assumes any

obligations, responsibilities and liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties considering a response to and/or responding to the RFP and all such costs shall be borne solely by each Proposer, except to the extent provided for in an executed Stipend Agreement.

2.3 No Binding Effect or Obligation

In no event shall the Procuring Authorities be bound by, or liable for, any obligations with respect to the Project or any portion thereof, except to the extent provided for in an executed Stipend Agreement, until such time (if at all) as (a) the NEPA process is completed for the Project, (b) the FHWA has issued a ROD³⁴, (c) a Project Agreement (in form and substance satisfactory to the Procuring Authorities) has been executed and authorized by the Procuring Authorities and (d) the Office of State Controller has approved and countersigned the Project Agreement and, then, only to the extent set out in the Project Agreement.

³⁴ The Procuring Authorities do not intend to select a Preferred Proposer or enter into the Project Agreement prior to issuance of the ROD.

PART E: EVALUATION CRITERIA

1. PASS/FAIL EVALUATION CRITERIA

The evaluation criteria set out in the table below (the “Pass/Fail Evaluation Criteria”) are comprised of: (a) the “Administrative and Technical Pass/Fail Criteria” (numbers (1) through (7)) and (b) the “Financial Pass/Fail Criteria” (numbers (8) through (15)), compliance with each of which shall be determined pursuant to Section 6.2.4 of Part C.

No.	Pass/Fail Evaluation Criteria	ITP Sec. Ref.
	Administrative and Technical Pass/Fail Criteria	
(1)	Administrative and Technical Proposal submitted at the Proposal Submission Location on or before the Technical Proposal Deadline.	<u>Section 5.1.1.a of Part C</u>
(2)	Administrative and Technical Proposal complies with all Pass/Fail Evaluation Criteria set out in the second column of the table in <u>Annex B</u> of the Administrative and Technical Proposal Letter.	<u>Annex A to Form A-1 in Part H</u>
(3)	Public Disclosure Technical Proposal submitted at the Proposal Submission Location on or before the applicable Public Disclosure Deadline.	<u>Section 1.5.2 of Part D</u>
(4)	Administrative and Technical Proposal not deemed to “fail” due to failures to disclose, incomplete, inaccurate, materially misleading or non-responsive submissions, or conditional or qualified submissions.	<u>Section 6.2.4.b of Part C</u>
(5)	Proposer’s Baseline Substantial Completion Date, as specified in its Proposal Schedule submitted as Technical Proposal Appendix C in accordance with <u>Section 2.1.10 of the Administrative and Technical Proposal Submission Requirements</u> , is no later than July 1, 2022.	Not applicable
(6)	Proposer and all required Core Proposer Team Members participated in required interview (if any).	<u>Section 6.2.3 of Part C</u>
(7)	No Proposer Material Adverse Change has occurred since the date of Proposer’s SOQ or exists at the date of its Administrative and Technical Proposal, in either case, as a result of evaluation of the information submitted in Volume 3 of Proposer’s Administrative and Technical Proposal.	<u>Section 3 of the Administrative and Technical Proposal Submission Requirements</u>
	Financial Proposal Pass/Fail Criteria	
(8)	Financial Proposal submitted at the Proposal Submission Location on or before the Financial Proposal Deadline.	<u>Section 5.1.1.a of Part C</u>
(9)	Financial Proposal complies with all Pass/Fail Evaluation Criteria set out in the second column of the table in <u>Annex A</u> of the Financial Proposal Letter.	<u>Annex A to Form A-2 in Part H</u>
(10)	Public Disclosure Financial Proposal submitted at the Proposal Submission Location on or before the applicable Public Disclosure Deadline.	<u>Section 1.5.2 of Part D</u>
(11)	Financial Proposal not deemed to “fail” due to failures to disclose, incomplete, inaccurate, materially misleading or non-responsive submissions, or conditional or qualified submissions.	<u>Section 6.2.4.b of Part C</u>

No.	Pass/Fail Evaluation Criteria	ITP Sec. Ref.
(12)	Proposer's Base MPP is not greater than the MPP Upset Limit.	Instruction (1) to <u>Form D-1</u> in <u>Part H</u>
(13)	Proposer's Baseline Substantial Completion Date, as specified in <u>Form D-3 (Financing Plan Dates)</u> submitted in its Financial Proposal in accordance with <u>Section 6.3</u> of the <u>Financial Proposal Submission Requirements</u> , is not later than July 1, 2022.	Not applicable
(14)	If Proposer anticipates a TIFIA Financing in its Financial Proposal, nothing in Proposer's Financial Proposal is materially inconsistent or incompatible with any term or condition in the Baseline TIFIA Term Sheet.	<u>Section 3.3</u> of <u>Part B</u>
(15)	No Proposer Material Adverse Change has occurred since the date of Proposer's Administrative and Technical Proposal, or exists at the date of its Financial Proposal, in either case, as a result of evaluation of the information submitted by Proposer in accordance with <u>Sections 5</u> and <u>6</u> of the <u>Financial Proposal Submission Requirements</u> .	<u>Sections 4.5</u> and <u>4.6</u> of the <u>Financial Proposal Submission Requirements</u>

2. TECHNICAL EVALUATION CRITERIA AND SCORING SYSTEM

In accordance with Section 6.3.2 of Part C, the Procuring Authorities will evaluate and score each Technical Proposal Scoring Element of a Proposer's Technical Proposal by reference to the extent to which each element complies with the Technical Proposal Instructions and having regard to the following criteria (which criteria are not necessarily listed in order of priority or importance):

- a. proposed approach to use of processes and practices that ensure quality through the Construction Period and the Operating Period;
- b. proposed project and schedule management approach to implement effective solutions and decision making;
- c. proposed approach to minimize impacts to the travelling public, businesses and nearby communities during the Construction Period and the Operating Period;
- d. proposed approach to effectively address environmental, stakeholder and/or community impacts and provide opportunities for DBEs and ESBs and workforce development; and
- e. evidence (including by way of technical solutions proposed) that Proposer will be able to comply with all Project Agreement requirements and achieve Milestone Completion of each Milestone Segment, Substantial Completion and Final Acceptance by the dates stated in Proposer's Proposal Schedule;

(together, the "Technical Evaluation Criteria").

Technical Proposal Scoring Table

No.	Technical Proposal Scoring Element	Administrative and Technical Proposal Submission Requirement ³⁵	Max. Individual Technical Substantive P/F Score	Max. Points for Technical Score
1	Project Management	<u>Section 2.1 of the Administrative and Technical Proposal Submission Requirements:</u> <ul style="list-style-type: none"> • Executive Summary • Part 1: Project Management • Appendix B: Draft Project Management Plan • Appendix C: Proposal Schedule³⁶ 	100	4
2	Quality Management	<u>Section 2.1 of the Administrative and Technical Proposal Submission Requirements:</u> <ul style="list-style-type: none"> • Executive Summary • Part 2: Quality Management • Appendix D: Draft Stage 1 Quality Management Plan • Appendix E: Draft Stage 2 Quality Management Plan 	100	4
3	Maintenance of Traffic	<u>Section 2.1 of the Administrative and Technical Proposal Submission Requirements:</u> <ul style="list-style-type: none"> • Executive Summary • Part 3: Maintenance of Traffic • Appendix F: Draft Transportation Management Plan 	100	6

³⁵ References to Parts in this column correspond to the Parts of the Technical Proposal, and references to Appendices correspond to the Technical Appendices, required to be included in Proposer's Administrative and Technical Proposal in accordance with, respectively, Section 2.2 and Section 2.3 of the Technical Proposal Instructions.

³⁶ For purposes of evaluating and scoring Proposers' Administrative and Technical Proposals, the Procuring Authorities will be evaluating the matters specified in Section 2.2.2.d of the Technical Proposal Instructions but will not be evaluating and scoring the proposed duration of such Proposer's Construction Period (in relation to which see Section 6.3.4.b of Part C).

No.	Technical Proposal Scoring Element	Administrative and Technical Proposal Submission Requirement ³⁵	Max. Individual Technical Substantive P/F Score	Max. Points for Technical Score
4	Environmental Management, Strategic Communications, Small and Disadvantaged Business Participation and Workforce Development	<u>Section 2.1 of the Administrative and Technical Proposal Submission Requirements:</u> <ul style="list-style-type: none"> • Executive Summary • Part 4: Environmental Management, Strategic Communications, Small and Disadvantaged Business Participation and Workforce Development • Appendix J: Draft Strategic Communications Plan • Appendix K: Draft Small and Disadvantaged Business Enterprise Plan • Appendix L: Draft Workforce Development Plan • Appendix M: Draft Environmental Compliance Work Plan 	100	6
5	Operations and Maintenance Management	<u>Section 2.1 of the Administrative and Technical Proposal Submission Requirements:</u> <ul style="list-style-type: none"> • Executive Summary • Part 5: Operations and Maintenance Management • Appendix H: Draft Operations Maintenance Plan • Appendix I: Draft Maintenance Management Plan 	100	4
6	Technical Approach and Solutions	<u>Section 2.1 of the Administrative and Technical Proposal Submission Requirements:</u> <ul style="list-style-type: none"> • Executive Summary • Part 6: Technical Approach and Solutions • Appendix A: Draft Design Drawings • Appendix G: Draft Cover Design Baseline Report 	100	6
Maximum Possible Points:			600 Points	30 Points

PART F: PROPOSAL INSTRUCTIONS

1. GENERAL PROPOSAL INSTRUCTIONS

1.1 Submission Format

1.1.1. Formatting

- a. All pages in the Pre-Proposal Submissions and the Proposal (other than pages of pre-existing or third party materials, such as published financial statements or letters of support) shall be printed on Standard Pages, provided that Oversized Pages are allowed for Oversized Materials, but not for narrative text.
- b. Proposals should be printed on recycled paper to the extent possible, although failure to do so will not be considered a “fail” for purposes of any of the Pass/Fail Evaluations. Double sided printing is also encouraged wherever appropriate, provided that any Oversized Materials should be printed single-sided and can be folded if included as part of or within a Standard Page size submission. Oversized Materials within any of the plans should not be folded.
- c. Text in any Annexes or Forms should retain the format of the template provided by the Procuring Authorities, excluding the instructions box (which may be deleted, unless expressly provided otherwise). Proposers may insert page breaks in Annexes or Forms for presentation purposes, provided that such page breaks do not result in any completed Annex or Form exceeding any applicable page limit.

1.1.2. Tabulation and Cross-references

- a. Each Proposer is required to assemble both its Administrative and Technical Proposal and its Financial Proposal in the order set out in the tables specifying the relevant Proposal Submission Requirements.
- b. Each Volume shall be sub-divided and tabbed to correspond to the Section numbering set out in the tables specifying the relevant Proposal Submission Requirements.

1.1.3. Page Limits

- a. For purposes of any page limit that applies to any Pre-Proposal Submission or any part of the Proposal, each printed side shall be considered one page.
- b. Proposers are encouraged to be succinct, to the extent possible. Submission of less than the maximum permitted number of pages for relevant sections of a Proposal will not be negatively evaluated.

1.2 Preparation of Binders

1.2.1. Originals and Copies

- a. Each Proposer that submits:³⁷
 - i. an Administrative and Technical Proposal shall submit:
 - A. one original and [] copies of Volume 1;
 - B. one original and [] copies of Volume 2; and
 - C. one original and [] copies of Volume 3; and
 - ii. a Financial Proposal shall submit:
 - A. one original and [] copies of Volume 4;
 - B. one original and [] copies of Volume 5; and

³⁷ Missing details to be provided in a subsequent Addendum.

- C. one original and [] copies of Volume 6,
with each original and (subject to Section 1.2.2.c of these General Proposal Instructions)
each copy to be contained in loose-leaf three ring binders.
- b. In addition to the hard copy volumes, each Proposer is required to submit:
- i. with each of its Administrative and Technical Proposal and Financial Proposal, a digital copy of such Proposal submission in pdf (searchable) format on a single, labeled USB flash drive that contains no other materials, provided that, if more than one USB flash drive is required due to file storage limitations, a Proposer may submit two or more labeled USB flash drives accompanied by written guidance as to the division of files between flash drives (a copy of which guidance should also be included in digital format on each flash drive);
 - ii. with its Administrative and Technical Proposal, an electronic P6.prx copy of Technical Proposal Appendix C (*Proposal Schedule*) on a single, labeled USB flash drive that contains no other materials;
 - iii. with its Financial Proposal:
 - A. a Microsoft® Word copy of Proposer's Public Statement on a single, labeled USB flash drive that contains no other materials (which may exclude the page numbering and any other section numbering or headings included on the versions thereof submitted as part of its entire Financial Proposal in accordance with Sections 1.2.1.a.ii and 1.2.1.b.i of these General Proposal Instructions); and
 - B. a digital copy of Proposer's Base Financial Model on a single, labeled USB flash drive that complies with the requirements of Section 3.4.1.a of the Financial Proposal Instructions and contains no other materials, which digital copy will be considered to be the "original" Base Financial Model.
- c. A Proposer may submit a separate labeled USB flash drive that contains only a copy of the information of a privately held firm submitted in accordance with Section 3.1 of the Administrative and Technical Proposal Submission Requirements, provided that such Proposer also submits written guidance as contemplated in Section 1.2.1.b.i of these General Proposal Instructions.
- d. If there is any conflict or inconsistency between the content of the original of a Proposal and a copy (whether digital or hardcopy) of such Proposal, the Procuring Authorities, acting reasonably, shall determine which version prevails.

1.2.2. Separation of Volumes and Sub-Volumes

- a. Proposers are required to divide their Proposals into six volumes as follows:
- i. for the Administrative and Technical Proposal:
 - A. as "Volume 1", all of the Administrative and Technical Proposal required to be submitted in accordance with Section 1 of the Administrative and Technical Proposal Submission Requirements;
 - B. as "Volume 2", all of the Administrative and Technical Proposal required to be submitted in accordance with Section 2 of the Administrative and Technical Proposal Submission Requirements; and
 - C. as "Volume 3", all of the Administrative and Technical Proposal required to be submitted in accordance with Section 3 of the Administrative and Technical Proposal Submission Requirements; and

- ii. for the Financial Proposal:
 - A. as “Volume 4”, all of the Financial Proposal required to be submitted in accordance with Section 4 of the Financial Proposal Submission Requirements;
 - B. as “Volume 5”, all of the Financial Proposal required to be submitted in accordance with Section 5 of the Financial Proposal Submission Requirements; and
 - C. as “Volume 6”, all of the Financial Proposal required to be submitted in accordance with Section 6 of the Financial Proposal Submission Requirements.
- b. Each hard copy original and copy of a Volume shall be submitted in a separate ring binder apart from each other Volume, provided that:
 - i. if needed, multiple ring binders can contain a single Volume; and
 - ii. a separate sub-Volume for Volume 3 is prepared for each entity in respect of which Financial Capacity Updates are required to be submitted pursuant to Section 3.1 of the Administrative and Technical Proposal Submission Requirements.
- c. The following documents may be submitted in sealed envelopes that are placed in a sleeve that is bound in the appropriate ring binder of the relevant Volume or sub-Volume:
 - i. the original Proposal Security submitted in the original Financial Proposal; and
 - ii. the contents of sub-Volumes of Volume 3 for entities that are privately held firms.
- d. The front cover and spine of each ring binder shall be marked with the following text (as such text may be adjusted by modifying or, if relevant, deleting the bracketed text):

“Central 70 Project [Administrative and Technical] [Financial] Proposal: [*Proposer’s Name*]
[Original] [Copy No. [*number*]] of Volume []
[Sub-Volume for [*name and role (e.g. Equity Member, Lead Contractor, Lead Operator, Lead Engineer, Financially Responsible Party)*] of entity to which sub-Volume relates]
[Binder [*number*] of [*total number*] for such [sub-]Volume)”

1.3 Contents

1.3.1. Units of Measure and Language

Proposals shall be submitted exclusively in the English language, use United States customary units of measure and specify monetary amounts in US dollar denominations. However, additional references may be made to the International System of Units and to monetary amounts in a different base currency provided that any such amounts are also specified in US dollars at an appropriate rate of conversion specified in the Proposal.

1.3.2. References to Time Periods

Any reference in the Proposal Submission Requirements or in any Annex or Form to a prior time period (e.g. the past 10 years, the past 12 months, etc.) is, unless the context requires otherwise or otherwise specified, to such period ending on the Administrative and Technical Proposal Deadline, provided Proposers have an obligation to promptly disclose any subsequent events or circumstances that occur prior to the Financial Proposal Deadline to the extent that such events would otherwise result in the Proposal containing an untrue statement of a material fact or an omission of a material fact necessary to make the Proposal’s contents true and otherwise not misleading.

1.3.3. Placeholders

If a Proposer does not include information or materials in its Proposal that are described as required only if certain circumstances apply (and such circumstances do not apply) under any of the Proposal Submission Requirements, then to facilitate the Pass/Fail Evaluations such Proposer is required to include in the relevant section in its Proposal a statement to the following effect: "Section[s] [] of the [Administrative and Technical Proposal Submission Requirements] [Financial Proposal Submission Requirements] do[es] not apply [with respect to []] because [Proposer to insert brief explanation]."

1.3.4. Additional Materials

- a. Proposers shall not electively include in Proposals any information or materials in addition to the information and materials specifically requested in this ITP and, to the extent that any such information or materials are included, the Procuring Authorities shall be entitled to disregard and not evaluate such information and materials.
- b. The Procuring Authorities expect that Proposals will be developed to address the Project-specific Proposal Submission Requirements. Accordingly, standard corporate brochures, awards, licenses and marketing materials should not be included in a Proposal, although reference can be made to licenses where relevant.

1.4 Signatures

- a. Signatures on documents included in the original Administrative and Technical Proposal and original Financial Proposal that are required to be submitted in accordance with Section 1.2.1.a of these General Proposal Instructions may be original or PDF copies of original signatures, except that signatures on the Stipend Agreement and the Proposal Security submitted in the original Administrative and Technical Proposal and original Financial Proposal, respectively, are required to be original signatures.
- b. All signed documents contained in a Proposal may be executed in one or more counterparts, the originals of which together shall be deemed to be an original.

2. TECHNICAL PROPOSAL INSTRUCTIONS

2.1 Introduction

Each Technical Proposal submitted by a Proposer in accordance with Section 2.1 of the Administrative and Technical Proposal Submission Requirements:

- a. shall be in narrative form (preceded by a table of contents and accompanied, as appropriate or required, by information in other formats, including the Technical Proposal Appendices);
- b. shall comprise:
 - i. an Executive Summary, in accordance with Section 2.2.1 of these Technical Proposal Instructions;
 - ii. the "Parts" required to be included therein pursuant to Section 2.2.2 to 2.2.7 of these Technical Proposal Instructions, as separately labeled and numbered subsections (in the order presented in the relevant Section, and with the contents also presented under the headings and in the order presented in the relevant Section); and
 - iii. the Technical Proposal Appendices, as separately labeled and numbered subsections (in the order presented in Section 2.3 of these Technical Proposal Instructions);
- c. shall include no materials or information other than those required to be included in accordance with Sections 2.2 and 2.3 of these Technical Proposal Instructions.

2.2 Technical Proposal

The Technical Proposal shall include the sections described in Sections 2.2.1 to 2.2.7 of these Technical Proposal Instructions and the Technical Proposal Appendices.

2.2.1. Executive Summary

The purpose of the “Executive Summary” is to provide the Procuring Authorities with a summary overview of Proposer’s Technical Proposal. The Executive Summary shall comprise the following sections:

- a. a narrative overview, including a summary of each “Part” of the Technical Proposal, the contents of which summaries shall include the items described in Sections 2.2.1.b to d of these Technical Proposal Instructions;
- b. in summarizing “Part 1: Project Management” required to be submitted in accordance with Section 2.2.2 of these Technical Proposal Instructions:
 - i. a summary of Proposer’s overall approach to project management including the approach to coordinating the Work with the Procuring Authorities and third parties to minimize conflicts;
 - ii. a summary version of the organizational charts required to be submitted in accordance with Sections 2.2.2.a.ii.A and B of these Technical Proposal Instructions;
 - iii. a summary of Proposer’s Proposal Schedule, including identification of the proposed dates when Key Milestones will occur or be achieved during the Construction Period; and
 - iv. a summary of the proposed dates when any Key Milestone will occur or be achieved during the Operating Period, as well as milestones related to the performance of Renewal Work;
- c. in summarizing “Part 2: Quality Management” required to be submitted in accordance with Section 2.2.3 of these Technical Proposal Instructions, a summary of Proposer’s approach to non-construction (Stage 1) quality management and construction (Stage 2) quality management and the associated key quality management processes;
- d. in summarizing “Part 3: Maintenance of Traffic” required to be submitted in accordance with Section 2.2.4 of these Technical Proposal Instructions, a summary of Proposer’s approach to the maintenance of traffic including how such approach will be aligned with Proposer’s Proposal Schedule;
- e. in summarizing “Part 4: Environmental Management, Strategic Communications, Small and Disadvantaged Business Participation and Workforce Development” required to be submitted in accordance with Section 2.2.5 of these Technical Proposal Instructions, a summary of Proposer’s approach to environmental management, strategic communications, small business and disadvantaged business participation and workforce development including the key characteristics of such approach and strategy;
- f. in summarizing “Part 5: Operations and Maintenance Management” required to be submitted in accordance with Section 2.2.6 of these Technical Proposal Instructions, a summary of Proposer’s approach to operations and maintenance management including the key characteristics of that approach and particularly how it will be integrated with the construction activities during the Construction Period; and
- g. in summarizing “Part 6: Technical Approach and Solutions” required to be submitted in accordance with Section 2.2.7 of these Technical Proposal Instructions:
 - i. a summary of Proposer’s approach to delivering design and construction components of the Project; and

- ii. a summary description of any innovative design concepts or significant deviations from the Reference Design (including a summary description of any material ATCs incorporated in Proposer's Technical Proposal).

2.2.2. Part 1: Project Management

The purpose of "Part 1" is to explain Proposer's approach to project management, and it shall: (a) demonstrate how Proposer intends to comply with the relevant requirements set out in Schedule 8 (Project Administration) to the Project Agreement; (b) identify characteristics of such approach and strategy that exceed relevant requirements set out in the Project Agreement; and (c) be reflected in and be consistent with the draft Project Management Plan submitted as Technical Proposal Appendix B in accordance with Section 2.3.2 of these Technical Proposal Instructions.

"Part 1" shall comprise the following sections:

- a. Management and Organization:
 - i. a description of Proposer's overall management philosophy, approach (including both administrative and Work related project management components and processes) and strategy for designing, constructing, operating and maintaining the Project and complying with the requirements of the Project Agreement; and
 - ii. a description of Proposer's overall project management organization, identifying participating entities and organizations, including the following:
 - A. an overall corporate organization chart identifying each Core Proposer Team Member, and including:³⁸
 - I. for each entity, identification of interim and ultimate parent companies (up to at least the level of Financially Responsible Parties, where relevant);
 - II. for each entity, percentage of equity holdings (actual or anticipated) by each interim and ultimate parent company (up to at least the level of Financially Responsible Parties, where relevant);
 - III. for each entity referenced in such chart, identification of the jurisdiction and legal form of organization, incorporation or formation of such entity; and
 - IV. for each Joint Venture, the nature of the liability of the Joint Venture members (e.g. joint and several, if applicable);
 - B. an organizational chart (or charts, if different for the Construction Period and the Operating Period) identifying all Key Personnel and Proposer's management structure(s), including reporting lines for design, construction, operations and maintenance and quality management activities; and
 - C. a description of Proposer's plan and overall ability to provide the experienced personnel, equipment, and facilities required to successfully complete all aspects of the Project;
- b. Safety: a description of Proposer's approach to safety in performing the Work and how such approach will be incorporated into the Safety Management Plan as described in Schedule 8 (Project Administration) to the Project Agreement, together with an

³⁸ If such chart is identical to the chart submitted in Proposer's SOQ in accordance with Section 2.1.2 of the Volume 1 Requirements (as defined in the RFQ), this should be clearly stated or, alternatively, any changes should be clearly identified and explained in the chart and/or the notes to the chart.

explanation of how Proposer plans to ensure compliance with such Safety Management Plan;

c. Proposal Schedule Summary:

- i. a summary of the Key Milestones set out in the Proposal Schedule submitted as Technical Proposal Appendix C in accordance with Section 2.3.3 of these Technical Proposal Instructions; and
- ii. a description of Proposer's approach to developing and updating the Baseline Schedule as required by Schedule 8 (Project Administration) to the Project Agreement; and

d. Schedule Management Approach:

- i. a description of Proposer's approach to managing resources and activities, both its own and of its Subcontractors, in order to achieve Key Milestones in accordance with the Baseline Schedule;
- ii. a description of Proposer's approach to ensure timely deliveries of materials to adhere to the Baseline Schedule including information with respect to anticipated fabrication times; and
- iii. a description of Proposer's overall approach to effectively managing the scheduling interface, liaison and coordination:
 - A. among Developer, Subcontractors of every tier and Suppliers;
 - B. among design, quality management, construction and operations and maintenance work streams;
 - C. among Developer and Procuring Authorities, including to ensure compliance with, and to reflect timeframes contemplated by, Schedule 9 (Submittals) to the Project Agreement; and
 - D. among the Developer resources referred to in Sections 2.2.2.d.iii.A and B of these Technical Proposal Instructions, on the one hand, and Governmental Authorities, other stakeholders and agencies (including the City of Denver, Utility Owners and the Railroads), on the other hand, including in relation to the timely obtaining of Governmental Approvals.

2.2.3. Part 2: Quality Management

The purpose of "Part 2" is to explain Proposer's approach to Quality Assurance in respect of non-construction, construction and operations and maintenance activities, and it shall (a) demonstrate how Proposer intends to comply with the relevant requirements set out in Schedule 8 (Project Administration) to the Project Agreement; and (b) identify characteristics of such approach that exceed relevant requirements set out in the Project Agreement.

"Part 2" shall comprise the following:

- a. General Requirements: narrative description of the draft Quality Management Plans included in Technical Proposal Appendices D and E which shall include a summary of their key elements for the purpose of conveying the overall philosophy and approach of Proposer to quality management and shall also include:
 - i. an organizational chart illustrating Key Personnel and staff (including discipline and field superintendent leads) responsible for, or involved in, quality management activities in respect of all work streams and phases of the Project;
 - ii. a description of Proposer's quality management approach and identification of its quality processes and procedures which meet or exceed the requirements set out in the Project Agreement, including procedures and lines of authority for

- stopping Work in relation to quality issues and mechanisms for resolution of such issues and quality compliance;
- iii. a description of Proposer's approach to ensuring independence between the process control and independent quality control functions within the quality management process;
 - iv. a description of the proposed organization systems including methods to be used to establish lines of communication and documentation within Proposer's team, including communication among the sub-organizations and management personnel to ensure quality;
 - v. a narrative describing the roles and responsibilities of quality Key Personnel during each phase of the Project to ensure quality for the design, construction, operations and maintenance phases of the Project, including a description of the inter-relationship and relative authority within Proposer's organization of, respectively, quality staff and design and construction staff during the Construction Period and, respectively, quality staff and those responsible for the carrying out of Renewal Work during the Operating Period;
 - vi. a description of the processes to ensure the qualifications of the respective quality staff are maintained as well as continuous training to ensure quality staff are knowledgeable in the quality management processes and adequately informed for their roles and responsibilities on the Project;
 - vii. a description of the methodology that Proposer will use to establish general staffing levels during each major phase of the Project to ensure there are adequate resources available to deliver a high quality Project;
 - viii. a description of the proposed document control processes and procedures;
 - ix. information regarding the process control and quality control of Work products and documents;
 - x. information relating to the independent quality control of processes (including internal auditing functions) and products;
 - xi. a description of how Proposer intends to continually improve the quality program;
 - xii. a description of how Proposer will identify, categorize and resolve Nonconformances, including both Developer and Procuring Authority identified Nonconformances; and
 - xiii. a description of satisfactory strategies to address defects, deficiencies and/or trends indicating declining quality, and to self-identify and correct adverse trends;
- b. Stage 1 Quality Management: narrative description of Proposer's approach to quality management in performing the non-construction elements, including the design, of the Project, which (a) shall be reflected in and be consistent with the draft Stage 1 Quality Management Plan submitted as Technical Proposal Appendix D in accordance with Section 2.3.4 of these Technical Proposal Instructions and (b) shall include the following:
- i. a description of the approach to meeting the quality management obligations set out in Schedule 8 (Project Administration) to the Project Agreement as they apply to such non-construction elements of the Project;
 - ii. a description of the approach for development, identification, review and coordination of non-construction quality management resources and procedures to ensure that these elements comply with the requirements of the Project Agreement, including the requirements set out in Schedules 8 (Project Administration), 14 (Strategic Communications), 15 (Federal and State

- Requirements*), 17 (*Environmental Requirements*) and 18 (*Right-of-Way*) to the Project Agreement;
- iii. a description of the approach for development, inter-disciplinary review and coordination of design, including integrating related issues such as right of way, survey, environmental permitting, Third Party Agreements, Utilities, Railroads and community relations;
 - iv. a description of how design personnel will interface between disciplines and with the construction, operations and maintenance and quality organizations to enhance, expedite the design process and ensure constructability, operability and maintainability of the Project;
 - v. a description of:
 - A. Proposer's approach for delivering the design for the Project, including the roles and responsibilities of key design staff and subconsultants;
 - B. Proposer's approach to managing subconsultants and off-site design work; and
 - C. how designs developed by different firms and offices will be integrated and coordinated to ensure consistency and quality;
 - vi. a description of how the design personnel will interface with the Procuring Authorities' staff; and
 - vii. a description of the proposed design packages, studies and reports and how they relate to the proposed construction sequencing; and
- c. Stage 2 Quality Management: narrative description of Proposer's approach to quality management in performing the construction of the Project, which (a) shall be reflected in and be consistent with the draft Stage 2 Quality Management Plan submitted as Technical Proposal Appendix E in accordance with Section 2.3.5 of these Technical Proposal Instructions and (b) shall include the following:
- i. a description of the approach to meeting the quality management obligations set out in Schedule 8 (*Project Administration*) to the Project Agreement as they apply to construction;
 - ii. a description of the approach to planning and controlling the Construction Work, especially scheduling of the Construction Work to meet the Key Milestones set out in the Baseline Schedule;
 - iii. a description of the management approach for construction, including how design and maintenance will be integrated with construction and how the Work will be divided and controlled within the Proposer organization;
 - iv. a description of how Proposer will manage staged construction, including how it will simultaneously manage construction with ongoing operation and maintenance activities;
 - v. a description of how the Independent Quality Control (IQC) and construction personnel will interface with the Procuring Authorities' staff; and
 - vi. a description of the approach to addressing constructability, durability, maintainability and environmental compliance into and through the delivery of the Project.

2.2.4. **Part 3: Maintenance of Traffic**

The purpose of "Part 3" is to explain Proposer's approach to traffic management, and it shall: (a) demonstrate how Proposer intends to comply with the requirements set out in Section 2 (*Maintenance of Traffic*) of Schedule 10 (*Design and Construction Requirements*) to the Project

Agreement; (b) identify characteristics of such approach that exceed relevant requirements set out in the Project Agreement; and (c) be reflected in and be consistent with the draft Transportation Management Plan submitted as Technical Proposal Appendix F in accordance with Section 2.3.6 of these Technical Proposal Instructions.

“Part 3” shall comprise the following sections:

Maintenance of Traffic, Construction Staging, and Construction Sequencing: a description of Proposer’s approach to maintenance of traffic (MOT) for construction staging and sequencing, including:

- a. the overall traffic management control, coordination and sequencing approach to the major Work activities indicated in the Proposal Schedule;
- b. how the Local Agency Roadways and CDOT Roadways will be impacted, including proposed durations of any planned closures and proposed detour routes, and how such impacts will be mitigated;
- c. how full Closures of the I-70 Mainline and ramps will be addressed;
- d. how residential, business and pedestrian access and access to other adjacent roads will be maintained during the Construction Period, and how other potential impacts to adjacent roads will be mitigated; and
- e. identification of intended lay-down, recycling, staging, disposal and maintenance locations to be used during construction.

2.2.5. **Part 4: Environmental Management, Strategic Communications, Small and Disadvantaged Business Participation and Workforce Development**

The purpose of “Part 4” is to explain Proposer’s approach to environmental management, strategic communications, small and disadvantaged business participation and DBE and workforce development, and it shall: (a) demonstrate how Proposer intends to comply with the requirements set out in Schedules 14 (*Strategic Communications*), 15 (*Federal and State Requirements*) and 17 (*Environmental Requirements*) to the Project Agreement; and (b) identify characteristics of such approach that exceed relevant requirements set out in the Project Agreement.

“Part 4” shall comprise the following sections:

- a. Environmental Compliance Work Plan: a description of Proposer’s approach to environmental management to be used to meet or exceed the environmental commitments made in the final EIS and the ROD as it applies to the Project and the requirements set out in Schedule 17 (*Environmental Requirements*) to the Project Agreement, which shall be reflected in and be consistent with the draft Environmental Compliance Work Plan submitted as Technical Proposal Appendix M to the Technical Proposal in accordance with Section 2.3.13 of these Technical Proposal Instructions;
- b. Strategic Communications: a description of Proposer’s approach to addressing public information and communications management, which shall be reflected in and be consistent with the draft Strategic Communications Plan submitted as Technical Proposal Appendix J in accordance with Section 2.3.10 of these Technical Proposal Instructions, including:
 - i. a description of the plan to establish and maintain two-way communications with residents, businesses, institutions, organizations and others likely to be impacted by the construction and during the long-term operation and maintenance of the Project; and
 - ii. a description of how Proposer proposes to use new and effective ways of communicating with the community and stakeholders, within the context of the Project Agreement;

- c. Small and Disadvantaged Business Participation³⁹: a description of Proposer's approach to engaging DBEs and ESBs, which shall be reflected in and be consistent with the Small and Disadvantaged Business Participation Plan submitted as Technical Proposal Appendix K in accordance with Section 2.3.11 of these Technical Proposal Instructions, including a description of Proposer's approach to meeting the Construction Work Small Business Goals; and
- d. Workforce Development⁴⁰: a description of Proposer's approach to workforce development, which shall be reflected in and be consistent with the Workforce Development Plan submitted as Technical Proposal Appendix L in accordance with Section 2.3.12 of these Technical Proposal Instructions, including descriptions of Proposer's approach to:
 - i. achieving the Construction Period OJT Goal; and
 - ii. achieving the Local Hiring Goal; and
 - iii. complying with its obligations relating to community development programs under Section 7 of Schedule 15 (*Federal and State Requirements*) to the Project Agreement.

2.2.6. Part 5: Operations and Maintenance Management

The purpose of "Part 5" is to explain Proposer's approach to operations and maintenance during the Construction Period and during the Operating Period, and it shall (a) demonstrate how Proposer intends to comply with the requirements set out in Schedule 11 (*Operations and Maintenance Requirements*) to the Project Agreement; and (b) identify characteristics of such approach that exceed the relevant requirements set out in the Project Agreement.

"Part 5" shall comprise the following sections:

- a. Operations Management Plan: narrative description of Proposer's approach to performing the operations of the Project, which (a) shall be reflected in and be consistent with the draft Operations Management Plan submitted as Technical Proposal Appendix H to the Technical Proposal in accordance with Section 2.3.8 of these Technical Proposal Instructions and (b) shall include the following:
 - i. a description of how the operations obligations as described in Schedule 11 (*Operations and Maintenance Requirements*) to the Project Agreement will be met and the proposed management approach thereto, including:
 - A. a detailed organizational chart and management structure illustrating Key Personnel and staff;
 - B. a description of Proposer's approach to operations during the Construction Period and the Operating Period, and particularly the transition from the Construction Period to the Operating Period;
 - C. the location and organization of proposed maintenance facilities and the activities conducted out of each facility, which shall include a non-binding indication of whether, and for how long, Proposer anticipates using CDOT's existing maintenance yard at Havana Street; and
 - D. the utilization of Proposer's own workforce and expertise and the utilization and expertise of proposed Subcontractors for the performance of such obligations;

³⁹ Additional details will be provided in a subsequent Addendum in relation to the Technical Proposal Instructions in respect of the Operating Period Small Business Goals.

⁴⁰ Additional details will be provided in a subsequent Addendum in relation to the Technical Proposal Instructions in respect of the Renewal Work OJT Goal.

- ii. a description of the robustness of the proposed operation strategy and plan including an assessment of risks affecting the proposed plan; and
- iii. a description of Proposer's approach to performing operations for the Project including its approach to:
 - A. ensuring the safety of the workforce and the travelling public;
 - B. detection of, and response to, emergencies, hazardous weather, accidents and incidents;
 - C. communicating and working with the Procuring Authorities and Emergency Services in relation to Incident management;
 - D. interfacing with the Procuring Authorities, CDOT, adjacent maintaining authorities and other interested third-party entities and stakeholders;
 - E. traffic management and maintaining lane availability during the performance of O&M Work through the Operating Period;
 - F. courtesy patrol services; and
 - G. performance monitoring.
- b. Maintenance Management Plan: narrative description of Proposer's approach to performing the maintenance of the Project, which (a) shall be reflected in and be consistent with the draft Maintenance Management Plan submitted as Technical Proposal Appendix I in accordance with Section 2.3.9 of these Technical Proposal Instructions and (b) shall include the following:
 - i. a description of how the maintenance obligations as described in Schedule 11 (Operations and Maintenance Requirements) to the Project Agreement will be met and a detailed organizational chart illustrating Key Personnel and staff;
 - ii. the characteristics of Proposer's management approach to and strategy in meeting the maintenance obligations;
 - iii. a description of the robustness of the proposed maintenance strategy and plan including an assessment of risks affecting the proposed plan;
 - iv. a description of Proposer's approach for performing Routine Maintenance and its relationship to Renewal Work including:
 - A. a description of the assumptions made in developing the proposed regime of Routine Maintenance and inspections to meet the Performance Requirements describing typical work activities, frequencies, and links to Renewal Work;
 - B. approach to general sweeping, cleaning, and removal of debris and graffiti;
 - C. approach to inspection and testing of Project assets and components;
 - D. approach to identification, classification and rectification of defects and inspection failures, to include a description of how personnel will be trained to identify and react to Category 1 Defects and Category 2 Defects; and
 - E. a description of the Maintenance Management Information System to be used for operations and maintenance activities; and
 - v. a description of Proposer's approach to Renewal Work including the following:
 - A. a description of the approach used for life cycle cost analysis over the duration of the Project, including how material durability will be

- determined and price variation (i.e. future energy costs, future labor costs, etc.) will be assessed;
- B. a description of the processes that will be employed for developing a rolling program and scheduling of major maintenance repairs and/or replacements;
 - C. a description of the processes that will assess the condition of the critical structural Elements against their intended performance, predicted Useful Life and assessment of Residual Life, including the inspection, testing and monitoring requirements; and
 - D. a description of the approach to addressing constructability, durability, and maintainability of all Elements and environmental compliance including materials, design features, inspections and maintenance strategies and processes which will meet the Handback Requirements described in Schedule 12 (Handback Requirements) to the Project Agreement.

2.2.7. Part 6: Technical Approach and Solutions

The purpose of “Part 6” is to explain Proposer’s technical approach to design and construction of the Project, and it shall: (a) demonstrate how Proposer intends to comply with the requirements set out in Schedule 10 (Design and Construction Requirements) and, to the extent applicable, Schedule 17 (Environmental Requirements) to the Project Agreement; (b) identify characteristics of Proposer’s technical approach, and specifically identify design and construction solutions, that in either case exceed relevant requirements set out in the Project Agreement; and (c) include appropriate references to the Draft Design Drawings submitted as Technical Proposal Appendix A in accordance with Section 2.3.1 of these Technical Proposal Instructions. In particular, “Part 6” shall include a clear description of Proposer’s approved ATCs which have been incorporated into its Technical Proposal, including the positive and negative aspects of each such ATC.

“Part 6” shall comprise the following sections:

Design and Construction Narrative:

- a. a description of Proposer’s approach to the design of the Project, including details of technical standards and specifications that will be used or are proposed for the proposed design (which (i) standards must comply with the requirements of the Project Agreement and (ii) should not include a recitation of those requirements);
- b. a description of any design features that would reduce the need, cost, duration, efficiency, and increase safety of maintenance activities or make inspection or maintenance procedures more efficient, safer or less costly;
- c. a description of Proposer’s approach to pavement design, including details of the proposed design methodology, material types, roadway classifications, traffic loading and design life considerations;
- d. a description of the proposed approach to implementation of signing, delineation, pavement markings, signalization and lighting for the Project;
- e. information relating to the proposed construction of earthworks, including:
 - i. assumptions regarding and approach to addressing geotechnical and related issues, and identification of the scope and objectives of future investigations, if applicable; and
 - ii. a description of Proposer’s excavation methods, construction techniques for earthworks, proposed mass-haul narrative and potential sources for borrow and/or uses for waste material;

- f. a description of Proposer's design approach and coordination approach with the Union Pacific Railroad (UPRR Crossing, UPRR Pepsi Lead Crossing and UPRR York Street Crossing), BNSF Market Lead (BNSF Crossing) and Denver Rock Island Railroad (DRIR Crossing) which operate within the Project, including identification of:
 - i. Proposer's plan to coordinate work that is the responsibility of the Railroads to carry out, including the means to ensure that such work is carried out in order to achieve the Key Milestones in accordance with Proposer's Schedule; and
 - ii. design and construction solutions for the protection of existing Railroad facilities and operations;
- g. a description of Proposer's design approach to the Cover consistent with the draft Cover Design Baseline Report submitted as Technical Proposal Appendix G in accordance with Section 2.3.7 of these Technical Proposal Instructions;
- h. a description of Proposer's design approach to the Cover and Swansea Elementary School landscape and aesthetic design consistent with the draft Cover and Swansea Elementary School landscape and aesthetic drawings included in Technical Proposal Appendix A in accordance with Section 2.3.1 of these Technical Proposal Instructions, including descriptions of Proposer's approach to:
 - i. integration with the Cover MEP System, Structures, drainage, Utilities and ITS requirements; and
 - ii. long-term operation and maintenance of the relevant Elements;
- i. a description of Proposer's plan for constructing the Project adjacent to the Swansea Elementary School including an overview of Proposer's approach to reducing the impact and disturbance to the School during all phases of the Construction Work, including descriptions of:
 - i. Proposer's approach to traffic phasing for local streets and school bus/parent drop-off/pick up;
 - ii. duration of construction Activities, including time frames for completion of off-site improvements and Cover elements; and
 - iii. Proposer's approach to providing Safe Routes to School, including plans for school pedestrian detours upon closure of 46th Avenue, which specifically address crossing of the UPRR Railroad at 47th Avenue and York Street;
- j. a description of Proposer's geotechnical design that addresses Proposer's approach to the major foundation design elements;
- k. a description of Proposer's design approach to Structures including details of the proposed design methodology, material types, loading, design life considerations and the durability of structural components;
- l. a description of Proposer's design approach to drainage, including:
 - i. a description of the overall surface water collection system identifying the proposed location and outfall locations to accommodate Project runoff;
 - ii. a description of Proposer's approach to the on-site and off-site drainage systems and accommodation of connections to other drainage facilities;
 - iii. a description of the methodology, approach and criteria to be used for the design and construction of detention facilities and identification of new and existing drainage facilities to be incorporated into the Project; and
 - iv. approach to reducing the maintenance requirements for the drainage system;

- m. a description of Proposer's design approach to utilities, including:
 - i. approach to identifying, verifying and documenting the presence and locations of utilities that may impact or be impacted by the Construction Work; and
 - ii. approach to coordinating the relocation of utilities with Utility Owners;
- n. a description of Proposer's plan for constructing the Project, describing in general any proposed phasing of the Work; and
- o. a description of proposed changes to the Reference Design reflected in Proposer's design, including an explanation of the overall benefits to the Project of making such changes.

2.3 Technical Proposal Appendices

The Technical Proposal Appendices shall include the following Appendices, all of which shall (a) comprise part of the Technical Proposal and (b) require to be updated and submitted for, as required by the Project Agreement, Approval or Acceptance by the Procuring Authorities in order to satisfy the relevant NTP1 Conditions or NTP2 Conditions, as the case may be, set out in Schedule 3 (Commencement and Completion Mechanics) to the Project Agreement.

2.3.1. Appendix A: Draft Design Drawings

Appendix A shall include the following (submitted on Oversized Pages and/or Oversized Materials):

- a. draft roadway design drawings, which shall include:
 - i. general Project roadway information including Project limits, design speeds, functional classification(s), and minimum design values met;
 - ii. Project horizontal alignments including PI station/location, degree of curve, radius, length of curve, PC and PT (graphical location) and bearings shown on a schematic plan at 1" to 400' scale and on Plan sheets at 1" to 100' scale;
 - iii. all lanes on mainline ramps and cross streets, including turn lanes;
 - iv. Project planimetrics including curbs and barriers, driveways and edge of pavement;
 - v. bridge locations and limits, bridge types, foundation types, controlling vertical clearances, and span arrangements;
 - vi. preliminary wall types, proposed locations and limits for retaining walls;
 - vii. approximate locations of proposed site access and borrow and waste sites;
 - viii. directional arrows indicating the number of lanes;
 - ix. proposed right-of-way (ROW) limits and control of access limits including any Additional Right-of-Way and any Temporary Properties that, in each case, Proposer has identified as necessary to implement its Proposal;
 - x. existing/natural ground and project and vertical alignments including vertical clearance, grades, VPI station, vertical curve length and K-values shown on profiles at a scale of horizontal - 1" = 100' and vertical - 1" = 40";
 - xi. typical sections including existing ground, pavement cross slope, super-elevation, lane and shoulder widths, and slope ratio for fills and cuts, drainage and ditches, legend of material types and thicknesses;
 - xii. cross sections of the mainline at a spacing of 1,000 ft. and at a scale of 1" = 50' (horizontal and vertical); and
 - xiii. location and text of the large guide signs; and

- b. draft drainage drawings, which shall include:
 - i. location of major drainage elements including trunk lines and cross culverts;
 - ii. outfall locations;
 - iii. water quality features including detention and retention structures; and
 - iv. connections to existing systems;
- c. draft Cover and Swansea Elementary School landscape and aesthetic design drawings, which shall include:
 - i. urban design plans, which shall be consistent with the requirements therefor specified in Section 14 (Landscaping and Aesthetics) of Schedule 10 (Design and Construction Requirements) to the Project Agreement;
 - ii. materials and layout details for each of the program Element requirements identified in Schedule 10B (Contract Drawings) to the Project Agreement;
 - iii. grading and drainage plans;
 - iv. preliminary landscape, irrigation and aesthetics plans, which shall be consistent with the requirements therefor specified in Section 14 (Landscaping and Aesthetics) of Schedule 10 (Design and Construction Requirements) to the Project Agreement; and
 - v. section elevations depicting the proposed surface topography and key site Elements; and
- d. identification of alignments or other elements proposed by Proposer's schematic to the extent they will require an evaluation for compliance with existing Governmental Approvals and possibly re-evaluations and delays associated with such re-evaluations.

2.3.2. Appendix B: Draft Project Management Plan

Appendix B shall be Proposer's draft Project Management Plan, which shall comply with the requirements set out in Section 2 of Schedule 8 (Project Administration) to the Project Agreement.

2.3.3. Appendix C: Proposal Schedule

Appendix C shall be Proposer's draft Baseline Schedule, which shall comply with the requirements set out in Section 3.3 of Schedule 8 (Project Administration) to the Project Agreement.

2.3.4. Appendix D: Draft Stage 1 Quality Management Plan

Appendix D shall be Proposer's draft Stage 1 Quality Management Plan, which shall comply with the requirements set out in Section 6 of Schedule 8 (Project Administration) to the Project Agreement.

2.3.5. Appendix E: Draft Stage 2 Quality Management Plan

Appendix E shall be Proposer's draft Stage 2 Quality Management Plan, which shall comply with the requirements set out in Section 6 of Schedule 8 (Project Administration) to the Project Agreement.

2.3.6. Appendix F: Draft Transportation Management Plan

Appendix I shall be Proposer's draft Transportation Management Plan, which shall comply with the requirements set out in Section 2 (Maintenance of Traffic) of Schedule 10 (Design and Construction Requirements) to the Project Agreement.

2.3.7. Appendix G: Draft Cover Design Baseline Report

Appendix L shall be Proposer's draft Cover Design Baseline Report, which shall comply with the requirements set out in Section 12 (*Cover MEP System*) of Schedule 10 (*Design and Construction Requirements*) to the Project Agreement.

2.3.8. Appendix H: Draft Operations Management Plan

Appendix F shall be Proposer's draft Operations Management Plan, which shall comply with the requirements set out in Section 9 of Schedule 11 (*Operations and Maintenance Requirements*) to the Project Agreement.

2.3.9. Appendix I: Draft Maintenance Management Plan

Appendix G shall be Proposer's draft Maintenance Management Plan, which shall comply with the requirements set out in Section 5 of Schedule 11 (*Operations and Maintenance Requirements*) to the Project Agreement, except that such draft plan does not need to include the following:

- a. maintenance and service manuals as referred to in Section 5.2.u of Schedule 11 (*Operations and Maintenance Requirements*) to the Project Agreement; or
- b. list of equipment manufacturers/vendors and associated contact information as referred to in Section 5.2.w of Schedule 11 (*Operations and Maintenance Requirements*) to the Project Agreement.

2.3.10. Appendix J: Draft Strategic Communications Plan

Appendix H shall be Proposer's draft Strategic Communications Plan, which shall comply with the requirements set out in Sections 4, 5, 6 and 7 of Schedule 14 (*Strategic Communications*) to the Project Agreement.

2.3.11. Appendix K: Small and Disadvantaged Business Participation Plan⁴¹

Appendix M shall be Proposer's draft Small and Disadvantaged Business Participation Plan, which shall comply with the requirements set out in Appendix A to Schedule 15 (*Federal and State Requirements*) to the Project Agreement.

2.3.12. Appendix L: Workforce Development Plan⁴²

Appendix B shall be Proposer's draft Workforce Development Plan, which shall comply with the requirements set out in Appendix B to Schedule 15 (*Federal and State Requirements*) to the Project Agreement.

2.3.13. Appendix M: Draft Environmental Compliance Work Plan

Appendix J shall be Proposer's draft Environmental Compliance Work Plan, which shall comply with the requirements set out in Section 2 of Schedule 17 (*Environmental Requirements*) to the Project Agreement. For certainty, such plan shall not be required to include drafts of the plans listed in Section 2.1.2 of Schedule 17 (*Environmental Requirements*).

3. FINANCIAL PROPOSAL INSTRUCTIONS

3.1 Financial Capacity Updates

3.1.1. Financial Statements

All financial statements submitted by a Proposer in any Financial Capacity Update shall comply with the following requirements.

⁴¹ See footnote to Section 2.2.5.c of Part F.

⁴² See footnote to Section 2.2.5.d of Part F.

- a. Fiscal Year and Auditing Requirements. In respect of each entity for which a Proposer is required to submit a Financial Capacity Update, Proposer must submit:
- i. audited financial statements in respect of each fiscal year of such entity that has ended since the end of the fiscal year in respect of which the most recent financial statements of such entity were submitted in such Proposer's SOQ (or, if applicable, as part of a Proposer Update Submission in respect of the Approved Organizational Change that resulted in the relevant entity becoming a Core Proposer Team Member); and
 - ii. if the financial statements in respect of the most recently completed fiscal year of such entity that were submitted in such Proposer's SOQ (or, if applicable, as part of a Proposer Update Submission in respect of the Approved Organizational Change that resulted in the relevant entity becoming a Core Proposer Team Member) were unaudited, audited financial statements in respect of such fiscal year;

provided that:

- iii. if audited statements are not available for any completed fiscal year of such entity in respect of which financial statements are required to be submitted in accordance with Section 3.1.1.a.i or ii of these Financial Proposal Instructions, Proposer must submit:
 - A. unaudited statements in respect of each fiscal year in respect of which financial statements are required to be submitted in accordance with Section 3.1.1.a.i of these Financial Proposal Instructions; and
 - B. a statement explaining why audited financial statements are unavailable in respect of each fiscal year in respect of which financial statements are required to be submitted in accordance with Section 3.1.1.a.i or ii of these Financial Proposal Instructions;

where for purposes of this Section 3.1.1.a of these Financial Proposal Instructions:

- (I) to qualify as "audited" such financial statements must have been audited by an independent party qualified to render audit opinions (e.g. a certified public accountant); and
 - (II) any unaudited financial statements must be certified as true, correct and accurate by the chief executive, chief financial officer or treasurer (or equivalent) of the relevant entity (if such individual is not also a signatory for the relevant entity of the Administrative and Technical Proposal Letter).
- b. Investment Fund Managers. In respect of any entity that is a fund manager of an investment fund, Proposers shall submit the financial statements for the fund manager, the limited partnership(s) constituting the investment fund and the general partner(s) of the investment fund (for certainty, with the financial statements for each such entity being included in a separate sub-Volume of Volume 3).
- c. Newly Formed Entities. In respect of any entity that is (a) a newly formed entity that does not yet have independent financial statements for at least one 12 month fiscal year or (b) a Joint Venture, Proposers are required to submit financial statements for (in the case of (a)) its Financially Responsible Party or (in the case of (b)) each of the Joint Venture members or partners.
- d. SEC Filings Requirement. In respect of any entity that files reports with the US Securities and Exchange Commission, Proposers are required to submit financial statements by submitting a copy of such entity's annual report on Form 10-K. To the extent a Form 10-K is not yet available for the most recent fiscal year for which financial

statements are required to be submitted in accordance with Section 3.1.1.a.i of these Financial Proposal Instructions, Proposers are required to submit, in respect of the relevant entity, a copy of any report filed on Form 10-Q or Form 8-K which has been filed since the latest filed Form 10-K.

e. Required elements. Financial statements shall include:

- i. opinion letter (auditor's report);
- ii. balance sheet;
- iii. income statement;
- iv. statement of cash flow; and
- v. footnotes,

provided that, if any set of financial statements did not include, when prepared, any of the above, then Proposer shall include an explanation for such non-inclusion.

f. Discussion of Negative Net Income. If any of the financial statements submitted pursuant to Section 3.1.1.a.i of these Financial Proposal Instructions indicate that the expenses and losses of an entity exceed its income in each of the fiscal years to which such financial statements relate, even if a material change as described in Section 3.2 of the Administrative and Technical Proposal Submission Requirements has not occurred during such fiscal years, Proposers are required to submit an explanation of the measures that will be undertaken to make the entity profitable in the future and an estimate of when the entity will be profitable.

g. Compliance with GAAP or IFRS. Financial statements shall be prepared in accordance with GAAP or International Financial Reporting Standards ("IFRS"), provided that, if financial statements are prepared in accordance with principles other than GAAP or IFRS, then together with such statements Proposers are required to submit a letter from a certified public accountant explaining the areas of the financial statements that would be affected by a conversion to GAAP or IFRS (for certainty, a restatement of the financial information in accordance with GAAP or IFRS is not required).

h. US Dollar Requirements. Financial statements shall be prepared in US dollars, provided that, if financial statements for any entity are not available in US dollars, Proposers are required to submit summaries (prepared by a certified public accountant by reference to the audited non-US dollar financial statements) of such entity's balance sheet, income statement and statement of cash flow for the applicable time periods converted to US dollars (at end of calendar year rates of conversion).

i. English Language. Financial statements shall be prepared in English, provided that, if any part of the financial statements is prepared in a language other than English, translations (certified by the translator or translation service that they are true and correct) of the relevant financial statement information shall accompany the original financial statement information.

3.1.2. **Material Changes in Financial Condition**

Any information regarding material changes in financial condition of any entity submitted in accordance with Section 3.2 of the Administrative and Technical Proposal Submission Requirements or Section 4.6.1 of the Financial Proposal Submission Requirements must include:

- a. in relation to any such material change, a statement describing:⁴³
 - i. such change;

⁴³ References to the notes in the financial statements shall not be sufficient to fulfill this requirement to discuss the impact of material changes.

- ii. actual and anticipated changes or disruptions in executive management relating to such change;
- iii. the likelihood that such change will continue during the proposed period of Project construction;
- iv. the projected full extent, nature and impact, positive and negative, of such change experienced and anticipated to be experienced in the proposed period of Project construction; and
- v. how such change is anticipated to affect the organizational and financial capacity and ability of the relevant entity to remain engaged in the procurement process described in this ITP and to ultimately participate in the Project as anticipated by the relevant Proposal,

provided that the inclusion of such statement shall not be required if the relevant entity is a publicly traded company and the making of such statement would be in violation of applicable securities law; provided, however, that Proposers shall be required to provide updated information promptly after relevant information becomes public (including if it becomes public after the Financial Proposal Deadline);

- b. to the extent not otherwise provided, estimates of the impact on revenues, expenses and the change in equity availability, separately for each material change, as certified by the chief executive officer, chief financial officer or treasurer (or equivalent) (if such individual is not also a signatory for the relevant entity of the relevant Proposal Letter); and
- c. if a material change will have a negative financial impact, an explanation of measures that have been taken, are currently in progress or would be reasonably anticipated to be taken to insulate the Project from any such material change.

3.2 Support Letters

3.2.1. Equity Member Support Letters

Each equity funding letter submitted by a Proposer in accordance with Section 4.5.1 of the Financial Proposal Submission Requirements shall be addressed to the Procuring Authorities (care of the Procuring Authorities' Contact Person) and shall comply with the following:

- a. any such letter shall include each of the following (such letter to include separate headings corresponding to each of the matters referred to in i. to v. below):
 - i. the amount, form and timing of the Equity Member's equity financing commitment;
 - ii. an overview of the approval process required to commit to and fund the required equity commitment for the Project and confirmation that such process is now complete;
 - iii. confirmation that the Project meets all of the corporate strategy (other than for investment funds) and investment policy requirements of the relevant entity (e.g., is an approved project, does not contradict any capital allocation policy, etc.) and is consistent with its investment objectives;
 - iv. the dollar value (and/or percentage of total equity) limitation on the equity commitment for the Project or the absence of such limitation; and
 - v. as attachments, documentation⁴⁴ of action(s) taken by or on behalf of the relevant Equity Member that authorize such Equity Member to submit the

⁴⁴ Such documentation should include (i) corporate or equivalent authorizations (such as board or investment committee resolutions) and (ii) if available (but, for certainty, such documentation is not required to be submitted if not available), execution copies of or detailed term sheets for any contribution agreements or shareholder/member agreements.

Proposal as a member of the relevant Proposer and to commit to the equity investment as described in such letter;

- b. if the Equity Member is an investment fund, then (in addition to complying with the requirements set out in Section 3.2.1.a of these Financial Proposal Instructions) the equity funding letter shall be signed by the fund's chief executive officer, chief financial officer or treasurer (or equivalent) and shall include each of the following (such letter to include separate headings corresponding to each of the matters referred to in i. and ii. below):
 - i. the name and ownership structure of the investment fund that will ultimately carry the investment; and
 - ii. supplemental information to the financial statements (as necessary) of the investment fund submitted previously in Proposer's SOQ and otherwise as a Financial Capacity Update to positively demonstrate the existence of committed capital capacity for the Project consistent with the likely equity investment and the Equity Member's responsibility to submit its percentage share of Developer's equity; and
- c. if the Equity Member is not an investment fund, then (in addition to complying with the requirements set out in Section 3.2.1.a of these Financial Proposal Instructions) the equity support letter shall be signed by the chief financial officer, the chief executive officer or treasurer (or equivalent) and shall include descriptions (such letter to include separate headings for corresponding to each of the matters referred to in i. and ii. below) of:
 - i. where and how the equity commitment will be sourced; and
 - ii. how competing allocation and capacity issues are considered between several project opportunities that the Equity Member pursues simultaneously.

3.2.2. Financially Responsible Party Letter of Support

A letter signed by the chief executive officer, chief financial officer or treasurer (or equivalent) of the relevant Financially Responsible Party:

- a. confirming that it will financially support or, as applicable, guarantee all the obligations of the relevant entity with respect to the Project, which confirmation shall include a description of the nature of such support or guarantee; and
- b. stating the dollar value limitation on such support, or the absence of such limitation.⁴⁵

3.3 Financing Plan

Each financing plan memorandum submitted by a Proposer in accordance with Section 4.1 of the Financial Proposal Submission Requirements shall:

- a. be in narrative form (preceded by a table of contents and accompanied, as appropriate, by financial information in other formats);
- b. include the elements set out in Sections 3.3.1 to 3.3.7 of these Financial Proposal Instructions as separately labeled and tabbed subsections for each of such Sections (in the order presented, and with the contents of each element also presented under the headings and in the order presented, in such Sections).^{46,47} Proposers are permitted to

⁴⁵ Letters should be submitted in a similar form to those submitted in a Proposer's SOQ.

⁴⁶ Subject to the page limit, the memorandum may also include other information relating to the Financing Plan that Proposer considers to be material or relevant in providing the Procuring Authorities a better understanding of its Financial Proposal.

⁴⁷ Proposers should include numbered tabs corresponding to the numbered Sections 3.3.1 to 3.3.7, but need not include lettered tabs corresponding to each of the subsections of such numbered Sections. However, the contents of each tabbed (numbered) Section should be divided using lettered subsections corresponding to those set out in

include “Not Applicable” or “Refer to Base Financial Model” or “Refer to Debt Term Sheet” under any heading, provided that, where applicable, an explanation as to any inapplicability, or specific cross-references to the relevant section(s) of the Base Financial Model or Debt Term Sheet are also included; and

- c. comply with the structuring assumptions set out in Section 3.6 of these Financial Proposal Instructions.

3.3.1. Overview

A Proposer’s Financing Plan shall include an overview of Proposer’s approach to financing the Project, including a summary of:

- a. Developer’s projected total sources and uses of funds for the Project;
- b. the total amount of Project Debt and other capital (including equity and shareholder subordinated debt, if applicable) to be obtained by the Proposer;
- c. identification of the type, amount, provider and purpose of each source of Project Debt and other capital (including equity and shareholder subordinated debt, if applicable); and
- d. (i) the creditworthiness of each provider of Project Debt and other capital (including equity and shareholder subordinated debt, if applicable), (ii) drawdown priority and (iii) cash-flow waterfall seniority considerations. For purposes of this Section, “creditworthiness” refers to the provider’s credit rating (if any) and their experience in underwriting and providing Project Debt to infrastructure projects in the United States over the prior ten years.

3.3.2. Project Debt Information

A Proposer’s Financing Plan shall include each of the following:

- a. description of each source of Project Debt (including identification of the type, amount and provider of each source of Project Debt financing);
- b. description of any credit enhancements, swaps or synthetic structures, letters of credit and subordinated facilities (including identification of the type, amount and provider of each);
- c. the maximum leverage ratio(s) allowed under (i) Section 26.1 of the Project Agreement and (ii) the Debt Term Sheet(s) (during both the Construction Period and the Operating Period), and how such ratio(s) are being calculated;
- d. all other financial ratio requirements (including debt service and loan life coverage ratios) with respect to average and minimum levels;
- e. the maximum and average maturity of each Project Debt facility, any principal or interest deferral periods and drawdown/availability periods for each facility;
- f. the cost of each Project Debt facility (including details of Benchmark Interest Rates, credit spread assumptions and all other related fees) and, if used, credit enhancements, hedging instruments, and interest rate swaps (for each period, if applicable); and
- g. description of the reserve accounts that Developer will establish pursuant to requirements under its Financing Documents, including ensuring compliance with financial covenants in the Financing Documents.

3.3.3. Equity Information

A Proposer’s Financing Plan shall include a description of:

- a. the amount, percentage, form, sourcing and timing of the investment to be made by each Equity Member;

Sections 3.3.1 to 3.3.7 as well as replicating (as headings) the text that describes the required contents of the lettered subsections.

- b. each Equity Member's investment horizon;
- c. any future equity transfers anticipated by any Equity Member(s) (whether or not the identity of the transferee or the exact timing of such transfer is known at the date of the Financial Proposal), including those occurring at the close-off of investment funds should they mature prior to the Expiry Date; and
- d. to the extent equity investments (including by way of any provision of debt by any Equity Member), distributions or repayments will be made at different times by or to different Equity Members, the nature and timing of such arrangements, as well as the investment profile and return anticipated to be provided for each Equity Member.

3.3.4. Project Structuring Information

A Proposer's Financing Plan shall include a summary of each of the following:

- a. details of up-front development and procurement pursuit costs:
 - i. identified source(s) of financing for which the up-front development and pursuit costs are an eligible use of proceeds and details regarding the exclusions from such eligibility;
 - ii. up-front fees payable in connection with any Project Debt and deferred equity commitments (including, for example, in respect of equity letters of credits), including fees for loan arranging, bond underwriting, letter(s) of credit, guarantee(s) or other financing fees;
 - iii. non-financing expenses such as Proposal development costs (including design and engineering work), legal, accounting, tax, financing and other advisory fees, Lenders' due diligence expenses (including, in relation to applicable expenses, indication of whether such expenses are assumed to be less than, equal to or greater than the estimates of such expenses provided by the Procuring Authorities pursuant to Sections 3.2.3 and 3.3.5 of Part B); and
 - iv. details regarding the nature of the services or work provided and the payee(s) of any expense item in excess of \$1,000,000 (an unspecific expense item (in particular, those categorized broadly as "other", "general development", "sponsors", "consortium", "contingency" or similar descriptions) can only be used to group amounts with a combined value of less than \$500,000, provided that a general expense item that is explained in detail will not be subject to the \$500,000 cap amount);
- b. rationale for the funding or drawdown of reserve accounts (if any), including funding and release timing and sources;
- c. local, State and Federal tax treatment, including tax rates, revenue and expense recognition, taxation of distributions, and other relevant assumptions; and
- d. macroeconomic (including inflation) assumptions.

3.3.5. Developer's Revenues and Cash-flow Waterfall

A Proposer's Financing Plan shall include a detailed description of:

- a. all sources of Developer's revenues for the Project, including Milestone Payments and Performance Payments and interest on reserve and other accounts;
- b. any funds which may be used to supplement such revenues (e.g., insurance proceeds, security packages, and reserve funds), as and when needed during the Term; and
- c. how, step-by-step, and in which order, such revenues will be applied to pay Project-related expenses (i.e. the payments waterfall, both pre- and post-default).

3.3.6. Drawdown and Repayment Schedule

A Proposer's Financing Plan shall include a detailed schedule of Developer's:

- a. monthly debt drawdowns; and
- b. debt service payments (separating principal and interest) over the course of the Term, together with a schedule for payment of fees and any other up-front and ongoing costs incurred in respect of the Project Debt.

3.3.7. Commercial Close and Financial Close Work Plan

A Proposer's Financing Plan shall include a narrative description of Proposer's approach to the following (including actions to be taken in connection with, and the anticipated schedule for):

- a. finalizing the Project Agreement and achieving timely satisfaction of all conditions precedent to execution in accordance with Section 7.3 of Part C; and
- b. achieving timely satisfaction of all conditions precedent to Financial Close set out in Schedule 1 (Financial Close) to the Project Agreement and anticipated in Proposer's Debt Term Sheet(s) and equity support letters.

3.4 Base Financial Model

3.4.1. General Requirements

The Base Financial Model submitted by a Proposer in accordance with Section 6.9.1 of the Financial Proposal Submission Requirements shall:

- a. be an electronic file constructed in Microsoft® Excel 2007 (or higher version) (English US) compatible format that shall not require the use of external modules;
- b. contain transparent calculations and outputs that are consistent with its Financing Plan;
- c. display information on the basis of CDOT's fiscal year (ending June 30) and use Key Milestone dates that are the same as those specified in Technical Proposal Appendix C submitted in Proposer's Administrative and Technical Proposal;
- d. be constructed using monthly periods from Financial Close until Substantial Completion and quarterly or semi-annual periods (with roll ups to annual periods) from Substantial Completion until three years after the Expiry Date;
- e. be free of mechanical errors;
- f. be suitable for use in connection with any calculations required to be made pursuant to Sections 28 and 29 of, and Schedule 1 (Financial Close) to, the Project Agreement with respect to any interest rate and credit spread related adjustments to be made at Financial Close, Relevant Events, calculation of any Refinancing Gain and calculation of any Termination Amount;
- g. comply with the requirements set out in Sections 3.4.2 through 3.4.6 of these Financial Proposal Submission Requirements;
- h. comply with the structuring assumptions set out in Section 3.6 of these Financial Proposal Instructions;
- i. for purposes of sizing the TIFIA Financing, assume that \$343,920,000⁴⁸ of the Procuring Authorities' direct costs are eligible to be funded by the TIFIA Financing; and
- j. assume payment of the fees, costs and expenses referred to in Sections 3.2.2.c and 3.3.4.b of Part B and the amount referred to in Section 3.7 of Part B to the Procuring Authorities on Financial Close.

⁴⁸ See footnote to Section 3.3.6 of Part B.

3.4.2. Password Protection and Security

- a. No component part of the Base Financial Model (cell, column, row, sheet, macro or otherwise) may be separately hidden, locked or protected with a password.
- b. If the Base Financial Model file is password-protected, the Proposer is required to conspicuously provide the password to the Procuring Authorities.

3.4.3. Formatting and Coding

- a. Proposers are required to format the Base Financial Model to facilitate printing such that row and column headers should be on every page of the printout.
- b. Proposers are discouraged from the use of circular references in calculations. To the extent used, Proposers are required to fully detail and explain such references in the Assumptions Book.
- c. All programming code in macros shall be logically-structured and well documented.

3.4.4. Organization of Worksheets

- a. Other than an optional title/disclaimer and/or instructions worksheet, the Base Financial Model shall only include the following types of worksheets:
 - i. Input worksheets, which shall consist of hard coded data and assumptions but not calculations (to the extent possible) and shall comply with Section 3.4.6.a of these Financial Proposal Instructions;
 - ii. Calculation worksheets, which shall consist of the individual calculations that support each line of all outputs and reports, provided that input cells shall not be hard-coded in such worksheets; and
 - iii. Output worksheets, which shall be used to display and generate model outputs and shall comply with Section 3.4.6.b of these Financial Proposal Instructions, provided that no input cells shall be hard coded in such worksheets and no calculations, except for simple formulae such as sums and check totals, shall be included.
- b. Worksheet names shall be descriptive and not use spaces (e.g., titles such as "NilSineNumine" or "Nil_Sine_Numine" shall be used instead of "Nil Sine Numine").
- c. A separate color coding scheme (e.g., blue font on yellow fill color) shall be consistently used for input cells and/or cells that reference other worksheets, provided that other color coding can also be used but only if fully explained in the Base Financial Model's instruction worksheet (if used) and/or the Assumptions Book.
- d. For calculation or output worksheets using time periods:
 - i. a given column shall be used for the same time period in each of such period's occurrence (e.g., January 1 through January 31 of year X for column Y);
 - ii. a row shall generally contain only one formula, copied across all columns, provided that cells which use a different formula (e.g., in the first column) should be clearly indicated (e.g., by color or label); and
 - iii. values that are obtained from input worksheets should be clearly indicated (e.g., by color or label).
- e. Each worksheet of the Base Financial Model shall identify the version and the date of issue.

3.4.5. Interest Rates and Credit Spreads

- a. The Base Financial Model shall be able to separately accommodate interest rates and credit spread inputs for each and every Benchmark Interest Rate and maturity used in the Financing Plan (differentiating inputs for each Project Debt facility, if applicable).
- b. The Base Financial Model shall be solvable with multiple term structures.
- c. The interest rate assumptions in the Base Financial Model should reflect a market-based coupon and yield structure (including any applicable premiums/discounting) and identify the credit spreads assumed on a yield-to-worst basis.⁴⁹
- d. Proposers are required to identify the appropriate market scale and basis scale in a form equivalent to Tables 2 and 3 set out in Annex 4 (Interest Rate and Credit Spread Submittal Form).

3.4.6. Mandatory Elements

a. Input Worksheets

The Base Financial Model shall clearly indicate in one or more input worksheets all assumptions supporting the calculation of projections, including (to the extent applicable):

- i. macroeconomic assumptions (including inflation in accordance with Section 3.6.a of these Financial Proposal Instructions), provided that in accordance with instruction (5) to Form D-1 (Base MPP Proposal) the Base Financial Model shall, for the purposes of producing the relevant output worksheet for Form D-1 (Base MPP Proposal) in accordance with Section 3.4.6.b.iii of this Part F, also show the calculation of MPPy for the Contract Year July 1, 2022 – June 30, 2023 using the CPI assumptions specified in instruction (5);
- ii. accounting and Federal, State and local tax assumptions applicable to Developer;
- iii. Construction Work expenditures including development and procurement pursuit costs (including details of the anticipated construction “S-curve” on a monthly basis);
- iv. all financial metrics for debt and associated instruments (such as swaps), including Benchmark Interest Rates and credit spread assumptions for applicable maturities within each debt structure; and
- v. funding source(s) and deposits into and drawdown of reserve accounts, if any.

b. Output Worksheets

- i. The Base Financial Model shall include a sources and uses table (in the form set out in Form D-7 (Sources and Uses of Funds)) and Developer’s projected monthly cash flows for the Project for each month of the anticipated Construction Period.
- ii. Each Proposer is required to include in the Base Financial Model each of the following output worksheets displaying information on an annual basis:
 - A. Developer annual balance sheet;
 - B. Developer annual profit and loss statement; and
 - C. Developer annual cash flow statement,where projections in such accounting statements shall be provided in compliance with all applicable Federal, State and local tax laws and regulations.

⁴⁹ The credit spreads included in the market scale in a Proposer’s Base Financial Model shall be identical to or less than those included in the Baseline Yield Curve and the Baseline Credit Spreads.

- iii. The Base Financial Model shall include a separate output worksheet for each of the Financial Proposal Forms.
- iv. Each Proposer is required to include as outputs in its Base Financial Model:
 - A. Developer's anticipated TIFIA Financing debt service, anticipated PABs debt service, anticipated Operating Period O&M Work expenditures and equity cash flows in each period, accompanied by supporting output worksheet(s) analyzing the Preferred Proposer's estimated expenditure in each period into the foregoing categories; and
 - B. the calculation of the Termination Amount that would be payable to Developer pursuant to Schedule 7 (*Compensation on Termination*) to the Project Agreement in the event of a Termination for Convenience, as at the end of each semi-annual period, but at Proposer's discretion excluding any Breakage Costs or other fees which cannot be calculated at the Financial Proposal Deadline.
- c. Sensitivity Analysis
 - i. Each Proposer is required to include in its Base Financial Model a sensitivity analysis in accordance with the following requirements:
 - A. Benchmark Interest Rate fluctuation (before Financial Close): the impact on the Base MPP of a change of -100 basis points, -50 basis points, +50 basis points, +100 basis points, and +150 basis points in all Benchmark Interest Rates at Financial Close (i.e., a parallel shift);
 - B. Project completion schedule: 6 months' and 12 months' completion delay (not caused by Relief Events or Compensation Events) beyond Proposer's Baseline Substantial Completion Date, factoring in the receipt of any liquidated damages by Developer (as appropriate);
 - C. Projected Substantial Completion Payment: -5% and -10% reduction in the amount of the Substantial Completion Payment assuming such reductions are a result of the accrual of Monthly Noncompliance Deductions and/or Monthly Construction Closure Deductions calculated in accordance with, respectively, Sections 2 and 3 of Part 1 of Schedule 6 (*Performance Mechanism*) to the Project Agreement;
 - D. O&M Work: +20% and -20% of forecasted amounts in each year during the Operating Period that Proposer projects incurring O&M Work costs;
 - E. Renewal Work costs: +20% and -20% of forecasted amounts in each year during the Operating Period that Proposer projects incurring Renewal Work costs; and
 - F. Projected MaxPP: -5% and -10% reduction in all expected MaxPPs earned as proposed in the Financing Plan, assuming such reductions are related to Monthly Noncompliance Deductions and/or Monthly Operating Period Closure Deductions calculated in accordance with, respectively, Sections 2 and 3 of Part 3 of Schedule 6 (*Performance Mechanism*) to the Project Agreement.
 - ii. For the scenarios specified in Sections 3.4.6.c.i.A to E of these Financial Proposal Instructions, Proposers are required to present the effect of these variations on both the expected Preliminary Equity IRR and on the minimum and average debt service coverage ratios and other ratios, as applicable, as defined under the relevant Debt Term Sheet(s) for the Project Debt. For these calculations, the Proposer is to solve the Base Financial Model to achieve the highest Base Case Equity IRR while (except in the case of the scenarios

specified in Section 3.4.6.c.i.A of these Financial Proposal Instructions) the Base MPP is maintained. Proposer is also required to state whether any financial covenants in any Financing Document would be breached under any of the scenarios specified in Sections 3.4.6.c.i.A to E of these Financial Proposal Instructions, and identify the impact on the Base MPP of the scenario specified in Section 3.4.6.c.i.A of these Financial Proposal Instructions.

3.5 Assumptions Book

The Assumptions Book shall identify and provide details of all assumptions used in the Base Financial Model, including at a minimum:

- a. the logical layout and structure of the Base Financial Model, including the names of all worksheets and a description of the color coding and/or labeling scheme(s);
- b. key financial assumptions, including:
 - i. Key Milestone dates;
 - ii. forecast capital expenditure during the Construction Period;
 - iii. forecast costs of the O&M Work (other than Renewal Work and O&M Work During Construction);
 - iv. forecast costs of Renewal Work during the Operating Period;
 - v. Benchmark Interest Rates, credit spreads and margins;
 - vi. macroeconomic assumptions, including assumptions relating to general or specific (i.e. related to a component of expenditure) inflation;
 - vii. tax and GAAP depreciation assumptions divided between the various categories of fixed assets;
 - viii. insurance coverage limits, deductibles and premiums broken down by coverage type and period; and
 - ix. financing assumptions, including drawdowns, capital repayment moratoria, repayment schedules, maturities, refinancings and gains, fees and reserve accounts,

together with an explanation of the sources which constitute the basis of such assumptions and/or arguments about the adopted options for the construction of the Base Financial Model and the execution of any related sensitivity analysis;

- c. reasonably sufficient information and instruction regarding the operation of the Base Financial Model, especially changing the Benchmark Interest Rates and Baseline Credit Spreads to ensure that the Procuring Authorities will be able to read, use and modify the data contained therein and conduct a detailed sensitivity analysis;
- d. a detailed description of the function and intended use of all macros (and each macro shall be logically-structured and well documented, i.e., the Procuring Authorities encourage the use of liberal comments within the programming code); and
- e. as attachments, any third-party reports developed to support the revenue and cost estimates used in developing the Financial Proposal.

3.6 Financial Structuring Assumptions

Each Proposer is required to develop its Financing Plan and its Base Financial Model in accordance with the following principles.

- a. Inflation:
 - i. All monetary figures shall be expressed in inflated/year of expenditure Dollars.

- ii. Subject to the proviso to Section 3.4.6.a.i of these Financial Proposal Instructions, Proposers are required to use their own inflation forecasts.
- b. Accounting Practices: Proposers are required to reflect all financial information in accordance with GAAP in the preparation of the Base Financial Model.
- c. Compliance with the RFP: Proposers are required to ensure that the Financing Plan and the Base Financial Model do not contain inconsistencies with any provision included in the RFP, including the Project Agreement.

3.7 Project Debt Commitments and Term Sheets

3.7.1. Debt Commitment Letters

Each Debt Commitment Letter shall (under separate headings corresponding to each of the matters referred to in a. to f. below):

- a. describe the Project Debt facility (or facilities) totaling 100% of the debt requirement for the Project (excluding any TIFIA Financing) and/or hedging instrument(s) the relevant Lender will be providing, including: (i) the amount(s) thereof; and (ii) for Bond Financing facilities, (A) details of any underwriting commitments, including, as a minimum, a volume underwriting commitment and (B) to the extent applicable to the type of Bond Financing, an agreement by the lead underwriter(s) to purchase in aggregate not less than 100% of the bonds to be issued at market prices;
- b. indicate that the Lender has reviewed the RFP issued by the Procuring Authorities, including applicable Addenda issued prior to the Financial Proposal Deadline, and confirmed that: (i) the terms contained therein, including in the Baseline TIFIA Term Sheet (to the extent a TIFIA Financing is assumed in Proposer's Financing Plan), are acceptable; and (ii) that the Lender has completed all material aspects of its due diligence or all appropriate and necessary relevant due diligence, including, in each case, financial, model, legal, technical and tax reviews (with all documents reviewed to be listed and clearly identified), other than any diligence required to be undertaken thereafter in accordance with Federal securities laws;
- c. acknowledge that all material intercreditor issues, if any, with other Lenders or any sureties have been preliminarily agreed by the relevant parties as set out in the accompanying Debt Term Sheet, subject to final confirmation with the TIFIA JPO (to the extent a TIFIA Financing is assumed in Proposer's Financing Plan);
- d. confirm that:
 - i. the required approvals from the Lender's board or credit committee have been obtained;
 - ii. such approvals are not, and will not be, subject to contingencies or conditions precedent, other than (without prejudice to the proviso to Section 3.7.2.c of these Financial Proposal Instructions) those customary for financings for projects similar to the Project (as described in the relevant Debt Term Sheet); and
 - iii. drawdowns from the relevant Project Debt facility will not be subject to contingencies or conditions precedent other than (without prejudice to the proviso to Section 3.7.2.c of these Financial Proposal Instructions) those customary for financings for projects similar to the Project (as described in the relevant Debt Term Sheet);
- e. include (i) an anticipated date for Financial Close that is the same as the date assumed therefor in Proposer's Base Financial Model, (ii) a validity period for the commitment that does not expire before the end of the Proposal Validity Period, and (iii) indication of the extent to which (as applicable and in respect of a Bank Financing) volume commitments, credit spreads or other debt-related fees are locked or subject to market flex provisions through the anticipated date for Financial Close (or any other applicable date); and/or

- f. in respect of any Bank Financing, include confirmation that each Lender providing such Debt Commitment Letter has a Minimum Issuer Rating (as defined in the definition of Eligible Financial Institution in Section 1 of Part A) from at least one Rating Agency, together with identification of any rating actions that have occurred over the 12 month period prior to the date of such Debt Commitment Letter.

3.7.2. Debt Term Sheet

Each Debt Term Sheet shall include but not be limited to:

- a. the identity of the lead arrangers, lead managers, placement agents and/or underwriting banks and/or debt providers in respect of each Bank Financing and Bond Financing that is subject to such term sheet;
- b. the amount, type and purpose of each Bank Financing and Bond Financing that is subject to such Debt Term Sheet;
- c. the expected terms and conditions for the loan or other debt facility, including conditions precedent to Financial Close (including any rating requirements), conditions precedent to drawdowns, representations and warranties, covenants (affirmative and negative), cash flow waterfall and events of default, provided that terms and conditions may not include or be limited to generic terms and conditions such as "customary for financings for projects similar to the Project" or the equivalent;
- d. drawdown schedule, capital repayment moratorium, repayment schedule and final maturity date;
- e. interest rates (whether fixed or floating), specifying base rate, spreads and margins and the reference interest rates that are relevant to the Financial Proposal (and for certainty, in the case of capital markets debt instruments, the expected interest rates shall be set out in the Base Financial Model);
- f. any proposed hedging arrangements in relation to interest rate risk and the material terms of such arrangements, including the amount hedged;
- g. maximum and average life of debt;
- h. fees;
- i. details of all required cover and other ratios;
- j. security required, including a detailed description of all collateral and security interests that will be pledged to the Lenders by Developer or its Equity Members (including in respect of any letters of credit from Equity Members to Developer, guarantees, the Lead Contractor's security package, and any secured and/or reserve accounts); and
- k. material terms of any intercreditor arrangement.

4. ADMINISTRATIVE AND TECHNICAL PROPOSAL SUBMISSION REQUIREMENTS

Each Proposer shall prepare its Administrative and Technical Proposal in accordance with the General Proposal Instructions, the Technical Proposal Instructions and, with respect to Section 3 of these Administrative and Technical Proposal Submission Requirements, the Financial Proposal Instructions, and shall include the following in its Administrative and Technical Proposal:

Administrative and Technical Proposal Submission Requirement	Page Limit
Volume 1 - Administrative Submissions	
1.1 Proposal Letter	
<p>Administrative and Technical Proposal Letter in the form of <u>Form A-1 (Administrative and Technical Proposal Letter)</u>, attaching:</p> <ul style="list-style-type: none"> a. Annex A (List of Proposer Team Members); and b. Annex B (Pass/Fail Evaluation Criteria Verification), <p>in the case of such letter and such Annexes, completed and executed in accordance with the instructions provided in such Form.</p>	n/a
1.2 Public Disclosure Information	
<p><u>Form B (Confidential Contents Index)</u> completed in accordance with the instructions applicable to the Administrative and Technical Proposal provided in such Form.</p>	n/a
1.3 Organizational Conflicts of Interest	
<p>Either:</p> <ul style="list-style-type: none"> a. confirmation of absence of any organizational conflicts of interest (as defined in <u>Section 1.3.1.a of Part D</u>), including reference to any prior steps taken pursuant to <u>Section 1.3.1.b of Part D</u> to confirm with the Procuring Authorities the absence of any such conflicts; or b. narrative description of any such potential or actual organizational conflicts of interest as required under <u>Section 1.3.1.b of Part D</u> (together with copies of any relevant documents), which description: <ul style="list-style-type: none"> i. shall be divided into: <ul style="list-style-type: none"> A. Part 1, which shall repeat (and not cross-refer to) all previously disclosed potential or actual organizational conflicts of interest (including in Proposer's Preliminary Organizational Conflict of Interest Disclosure); and B. Part 2, which shall describe all potential or actual organizational conflicts of interest not previously disclosed; and ii. shall (in both Parts 1 and Part 2): <ul style="list-style-type: none"> A. identify the Person or Persons which may be involved in the organizational conflict of interest; B. state how Proposer's collective or individual interests, including those of any of its team members, consultants, contractors or subcontractors, or the interests of any chief executives, directors or senior personnel thereof, may result in, or could be viewed 	n/a

Administrative and Technical Proposal Submission Requirement	Page Limit
<p>as, an organizational conflict of interest; and</p> <p>C. detail any steps taken to date, and proposed future steps to be taken, to eliminate or mitigate such organizational conflict of interest including reference to any steps taken or to be taken following consultation with the Procuring Authorities following submission of Proposer's Preliminary Organizational Conflict of Interest Disclosure in accordance with <u>Section 1.3.1.c of Part D</u>.</p>	
<p>1.4 Stipend Agreement</p>	
<p>One of:</p> <p>a. <u>Form H (Stipend Agreement)</u> executed in accordance with the instructions provided in such Form;</p> <p>b. a statement that "The Proposer has elected not to execute a Stipend Agreement and accordingly waives its right to payment of a Stipend Payment in accordance with paragraph 5(e) of the Administrative and Technical Proposal Letter"; or</p> <p>c. a statement that "The Proposer has prior to the Technical Proposal Deadline submitted to the Procuring Authorities <u>Form H (Stipend Agreement)</u> executed in accordance with the instructions provided in such Form".</p>	n/a
<p>Volume 2 - Technical Submissions</p>	
<p>2.1 Technical Proposal</p>	
<p>A detailed proposal that complies with <u>Section 2.2 of the Technical Proposal Instructions</u> comprising:</p>	60 pages in aggregate for Parts 1 to 6 inclusive
<p>2.1.1. Executive Summary</p>	6
<p>2.1.2. Part 1: Project Management</p>	See above
<p>2.1.3. Part 2: Quality Management</p>	See above
<p>2.1.4. Part 3: Maintenance of Traffic</p>	See above
<p>2.1.5. Part 4: Environmental Management, Strategic Communications, Small and Disadvantaged Business Participation and Workforce Development</p>	See above
<p>2.1.6. Part 5: Operations and Maintenance Management</p>	See above
<p>2.1.7. Part 6: Technical Approach and Solutions</p>	See above
<p>2.1.8. Appendix A: Draft Design Drawings</p>	n/a
<p>2.1.9. Appendix B: Draft Project Management Plan</p>	n/a
<p>2.1.10. Appendix C: Proposal Schedule</p>	n/a
<p>2.1.11. Appendix D: Draft Stage 1 Quality Management Plan</p>	n/a

Administrative and Technical Proposal Submission Requirement	Page Limit
2.1.12. Appendix E: Draft Stage 2 Quality Management Plan	n/a
2.1.13. Appendix F: Draft Transportation Management Plan	n/a
2.1.14. Appendix G: Draft Cover Design Baseline Report	n/a
2.1.15. Appendix H: Draft Operations Management Plan	n/a
2.1.16. Appendix I: Draft Maintenance Management Plan	n/a
2.1.17. Appendix J: Draft Strategic Communications Plan	n/a
2.1.18. Appendix K: Draft Small and Disadvantaged Business Participation Plan ⁵⁰	n/a
2.1.19. Appendix L: Draft Workforce Development Plan ⁵¹	n/a
2.1.20. Appendix M: Draft Environmental Compliance Work Plan	n/a
2.2 ATCs	
ATC Submissions that Proposer is electing to incorporate in its Proposal in accordance with <u>Section 3.5.1 of Part C</u> , together with copies of unconditional approval of each such ATC Submission received from the Procuring Authorities. ⁵²	n/a
Volume 3 – Financial Capacity Updates	
3.1 Financial Statements	
<p>Either:</p> <ul style="list-style-type: none"> a. financial statements that comply with <u>Section 3.1 of the Financial Proposal Instructions</u> for each fiscal year in respect of which financial statements are required to be submitted in accordance with <u>Sections 3.1.1.a.i and 3.1.1.a.ii of the Financial Proposal Instructions</u>; or b. if financial statements do not exist for any such fiscal year, then for each such relevant entity a letter addressed to the Procuring Authorities (care of the Procuring Authorities’ Contact Person) from its chief executive officer, chief financial officer or treasurer (or equivalent) certifying that no such financial statements are available, together with a statement explaining why such financial statements are unavailable for any relevant period (unless such individual is also a signatory of the Administrative and Technical Proposal Letter on behalf of the relevant entity, in which case the Administrative and Technical Proposal may include an unsigned statement to this effect); <p>in either case in respect of each of the Core Proposer Team Members, being:</p>	n/a
<ul style="list-style-type: none"> i. each Equity Member; 	
<ul style="list-style-type: none"> ii. Lead Contractor; 	

⁵⁰ See footnote to Section 2.2.5.c of Part F.

⁵¹ See footnote to Section 2.2.5.d of Part F.

⁵² Although such submissions will include descriptions of the positive and negative impacts of the relevant ATC, Proposers should also include details of such impacts in “Part 6” (and any other relevant Parts) of their Technical Proposals, as these will be evaluated and may affect scoring of individual Technical Proposal Scoring Elements.

Administrative and Technical Proposal Submission Requirement	Page Limit
iii. Lead Engineer;	
iv. Lead Operator; and	
v. each Financially Responsible Party, if any.	
3.2 Material Changes in Financial Condition	
<p>A letter in respect of each of the following entities addressed to the Procuring Authorities (care of the Procuring Authorities' Contact Person) from the chief executive officer, the chief financial officer or treasurer (or equivalent) of the relevant entity (unless such individual is also a signatory of the Administrative and Technical Proposal Letter on behalf of the relevant entity, in which case the Administrative and Technical Proposal may include an unsigned statement of the required information (in the case of a.) or an unsigned certification to the required effect (in the case of b.)), such letter (or unsigned statement or certification) to be substantially in the form set out in <u>Form G-1 (Material Changes)</u>, that either:</p> <p>a. in compliance with <u>Section 3.1.2</u> of the <u>Financial Proposal Instructions</u>, sets out information regarding any material changes in financial condition⁵³ with respect to the relevant entity that have occurred since Proposer submitted its SOQ (or the Proposer Update Submission in respect of the Approved Organizational Change that resulted in the relevant entity becoming a Core Proposer Team Member) and any such material changes that are anticipated to occur during such entity's current fiscal year; or</p> <p>b. if no such material change has occurred and none is anticipated with respect to the relevant entity, certifies that no such material change has occurred or is anticipated to occur during such entity's current fiscal year;</p> <p>in either case in respect of each of the Core Proposer Team Members, being:</p>	n/a
i. each Equity Member;	
ii. Lead Contractor;	

⁵³ Set out below is a representative list of events intended to provide examples of what the Procuring Authorities consider to be a material change in financial condition. This list is indicative only. At the discretion of the Procuring Authorities, any failure to disclose a prior or anticipated material change may result in disqualification from further participation in the procurement process.

- a. an event of default involving the affected entity, or the parent corporation of the affected entity;
- b. a bankruptcy involving the affected entity, or the parent corporation of the affected entity;
- c. a change in tangible net worth of 10% or more of total shareholder equity;
- d. a sale, merger or acquisition exceeding 10% of the value of shareholder equity prior to the sale, merger or acquisition which in any way involves the affected entity or parent corporation of the affected entity;
- e. a downgrade in the credit rating of the affected entity or parent corporation of the affected entity;
- f. inability to meet material conditions of loan or debt covenants by the affected entity or parent corporation of the affected entity which has required or will require a waiver or modification of agreed financial ratios, or other loan covenants, or additional credit support from shareholders or other third parties;
- g. the affected entity or the parent corporation of the affected entity either: (i) incurred a net operating loss; (ii) sustained charges exceeding 5% or more of the then shareholder equity due to claims, changes in accounting policies, write-offs or business restructuring; or (iii) implemented a restructuring/reduction in labor force exceeding 200 positions or that involved the disposition of assets exceeding 10% of the then shareholder equity; and
- h. other events known to the affected entity which represent a material change in financial condition.

Administrative and Technical Proposal Submission Requirement	Page Limit
iii. Lead Engineer;	
iv. Lead Operator; and	
v. each Financially Responsible Party, if any.	
3.3 Off Balance Sheet Liabilities	
<p>A letter in respect of each of the following entities addressed to the Procuring Authorities (care of the Procuring Authorities' Contact Person) from the chief executive officer, the chief financial officer or treasurer (or equivalent) (unless such individual is also a signatory of the Administrative and Technical Proposal Letter on behalf of the relevant entity, in which case the Administrative and Technical Proposal may include an unsigned statement of the required information (in the case of a.) or an unsigned certification to the required effect (in the case of b.)) or a certified public accountant, such letter (or unsigned statement or certification) to be substantially in the form set out in <u>Form G-2 (Off Balance Sheet Liabilities)</u>, that either:</p> <p>a. identifies and describes off balance sheet liabilities for each fiscal year of the relevant entity in respect of which financial statements are submitted in accordance with <u>Sections 3.1.1.a.i</u> and <u>3.1.1.a.ii</u> of the <u>Financial Proposal Instructions</u> to the extent such liabilities exceed \$25 million in the aggregate in such fiscal year; or</p> <p>b. certifies that there are no such liabilities in excess of such limit for each such fiscal year,</p> <p>in either case in respect of each of the Core Proposer Team Members, being:</p>	n/a
i. each Equity Member;	
ii. Lead Contractor;	
iii. Lead Engineer;	
iv. Lead Operator; and	
v. each Financially Responsible Party, if any.	
3.4 Credit Ratings	
3.4.1. Completed <u>Form G-3 (Credit Ratings)</u> .	n/a
<p>For each entity that has a credit rating as indicated on the completed <u>Form G-3 (Credit Ratings)</u>, either:</p> <p>a. all rating information (including ratings outlooks and reports, if applicable) issued by any Rating Agency (i) regarding any debt instrument issued by such entity or (ii) for any other purpose, in either case since Proposer submitted its SOQ (or the Proposer Update Submission in respect of the Approved Organizational Change that resulted in the relevant entity becoming a Core Proposer Team Member); or</p>	n/a
<p>b. if no such information has been issued in respect of such entity, a statement in compliance with <u>Section 1.3.3</u> of the <u>General Proposal Instructions</u>.</p>	

5. FINANCIAL PROPOSAL SUBMISSION REQUIREMENTS

Each Proposer shall prepare its Financial Proposal in accordance with the General Proposal Instructions and the Financial Proposal Instructions, and shall include the following in its Financial Proposal:

Financial Proposal Submission Requirements	Page Limit
Volume 4 – Administrative Submissions	
4.1 Proposal Letter	
Financial Proposal Letter in the form of <u>Form A-2 (Financial Proposal Letter)</u> , attaching <u>Annex A (Pass/Fail Evaluation Criteria Verification)</u> , completed and executed in accordance with the instructions provided in such Form.	n/a
4.2 Public Disclosure Information	
4.2.1. Public Statement that complies with Section 1.5.3 of Part D.	6
4.2.2. Form B (Confidential Contents Index) completed in accordance with the instructions applicable to the Financial Proposal provided in such Form.	n/a
4.3 Proposal Security	
One or more letters of credit issued by an Eligible Financial Institution: ⁵⁴ a. in the aggregate amount of \$10,000,000; and b. in the form of Form F (<i>Standby Letter of Credit</i>), or otherwise in such other form as the Procuring Authorities may, in their discretion, approve in writing prior to the Financial Proposal Deadline.	n/a
4.4 Affidavit and Certifications	n/a
The following Forms completed (to the extent applicable) and executed in accordance with the instructions provided in the relevant Form.	
4.4.1. Form C-1 (Non-Collusion Affidavit) signed by Proposer and each Core Proposer Team Member.	
4.4.2. Form C-2 (Buy America Certification) signed by Proposer and Lead Contractor.	
4.4.3. Form C-3 (Equal Employment Opportunity Certification) signed by Proposer, each Core Proposer Team Member and each other contractor or subcontractor not exempt under 41 CFR 60-1.5.	
4.4.4. Form C-4 (Use of Contract Funds for Lobbying Certification) signed by Proposer and each Core Proposer Team Member.	
4.4.5. Form C-5 (Debarment and Suspension Certification) signed by Proposer and each Core Proposer Team Member.	
4.5 Support Letters	
4.5.1. Equity Member Support Letters	
4.5.2. Equity funding letter from each Equity Member that complies with <u>Section 3.2.1</u> of the <u>Financial Proposal Instructions</u> .	n/a
4.5.3. Financially Responsible Party Letters of Support	

⁵⁴ See Section 1.2.1.a of the General Proposal Instructions with respect to the submission of the original forms of Proposal Security.

Financial Proposal Submission Requirements	Page Limit
Letter of support from each Financially Responsible Party (if any) that complies with <u>Section 3.2.2</u> of the <u>Financial Proposal Instructions</u> or, if there are no Financially Responsible Parties in Proposer's team, a statement in compliance with <u>Section 1.3.3</u> of the <u>General Proposal Instructions</u> .	n/a
4.6 Financial Capacity Updates	
4.6.1. Material Changes in Financial Condition	
<p>A letter in respect of each of the following entities addressed to the Procuring Authorities (care of the Procuring Authorities' Contact Person) from the chief executive officer, the chief financial officer or treasurer (or equivalent) of the relevant entity (unless such individual is also a signatory of the Financial Proposal Letter on behalf of the relevant entity, in which case the Financial Proposal may include an unsigned statement of the required information (in the case of a.) or an unsigned certification to the required effect (in the case of b.)), such letter (or unsigned statement or certification) to be substantially in the form set out in <u>Form G-1 (Material Changes)</u>, that either:</p> <p>a. in compliance with <u>Section 3.1.2</u> of the <u>Financial Proposal Instructions</u>, sets out information regarding any material changes in financial condition⁵⁵ with respect to the relevant entity that have occurred since Proposer submitted its Administrative and Technical Proposal and any such material changes that are anticipated to occur during such entity's current fiscal year; or</p> <p>b. if no such material change has occurred and none is anticipated with respect to the relevant entity, certifies that no such material change has occurred or is anticipated to occur during such entity's current fiscal year;</p> <p>in either case in respect of each of the Core Proposer Team Members, being:</p>	n/a
i. each Equity Member;	
ii. Lead Contractor;	
iii. Lead Engineer;	
iv. Lead Operator; and	
v. each Financially Responsible Party, if any.	
4.6.2. Credit Ratings	
<p>a. For each entity that has a credit rating as indicated on the completed <u>Form G-3 (Credit Ratings)</u> submitted in Proposer's Administrative and Technical Proposal, either:</p> <p>i. confirmation that, since Proposer submitted its Administrative and Technical Proposal, there have been no changes (positive or negative, including such entity ceasing to be rated) in any rating and/or in any rating outlook of such entity; or</p>	n/a

⁵⁵ See footnote to Section 3.2 of the Administrative and Technical Proposal Submission Requirements.

Financial Proposal Submission Requirements	Page Limit
<p>ii. a description of any such change that has occurred in respect of such entity.</p>	
<p>b. For each entity that has a credit rating as indicated on the completed <u>Form G-3 (Credit Ratings)</u> submitted in Proposer's Administrative and Technical Proposal, either:</p> <p>i. all rating information (including ratings outlooks and reports, if applicable) issued by any Rating Agency (i) regarding any debt instrument issued by such entity or (ii) for any other purpose, in either case since Proposer submitted its Administrative and Technical Proposal; or</p> <p>ii. if no such information has been issued in respect of such entity, a statement in compliance with <u>Section 1.3.3 of the General Proposal Instructions</u>.</p>	n/a
Volume 5 – Financial Plan	
5.1 Financing Plan Memorandum	
<p>A detailed memorandum (the "<u>Financing Plan</u>") containing all information required by <u>Section 3.3 of the Financial Proposal Instructions</u>.</p>	10 pages
5.2 Debt Commitments and Terms	
5.2.1. Debt Commitment Letters	
<p>From each of Proposer's Lenders (in the case of any underwriter, as approved by the Procuring Authorities in accordance with <u>Section 4.4.3 of Part C</u>):⁵⁶</p> <p>a. a commitment letter, with respect to any Bank Financing; or</p> <p>b. an underwriting commitment letter, with respect to any Bond Financing,</p> <p>(each, a "<u>Debt Commitment Letter</u>") that complies with <u>Section 3.7.1 of the Financial Proposal Instructions</u>, and attaching or incorporating by reference an agreed Debt Term Sheet.</p>	n/a
5.2.2. Debt Term Sheets⁵⁷	
<p>Copy of each term sheet with respect to:</p> <p>a. any Bank Financing; and</p> <p>b. any Bond Financing,</p> <p>(each, a "Debt Term Sheet") that complies with <u>Section 3.7.2 of the Financial Proposal Instructions</u>.</p>	n/a

⁵⁶ One Debt Commitment Letter can be provided on behalf of two or more Lenders, provided that such letter makes clear the level of participation of each Lender in the Project Debt facility or facilities described therein.

⁵⁷ If any Debt Term Sheet is attached to a commitment letter, the Proposer may cross-reference to that attachment in this Section of its Financial Proposal.

Financial Proposal Submission Requirements	Page Limit
5.2.3. Rating Agency Letter(s)	
a. Letters providing any required indicative credit rating from Rating Agencies in respect of any TIFIA Financing, which ratings must meet [the minimum statutory and programmatic requirements of TIFIA and the TIFIA JPO] ⁵⁸ .	n/a
b. Letters providing any required indicative credit rating from Rating Agencies in respect of any securities to be issued as part of a Bond Financing to the extent that Lenders require ratings under the terms of their Debt Commitment Letters and/or Debt Term Sheets in respect of such financing.	n/a
c. Letters providing any required indicative credit rating from Rating Agencies in respect of any other financing to the extent that Lenders require ratings under the terms of their Debt Commitment Letters and/or Debt Term Sheets in respect of such financing.	n/a
Volume 6 – Financial Proposal Forms	
6.1 Completed Form D-1 (Base MPP Proposal)	n/a
6.2 Completed Form D-2 (Bridge Enterprise Eligible Costs Breakdown)	n/a
6.3 Completed Form D-3 (Financing Plan Dates)	n/a
6.4 Completed Form D-4 (Equity and Debt Information)	n/a
6.5 Completed Form D-5 (Proposer Market Scale)	n/a
6.6 Completed Form D-6 (Proposer Basis Scale)	n/a
6.7 Completed Form D-7 (Sources and Uses of Funds)	n/a
6.8 Completed Form E (Estimated Insurance Costs Form)	n/a
6.9 Financial Model	
6.9.1. Base Financial Model	
A financial model generated and computed by spreadsheet software that complies with <u>Section 3.4</u> of the <u>Financial Proposal Instructions</u> (the “ <u>Base Financial Model</u> ”).	n/a
6.9.2. Assumptions Book	
A detailed and comprehensive booklet of assumptions regarding the Base Financial Model (the “ <u>Assumptions Book</u> ”) that complies with <u>Section 3.5</u> of the <u>Financial Proposal Instructions</u> .	n/a

⁵⁸ To be specified, if possible, in later drafts based on TIFIA JPO guidance and the Baseline TIFIA Term Sheet.

Financial Proposal Submission Requirements	Page Limit
6.9.3. Base Model Financial Audit and Opinion	
The audit report in relation to, and opinion letter on, the Base Financial Model issued by the model auditor (the identity of the model auditor as approved by the Procuring Authorities in accordance with <u>Section 4.4.3</u> of <u>Part C</u> and the report and letter being in compliance with the model auditor's engagement terms as approved by the Procuring Authorities in accordance with such Section).	n/a

PART G: ANNEXES

ANNEXES

- Annex 1: RFP Comment Submission Form
- Annex 2: Supplemental Due Diligence Request Form
- Annex 3: Alternative Technical Concept Submission Form
- Annex 4: Interest Rate and Credit Spread Submittal Form
- Annex 5: Proposer Update Submission Form
- Annex 6: Key Personnel Form

ANNEX 1: RFP COMMENT SUBMISSION FORM

Instructions

Please generally see [Section 2.2](#) of [Part C](#). In addition:

- (1) Proposers shall submit RFP Comments in English and in Microsoft® Word format.
- (2) For purposes of this Form, "Technical Provisions" means Schedules 6 (Appendix A), 8, 9, 10, 11, 12, 14, 17 and 18.
- (3) Proposers should use the checkboxes at the top of the Form to indicate the identity and (by filling out the date where indicated) issuance date of all RFP documents to which the RFP Comments relate.
- (4) Proposers should divide their comments into three Parts – Part 1 (comments on the ITP), Part 2 (comments on the Project Agreement) and Part 3 (comments on the Technical Provisions) – as indicated in the Form. Proposers may exercise their judgment as to the Part in which they include a comment that does not clearly fit within only one Part or is a comment in relation to the RFP but is not on the terms of the ITP or the Project Agreement themselves (taking into account, in particular, the Procuring Authorities' preference for technical comments to be included in Part 3 and other comments to be included in Parts 1 and 2).
- (5) Proposers shall use the numbering system set out in the Form.
- (6) Under the "Reference" heading, Proposers should:
 - (a) if applicable, first, list the "Part", "Form", "Annex", "Schedule" (or equivalent) of or to the ITP or the Project Agreement (or other document, if applicable), and then reference the relevant Section (including any subsection); or
 - (b) if not applicable, indicate "N/A".
- (7) RFP Comments should be divided into the following categories in accordance with the Category headings in each Part of the Form:
 - (a) "[Category A](#)" – an issue that, if not resolved in an acceptable fashion, would likely preclude the Proposer from submitting a Proposal;
 - (b) "[Category B](#)" – an issue that, if not resolved in an acceptable fashion, will significantly affect value for money or, taken together with other issues (which should be identified to the extent related or possible), would likely preclude the Proposer from submitting a Proposal;
 - (c) "[Category C](#)" – a substantive issue that does not qualify as a Category A, B or D issue; or
 - (d) "[Category D](#)" – a drafting issue, a clarification or a comment concerning conflicts between or within documents, or the equivalent of one of these, in each case which a reasonable Proposer would not interpret as intentional (and therefore should be a Category A, B or C comment).
- (8) Within each Category within each of Parts 1, 2 and 3 of the Form RFP Comments should be ordered sequentially by reference to the order in which they appear in the ITP or the Project Agreement (or other document, if applicable).
- (9) Proposers should consider relevance, brevity and clarity when submitting RFP Comments. As such:
 - (a) each comment should ideally address a single issue. If it is appropriate to address multiple issues, consider dividing the comment into sub-comments with appropriate numbering/letter (e.g. 1.1.a., 1.1.b., etc.), with each sub-comment to be set out in a separate row; and
 - (b) each comment should indicate why it has been made (or repeated in subsequent rounds of comments).
- (10) Proposers should refer to [Section 1.5](#) of [Part D](#) before submitting RFP Comments that contain confidential or proprietary information.
- (11) Pursuant to [Section 1.1](#) of [Part F](#), Proposers should delete this instructions box and additional instruction notes prior to submitting any RFP Comments using this Form.

Proposer Name: [Proposer to provide]
Date: [Proposer to provide]

Central 70 Project: RFP Comment Submission No. []¹

- Comments on: ITP ([date])
 Project Agreement ([date])
 Technical Provisions ([date])

Part 1: ITP Comments

No.	Reference	RFP Comment	For Procuring Authority Use Only
Category A Comments			
1.1.			
1.2.			

No.	Reference	RFP Comment	For Procuring Authority Use Only
Category B Comments			
1.3.			
1.4.			

No.	Reference	RFP Comment	For Procuring Authority Use Only
Category C Comments			
1.5.			
1.6.			

No.	Reference	RFP Comment	For Procuring Authority Use Only
Category D Comments			
1.7.			
1.8.			

¹ Proposers to sequentially number each set of RFP Comments submitted.

Part 2: Project Agreement Comments

No.	Reference	RFP Comment	For Procuring Authority Use Only
Category A Comments			
2.1.			
2.2.			

No.	Reference	RFP Comment	For Procuring Authority Use Only
Category B Comments			
2.3.			
2.4.			

No.	Reference	RFP Comment	For Procuring Authority Use Only
Category C Comments			
2.5.			
2.6.			

No.	Reference	RFP Comment	For Procuring Authority Use Only
Category D Comments			
2.7.			
2.8.			

Part 3: Technical Provisions Comments

<u>No.</u>	<u>Reference</u>	<u>RFP Comment</u>	<u>For Procuring Authority Use Only</u>
Category A Comments			
3.1.			
3.2.			

<u>No.</u>	<u>Reference</u>	<u>RFP Comment</u>	<u>For Procuring Authority Use Only</u>
Category B Comments			
3.3.			
3.4.			

<u>No.</u>	<u>Reference</u>	<u>RFP Comment</u>	<u>For Procuring Authority Use Only</u>
Category C Comments			
3.5.			
3.6.			

<u>No.</u>	<u>Reference</u>	<u>RFP Comment</u>	<u>For Procuring Authority Use Only</u>
Category D Comments			
3.7.			
3.8.			

ANNEX 2: SUPPLEMENTAL DUE DILIGENCE REQUEST FORM

Instructions

Please generally see Section 2.3 of Part C. In addition:

- (1) Proposers should submit a separate Supplemental Due Diligence Request with respect to each requested Supplemental Due Diligence Activity.
- (2) Pursuant to Section 1.1 of Part F, Proposers should delete this instructions box and additional instruction notes prior to submitting this Form.

Proposer Name: [Proposer to provide]

Date: [Proposer to provide]

Central 70 Project: Supplemental Due Diligence Request No. []²

1. **Type of Request**
 Physical Due Diligence, to be conducted by:³
 Proposer
 Procuring Authorities
 Restricted Access Inspection
 Public Access Inspection
2. **Overview**
[Provide description.]
3. **Method(s) of Inspection/Investigation**
[Provide description.]
4. **Location(s) and Approximate Duration of Activity**
[Provide description.]
5. **Identity and Qualifications of Participants (if applicable/known)**
[Provide description.]
6. **Permit(s)/Approval(s) Required**
[Provide description.]
7. **Potential Benefits to the Procurement**
[Provide description.]

² Proposers to sequentially number all Supplemental Due Diligence Requests.

³ In accordance with Sections 2.3.2.a. and 2.3.4 of Part C, the Procuring Authorities may, in their discretion, modify the party that will conduct Physical Due Diligence when approving any Supplemental Due Diligence Request relating to Physical Due Diligence.

ANNEX 3: ALTERNATIVE TECHNICAL CONCEPT SUBMISSION FORM

Instructions

Please generally see Section 3 of Part C. In addition:

- (1) Proposers should submit a separate ATC Submission Form for each ATC.
- (2) ATC Submissions should be numbered in the format of "X.Y" to indicate iterative versions of the same ATC, where:
 - (a) "X" shall be the sequential number of each ATC that is submitted; and
 - (b) "Y" shall be the sequential number of the version of such ATC, where the initial submission shall be version "0" and each subsequent resubmission (including resubmission of a Conceptual ATC as a Detailed ATC) shall be, in sequence, "1", "2", "3" etc.By way of illustration, ATC Submission "7.2" would be the second resubmission (and therefore the third version) of the seventh unique ATC.
- (3) Proposers should complete Parts A and B of the form set out in this Annex for both Conceptual ATCs and Detailed ATCs and Part C of such form for Detailed ATCs only.
- (4) In completing Part B of an ATC Submission Form for a Detailed ATC, Proposers should include the following express statement (with the inapplicable square bracketed language deleted) under each heading:

"This information [has been] [has not been] amended since the submission of the previous version of this ATC."
- (5) Conceptual ATC submissions shall not exceed three Standard Pages, plus up to two additional Oversized Pages or two pages of Oversized Materials. There is no page limit for Detailed ATC Submissions.
- (6) Any attachments should clearly indicate which headings within the ATC Submission Form the materials relate to.
- (7) Pursuant to Section 1.1 of Part E, Proposers should delete this instructions box and additional instruction notes, and may delete italicized text in Part B and Part C prior to making an ATC Submission using this Form.

Proposer Name: *[Proposer to provide]*

Date: *[Proposer to provide]*

Central 70 Project RFP: ATC Submission No. []-[]⁴

A. Background Information

1. Type of Submission

- Conceptual ATC
 Detailed ATC

2. Prior Submission(s)

- None (initial submission of ATC)
 Previously Submitted as Conceptual ATC
 Previously Submitted as Detailed ATC

3. Explanation of Reason for Resubmission

[Proposer to provide]

⁴ Proposers to complete in accordance with instruction (2) to the Annex.

4. Request for Discussion at One-on-One Meeting

- Meeting Requested
- Meeting Not Requested⁵

⁵ In accordance with Section 3.2.1 of Part C, the Procuring Authorities may nevertheless require a Proposer to present an ATC Submission at a One-on-One Meeting.

B. General ATC Submission Requirements

1. Overview Description

Narrative overview description of the proposed ATC.

[Proposer to provide]

2. Relevant RFP Requirements

List all material RFP requirements that are inconsistent with, and would require amendment to accommodate, the proposed ATC⁶.

[Proposer to provide]

3. Rationale

Explanation of how, where and why the ATC would be used on the Project, including how it aligns with the Project Goals.

[Proposer to provide]

4. Impacts

A preliminary analysis of potential environmental, social, economic, community, traffic, safety, operations and maintenance or third party impacts (positive and negative), including specific separate identification and analysis of any such impacts that are not reflected in the final EIS.

[Proposer to provide]

5. Cost and Benefit Analysis

An estimate (which in the case of a Conceptual ATC can be limited to an order of magnitude) of likely costs, and savings, that are likely to result from implementation of such ATC, including reference to assumptions on which such estimate is based.

[Proposer to provide]

6. Schedule Analysis

An estimate (which in the case of a Conceptual ATC can be limited to an order of magnitude) of likely design and construction time period impacts (positive and negative) of such ATC, including reference to assumptions on which such estimate is based.

[Proposer to provide]

7. Conceptual Drawings

At Proposer's discretion, unless otherwise requested by the Procuring Authorities, conceptual drawings.

[Proposer to attach]

8. Past Use

Identification of other projects on which the ATC (or a substantially similar approach) has been implemented, regardless of the results, and the relevance of such experience.

[Proposer to provide]

9. Additional Information

With respect to previously submitted ATC Submissions only, additional information as requested by the Procuring Authorities following review of such prior submissions.

[Proposer to provide]
⁶Proposers are not required to propose RFP drafting amendments when completing Part B, but are required to do so

C. Detailed ATC Requirements

1. Risks

To the extent not otherwise addressed by the responses to Part B above, an analysis of any additional risks to the Procuring Authorities, CDOT, the State or third parties associated with implementation of the ATC, including discussion of how such risks are, or are proposed to be, allocated under the terms of the Project Agreement.

[Proposer to provide]

2. Handback

Description of any proposed changes in handback procedures and/or the Handback Requirements associated with the ATC, if any are expected.

[Proposer to provide]

3. Right-of-Way

A description, estimated cost and proposed procurement schedule of any Additional Right-of-Way expected to be required to implement the ATC, if any.

[Proposer to provide]

4. List of Required Approvals

A list of required, or likely to be required, third party and Governmental Approvals, including any Design Exceptions (which should be summarized in the form of Attachment A (Design Exceptions)).

[Proposer to provide/attach]

5. Proposed Drafting Revisions

(a) List all RFP requirements that are inconsistent with the proposed ATC and (b) attach in the form of a mark-up (for amendments to existing drafting) and/or a rider (with respect to newly proposed drafting) proposed revisions to address those inconsistencies.

[Proposer to provide/attach]

when completing Section 5 of Part C.

**Attachment A
Design Exceptions**

No.	RFP Reference	Existing Condition and Applicable Standard (verbatim from standard)	Proposed Condition⁷	Procuring Authorities' Response⁸	FHWA Response⁹
1.					
2.					

⁷ Proposers should include in this column or attach to the relevant ATC Submission Form the information referred to in Section 9.4.15.b.ii of Schedule 10 (Design and Construction Requirements) to the Project Agreement.

⁸ For Procuring Authorities' use only.

⁹ For FHWA use only.

ANNEX 4: INTEREST RATE AND CREDIT SPREAD SUBMITTAL FORM

Instructions

Please generally see Section 4.2 of Part C. In addition:

- (1) In respect of any Bank Financing or TIFIA Financing that a Proposer expects to assume in its Financing Plan and Base Financial Model and for which the Proposer seeks interest rate protection in accordance with Schedule 1 (*Financial Close*) to the Project Agreement, Proposers should:
 - (a) complete Table 1 below;
 - (b) only include Benchmark Interest Rate(s) that: (i) take into account the tenor of, respectively, each Bank Financing and any TIFIA Financing expected to be assumed in Proposer's proposed Financing Plan and Base Financial Model; and (ii) do not include margin, fees, credit spread or swap margin; and
 - (c) attach supporting materials, which: (i) for Bank Financings, shall include screenshots of the applicable Bloomberg U.S.-based screens or another independently verifiable source that has been pre-agreed as acceptable by the Procuring Authorities; (ii) for TIFIA Financings, shall include a screenshot from the United States Treasury Bureau of Public Debt's daily rate table for State and Local Government Series (SLGS) securities, currently located online at: <https://www.treasurydirect.gov/GA-SL/SLGS/selectSLGSDate.htm>; and (iii) may also include other materials that Proposer believes are relevant in supporting its assumptions.
- (2) In respect of any Bond Financing that a Proposer expects to assume in its Financing Plan and Base Financial Model and for which Proposer seeks interest rate and/or credit spread protection in accordance with Schedule 1 (*Financial Close*) to the Project Agreement, Proposers should:
 - (a) complete Tables 2 and 3 below for each assumed credit rating for which such protection is requested;
 - (b) only include Benchmark Interest Rate(s) that: (i) take into account the tenor of each Bond Financing expected to be assumed in the Proposer's proposed Financing Plan and Base Financial Model; and (ii) do not include margin, fees or credit spread; and
 - (c) only include Baseline Credit Spreads with respect to Bond Financings that are not private placements (other than offerings under Rule 144A and Regulation S of the Securities Act of 1933); and
 - (d) attach supporting materials, which: (i) shall include screenshots of the applicable Bloomberg U.S.-based screens or another independently verifiable source that has been pre-agreed as acceptable by the Procuring Authorities; and (ii) may also include other materials (such as screenshots or data on comparable bonds or any other materials) that Proposer believes are relevant in supporting its assumptions.
- (3) If, in accordance with Section 4.2.4 of Part C, a Proposer in its discretion chooses to irrevocably waive its right to interest rate protection or credit spread protection, it should:
 - (a) with respect to interest rate protection in respect of any Bank Financing and TIFIA Financing, replace Table 1 with "[Proposer Name] waives its right to interest rate protection under Schedule 1 to the Project Agreement." immediately below the Table 1 heading; and
 - (b) with respect to interest rate protection and credit spread protection in respect of any Bond Financing, replace each of Table 2 and Table 3 with "[Proposer Name] waives its right to interest rate and credit spread protection under Schedule 1 to the Project Agreement." immediately below each of the Table 2 and Table 3 headings.
- (4) Pursuant to Section 1.1 of Part F, Proposers should delete this instructions box and additional instruction notes prior to submitting this Form.

Proposer Name: [Proposer to provide]
Date: [Proposer to provide] [(Dry run submission)]¹⁰

Interest Rate and Credit Spread Submittal

Table 1: Benchmark Interest Rates

Bank/TIFIA Facility	Benchmark Index and Maturity	Benchmark Interest Rate(s) (%) ¹¹

Table 2: Proposer Market Scale assuming a [] credit rating¹²

Type of Bond Financing Instrument	Benchmark Index	Maturity	Serial/ Term	Average Maturity/ Average Life	Benchmark Interest Rate(s) (%)	Coupon	Yield Worst to ("YTW") (%)	YTW Credit Spread (%)	Call Date ¹³

Table 3: Proposer Basis Scale assuming a [] credit rating¹⁴¹⁵

Type of Bond Financing Instrument	Benchmark Index	Maturity	Benchmark Interest Rate(s) (%)	Yield to Call (YTC) (%)	YTC Credit Spread (%)	Yield Maturity to ("YTM")	YTM Credit Spread (%)	Call Date ¹⁶

¹⁰ Include language (without square brackets) only for "dry run" submissions made in accordance with Section 4.2.2 of Part C.

¹¹ More than one Benchmark Interest Rate may be used and notified to the Procuring Authorities if a Proposer contemplates multiple Bank Financing tranches, composite indices or a combination of Bank Financing, TIFIA Financing and Bond Financing in its proposed Financing Plan and Base Financial Model.

¹² Separate versions of Table 2 to be completed by Proposer for each credit rating for which credit spread protection is sought.

¹³ Par call of ten years or less is required for tax-exempt bonds.

¹⁴ Separate versions of Table 3 to be completed by Proposer for each credit rating for which credit spread protection is sought.

¹⁵ To be provided for all semi-annual maturities through 40 years on a June 30/December 31 basis for each assumed credit rating.

¹⁶ Par call of ten years or less is required for tax-exempt bonds.

ANNEX 5: PROPOSER UPDATE SUBMISSION FORM

Instructions

Please generally see Section 4.4 of Part C. In addition:

- (1) Proposers should submit a separate Proposer Update Submission for each approval or verification requested (including for each individual underwriter, as applicable).
- (2) Proposers should complete:
 - (a) Part A for all Proposer Update Submissions; and
 - (b) only the relevant portion of Part B for a particular submission and delete the other alternatives in Part B.
- (3) For each separate Proposer Update Submission, Proposers should indicate under the heading "Organizational Conflict of Interest" either:
 - (a) by marking "None" that no such conflict will exist if the Procuring Authorities approve or verify the relevant submission and the Proposer proceeds with the relevant appointment or change; or
 - (b) by way of an attachment, if there is such a conflict, that a disclosure has been made in compliance with the ITP either previously or in the Proposer Update Submission.
- (4) Any proposed model auditor or underwriter shall:
 - (a) have relevant experience within the past ten years in the United States:
 - (i) for model auditors, auditing detailed financial models relating to the financing of P3 infrastructure projects; and
 - (ii) for underwriters, acting as underwriters for capital markets issuances for financing transportation infrastructure projects; and
 - (b) include individuals on its engagement with the Proposer that reflect the type of qualifications referenced in (a) above.
- (5) Proposers should refer to Attachment A (*Mandatory Model Auditor Engagement Terms*) prior to engaging any model auditor.
- (6) Proposers shall not attach as responses standard corporate brochures, awards, licenses and marketing materials, although reference can be made to awards and licenses where relevant.
- (7) Pursuant to Section 1.1 of Part F, Proposers should delete this instructions box and additional instruction notes prior to submitting a Proposer Update Submission using this Form.

Proposer Name: [Proposer to provide]

Date: [Proposer to provide]

Proposer Update Submission No. []¹⁷

Part A

Approval or Verification Requested¹⁸

Model Auditor Appointment

Underwriter Appointment

Organizational Change

Key Personnel Change

Organizational Conflict of Interest

See Section 1.3.1 of Part D

None

Previously Disclosed (disclosure attached)

Not Previously Disclosed (disclosure attached)

¹⁷ Proposers to sequentially number all Proposer Update Submissions (for certainty, not by category of Proposer Update Submission).

¹⁸ Select only one.

Part B

Model Auditor

Name: []

Please (a) describe the proposed model auditor's relevant experience and qualifications (which shall comply with the applicable requirements set out in instruction (4) to this Annex 5) and (b) attach a copy of the final pre-execution version of the engagement agreement with the model auditor (which agreement must comply with the requirements in Attachment A (*Mandatory Model Auditor Engagement Terms*) to this form).

Response: [].¹⁹

Underwriter

Name: []

Please describe the proposed underwriter's experience and qualifications (which shall comply with the applicable requirements set out in instruction (4) to this Annex 5).

Response: [].²⁰

Organizational Change

Name of entity to be replaced: []²¹

Name of [replacement][additional] entity: []

Please (a) describe, and explain the reason for, the proposed change and (b) attach all information and materials that would have been required to be submitted in Proposer's SOQ under the terms of the RFQ had (i) such replacement or additional entity been identified as a Core Proposer Team Member in Proposer's SOQ and (ii) Proposer's SOQ been submitted on the date of submission of this Proposer Update Submission.²²

Response: [].²³

Key Personnel Change

Key Personnel Position: []

Name of Person to be replaced: []

Name of replacement: []

Please (a) describe, and explain the reason for, the proposed change and (b) attach all information and materials that would have been required to be submitted, as applicable, in Proposer's SOQ under the terms of the RFQ had (i) such replacement originally been identified in such Key Personnel position in Proposer's SOQ or, as the case may be, in a Key Personnel Form submitted in accordance with Section 4.3 of Part C and (ii) Proposer's SOQ or the relevant Key Personnel Form been submitted on the date of submission of this Proposer Update Submission.²⁴

Response: [].²⁵

¹⁹ Maximum two Standard Pages (inclusive of form, but excluding (a) the engagement agreement and (b) any organizational conflict of interest disclosure).

²⁰ Maximum two Standard Pages (inclusive of form, but excluding any organizational conflict of interest disclosure) per underwriter.

²¹ Indicate "N/A" if not applicable to a particular Organizational Change.

²² The purpose of (ii) is to ensure that the most up to date information is submitted to the Procuring Authorities for review in connection with the relevant request to approve an Organizational Change.

²³ Maximum two Standard Pages (inclusive of form, but excluding (a) attachments (which shall be subject to any page limits that would have applied to such materials had they been submitted in Proposer's SOQ) and (b) any organizational conflict of interest disclosure).

²⁴ The purpose of (ii) is to ensure that the most up to date financial and experience information is submitted to the Procuring Authorities for review in connection with the relevant request to approve a Key Personnel Change.

²⁵ Maximum two Standard Pages (inclusive of form, but excluding (a) attachments (which shall be subject to any page limits that would have applied to such materials had they been submitted in Proposer's SOQ) and (b) any organizational conflict of interest disclosure).

Attachment A: Mandatory Model Auditor Engagement Terms

The terms of Proposer's engagement with the model auditor shall include the following, where all references to (i) the preliminary audit report and opinion are to the audit report and opinion that each Proposer is required to include in its Financial Proposal in accordance with Section 6.9.3 of the Financial Proposal Submission Requirements and (ii) the final audit report and opinion are to the audit report and opinion that each Proposer is required to submit in final form in accordance with Schedule 1 (*Financial Close*) to the Project Agreement:

- (a) a statement that copies of the preliminary and final audit reports and opinions will be co-addressed, on a reliance basis, to the Procuring Authorities and will be delivered to all addressees by the times required by the ITP and the Project Agreement;
- (b) a statement that the preliminary and final audit reports and opinions will confirm that the Base Financial Model is: (i) free of mechanical error; (ii) suitable for use in connection with any calculations required to be made pursuant to Sections 28 and 29 of, and Schedule 1 (*Financial Close*) to, the Project Agreement with respect to any interest rate and credit spread related adjustments to be made at Financial Close, Relevant Events, calculation of any Refinancing Gain and calculation of any Termination Amount); and (iii) consistent with the requirements of the ITP and the representations and warranties of Developer set out in Part A of Schedule 2 (*Representations and Warranties*) to the Project Agreement, or, if any such confirmation cannot be given, an explanation as to why not;
- (c) an acknowledgment that the preliminary and final audit reports and opinions delivered to the Procuring Authorities will be subject to public disclosure in accordance with CORA, subject to any treatment as CORA Exempt Materials in accordance with the ITP or Project Agreement, as applicable;
- (d) to the extent such terms of engagement include any limitation on liability, the model auditor must agree to: (i) remain liable to the Procuring Authorities for any errors or omissions in connection with its preliminary and final audit reports and opinions that are identified up to and including the fifth anniversary of the date of delivery of the relevant audit report or opinion to the Procuring Authorities, in an amount (not subject to the recourse of any other Person) of not less than \$2,000,000; and (ii) maintain professional liability coverage in an amount which equals or exceeds the amount of the potential liability to the Procuring Authorities, plus the amount of all other potential liabilities, throughout such five year period;
- (e) a form of opinion that complies with the required terms of the engagement set out above, including express statements to the effect required in accordance with (b) above;
- (f) a provision identifying New York law as the choice of law governing the engagement; and
- (g) an express statement agreeing that disputes shall be resolved in the United States District Court for the District of Colorado.

The engagement letter and forms of preliminary and final audit reports and opinions may otherwise include customary qualifications and restrictions with respect to the scope of the engagement and the opinions offered, as well as standard terms and conditions, so long as none contravene or limit the above requirements as determined by the Procuring Authorities, in their discretion.

ANNEX 6: KEY PERSONNEL FORM

Instructions

Please generally see Section 4.3 of Part C. In addition:

- (1) Excluding the page required to comply with instruction (2) below and the copy Forms F required to comply with instruction (1)(d) below, each resume shall not exceed two pages in length and shall include (in the following order):
 - (a) an introductory narrative statement of up to one quarter page in length explaining the relevance of the individual's qualifications;
 - (b) years of experience performing similar work;
 - (c) length of employment with current employer and all prior employers (the names of each of which shall be specified) for at least the past 10 years;
 - (d) title, employer, roles and responsibilities on (i) any of the projects previously listed in a completed Form F (*Project Experience*) included in Proposer's SOQ (copies of relevant Forms F should be attached to the resume) and (ii) any other potentially relevant Reference Projects (as defined in the RFQ); and
 - (e) identification of any relevant (i) licenses and/or registrations, (ii) community or professional organization service activities or recognitions and/or (ii) professional disciplinary actions.
- (2) Each resume shall include details of three references on a third page in the format provided in Attachment A to this Form. References shall be previous owners, clients or employers on projects on which the individual has worked within the past five years. If the individual has worked on less than three projects that meet these criteria, then other references may be included but shall clearly be marked as such.
- (3) For certainty, Proposers are permitted to submit the same or similar information regarding an individual as was previously submitted in its SOQ, provided that, where the response included in the final column of the Form is "No", the relevant resume should clearly indicate changes made to it since the SOQ submission. For these purposes, Proposer shall be entitled to submit additional redlined copies of resumes without breaching the page limits stated above.
- (4) Pursuant to Section 1.1 of Part F, Proposers should delete this instructions box and additional instruction notes prior to submitting this Form.

Proposer Name: [Proposer to provide]

Date: [Proposer to provide]

Key Personnel Form

By submitting this completed form, Proposer hereby certifies that:

- (a) the below named individuals:
 - (i) satisfy the qualifications applicable to the relevant Key Personnel position set out in Schedule 27 (Key Personnel) to the Project Agreement; and
 - (ii) are, and are reasonably expected to remain, available to serve in the relevant Key Personnel position for the period for which such position will be required to be filled pursuant to Schedule 27 (Key Personnel) to the Project Agreement; and
- (b) the resumes attached to this form are current as of the date of this submittal.

Key Personnel Position	Proposed Individual and Current Employer	Resume attached? (Yes/No)	Resume previously submitted with SOQ? (Yes/No)	If submitted with SOQ, is resume (including reference details) in identical form to SOQ submission? (Yes/No)
Project Manager				
Design-Build Manager				
Construction Manager				
Design Manager				
O&M Manager				
Project Quality Manager				
Independent Design Quality Manager				
Construction Process Control Manager				
Independent Quality Control Manager				
Environmental Manager				
Utilities Manager				
Project Communications Manager				

**Attachment A to Annex 6
 Form for Key Personnel References**

Proposer Name: *[Proposer to provide]*
Position: *[relevant Key Personnel position]*
Individual: *[name]*

References

Required Information	Reference No. 1	Reference No. 2	Reference No. 3
Project(s)/Transaction(s):			
Reference's Name:			
Reference's Title (current):			
Reference's Employer (current):			
Reference's Title (at time of project/transaction):			
Reference's Employer (at time of project/transaction):			
Reference's Phone and Email:			
Reference's Location and Time Zone:			
Other: ²⁶			

²⁶ Include any other notes that may be useful when speaking to this individual e.g. that they are a non-English speaker, etc.

PART H: FORMS

- Form A: Proposal Letters
 - Form A-1: Administrative and Technical Proposal Letter
 - Form A-2: Financial Proposal Letter
- Form B: Confidential Contents Index
- Form C: Affidavit and Certifications
 - Form C-1: Non-Collusion Affidavit
 - Form C-2: Buy America Certification (FHWA)
 - Form C-3: Equal Employment Opportunity Certification
 - Form C-4: Use of Contract Funds for Lobbying Certification
 - Form C-5: Debarment and Suspension Certification
- Form D: Financial Proposal Forms
 - Form D-1: Base MPP Proposal
 - Form D-2: Bridge Enterprise Eligible Costs Breakdown
 - Form D-3: Financing Plan Dates
 - Form D-4: Equity and Debt Information
 - Form D-5: Proposer Market Scale
 - Form D-6: Proposer Basis Scale
 - Form D-7: Sources and Uses of Funds
- Form E: Estimated Insurance Costs Form
- Form F: Standby Letter of Credit
- Form G: Financial Capacity Update Forms
 - Form G-1: Material Changes
 - Form G-2: Off Balance Sheet Liabilities
 - Form G-3: Credit Ratings
- Form H: Stipend Agreement

PART H: FORMS

FORM A: PROPOSAL LETTERS

Form A-1: Administrative and Technical Proposal Letter

Instructions

Please generally see Section 1.1 of the Administrative and Technical Proposal Submission Requirements. In addition:

- (1) Official Representatives shall sign the Administrative and Technical Proposal Letter on behalf of Proposers.
- (2) An authorized representative of each Core Proposer Team Member shall sign the certification set out at the end of the form of Administrative and Technical Proposal Letter.
- (3) All signature blocks on this Form may be modified to properly reflect the authority of the person signing.
- (4) Pursuant to Section 1.1 of Part F, Proposers should delete this instructions box and any additional instruction notes, and should modify or delete bracketed items, instructions (in italics) and drafting alternatives (with multiple options separated by forward slashes “/”) as the context and any additional instruction notes may require.

[Proposer Name]

[Proposer Address (if applicable)]

[Date]

High Performance Transportation Enterprise and Colorado Bridge Enterprise
c/o High Performance Transportation Enterprise
Colorado Department of Transportation
4201 East Arkansas Avenue
Denver, Colorado 80222
Attn: HPTE Director and Colorado Bridge Enterprise Director

Re. Submission of Administrative and Technical Proposal in connection with the Central 70 Project

1. Introduction

- (a) [Proposer name] (“Proposer”) submits this letter, the Annexes hereto and the documents described in paragraph 2(b) below (this letter, such Annexes and such documents, together, this “Administrative and Technical Proposal”) in response to the Request for Proposals to Design, Build, Finance, Operate and Maintain the Central 70 Project dated [] (as amended by Addendum Nos. [], [] and [] thereto dated, respectively, [], [] and [] (collectively, the “RFP Addenda”), the “RFP”) issued by the High Performance Transportation Enterprise (“HPTE”) and the Colorado Bridge Enterprise (“BE”) (HPTE and BE, together, the “Procuring Authorities”) in relation to the Project.
- (b) Capitalized terms not otherwise defined in this letter have the meanings given to them in the Instructions to Proposers that is included in the RFP (the “ITP”).
- (c) References to Sections and Parts in this letter are references to Sections and Parts of the ITP.

2. Annexes and Enclosures

- (a) For the Procuring Authorities’ ease of reference:
 - (i) attached as Annex A to this letter is a list confirming the identity of:
 - (A) all of Proposer’s Core Proposer Team Members as of the date of this letter; and

- (B) all known advisors, consultants and Subcontractors of any tier as of the date of this letter;
and
 - (ii) attached as Annex B to this letter is a reference chart indicating the conclusions of Proposer's evaluation of each element of the Administrative and Technical Proposal for compliance with the Administrative and Technical Pass/Fail Criteria.
- (b) Enclosed, and by this reference incorporated in this letter and made a part of this Administrative and Technical Proposal, are each of Volume 1, Volume 2 and Volume 3 of the Administrative and Technical Proposal as required to be submitted in accordance with the ITP. This letter itself constitutes the Administrative and Technical Proposal Letter.

3. Proposal Validity

Proposer and each of the undersigned Core Proposer Team Members to keep its respective applicable obligations regarding this Administrative and Technical Proposal and any Financial Proposal submitted by Proposer open for acceptance initially for the maximum Proposal Validity Period as defined in paragraph (a) of the definition thereof in Section 1 of Part A (subject always to the Proposal Validity Period ending earlier in accordance with the definition thereof in Section 1 of Part A), without unilaterally varying or amending its terms and without making any Organizational Change or Key Personnel Change, without first obtaining the prior written consent of the Procuring Authorities (which may be given or withheld at the sole discretion of the Procuring Authorities).

4. Representations and Warranties

Proposer and each of the undersigned Core Proposer Team Members, in each case as noted below, represents and warrants to the Procuring Authorities as of the date hereof that:

- (a) this Administrative and Technical Proposal is submitted, and any Financial Proposal submitted by Proposer will (when submitted) be submitted, without reservations, qualifications, assumptions, deviations or conditions except, in the case of assumptions, to the extent expressly permitted by the ITP;
- (b) all statements made in the SOQ previously delivered by Proposer to the Procuring Authorities regarding Proposer or each Core Proposer Team Member (where applicable, as such statements have been amended, resubmitted and/or updated by any Proposer Update Submission in accordance with Section 4.3 of Part C and/or this Administrative and Technical Proposal and/or (when submitted) Proposer's Financial Proposal) are correct, complete and not materially misleading as of the date hereof;
- (c) prior to the date hereof, Proposer has conducted, and has had the opportunity to conduct, all due diligence and design development that would be considered prudent and reasonable in preparing and submitting this Administrative and Technical Proposal; and
- (d) prior to the date hereof, Proposer has previously notified the Procuring Authorities of (A) any deficiencies or inconsistencies in or omissions from the RFP and Project Information and (B) any material Project risks (including any related to site conditions), in the case of (A) and (B), of which it became aware and which were not otherwise recognized, acknowledged or addressed by the Procuring Authorities in the RFP.

5. Acknowledgements and Agreements

Proposer and each of the undersigned Core Proposer Team Members acknowledges and agrees:

- (a) Acceptance of ITP: to all the terms and conditions of the ITP;
- (b) Project Information:
 - (i) that it has received or had access to, and understands and has considered, the RFP (including all RFP Addenda) and all Reference Documents; and
 - (ii) that the provisions of the RFP (including the Project Agreement) and the Project Information together provide Proposer with sufficient information relating to the Project (including with respect to the obligations to be assumed under the terms of the Project Agreement, the

Construction Contract and the O&M Contract) for purposes of preparing and submitting this Administrative and Technical Proposal;

- (c) Proposal acceptance: that the Procuring Authorities' acceptance of the delivery of this Administrative and Technical Proposal does not, and shall not be deemed to, constitute any statement or determination as to its completeness, responsiveness or compliance with the requirements of the RFP;
- (d) Public disclosure:
- (i) to the Procuring Authorities' disclosure of the Public Statement (following submittal in Proposer's Financial Proposal);
 - (ii) to the Procuring Authorities' disclosure of the Public Disclosure Technical Proposal and (when submitted) the Public Disclosure Financial Proposal as contemplated by Section 1.5.2 of Part D; and
 - (iii) to any other disclosures contemplated by Section 1.5 of Part D,
and expressly waives any right to contest such disclosures;
- (e) Bid costs:²⁷
- [*Option 1:*] [that all costs and expenses incurred by it in preparing this Administrative and Technical Proposal and Proposer's Financial Proposal and participating in the Project procurement process will be borne solely by Proposer and/or the Core Proposer Team Members, except for any Stipend Payment that the Procuring Authorities pay Proposer in accordance with the Stipend Agreement that is entered into between the Core Proposer Team Members and the Procuring Authorities;]
- [*Option 2:*] [that (i) all costs and expenses incurred by it in preparing this Administrative and Technical Proposal and Proposer's Financial Proposal and participating in the Project procurement process will be borne solely by Proposer and/or the Core Proposer Team Members and (ii) it hereby irrevocably waives and releases (A) any rights to enter into a Stipend Agreement or otherwise to receive any Stipend Payment and (B) any other right that it may have to recover the costs associated with the development of Proposer's Intellectual Property (as defined in the form of Stipend Agreement attached as Form H in Part H, as applied to Proposer) and/or costs incurred by it in participating in the Project procurement process;]
- (f) Protest rights: to the protest procedures set out in Section 7.4.1 of Part C, including the limitations imposed by such provisions on Proposer's and each Core Proposer Team Member's rights and remedies to protest or challenge any aspect of the RFP process, including any determination or selection of a Preferred Proposer made pursuant to the RFP;
- (g) Reserved Rights: that, under the terms of the ITP, the Procuring Authorities have reserved to themselves a number of rights related to the procurement of the Project (including the selection of a Preferred Proposer), including the Reserved Rights; and
- (h) RFP priority: that the representations and warranties made in paragraph 4 above and the acknowledgements and agreements in this paragraph 5 are without prejudice to the operation of the provisions of the Project Agreement, and this letter shall not be admissible as evidence in any dispute arising after the execution of the Project Agreement.

6. Governing law

This letter shall be governed by and construed in all respects according to the law of the State of Colorado.

²⁷ Proposer to elect which of the alternative paragraphs to include: Option 1 if it has previously submitted, or is submitting in its Proposal, an executed Stipend Agreement or Option 2 if it is not.

Under penalty of perjury, each of the undersigned:

- (a) certifies on behalf of the entity for which he or she signs that:
 - (i) the Official Representative named above is authorized by such entity to sign this letter on behalf of Proposer; and
 - (ii) the representations, certifications, statements, disclosures, authorizations and commitments made, and information contained, in this Administrative and Technical Proposal, including in this letter, by or in respect of such entity have been authorized by such entity, and is or are correct, complete and not materially misleading; and
- (b) swears and affirms that he or she is authorized to act on behalf of the entity for which he or she signs and acknowledges that the Procuring Authorities are each relying on his or her representation to this effect.²⁸

[role of team member]:²⁹ [insert entity name]

By: _____

Printed Name: [insert name]

Title: [insert title]

[Update and add additional signature blocks as necessary]

²⁸ Signature block below to be repeated for each Core Proposer Team Member.

²⁹ For any Core Proposer Core Team Member that is a Joint Venture, include signature by each Joint Venture member or partner.

Annex A: List of Proposer Team Members

Part 1: Core Proposer Team Members

We hereby certify that, for the purposes of Proposer’s Proposal, the full legal names of the entities that are Proposer’s Core Proposer Team Members, and (to the extent applicable) the respective percentage interest that each of them will have in the equity of Proposer’s Developer (in the case of the Equity Members) or in the principal contract for the relevant works for which it has primary responsibility (in the case of the Lead Contractor, the Lead Engineer and the Lead Operator), are as set out in Column 1 in the table below. In addition, in Column 2 in the table below we identify any changes made to the identity of any Core Proposer Team Members or the relevant percentages since submission of our Preliminary Organizational Conflict of Interest Disclosure.

Column 1	Column 2
Core Proposer Team Members	Changes (if any) since submission of Preliminary Organizational Conflict of Interest Disclosure
1. Equity Members [] ([])% [] ([])%	
2. Lead Contractor [] ([])% [] ([])%	
3. Lead Engineer [] ([])% [] ([])%	
4. Lead Operator [] ([])% [] ([])%	
5. Financially Responsible Parties [] ([])% [] ([])%	

Part 2: Other Proposer Team Members³⁰

Column 1	Column 2
Other Proposer Team Members	Changes (if any) since submission of Preliminary Organizational Conflict of Interest Disclosure
1. Financial Advisors to Proposer []	
2. Legal Advisors To Proposer: [] To Lenders: [] Other: []	
3. Technical Advisors to Lenders []	
4. Insurance Advisors To Proposer: [] To Lenders: []	
5. Consultants³¹ []	
[6. Sub-contractors]³² []	

³⁰ Proposers are only required in this Part to identify external advisors and consultants.

³¹ Proposers are required to identify the names and roles of all other consultants engaged or proposed to be engaged by Proposer or any Core Proposer Team Member whose identity is known as of the date of this letter. Such consultants would include specialists in areas such as environmental, public relations, DBE and workforce issues etc.

³² Proposers are required to identify the names and roles of all Subcontractors (other than Core Proposer Team Members) engaged or proposed to be engaged by Proposer or any Core Proposer Team Member whose identity is known as of the date of this letter.

Annex B: Pass/Fail Evaluation Criteria Verification³³

No.	Administrative and Technical Pass/Fail Criteria	ITP Sec. Ref.	Satisfied? ³⁴
1.			<input type="checkbox"/>
2.			<input type="checkbox"/>
3.			<input type="checkbox"/>
4.			<input type="checkbox"/>

³³ Second and third columns in the table will be completed by the Procuring Authorities prior to issuance of the final RFP.

³⁴ Proposer should check each box to confirm that it believes that the relevant Administrative and Technical Pass/Fail Criteria has been satisfied.

Form A-2: Financial Proposal Letter

Instructions

Please generally see Section 4.1 of the Financial Proposal Submission Requirements. In addition:

- (1) In relation to any paragraph that includes “[Not applicable]” at the beginning of such paragraph, Proposers should either:
 - (a) if the relevant paragraph is applicable to it or its Financial Proposal, delete the “[Not applicable]” and the square brackets around the substantive text; or
 - (b) if it is not applicable, delete the substantive text and retain the “[Not applicable]”.
- (2) Official Representatives shall sign the Financial Proposal Letter on behalf of Proposers.
- (3) An authorized representative of each Core Proposer Team Member shall sign the certification set out at the end of the form of Financial Proposal Letter.
- (4) All signature blocks on this Form may be modified to properly reflect the authority of the person signing.
- (5) Pursuant to Section 1.1 of Part E, Proposers should delete this instructions box and additional instruction notes, and should modify or delete bracketed items, instructions (in italics) and drafting alternatives (with multiple options separated by forward slashes “/”) as the context and any additional instruction notes may require.

[Proposer Name]
[Proposer Address (if applicable)]
[Date]

High Performance Transportation Enterprise and Colorado Bridge Enterprise
c/o High Performance Transportation Enterprise
Colorado Department of Transportation
4201 East Arkansas Avenue
Denver, Colorado 80222
Attn: HPTE Director and Colorado Bridge Enterprise Director

**Re. Submission of Financial Proposal
in connection with the Central 70 Project**

1. Introduction

- (a) *[Proposer name]* (“Proposer”) submits this letter, the Annex hereto and the documents described in paragraph 2(b) below (this letter, such Annex and such documents, together, this “Financial Proposal”) in response to the Request for Proposals to Design, Build, Finance, Operate and Maintain the Central 70 Project dated [] (as amended by Addendum Nos. [], [] and [] thereto dated, respectively, [], [] and [] (collectively, the “RFP Addenda”), the “RFP”) issued by the High Performance Transportation Enterprise (“HPTE”) and the Colorado Bridge Enterprise (“BE”) (HPTE and BE, together, the “Procuring Authorities”) in relation to the Project.
- (b) Capitalized terms not otherwise defined in this letter have the meanings given to them in the Instructions to Proposers that is included in the RFP (the “ITP”).
- (c) References to Sections and Parts in this letter are references to Sections and Parts of the ITP.

2. Annexes and Enclosures

- (a) For the Procuring Authorities’ ease of reference, attached as Annex A to this letter is a reference chart indicating the conclusions of Proposer’s evaluation of each element of the Financial Proposal for compliance with the Financial Pass/Fail Criteria.

- (b) Enclosed, and by this reference incorporated in this letter and made a part of this Financial Proposal, are each of Volume 4, Volume 5 and Volume 6 of the Financial Proposal as required to be submitted in accordance with the ITP. This letter itself constitutes the Financial Proposal Letter.

3. Proposal Validity

Proposer and each of the undersigned Core Proposer Team Members undertakes to keep its Administrative and Technical Proposal and this Financial Proposal open for acceptance initially for the maximum Proposal Validity Period as defined in paragraph (a) of the definition thereof in Section 1 of Part A of the ITP (subject always to the Proposal Validity Period ending earlier in accordance with the definition thereof in Section 1 of Part A of the ITP), without unilaterally varying or amending its terms and without making any Organizational Change or Key Personnel Change, without first obtaining the prior written consent of the Procuring Authorities (which may be given or withheld at the sole discretion of the Procuring Authorities).

4. Representations and Warranties

Proposer and each of the undersigned Core Proposer Team Members represents and warrants to the Procuring Authorities that:

- (a) prior to the date hereof, it has conducted, and has had the opportunity to conduct, all due diligence that would be considered prudent and reasonable in preparing and submitting this Financial Proposal; and
- (b) as of the date hereof, all calculations, figures, estimates and assumptions shown and/or used in Proposer's Base Financial Model:
 - (i) are consistent with:
 - (A) Proposer's Administrative and Technical Proposal; and
 - (B) the manner of calculation, and the amount, of the Milestone Payments and Performance Payments payable pursuant to the terms of the Project Agreement; and
 - (ii) form the basis for:
 - (A) all commitments provided, and financing to be provided, by any Lenders as described in, respectively, the Debt Commitment Letter(s) and Debt Term Sheet(s) included in this Financial Proposal; and
 - (B) all credit ratings provided in letters from Rating Agencies included in this Financial Proposal.

5. Acknowledgements and Agreements

Proposer and each of the undersigned Core Proposer Team Members acknowledges and agrees:

- (a) Project Information: that the provisions of the RFP (including the Project Agreement) and the Reference Documents together provide Proposer with sufficient information relating to the Project (including with respect to the obligations to be assumed under the terms of the Project Agreement, the Construction Contract and the O&M Contract) for purposes of preparing and submitting this Financial Proposal;
- (b) Proposal Acceptance: that the Procuring Authorities' acceptance of the delivery of this Financial Proposal does not, and shall not be deemed to, constitute any statement or determination as to its completeness, responsiveness or compliance with the requirements of the RFP;
- (c) [Not applicable] [TIFIA Financing: by assuming the use of a TIFIA Financing in this Financial Proposal (including in Proposer's Base Financial Model):
 - (i) to all terms and conditions of:
 - (A) the RFP applicable to a TIFIA Financing; and

- (B) the Baseline TIFIA Term Sheet; and
- (ii) that nothing in this Financial Proposal (including in Proposer's Base Financial Model), is materially inconsistent or incompatible with any term or condition of the Baseline TIFIA Term Sheet;]
- (d) [Not applicable] [PABs Financing]: by assuming the use of a PABs Bond Financing in this Financial Proposal (including in Proposer's Base Financial Model), to all terms and conditions of the RFP applicable to a PABs Bond Financing;]
- (e) [Not applicable] [Waiver of Interest Rate Protection for [Bank Financing][and][TIFIA Financing]]: that[, in accordance with Proposer's Interest Rate and Credit Spread Submittal,] Proposer elects to waive interest rate protection otherwise available pursuant to Schedule 1 (*Financial Close*) to the Project Agreement in respect of the [Bank Financing][and][TIFIA Financing] the use of which [is][are] assumed in this Financial Proposal (including in Proposer's Base Financial Model);]
- (f) [Not applicable] [Waiver of Interest Rate Protection and Credit Spread Protection for Bond Financing]: that[, in accordance with Proposer's Interest Rate and Credit Spread Submittal,] Proposer elects to waive interest rate and credit spread protection otherwise available pursuant to Schedule 1 (*Financial Close*) to the Project Agreement in respect of the Bond Financing the use of which is assumed in this Financial Proposal (including in Proposer's Base Financial Model);]
- (g) Proposal and Financial Close Security:
 - (i) that the Procuring Authorities shall be entitled to draw on Proposer's Proposal Security in accordance with Section 5.4.2 of Part C; and
 - (ii) that forfeiture of Proposer's Proposal Security or Proposer's Financial Close Security pursuant to the terms thereof and the relevant provisions of the ITP and the Project Agreement are in the nature of liquidated damages and not a penalty and that any amount forfeited is a fair and reasonable estimate of fair compensation to the Procuring Authorities for the work required to procure the Project and any losses that may accrue to the Procuring Authorities as a result of the circumstances giving rise to such forfeiture, which amounts are impossible to ascertain as of the date of submission of Proposer's Proposal Security or Proposer's Financial Security, as the case may be;
- (h) Post-selection Process Assurances:
 - (i) to comply with Section 7.3.1 of Part C and procure that Developer will execute and deliver the Project Agreement in the form included in the RFP, without negotiation or variation, except as expressly permitted in accordance with Section 7.2 of Part C; and
 - (ii) to the extent that there is any negotiation of the terms of the Project Agreement with the Procuring Authorities, to negotiate (A) in good faith and (B) in compliance with the requirements of the ITP.

6. Governing law

This letter shall be governed by and construed in all respects according to the law of the State of Colorado.

Under penalty of perjury, each of the undersigned:

- (a) certifies on behalf of the entity for which he or she signs that:
 - (i) the Official Representative named above is authorized by such entity to sign this letter on behalf of Proposer; and
 - (ii) the representations, certifications, statements, disclosures, authorizations and commitments made, and information contained, in this Financial Proposal, including in this letter, by or in respect of such entity have been authorized by such entity, and is or are correct, complete and not materially misleading; and
- (b) swears and affirms that he or she is authorized to act on behalf of the entity for which he or she signs and acknowledges that the Procuring Authorities are each relying on his or her representation to this effect.³⁵

[role of team member]:³⁶ [insert entity name]

By: _____

Printed Name: [insert name]

Title: [insert title]

[Update and add additional signature blocks as necessary]

³⁵ Signature block below to be repeated for each Core Proposer Team Member.

³⁶ For any Core Proposer Core Team Member that is a Joint Venture, include signature by each Joint Venture member or partner.

Annex A: Pass/Fail Evaluation Criteria Verification³⁷

No.	Financial Pass/Fail Criteria	ITP Sec. Ref.	Satisfied? ³⁸
1.			<input type="checkbox"/>
2.			<input type="checkbox"/>
3.			<input type="checkbox"/>
4.			<input type="checkbox"/>

³⁷ Second and third columns in the table will be completed by the Procuring Authorities prior to issuance of the final RFP.

³⁸ Proposer should check each box to confirm that it believes that the relevant Financial Pass/Fail Criteria has been satisfied.

FORM B: CONFIDENTIAL CONTENTS INDEX

Instructions

Please generally see Section 1.5 of Part D, Section 1.2 of the Administrative and Technical Proposal Submission Requirements and Section 4.2 of the Financial Proposal Submission Requirements. In addition, Proposers should:

- (1) For the Administrative and Technical Proposal, delete the portion of the Form that relates to the Financial Proposal; for the Financial Proposal, delete the portion of the Form that relates to the Administrative and Technical Proposal.
- (2) In all cases, include a brief explanation of the relevant exemption under CORA.
- (3) Note that the Procuring Authorities will not accept blanket designations that do not clearly identify CORA Exempt Materials. The Procuring Authorities may, in their discretion, and subject to compliance with CORA and applicable law, treat the whole of the relevant section(s)/document(s) that are subject to such a blanket designation as non-CORA Exempt Materials.
- (4) Include Proposal page references only if the relevant materials are paginated and otherwise should indicate "n/a" in the Proposal Page(s) column.
- (5) Include as "Other Identifying Information" other indications, if any, necessary to determine which information or materials constitute potentially CORA Exempt Materials (e.g. information in a graphic or chart that cannot be referenced alone by a combination of Volume, heading, Section and page references) and, if not applicable, should indicate "n/a" in the Other Identifying Information column.
- (6) For the "Duration of Exemption", indicate either "Permanent" or "Until [*date/event*]" and include a brief explanation of the basis for Proposer's justification for such exemption period.
- (7) Pursuant to Section 1.1 of Part F, Proposers should delete this instructions box and additional instruction notes prior to submitting the Form.

Proposer Name: [Proposer to provide]

Form B: Confidential Contents Index

Administrative and Technical Proposal

Volume 1:

No.	Proposal Heading(s)	Proposal Section(s)	Proposal Page(s)	Other Identifying Information (if any)	Relevant CORA Exemption(s)	Duration of Exemption(s)
(1)						
(2)						

Volume 2:

No.	Proposal Heading(s)	Proposal Section(s)	Proposal Page(s)	Other Identifying Information (if any)	Relevant CORA Exemption(s)	Duration of Exemption(s)
(1)						
(2)						

Volume 3, Sub-Volume []:³⁹

No.	Proposal Heading(s)	Proposal Section(s)	Proposal Page(s)	Other Identifying Information (if any)	Relevant CORA Exemption(s)	Duration of Exemption(s)
(1)						
(2)						

Financial Proposal

Volume 4:

No.	Proposal Heading(s)	Proposal Section(s)	Proposal Page(s)	Other Identifying Information (if any)	Relevant CORA Exemption(s)	Duration of Exemption(s)
(1)						
(2)						

Volume 5:

No.	Proposal Heading(s)	Proposal Section(s)	Proposal Page(s)	Other Identifying Information (if any)	Relevant CORA Exemption(s)	Duration of Exemption(s)
(1)						
(2)						

Volume 6:

No.	Proposal Heading(s)	Proposal Section(s)	Proposal Page(s)	Other Identifying Information (if any)	Relevant CORA Exemption(s)	Duration of Exemption(s)
(1)						
(2)						

³⁹ Replicate this table as needed for each Sub-Volume.

Form C-2: Buy America Certification (FHWA)

Instructions

Please generally see Section 4.4.2 of the Financial Proposal Submission Requirements. In addition:

- (1) Official Representatives shall sign the Certification on behalf of Proposers.
- (2) Authorized representatives of Lead Contractor entities shall sign the Certification on behalf of Lead Contractor.
- (3) All signature blocks on the form of Certification may be modified to properly reflect the authority of the person signing.
- (4) Separate Certifications may be submitted signed by one or more entities.
- (5) Pursuant to Section 1.1 of Part F, Proposers should delete this instructions box prior to submitting the Certification.

Buy America Certification

The undersigned certifies, on behalf of [*specify Proposer or Lead Contractor name*], that only domestic steel and iron will be used for the construction portion of the Project.

To be considered domestic, all steel and iron used and all products manufactured from steel and iron must be produced in the United States and all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes, which protect or enhance the value of the material to which the coating is applied. This requirement does not preclude a minimal use of foreign steel and iron materials, provided the cost of such materials does not exceed 0.1 percent of the aggregate value of the Construction Work to be performed under the Construction Contract (as such terms are defined in the Project Agreement included in the Request for Proposals issued by Colorado Bridge Enterprise and High Performance Transportation Enterprise on September 15, 2015 and September 29, 2015, as supplemented and amended to date).

[Proposer name] [Lead Contractor name]

Date: _____

Signature

Name

Title

Form C-3: Equal Employment Opportunity Certification

Instructions

Please generally see Section 4.4.3 of the Financial Proposal Submission Requirements. In addition:

- (1) Official Representatives shall sign the Certification on behalf of Proposers.
- (2) Authorized representatives of Core Proposer Team Members shall sign the Certification on behalf of Core Proposer Team Members.
- (3) Authorized representatives of other contractors and subcontractors not exempt under 41 CFR 60—1.5 shall sign the Certification on behalf of such contractors/subcontractors.
- (4) All signature blocks on the form of Certification may be modified to properly reflect the authority of the person signing.
- (5) Separate Certifications may be submitted signed by one or more entities.
- (6) Pursuant to Section 1.1 of Part F, Proposers should delete this instructions box prior to submitting the Certification.

Equal Employment Opportunity Certificate

[Specify Proposer, Core Proposer Team Member or Contractor/Subcontractor name] certifies that (1) [it/he/she] has _____ has not _____ [mark one blank] developed affirmative action programs on file at each establishment pursuant to 41 CFR § 60-4 and (2) [it/he/she] has _____ has not _____ [mark one blank] participated in a previous contract or subcontract subject to the equal opportunity clauses, as required by Executive Orders 10925, 11114, or 11246, and that, where required, [it/he/she] has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Date: _____, 201[●]

[Proposer][Core Proposer Team Member][Subcontractor] Name: _____

Signature: _____

Name: _____

Title: _____

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)), and must be submitted by Proposers and proposed subcontractors only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are listed in 41 CFR 60-1.5. (Generally only contracts or subcontracts of \$10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Proposed prime contractors and subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a

report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, US Department of Labor.

Form C-4: Use of Contract Funds for Lobbying Certification

Instructions

Please generally see Section 4.4.4, of the Financial Proposal Submission Requirements. In addition:

- (1) Official Representatives shall sign the Certification on behalf of Proposers.
- (2) Authorized representatives of Core Proposer Team Members shall sign the Certification on behalf of Core Proposer Team Members.
- (3) All signature blocks on the form of Certification may be modified to properly reflect the authority of the person signing.
- (4) Separate Certifications may be submitted signed by one or more entities.
- (5) Pursuant to Section 1.1 of Part F, Proposers should delete this instructions box prior to submitting the Certification.

Use of Contract Funds for Lobbying Certification¶

The undersigned certifies, to the best of its knowledge and belief, that:

1. no Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement; and
2. if any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 USC. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Proposer name] [Core Proposer Team
Member name]

Date: _____

Signature

Name

Title

Form C-5: Debarment and Suspension Certification

Instructions

Please generally see Section 4.4.5 of the Financial Proposal Submission Requirements. In addition:

- (1) Official Representatives shall sign the Certification on behalf of Proposers.
- (2) Authorized representatives of Core Proposer Team Members shall sign the Certification on behalf of Core Proposer Team Members.
- (3) All signature blocks on the form of Certification may be modified to properly reflect the authority of the person signing.
- (4) Separate Certifications may be submitted signed by one or more entities.
- (5) Pursuant to Section 1.1 of Part F, Proposers should delete this instructions box and modify prior to submitting the Certification.

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY
AND VOLUNTARY EXCLUSION (2 CFR PART 180 & 2 CFR PART 1200)**

Initially capitalized terms used herein shall have the meanings ascribed to them in the Request for Proposals issued by Colorado Bridge Enterprise and High Performance Transportation Enterprise (the "Procuring Authorities") on September 15, 2015 and September 29, 2015, including all Addenda thereto.

The undersigned, under penalty of perjury, certifies that, excepted as noted below, to the best of its knowledge and belief, neither it nor the Proposer nor their respective principals:

1. is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;
2. has within a three-year period preceding the Proposal been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. is presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 2 of this certification;
4. has within a three-year period preceding the Proposal had one or more public transactions (Federal, State or local) terminated for cause or default; and
5. shall knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in the Project by including a certification in all contracts for lower tier covered transactions and all solicitations for lower tier covered transactions that the prospective lower tier participant certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

If there are any exceptions to this certification, insert the exceptions in the following space:

[Specify exceptions (if any)]

Exceptions will not necessarily result in denial of award of the Project Agreement, but will be considered in determining bidder responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

The undersigned acknowledges and agrees to the provisions set out in Section 1 or Section 2, as applicable to the undersigned, of Part X of Appendix H to Schedule 15 to the Project Agreement.

Note: Providing false information may result in criminal prosecution or administrative sanctions.

[Proposer name] [Core Proposer Team
Member name]

Date: _____

Signature

Name

Title

FORM D: FINANCIAL PROPOSAL FORMS

Form D-1: Base MPP Proposal

Instructions

Please generally see Section 3.4.6.b.iii of the Financial Proposal Instructions. In addition:

- (1) "Base MPP" must be an amount that is less than or equal to \$41,403,000 (in nominal dollars as of July 1, 2017) (the "Base MPP Upset Limit").
- (2) "Base MPP" must equal the aggregate of "Base CPP" and "Base OMRP".
- (3) "Base CPP" must be an amount equal to 80% of "Base MPP".⁴⁰
- (4) "Base OMRP" must be an amount equal to 20% of "Base MPP".⁴¹
- (5) "MaxPP_y for the Contract Year July 1, 2022 - June 30, 2023" shall be calculated in accordance with Section 2 of Part 2 of Schedule 6 to the Project Agreement and shall assume an annual increase in CPI of 2.0% p.a. in respect of each of the Contract Years that ends on June 30 in each of 2018, 2019, 2020, 2021 and 2022.
- (6) The only amount included in this Form that will be evaluated and scored will be the "Base MPP" (see Section 6.3.4.a of Part C).
- (7) In relation to MaxPP_y for the Contract Year July 1, 2022-June 30, 2023 stated in this Form:
 - (a) Proposers are required to state such amount for informational purposes only, given that the actual rate of CPI increases may be different from those Proposers are required to assume in accordance with instruction (5) above; and
 - (b) Proposers may assume different rates of increase of CPI in their Base Financial Models from those they are required to assume in accordance with instruction (5) above.
- (8) Pursuant to Section 1.1 of Part E, Proposers should NOT delete this instructions box prior to submitting the Form.

	\$
Base MPP (in nominal dollars as of July 1, 2017)	
Base CPP (in nominal dollars as of July 1, 2017)	
Base OMRP (in nominal dollars as of July 1, 2017)	
MaxPP _y for the Contract Year July 1, 2022-June 30, 2023	

By submitting this completed Form, Proposer acknowledges and agrees that, if there is a discrepancy between the Base MPP stated in this Form and the amount thereof determined in accordance with Proposer's Base Financial Model, the lower amount will prevail.

⁴⁰ This will be the amount stated as the Base Capital Performance Payment in Section 2(f) of Part 2 of Schedule 6 to the Project Agreement as "Base CPP".

⁴¹ This will be the amount stated as the Base OMR Payment in Section 2(f) of Part 2 of Schedule 6 to the Project Agreement as "Base OMRP".

Form D-2: Bridge Enterprise Eligible Costs Breakdown

<u>Instructions</u>	
(1)	Proposers should complete the table set out in Part A using the guidance set out in Part B.
(2)	For purposes of complying with <u>Section 6.2</u> of the <u>Financial Proposal Submission Requirements</u> , Proposers should only submit a completed table in the form set out in Part A below (i.e. should not include Part B in their Financial Proposal).
(3)	The amounts included in Proposers' completed tables submitted in their Financial Proposals are for information only and will not be evaluated.
(4)	Pursuant to <u>Section 1.1</u> of <u>Part F</u> , Proposers should delete this instructions box prior to submitting the Form.

Part A: Eligible Cost Breakdown

	\$	%
BE-Eligible Costs (in nominal dollars as of July 1, 2017)		
Non-BE-Eligible Costs (in nominal dollars as of July 1, 2017)		
Total		

Part B: Bridge Enterprise Cost Eligibility

Bridge Enterprise's Statutory Authorization

C.R.S. §§ 43-4-805(3)(c) provides authorization for BE to expend moneys to fund, including payment on bond or loan obligations, the administration, planning, financing, repair, reconstruction, replacement, or maintenance of Designated Bridges (defined below), which includes most bridges within the Project area, and for the acquisition of land to the extent it is required in connection with any Designated Bridge project identified and authorized pursuant to C.R.S. § 43-4-805(5)(f).

The Project includes a number of Designated Bridges (as further described below), including the reconstruction of the existing I-70 viaduct from Brighton Boulevard to Colorado Boulevard and its replacement with the Partial Covered Lowered Alternative (the "PCL").

A "Designated Bridge" is defined in C.R.S. §§ 43-4-803(10) to also include "any roadways, sidewalks, or other infrastructure connected or adjacent to or required for the optimal functioning of the bridge".

Determination of Cost Eligibility

BE's broad statutory authorization would generally permit funding of any work broadly connected with the reconstruction of Designated Bridges. However, in order to provide consistency in bridge-eligibility designations statewide, as well as to maximize the reach and effectiveness of BE revenues, BE previously adopted more conservative general project eligibility criteria. Some modifications to these general criteria are required to establish the BE-Eligible Criteria for the Project, as the general criteria contemplate an in-kind replacement of bridges, rather than the replacement of the existing I-70 viaduct with the below-grade PCL. However, to the extent practicable, these general criteria will also be applied to the Project in the form of "BE-Eligible Criteria" for "BE-Eligible Costs", which are set out below in more detail. Any costs that are not BE-Eligible Costs shall, for the purposes of completing the table set out in Part A, be deemed to be "Non-BE-Eligible Costs". The BE-Eligible Criteria, which can be further altered at any time in BE's discretion, generally do not permit its Bridge Surcharge revenues to be utilized for costs related to capacity expansions, new connections that are not required under an approved local transportation plan, or enhancements not required in by an approved environmental document. Only

BE-Eligible Costs meeting the BE-Eligible Criteria within the limits of a Designated Bridge project are eligible for funding from Bridge Surcharge revenues.

Designated Bridges

The limits of the Designated Bridge project for the replacement of the existing I-70 viaduct itself extend beyond the footprint of the existing viaduct due to the profile change required to reconnect I-70 and the PCL to existing grade. Subject to the more detailed BE-Eligible Criteria set out below, the "PCL Limits" constituting this Designated Bridge project are as follows: in the west, from the point where the I-70 profile ties in to the existing highway grade, immediately west of Brighton Boulevard, extending to the east to the point where the I-70 profile is no longer in cut and matches to existing grade, east of Colorado Boulevard.

The following bridge(s), which are also Designated Bridges, are expected to be replaced within the PCL Limits:

- a. Brighton (partially eligible, depending on point of return to existing grade);
- b. York (and sanitary and storm sewers);
- c. Josephine Pedestrian Bridge;
- d. Columbine (included in the Cover);
- e. Clayton (included in the Cover);
- f. Fillmore;
- g. Monroe (45th Ave. Connector);
- h. Steele/Vasquez;
- i. Union Pacific Railroad (I-70 Mainline);
- j. BNSF Railroad Market Lead (two bridges);
- k. Union Pacific Railroad – 46th Avenue (eastbound and westbound);
- l. Union Pacific Railroad Access Road;
- m. Union Pacific Railroad Bridge; and
- n. Colorado Boulevard (partially eligible - see other BE-Eligibility Criteria).

The Cook Street bridge is not a Designated Bridge, and costs related to it are not BE-Eligible Costs.

The Dahlia Street bridge is located east of the PCL point of return to grade, and costs related to it are also not BE-Eligible Costs.

Costs related to the Cover included within the PCL are fully BE-Eligible Costs.

Subject to the more detailed BE-Eligible Criteria set out below, the I-270 flyover bridge over I-70 and the I-70 bridges over the Denver Rock Island Railroad (including the proposed I-70 eastbound exit ramp over the Denver Rock Island Railroad and the N Stapleton Drive over Denver Rock Island Railroad) are also Designated Bridges, and costs related to these are BE-Eligible Costs. No other bridges east of Colorado Boulevard are Designated Bridges.

BE-Eligible Criteria for BE-Eligible Costs

The following criteria shall be applied to the Designated Bridge projects within the Project to determine BE-Eligible Costs for the Project (which, for certainty, are only costs incurred during the Construction Period). Costs incurred during the Construction Period that relate to the entire Project (such as advisors' and other bid pursuit costs) may be split such that the proportion of such costs that (a) is equal to the proportion of the total costs of the Project that is attributable to work relating to Designated Bridges, and (b) otherwise meet the CBE-Eligible Criteria, will be CBE-Eligible Costs (the "BE-Eligible Share").

1. Capacity Improvements

Costs related to capacity improvements are not BE-Eligible Costs.

- a. Costs related to widening cross-streets are only BE-Eligible Costs in proportion to the existing capacity. For example, the existing crossing of Steele/Vasquez Street under I-70 is four lanes. The proposed typical section of Steele Street is seven lanes. Costs related to the additional three lanes are not BE-Eligible Costs.
- b. Costs related to added capacity on the I-70 Mainline are not BE-Eligible Costs. For example, the existing viaduct is a six-lane cross-section. Costs related to the four additional lanes in the proposed highway cross-section are not BE-Eligible Costs. Note: This may not require an exact 60% - 40% cost split, as costs for elements that would be equally required (e.g. roadway shoulders) regardless of cross-section width are fully BE-Eligible Costs.
- c. Costs related to structures spanning the highway to the extent the additional span/structure deck area is required to accommodate the capacity expansion are not BE-Eligible Costs.

2. Connectivity

Reconnections of existing local streets are generally BE-Eligible Costs within the limits necessary to reconnect roadways, both horizontally and vertically.

- a. Costs related to reconstruction of 46th Avenue are BE-Eligible Costs.
- b. Costs related to traffic control devices required for reconnecting local streets and connecting 46th Avenue are BE-Eligible Costs. Note: Costs related to Cook Street are not BE-Eligible Costs, as there is no existing connectivity.
- c. Costs related to the reconstruction of the Colorado Boulevard bridge and interchange are partially BE-Eligible Costs.
- d. Costs related to reconstruction of the Colorado Boulevard bridge and interchange are partially BE-Eligible Costs.
 - i. Costs related to reconstruction of the Colorado Boulevard bridge to the extent the additional span/area is required to accommodate the capacity expansion of I-70 are not BE-Eligible Costs. Modifications that would otherwise be required if the bridge were reconstructed to current standards without a capacity expansion are BE-Eligible Costs.
 - ii. To the extent realignment of the Colorado Boulevard bridge is required only for construction of and connection to the PCL, costs related to horizontal

- reconnection of the roadways to the north and south are BE-Eligible Costs. Costs related to realignment solely for project phasing are not BE-Eligible Costs.
- iii. Costs related to additional bridge width for turn lanes and a median are BE-Eligible Costs.
 - iv. Costs related to the reconstruction of the westbound on-ramps and eastbound off-ramps are necessary to connect to the PCL, and therefore are BE-Eligible Costs.
 - v. Costs related to the reconstruction of the westbound off-ramps and eastbound on-ramps are not BE-Eligible Costs.
3. Design and Environmental Costs.
 - a. Costs for design and environmental studies conducted prior to execution of the project Agreement are fully BE-Eligible Costs.
 - b. Following execution of the Project Agreement, the BE-Eligible Share of costs for design, environmental studies, environmental compliance, and environmental justice measures are BE-Eligible Costs.
 4. Costs for acquisition of right-of-way necessary for any Project element otherwise satisfying the BE-Eligible Criteria are BE-Eligible Costs.
 5. Costs related to utilities and utility relocations necessary for any Project element otherwise satisfying the BE-Eligible Criteria are BE-Eligible Costs.
 6. Costs related to removals of existing structure and roadway within the limits of a Designated Bridge project are BE-Eligible Costs.
 7. Costs related to realignment of roadways to correct safety and hydraulic issues in connection with a Designated Bridge project are BE-Eligible Costs.
 8. Costs related to all structural elements within the limits of a Designated Bridge project are BE-Eligible Costs.
 9. Costs related to retaining walls, columns and abutments within the limits of a Designated Bridge project, including those necessary for the PCL and the Cover, are BE-Eligible Costs.
 10. Costs for removals, earthwork, pavement, sidewalk, curb and gutter, and barriers within the limits of a Designated Bridge project are BE-Eligible Costs.
 11. Costs related to dewatering within the limits of a Designated Bridge project are BE-Eligible Costs.
 12. Costs related to offsite storm drainage required to protect the PCL are BE-Eligible Costs.
 13. Costs related to onsite storm drainage improvements within the limits of a Designated Bridge project, or the BE-Eligible Share of such costs in proportion to the costs necessary to protect a Designated Bridge project, are BE-Eligible Costs.
 14. Costs related to erosion protection to prevent scour of piers, abutments, and substructure of a Designated Bridge project are BE-Eligible Costs.

15. Costs related to guardrail and safety treatments on approaches and departures to a Designated Bridge or within the PCL Limits are BE-Eligible Costs.
16. Costs for earthwork and surfacing for approaches to match new profile are BE-Eligible Costs.
17. Costs related to removal of trees, clearing and grubbing for new structure and approaches to a Designated Bridge project are BE-Eligible Costs.
18. Costs of architectural treatments, but only to the extent required by the EIS or ROD or applicable environmental document, are BE-Eligible Costs.
19. The BE-Eligible Share of costs related to traffic control, mobilization, construction oversight, testing, permitting, and other general project costs are BE-Eligible Costs.
20. Costs related to tolling systems are not considered to be BE-Eligible Costs.

Eligibility of Operations & Maintenance Costs

The BE-Eligible Share of the costs of performing O&M Work During Construction are BE-Eligible Costs during the Construction Period for the life of the existing viaduct. Because the below-grade PCL that would replace the existing viaduct (subject to final approval through the NEPA process) would not be a Designated Bridge following reconstruction, post-demolition operations and maintenance costs would not be BE-Eligible Costs.

Form D-3: Financing Plan Dates

Instructions	
Please generally see <u>Section 3.4.1.c</u> of the <u>Financial Proposal Instructions</u> . In addition:	
(1)	Proposers should use the following date format: [month] [date], [year].
(2)	Dates specified in this Form should be the same as the dates assumed in Proposer's Base Financial Model and, where applicable, assumed in Proposer's Proposal Schedule submitted as Technical Proposal Appendix C in accordance with <u>Section 2.1.10</u> of the <u>Administrative and Technical Submission Requirements</u> .
(3)	Proposers should, when completing this Form in relation to the dates applicable to Payment Milestones, include the dates in the chronological order in which they propose to achieve the Milestone Completion Dates of each Payment Milestone (and not using the sequential numbering of Milestones 1, 2, 3 and 4).
(4)	The only information included in this Form that will be directly evaluated and scored will be the "Scored Construction Period" (see <u>Section 6.3.4.b</u> of <u>Part C</u>).
(5)	Pursuant to <u>Section 1.1</u> of <u>Part E</u> , Proposers should delete this instructions box prior to submitting the Form.

	Date
Financial Close Date	July 1, 2017
Milestone []	
(a) Milestone Completion Target Date	(a)
(b) Payment date of Milestone Payment	(b)
Milestone []	
(a) Milestone Completion Target Date	(a)
(b) Payment date of Milestone Payment	(b)
Milestone []	
(a) Milestone Completion Target Date	(a)
(b) Payment date of Milestone Payment	(b)
Milestone []	
(a) Milestone Completion Target Date	(a)
(b) Payment date of Milestone Payment	(b)
Baseline Substantial Completion Date	
Payment date of Substantial Completion Payment	
Final Acceptance Date	
Expiry Date	

Number of Calendar Days from (and excluding) July 1,2017 to (and including) Proposer's Baseline Substantial Completion Date	
minus	1095
Number of Calendar Days in Proposer's Scored Construction Period	

Form D-4: Equity and Debt Information

Instructions

Please generally see Sections 3.3.2 and 3.3.3 of the Financial Proposal Instructions.

Pursuant to Section 1.1 of Part F, Proposers should delete this instructions box and additional instruction notes prior to submitting the Form.

Part A: Equity Information

Equity Member	Equity Investment	
	Amount (\$)	% of Total Equity Investment
Total		

Total Committed Investment amount	
Nominal Post-Tax Equity IRR (%)	
Nominal Pre-Tax Equity IRR (%)	
Real Post-Tax Equity IRR (%)	
Real Pre-Tax Equity IRR (%)	
Date of first equity distribution (including any payment on shareholder subordinated debt, if applicable)	

Part B: Debt Information

Project Debt⁴²	
Maximum Project Debt amount	
Weighted Average Cost of Project Debt (%)	
Project Debt Coverage Ratios	
Minimum DSCR	
Average DSCR	
Minimum LLCR	
Average LLCR	
Minimum PLCR	
Average PLCR	

⁴² For certainty, excluding shareholder subordinated debt.

Senior Debt⁴³	
Maximum Senior Debt amount	
Senior Debt Coverage Ratios	
Minimum DSCR	
Average DSCR	
Minimum LLCR	
Average LLCR	
Minimum PLCR	
Average PLCR	

⁴³ For certainty, excluding shareholder subordinated debt.

Form D-5: Proposer Market Scale

Instructions

Please generally see Section 4.2 of Part C. Pursuant to Section 1.1 of Part F, Proposers should delete this instructions box prior to submitting the Form.

Type of Bond Financing Instrument	Benchmark Index	Maturity	Serial/Term	Average Maturity/Average Life	Benchmark Interest Rate(s) (%)	Coupon	Yield to Worst ("YTW") (%)	YTW Credit Spread(%)	Call Date ⁴⁴

⁴⁴ Par call of ten years or less is required for tax-exempt bonds.

Form D-6: Proposer Basis Scale

Instructions

Please generally see Section 4.2 of Part C. In addition:

- (1) Proposers to complete Form for all semi-annual maturities through 40 years on a June 30/December 31 basis.
- (2) Pursuant to Section 1.1 of Part F, Proposers should delete this instructions box prior to submitting the Form.

Type of Bond Financing Instrument	Benchmark Index	Maturity	Benchmark Interest Rate(s) (%)	Yield to Call (YTC) (%)	YTC Credit Spread (%)	Yield to Maturity ("YTM")	YTM Credit Spread (%)	Call Date ⁴⁵

⁴⁵ Par call of ten years or less is required for tax-exempt bonds.

Form D-7: Sources and Uses of Funds

Instructions

Please generally see Section 3.4.6.b.i of the Financial Proposal Instructions. Pursuant to Section 1.1 of Part E, Proposers should delete this instructions box and additional instruction notes prior to submitting the Form.

Sources of funds during Construction Period	Total (\$)	Percent of Total (%)
Bank Debt/Taxable Bond (Non-PABs)		
PABs		
TIFIA Loan		
Capitalized Interest on TIFIA Loan up to Substantial Completion		
Equity		
Interest earned on accounts		
Milestone Payments		
[Other Sources] ⁴⁶		
Total Sources of Funds		
Uses of funds during Construction Period	Total (\$)	Percent of Total (%)
Design and Construction Costs		
O&M During Construction Costs		
Development Costs		
SPV Costs		
Insurance Costs		
Contingencies		
Capitalized Interest on TIFIA Loan up to Substantial Completion		
Bank Debt/Taxable Bond (Non-PABs) Interest Expenses		
PABs Interest Expenses		
Financing Fees ⁴⁷		
Working Capital		
Reserves ⁴⁸		
Tax paid/refunded		
[Other Uses] ⁴⁹		
Total Uses of Funds		

⁴⁶ Proposers to add line items for any other sources of funds or amend any sources listed.

⁴⁷ Proposers to add line items for each category.

⁴⁸ Proposers to identify specific reserves.

⁴⁹ Proposers to add line items for any other uses of funds or amend any uses listed.

FORM E: ESTIMATED INSURANCE COSTS FORM**Instructions**

Please generally see Section 6.8 of the Financial Proposal Submission Requirements and Section 25.7 of the Project Agreement. In addition, the "Estimated Insurance Costs" amount specified in this Form must be the same as the amount included in Proposer's Base Financial Model. If the amounts differ, at the Procuring Authorities' discretion, the "Estimated Insurance Costs" amount for purposes of inclusion in the definition of Base Benchmarked Insurance Costs in the Project Agreement will be the lesser of the amount specified in this Form and the amount included in Proposer's Base Financial Model.

Pursuant to Section 1.1 of Part F, Proposers should delete this instructions box and modify or delete bracketed items, instructions (in italics) and drafting alternatives (with multiple options separated by forward slashes "/") as the context and any additional instruction notes may require.

Estimated Insurance Costs Form

Estimated Insurance Costs: US\$[specify in numbers]⁵⁰ (US\$[specify in words]) in nominal dollars as of July 1, 2017

The amount of the "Estimated Insurance Costs" for the first year of the Operating Period has been determined based on discussions with [*Proposer to provide number and name of insurance brokers and underwriters*] and the following assumptions: [*Proposer to provide details*].

⁵⁰ This amount should exclude brokerage fees and commissions.

FORM F: STANDBY LETTER OF CREDIT

Instructions

Please generally see:

- (1) Section 5.4 of Part C and Section 4.3 of the Financial Proposal Submission Requirements in relation to the use of this Form as the form of Proposer's Proposal Security.
- (2) Section 7.3.1.f of Part C and Schedule 1 (*Financial Close*) to the Project Agreement in relation to the use of this Form as the form of Preferred Proposer's Financial Close Security.
- (3) Pursuant to Section 1.1 of Part F, Proposers should delete this instructions box and additional instruction notes prior to submission.

ISSUER: [Name, Address and Contact Information, including Phone, Fax and Email]

PLACE FOR PRESENTATION OF DRAFT IN PROGRESS: [Name and address of Bank/Branch]⁵¹

APPLICANT: [Name]

BENEFICIARIES: Bridge Enterprise
c/o Colorado Department of Transportation
4201 East Arkansas Avenue
Denver, Colorado 80222

High Performance Transportation Enterprise
c/o Colorado Department of Transportation
4201 East Arkansas Avenue
Denver, Colorado 80222

LETTER OF CREDIT NUMBER: []

PLACE AND DATE OF ISSUE: []

AMOUNT:⁵² \$[10,000,000]⁵³ [20,000,000]⁵⁴

EXPIRATION DATE: [Date no earlier than 30 Calendar Days after the expiry of the Proposal Validity Period]⁵⁵

The Issuer hereby issues this Irrevocable Standby Letter of Credit (this "Letter of Credit") in favor of the Beneficiaries for any sum or sums in the sum of up to **[TEN] [TWENTY] MILLION UNITED STATES DOLLARS ([\\$10,000,000] [\\$20,000,000])** (the "Stated Amount"), available by draft at sight drawn on the Issuer.

⁵¹ This must be in the City of New York, New York or the City of Denver, Colorado unless otherwise approved by HPTE and BE.

⁵² The amount of a single letter of credit may be less than the required amount of the Proposal Security or the Financial Close Security, as the case may be, provided that the aggregate amount of all letters of credit issued as the Proposal Security or the Financial Close Security, as the case may be, equals or exceeds the required amount.

⁵³ Applicable to Proposal Security.

⁵⁴ Applicable to Financial Close Security

⁵⁵ Applicable to both Proposal Security and Financial Security. **Note to Proposers:** Requirement based on the intention that commercial close and financial close both occur during the Proposal Validity Period. The additional 30-day period is intended to provide the Procuring Authorities with a cushion for calling the LC if necessary, but is not intended to extend the Proposal Validity Period.

Any drawing under this Letter of Credit may be made by either Beneficiary, shall be in the form of the drawing certificate set out in the Exhibit to this Letter of Credit and shall:

- (a) identify this Letter of Credit by the name of the Issuer, and the Letter of Credit number, amount, and place and date of issue; and
- (b) be signed by a representative of either Beneficiary and contain a statement that such Beneficiary is entitled to make such drawing.

Any such drawing certificate shall be honored by the Issuer if presented in person at [City of New York, New York or Denver, Colorado Bank/Branch – Name & Address] on or before the Expiration Date.

Drawings by facsimile to the facsimile number specified above or electronically to the email address specified above are also acceptable if made on or before the Expiration Date. Upon the sending of any drawing certificate by facsimile or email the relevant Beneficiary shall confirm, by telephone, the Issuer's receipt of such facsimile or email drawing by calling the Issuer at the telephone number specified above (provided that no failure or delay by the Issuer in confirming receipt of the drawing certificate shall affect the validity of any drawing properly made by the Beneficiary).

The obligations of the Issuer hereunder are primary obligations to the Beneficiaries and shall not be affected by the performance or non-performance by [Name of Applicant] under any agreement with either Beneficiary or the Issuer or by any bankruptcy, insolvency or other similar proceeding initiated by or against [Name of Applicant]. [Name of Applicant] is not the beneficiary under this Letter of Credit and possesses no interest whatsoever in proceeds of any draw under this Letter of Credit.

This Letter of Credit shall terminate on the earlier of: (a) 3:00 pm [Mountain] [Eastern]⁵⁶ Standard Time on the Expiration Date and (b) the date on which the Issuer has honored one or more draws in an aggregate amount equal to the Stated Amount.

This Letter of Credit may not be transferred by either Beneficiary to any other person other than the Colorado Department of Transportation.

To the extent not inconsistent with the express provisions hereof, this Letter of Credit is subject to the rules of the International Standby Practices ISP98 ("ISP98"), as interpreted under the laws of the State of [[Colorado]/[New York]], and shall, as to matters not governed by ISP98, be governed and construed in accordance with the laws of the State of [[Colorado]/[New York]].⁵⁷

With respect to any suit, action or proceeding relating to this Letter of Credit ("Proceedings"), the Issuer irrevocably: (i) submits to the exclusive jurisdiction of the United States District Court for the District of Colorado, (ii) waives any objection which it may have at any time to the laying of venue of any Proceeding brought in any such court, (iii) waives any claim that any such Proceeding has been brought in an inconvenient forum and (iv) waives the right to object, with respect to any such Proceeding, that such court does not have any jurisdiction with respect to such Proceeding.

Issuer:

By:

Name: []
Title: []
(Authorized Signatory of Issuer)

⁵⁶ Delete, as applicable, depending on whether Letter of Credit is presentable in Denver or New York, respectively.

⁵⁷ Proposers to specify/delete governing law, as applicable.

Exhibit
Form of Drawing Certificate

ISSUER: [Name, Address and Contact Information,
including Phone, Fax and Email]

APPLICANT: [Name]

BENEFICIARY: [Bridge Enterprise
c/o Colorado Department of Transportation
4201 East Arkansas Avenue
Denver, Colorado 80222

High Performance Transportation Enterprise
c/o Colorado Department of Transportation
4201 East Arkansas Avenue
Denver, Colorado 80222]⁵⁸

LETTER OF CREDIT NUMBER: []

PLACE AND DATE OF ISSUE: []

AMOUNT: \$[10,000,000]⁵⁹ [20,000,000]⁶⁰

EXPIRATION DATE: []

Reference is made to the Irrevocable Standby Letter of Credit referenced above (the "Letter of Credit") issued by the Issuer referenced above by order and for account of the Applicant referenced above.

The undersigned, a duly authorized representative of the Beneficiary referenced above (the "Beneficiary"), hereby certifies that the Beneficiary is entitled to draw under the Letter of Credit in the full amount thereof as specified above.

[Name of Beneficiary]

By:

Name: []

Title: []

Date:

(Authorized Signatory of Beneficiary)

⁵⁸ Delete, as applicable, depending on the Beneficiary submitting the Drawing Certificate.

⁵⁹ Applicable to Proposal Security.

⁶⁰ Applicable to Financial Close Security.

FORM G: FINANCIAL CAPACITY UPDATE FORMS

Form G-1: Material Changes

Instructions

Please generally see Section 3.1.2 of the Financial Proposal Instructions and, as applicable, Section 3.2 of the Administrative and Technical Proposal Submission Requirements or Section 4.6.1 of the Financial Proposal Submission Requirements. In addition:

- (1) If the chief executive officer, chief financial officer or treasurer (or equivalent) of the relevant entity is a signatory of the Administrative and Technical Proposal Letter or Financial Proposal Letter, as applicable, then it is permissible to include in the Administrative and Technical Proposal or Financial Proposal, as applicable, an unsigned confirmation in the required form set out below instead of a letter from the relevant entity.
- (2) Complete or delete square bracketed language in the Form as applicable.
- (3) Separate Exhibits in form of the Exhibit to the letter set out in this Form should be completed and attached to the letter in relation to each material change or anticipated material change.
- (4) If any of the sections of the form of the Exhibit to the letter set out in this Form is not applicable to a specific material change, the relevant description may be marked as such.
- (5) In completing an Exhibit, it is permissible to make cross-reference to another description(s) in the same Exhibit or in another Exhibit.
- (6) Pursuant to Section 1.1 of Part E, Proposers should delete this instructions box and additional instruction notes, and should modify or delete bracketed items, instructions (in italics) and drafting alternatives (with multiple options separated by forward slashes “/”) as the context and any additional instruction notes may require.

[on letterhead of relevant entity]

[Date]

High Performance Transportation Enterprise and Colorado Bridge Enterprise
c/o High Performance Transportation Enterprise
4201 East Arkansas Avenue
Denver, Colorado 80222
Attn: Nicholas Farber, Procuring Authorities' Contact Person

Re. **Material Changes Letter** **in connection with the Instruction to Proposers for the Central 70 Project (“ITP”)**

I, *[Name]*, in my capacity as *[CEO/CFO/Treasurer (or equivalent)]* of *[Full legal name of entity]* (the “Company”), *[the/an] [Equity Member/Lead Contractor/Lead Engineer/Lead Operator/Financially Responsible Party]* in *[Proposer team name]*, and not in my personal capacity, deliver this letter pursuant to *[Section 3.2 of the Administrative and Technical Proposal Submission Requirements]* *[Section 4.6.1 of the Financial Proposal Submission Requirements]* and hereby confirm as follows.

[Except as set forth in the Exhibit(s) attached hereto, there] [There] have been no material changes in the Company’s financial capacity since

[OPTION 1: Proposer submitted its SOQ]⁶¹

[OPTION 2: Proposer submitted its Proposer Update Submission in respect of the Approved Organizational Change that resulted in the Company becoming a Core Proposer Team Member]⁶²

⁶¹ To be used if letter being submitted in Proposer’s Administrative and Technical Proposal if the relevant entity was identified in Proposer’s SOQ as a Core Proposer Team Member.

[*OPTION 3*: Proposer submitted its Administrative and Technical Proposal]⁶³

and no material changes are anticipated to occur during the remainder of the Company's current fiscal year.

Unless defined herein, capitalized terms used in this letter have the meanings given to them in the ITP.

Yours []

⁶² To be used if letter being submitted in Proposer's Administrative and Technical Proposal if the relevant entity was only approved as a Core Proposer Team Member after submission of Proposer's SOQ.

⁶³ To be used if letter being submitted in Proposer's Financial Proposal.

EXHIBIT []

Part I. In accordance with Section 3.1.2.a of the Financial Proposal Instructions, the following sets out a description of an actual or anticipated material change:

i. such change;

[DESCRIPTION TO BE INSERTED BY RELEVANT ENTITY]

ii. actual and anticipated changes or disruptions in executive management relating to such change;

[DESCRIPTION TO BE INSERTED BY RELEVANT ENTITY]

iii. the likelihood that such change will continue during the proposed period of Project construction;

[DESCRIPTION TO BE INSERTED BY RELEVANT ENTITY]

iv. the projected full extent, nature and impact, positive and negative, of such change experienced and anticipated to be experienced in the proposed period of Project construction;

[DESCRIPTION TO BE INSERTED BY RELEVANT ENTITY]

v. how such change is anticipated to affect the organizational and financial capacity and ability of the relevant entity to remain engaged in the procurement described in the RFP and to ultimately participate in the Project as anticipated by the relevant Proposal.

[DESCRIPTION TO BE INSERTED BY RELEVANT ENTITY]

Part II. In accordance with Section 3.1.2.b of the Financial Proposal Instructions, set out below are estimates of the impact of the material change on:

i. revenues;

[DESCRIPTION TO BE INSERTED BY RELEVANT ENTITY]

ii. expenses;

[DESCRIPTION TO BE INSERTED BY RELEVANT ENTITY]

iii. change in equity availability.

[DESCRIPTION TO BE INSERTED BY RELEVANT ENTITY]

Part III. In accordance with Section 3.1.2.c of the Financial Proposal Instructions, if the material change will have a negative financial impact, an explanation of measures that have been taken, are currently in progress or would be reasonably anticipated to be taken to insulate the Project from any such material change:

[DESCRIPTION TO BE INSERTED BY RELEVANT ENTITY]

Form G-2: Off Balance Sheet Liabilities

Instructions

Please generally see Section 3.3 of the Administrative and Technical Proposal Submission Requirements. In addition:

- (1) If the chief executive officer, chief financial officer or treasurer (or equivalent) of the relevant entity is a signatory of the Administrative and Technical Proposal Letter, then it is permissible to include in the Administrative and Technical Proposal an unsigned confirmation in the required form set out below instead of a letter from the relevant entity.
- (2) Complete or delete square bracketed language in the Form as applicable.
- (3) Pursuant to Section 1.1 of Part F, Proposers should delete this instructions box, and should modify or delete bracketed items, instructions (in italics) and drafting alternatives (with multiple options separated by forward slashes “/”) as the context and any additional instruction notes may require.

[on letterhead of relevant entity]

[Date]

High Performance Transportation Enterprise and Colorado Bridge Enterprise
c/o High Performance Transportation Enterprise
4201 East Arkansas Avenue
Denver, Colorado 80222
Attn: Nicholas Farber, Procuring Authorities' Contact Person

**Re. Off Balance Sheet Liabilities Letter
in connection with the Instruction to Proposers for the Central 70 Project (“ITP”)**

I, *[Name]*, in my capacity as *[CEO/CFO/Treasurer (or equivalent)]* of *[Full legal name of entity]* (the “Company”), *[the/an] [Equity Member/Lead Contractor/Lead Engineer/Lead Operator/Financially Responsible Party]* in *[Proposer team name]*, and not in my personal capacity, deliver this letter pursuant to Section 3.3 of the Administrative and Technical Proposal Submission Requirements set out in the ITP and hereby confirm as follows.

[Except as set forth in the Exhibit attached hereto, there] [There] are no off balance sheet liabilities for any fiscal year of the Company in respect of which financial statements have been submitted in accordance with Section 3.1 of the Administrative and Technical Proposal Submission Requirements that exceed \$25 million in aggregate in such fiscal year.

Yours []

EXHIBIT []

In accordance with Section 3.3 of the Administrative and Technical Proposal Submission Requirements, the following sets out a description of off balance sheet liabilities:

Fiscal year⁶⁴ for which there are off balance sheet liabilities in excess of \$25m in aggregate: [YEAR TO BE SPECIFIED]

[DESCRIPTION OF LIABILITIES TO BE INSERTED BY RELEVANT ENTITY]

⁶⁴ Proposers to repeat for each fiscal year for which off balance sheet liabilities exceed \$25m in aggregate.

Form G-3: Credit Ratings

Instructions	
Please generally see, as applicable, <u>Section 3.4</u> of the <u>Administrative and Technical Proposal Submission Requirements</u> or <u>Section 5.2.3</u> of the <u>Financial Proposal Submission Requirements</u> . In addition, Proposers should:	
(1)	For "Role" and "Entity Name", indicate, respectively, role of Core Proposer Team Member in Proposer team and such member's full legal name.
(2)	If any entity that is rated by one or more Rating Agencies is not rated by any other Rating Agency, indicate "Not rated".
(3)	For "Describe Change(s)", for each positive or negative change that has occurred in a rating (which shall include any change in a rating level and/or any change in a rating outlook) since, as applicable, (i) Proposer's submission of its SOQ, (ii) Proposer submitted its Proposer Update Submission in respect of the Approved Organizational Change that resulted in the relevant entity becoming a Core Proposer Team Member or (iii) Proposer's submission of its Administrative and Technical Proposal, describe such change in the format of "[Rating Agency name]: Change from [prior rating]" and separate multiple changes with semi-colons.
(4)	For each entity that has a credit rating as indicated in the completed Form G-3 (<i>Credit Ratings</i>), attach all rating information (including ratings outlooks and reports, if applicable) issued by any Rating Agency since the submissions referred to in, as applicable, (i), (ii) or (iii) in instruction (3) above, (a) regarding any debt instrument issued by such entity or (b) for any other purpose.
(5)	Pursuant to <u>Section 1.1</u> of <u>Part F</u> , Proposers should delete this instructions box and additional instruction notes prior to submitting the Form.

Proposer Name: [Proposer to provide]

Credit Ratings

Role ⁶⁵	Entity Name	Fitch	Moody's	S&P	DBRS	Change(s) in any credit ratings since SOQ? ⁶⁶	Describe Change(s)
						<input type="checkbox"/> Yes <input type="checkbox"/> No	
						<input type="checkbox"/> Yes <input type="checkbox"/> No	
						<input type="checkbox"/> Yes <input type="checkbox"/> No	
						<input type="checkbox"/> Yes <input type="checkbox"/> No	

⁶⁵ Proposers to use following abbreviations: EM (for Equity Member), LC (for Lead Contractor), LE (for Lead Engineer), LO (for Lead Operator) and FRP (for Financially Responsible Party).

⁶⁶ If any Core Proposer Team Member has ceased to be rated by any one or more Rating Agency since submission of Proposer's SOQ or Proposer's Proposer Update Submission in respect of the Approved Organizational Change that resulted in the relevant entity becoming a Core Proposer Team Member, Proposer should check "Yes" and provide an explanation of why such entity has ceased to be rated in the "Describe Change(s)" column.

FORM H: STIPEND AGREEMENT

Instructions

Please generally see Section 5.5 of Part C. In addition:

- (1) An authorized representative of each Core Proposer Team Member shall sign the agreement.
- (2) All signature blocks on this Form may be modified to properly reflect the authority of the person signing.
- (3) Additional signature blocks may be inserted or signature blocks may be deleted as necessary dependent on the composition of a Proposer team.
- (4) The Procuring Authorities may issue, in pdf format, individual Proposer customized execution versions of the agreement (with the names of that Proposer's team members included) around the time of issuance of the final RFP.
- (5) Pursuant to Section 1.1 of Part F, Proposers should delete this instructions box and modify or delete bracketed items, instructions (in italics) and drafting alternatives (with multiple options separated by forward slashes "/" as the context and any additional instruction notes may require.

STIPEND AGREEMENT

THIS STIPEND AGREEMENT (this "Agreement") is made and entered into as of this [] day of [], [] by and between:

- (1) the Colorado High Performance Transportation Enterprise ("HPTE") and the Colorado Bridge Enterprise ("BE"), each of which is a government-owned business within the Colorado Department of Transportation ("CDOT") and, in the case of HPTE, is a division of CDOT (together, the "Procuring Authorities");
- (2) [] (together, the "Equity Members");
- (3) [] (together, the "Lead Contractor");
- (4) [] (together, the "Lead Engineer");
- (5) [] (together, the "Lead Operator"); and
- (6) [] (together, the "Financially Responsible Parties") and, together with the Equity Members, the Lead Contractor, the Lead Engineer and the Lead Operator, the "Core Proposer Team Members").

WITNESSETH:

WHEREAS, in response to the Request for Proposals dated September 15 and 29, 2015 (as amended by any Addenda thereto, the "RFP") issued by the Procuring Authorities in relation to the Central 70 Project (the "Project"), (a) [*Proposer team name to be inserted*] ("Proposer") comprising the Core Proposer Team Members has submitted an Administrative and Technical Proposal and (b) Proposer is intending to submit a Financial Proposal;

WHEREAS, if Proposer is selected as the Preferred Proposer in accordance with the RFP, Proposer will, subject to the terms and conditions of the RFP, procure that an entity established by it will enter into a project agreement relating to the Project (the "Project Agreement") with the Procuring Authorities;

WHEREAS, as part of the procurement process for the Project under the RFP (the "Procurement Process"), Proposer has already provided and/or furnished to the Procuring Authorities, and may continue to provide and/or furnish to the Procuring Authorities, certain intellectual property, materials, information and ideas, including, but not limited to, such matters that are: (a) conveyed verbally and/or in writing during the Procurement Process including during proprietary meetings or interviews; and (b) contained in, related to or associated with Proposer's Proposal, including, but not limited to, written correspondence, designs, drawings, plans, exhibits, photographs, reports, printed material, tapes, electronic disks, Alternative Technical Concepts submitted to the Procuring Authorities during the Procurement Process (whether or not approved and whether or not incorporated into Proposer's Proposal), other graphic and visual aids, or information contained in Proposer's Proposal (all such intellectual property, materials, information and ideas, collectively, but subject to the exclusion specified in Section 2 below, "Proposer's Intellectual Property");

WHEREAS, the Procuring Authorities are willing to provide a payment to Proposer, subject to the express conditions stated in this Agreement, to obtain Proposer's Intellectual Property; and

WHEREAS, Proposer wishes to be eligible to receive the payment offered by the Procuring Authorities, in exchange for granting the Procuring Authorities the rights contained in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows:

1. The Procuring Authorities' Rights in Proposer's Intellectual Property. Each of the Core Proposer Team Members hereby conveys to the Procuring Authorities all of its rights, title and interest, free and clear of all liens, claims and encumbrances, in Proposer's Intellectual Property, which includes, without restriction or limitation, the right of the Procuring Authorities, and anyone contracting with the Procuring Authorities, to incorporate any ideas or information from Proposer's Intellectual Property into: (a) the Project, including the Project Agreement and/or the Construction Contract (and/or any relevant sub-contract of either thereof), (b) any other contract entered into in relation to the Project or (c) any subsequent procurement by the Procuring Authorities or CDOT for the Project or any other project. As a result of such conveyance, the Procuring Authorities shall own all intellectual property rights, copyrights, patents, trade secrets, trademarks, and service marks in Proposer's Intellectual Property, and each of the Core Proposer Team Members agrees that it will, at the request of the Procuring Authorities, execute all papers and perform all other acts that may be necessary to ensure that the Procuring Authorities' rights, title and interest in Proposer's Intellectual Property are conveyed as purported to be conveyed hereunder and protected, provided that such acts do not extend to engaging in litigation, but each of the Core Proposer Team Members hereby authorizes the Procuring Authorities to litigate in its name. The rights conveyed pursuant hereto to the Procuring Authorities include, without limitation, the Procuring Authorities' ability to use and re-use Proposer's Intellectual Property without the obligation to notify or seek permission from Proposer or any of the Core Proposer Team Members. The Procuring Authorities acknowledge that any designs, plans, drawings or other documents of such nature included as Proposer's Intellectual Property are preliminary in nature and use or reuse by the Procuring Authorities is at the Procuring Authorities' sole risk.

2. Exclusions from Proposer's Intellectual Property. Notwithstanding Section 1 above, it is understood and agreed that Proposer's Intellectual Property does not include, and the Core Proposer Team Members do not pursuant to this Agreement convey any rights in, the Base Financial Model.

3. Stipend Payment. The Procuring Authorities agree to pay Proposer (on behalf of all Core Proposer Team Members) a stipend payment (the "Stipend Payment") in the amount specified in Section 4 below, which constitutes payment in full to Proposer for the conveyance of Proposer's Intellectual Property to the Procuring Authorities in accordance with this Agreement. The Procuring Authorities shall pay the Stipend Payment to Proposer on condition that:

- a. unless the Procuring Authorities have publicly announced the cancellation of the Procurement Process prior to the Technical Proposal Deadline, Proposer submits an Administrative and Technical Proposal which is responsive to, and compliant with, the RFP (including being compliant with all Administrative and Technical Pass/Fail Criteria and passing the Technical Substantive P/F Evaluation), as determined by the Procuring Authorities in their discretion; and
 - b. unless the Procuring Authorities have publicly announced the cancellation of the Procurement Process prior to the Financial Proposal Deadline, Proposer submits a Financial Proposal which is responsive to, and compliant with, the RFP (including being compliant with all Financial Pass/Fail Criteria), as determined by the Procuring Authorities in their discretion; and
 - c. Proposer has complied with all other terms and conditions of this Agreement and the ITP.
4. Stipend Payment Amount. Subject to the satisfaction of the conditions specified in Section 3 above, the Procuring Authorities shall make the Stipend Payment to Proposer in the amount of either:
- a. \$1,000,000, following the public announcement by the Procuring Authorities of the cancellation of the Procurement Process after the issuance of the final RFP but prior to the Technical Proposal Deadline; or
 - b. \$2,000,000, following:
 - i. the public announcement by the Procuring Authorities of the cancellation of the Procurement Process after the Technical Proposal Deadline;
 - ii. the public announcement by the Procuring Authorities of a Preferred Proposer that is not Proposer (except that, if the Procuring Authorities enter into a Project Agreement with Proposer's Developer at any time after another Proposer is first selected as Preferred Proposer, the Procuring Authorities shall have no obligation to pay the Stipend Payment to Proposer); or
 - iii. the public announcement by the Procuring Authorities of the cancellation of the Procurement Process after the Financial Proposal Deadline, unless Proposer is first selected as the Preferred Proposer and the Procuring Authorities then become entitled to draw on Proposer's Proposal Security in accordance with Section 5.4.2.a of Part C of the ITP (in which event, for certainty, the Procuring Authorities shall have no obligation to pay the Stipend Payment to Proposer).
5. Payment Due Date. Subject to the satisfaction of the conditions specified in Section 3 above, the Procuring Authorities will make payment of the Stipend Payment to the Proposer (on behalf of the Core Proposer Team Members) by no later than the earlier of (a) 90 Calendar Days after the date on which the Procuring Authorities publicly announce the cancellation of the Procurement Process and (b) five Working Days after Financial Close, subject to prior receipt of an invoice therefor (which invoice shall specify the account details for such payment).
6. Effective Date of this Agreement. This Agreement shall not be valid until, and the rights and obligations of the Procuring Authorities, Proposer and the Core Proposer Team Members under this Agreement (including the Procuring Authorities' ownership rights in Proposer's Intellectual Property) shall only vest once, the Colorado State Controller (or designee) has approved, signed and dated this Agreement, except that the Procuring Authorities' ownership rights in any Proposer's Intellectual Property that is not created until after such date shall vest upon the date of creation.
7. Waiver. Notwithstanding any other provisions of this Agreement, if any one or more of the conditions set out in Section 3 above is not satisfied, then Proposer and the Core Proposer Team Members shall be deemed to have irrevocably waived and released any right to receive the Stipend

Payment and any other right, in contract, law or equity, to recover the costs associated with the development of Proposer's Intellectual Property and/or costs incurred in participating in the Procurement Process, and the Procuring Authorities will have no rights or obligations under this Agreement (including, for the avoidance of doubt, to the Proposer's Intellectual Property).

8. Indemnity. The Core Proposer Team Members will, at their own expense, indemnify, protect and hold harmless the Procuring Authorities and their agents, directors, officers, employees, representatives and contractors from all claims, costs, expenses, liabilities, demands, or suits at law or equity ("Claims") of, by or in favor of or awarded to any third party (including any costs (including legal fees) incurred by the Procuring Authorities in defending any such Claims or otherwise in seeking to protect their rights, title and interest in Proposer's Intellectual Property conveyed, or purported to be conveyed, to them hereunder) arising in whole or in part from breach of any of the obligations of the Core Proposer Team Members under this Agreement or the representation and warranty given by each of them under Section 10.a below, in each case only to the extent such breach gives rise to the relevant Claim, provided that this indemnity will not apply with respect to any Claim to the extent that such Claim is solely and directly caused by or results from the negligence or willful misconduct of the Procuring Authorities, or their agents, directors, officers, employees, representatives or contractors.

9. Assignment.

- a. None of the Core Proposer Team Members shall be entitled to assign or otherwise transfer any of their rights or obligations under this Agreement without the Procuring Authorities' prior written consent, which consent may be given or withheld in the Procuring Authorities' sole discretion. Any such assignment or transfer without such consent will be null and void.
- b. The Procuring Authorities shall be entitled to assign or otherwise transfer their rights under this Agreement and/or their rights, title and interest in Proposer's Intellectual Property Rights conveyed to them hereunder to any division, agency or political subdivision of the State of Colorado.

10. Authority to Enter into this Agreement. By executing this Agreement:

- a. each of the Core Proposer Team Members specifically represents and warrants that it has the power and authority to enter into this Agreement and to convey to the Procuring Authorities all of its rights, title, and interest in Proposer's Intellectual Property, free and clear of all liens, claims and encumbrances; and
- b. each of the Procuring Authorities specifically represents and warrants that it has the authority to enter into this Agreement and to pay the Stipend Payment.

11. Miscellaneous.

- a. The parties hereto agree that Proposer, the Core Proposer Team Members, and their respective employees are not agents of the Procuring Authorities as a result of entering into this Agreement.
- b. Capitalized terms not otherwise defined in this Agreement have the meanings given to them in the RFP.
- c. This Agreement:
 - i. together with the RFP, embodies the entire agreement of the parties with respect to the subject matter hereof and there are no promises, terms, conditions, or obligations other than those contained herein or in the RFP relating to such subject matter; and

- ii. will supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto in relation to such subject matter.
- d. It is understood and agreed by the parties that, if any part, term, or provision of this Agreement is by the courts held to be invalid, illegal or in conflict with any law of the State of Colorado, the validity and legality of the remaining parts, terms and provisions will not be affected, and the rights and obligations of the parties will be construed and enforced as if this Agreement did not contain the particular part, term, or provision held to be invalid, illegal or in conflict with any law of the State of Colorado.
- e. Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special 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 Agreement, to the extent capable of execution.
- f. With respect to any suit, action or proceeding relating to this Agreement ("Proceedings"), each of the Core Proposer Team Members irrevocably:
 - i. submits to the exclusive jurisdiction of the United States District Court for the District of Colorado;
 - ii. waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court;
 - iii. waives any claim that any such Proceedings has been brought in an inconvenient forum; and
 - iv. waives the right to object, with respect to any such Proceedings, that such court does not have any jurisdiction with respect to such Proceedings.

12. Other Special Provisions.

- a. **Fund Availability. CRS §24-30-202(5.5).** Financial obligations of the Procuring Authorities payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
- b. **Governmental Immunity.** No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.
- c. **Independent Contractor.** Proposer and each Core Proposer Team Member shall perform their duties hereunder as independent contractors and not as employees. None of Proposer, any Core Proposer Team Member or any agent or employee of any thereof shall be deemed to be an agent or employee of the State. Proposer and each Core Proposer Team Member and the employees and agents of each thereof are not entitled to unemployment insurance or workers' compensation benefits through the State and the State shall not pay for or otherwise provide such coverage. Unemployment insurance benefits will be available to Proposer and each Core Proposer Team Member and its employees and agents only if such coverage is made available by Proposer or any Core Proposer Team Member or a third party. Proposer and each Core Proposer Team

- Member shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. Neither Proposer nor any Core Proposer Team Member shall have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Proposer and each Core Proposer Team Member shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.
- d. **Compliance with Law.** Proposer and each Core Proposer Team Member shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.
- e. **Binding Arbitration Prohibited.** The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Agreement or incorporated herein by reference shall be null and void.
- f. **Software Piracy Prohibition.** Governor's Executive Order D 002 00. State or other public funds payable under this Agreement shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Proposer and each Core Proposer Team Member hereby certifies and warrants that, during the term of this Agreement and any extensions, Proposer and each Core Proposer Team Member has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Proposer or any Core Proposer Team Member is in violation of this provision, the Procuring Authorities may exercise any remedy available at law or in equity or under this Agreement, including, without limitation, immediate termination of this Agreement and any remedy consistent with federal copyright laws or applicable licensing restrictions.
- g. **Employee Financial Interest/Conflict of Interest. CRS §§24-18-201 and 24-50-507.** The Proposer and each Core Proposer Team Member avers that, to its knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Agreement. Neither Proposer nor any Core Proposer Team Member has any interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Proposer's and each Core Proposer Team Member's obligations under this Agreement and neither Proposer nor any Core Proposer Team Member shall employ any person having such known interests.
- h. **Vendor Offset. CRS §§24-30-202 (1) and 24-30-202.4.** Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.
- i. **Public Contracts for Services. CRS §8-17.5-101.** Proposer and each Core Proposer Team Member certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work related to this Agreement and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work related to this Agreement, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c), None of Proposer or any Core Proposer Team Member shall knowingly employ or contract with an illegal alien to perform work related to this Agreement or enter into a contract with a subcontractor that fails to certify to Proposer or the relevant Core Proposer Team Member, as the case may be, that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work related to this Agreement.

Proposer and each Core Proposer Team Member (a) shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while work related to this Agreement is being performed, (b) shall notify the subcontractor and the Procuring Authorities within three days if Proposer or such Core Proposer Team Member has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work related to this Agreement, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Proposer or such Core Proposer Team Member participates in the Department program, it shall deliver to the Procuring Authorities, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Proposer or such Core Proposer Team Member has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Proposer or such Core Proposer Team Member fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this Agreement for breach and, if so terminated, Proposer and each Core Proposer Team Member shall be liable for damages.

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the day and year first above written.

COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE

By: _____

Title: _____

Date: _____

COLORADO BRIDGE ENTERPRISE

By: _____

Title: _____

Date: _____

APPROVED:

[_____], ATTORNEY GENERAL

By: _____

Title: _____

Date: _____

Equity Members

[Insert entity name]

By: _____

Printed Name: _____

Title: _____

[Insert entity name]

By: _____

Printed Name: _____

Title: _____

Lead Contractor

[Insert entity name]

By: _____

Printed Name: _____

Title: _____

[Insert entity name]

By: _____

Printed Name: _____

Title: _____

Lead Engineer

[Insert entity name]

By: _____

Printed Name: _____

Title: _____

[Insert entity name]

By: _____

Printed Name: _____

Title: _____

Lead Operator

[Insert entity name]

By: _____

Printed Name: _____

Title: _____

[Insert entity name]

By: _____

Printed Name: _____

Title: _____

Financially Responsible Parties

[Insert entity name]

By: _____

Printed Name: _____

Title: _____

[Insert entity name]

By: _____

Printed Name: _____

Title: _____

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

STATE CONTROLLER

ROBERT JAROS, CPA, MBA, JD

By: _____ , Delegee

Date:

PART I: EXHIBITS

EXHIBIT 1: BASELINE TIFIA TERM SHEET

[To be provided in a subsequent Addendum.]