

This Second Amendment to the Project Agreement (this "Amendment") is made, entered into and effective as of the date it is approved and signed by the Colorado State Controller or its designee below (the "Amendment Date") among:

- (1) Colorado High Performance Transportation Enterprise ("HPTE"), a government-owned business within and a division of the Colorado Department of Transportation ("CDOT");
- (2) Colorado Bridge Enterprise, a government-owned business within CDOT ("BE" and, together with HPTE, each individually an "Enterprise" and, together, the "Enterprises"); and
- (3) Kiewit Meridiam Partners LLC, a limited liability company formed under the laws of the State of Delaware ("Developer").

The Enterprises and Developer are hereinafter referred to collectively as the "Parties", and "Party" means either the Enterprises (taken together) or Developer.

### RECITALS

#### Whereas:

- (A) The Enterprises and Developer entered into the Project Agreement for the Central 70 Project, dated as of November 21, 2017 (as amended from time to time in accordance with the terms thereof, including by the First Amendment to the Project Agreement, dated December 21, 2017, the "Project Agreement"), in connection with the design, construction, financing, operation and maintenance of a portion of the I-70 East corridor in Greater Denver, Colorado as more fully described in the Project Agreement.
- (B) In accordance with that certain Memorandum of Settlement, dated May 9, 2019, by and among the Enterprises, Developer and the Construction Contractor, the Parties have agreed to make the amendments to the Project Agreement set forth in this Amendment.

Now, therefore, in consideration of their mutual undertakings and agreements hereunder, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties undertake and agree as follows:

#### 1. DEFINITIONS AND INTERPRETATION

- 1.1. Terms used but not defined herein shall have the respective meanings ascribed to such terms in the Project Agreement.
- 1.2. Sections 2 (excluding only Section 2.1.3.a) and 42.2 of the Project Agreement are incorporated by reference as if set forth herein.

#### 2. AMENDMENTS

In accordance with Section 43.1 of the Project Agreement, with effect on and from the Amendment Date, the Project Agreement shall be amended as provided in this Section 2.

##### 2.1. Amendments to Definitions

In Part A of Annex A (Definitions and Abbreviations) of the Project Agreement:

- (i) The definition of "Baseline Substantial Completion Target Date" is amended by deleting it in its entirety and replacing it with the following:  
"Baseline Substantial Completion Target Date" means September 21, 2022.
- (ii) The definition of "Construction Price" is amended by deleting it in its entirety and replacing it with the following:  
"Construction Price" means \$813,185,600.
- (iii) The definition of "Expiry Date" is amended by deleting it in its entirety and replacing it with the following:

**"Expiry Date"** means the 30<sup>th</sup> anniversary of the Milestone Completion Target Date for Milestone 5.

- (iv) The definition of **"Final Acceptance Deadline Date"** is amended by deleting it in its entirety and replacing it with the following:

**"Final Acceptance Deadline Date"** means the date which is 90 Calendar Days after the Substantial Completion Date, as such deadline may be extended from time to time pursuant to:

- a. Section 15.3.1.c.iii, as a result of the occurrence of a Supervening Event; or
- b. a Change documented in a Change Order.

- (v) The definition of **"Longstop Date"** is amended by deleting it in its entirety and replacing it with the following:

**"Longstop Date"** means the date that occurs 585 Calendar Days after the Milestone Completion Target Date for Milestone 5 (for certainty, as the Milestone Completion Target Date for Milestone 5 may be extended from time to time), as such Longstop Date may be extended from time to time pursuant to:

- a. Section 15.3.1.c.iii, as a result of the occurrence of a Supervening Event; or
- b. a Change documented in a Change Order.

- (vi) The definition of **"Milestone 3"** is amended by deleting it in its entirety and replacing it with the following:

**"Milestone 3"** means completion of phases 1 through 5 of the UPRR Crossing to the extent that trains are operating on the phase 4 and 5 structure.

- (vii) The definition of **"Milestone 4"** is amended by deleting it in its entirety and replacing it with the following:

**"Milestone 4"** means:

- a. the Construction Work between Brighton Blvd and Dahlia Street (Station 2000+00 to 2091+00) comprising westbound I-70 and 46th Avenue/Stapleton Drive (north of I-70), excluding:
  - i. the SMA pavement; and
  - ii. the Construction Work for Planning Area 1 and Planning Area 2 of the Cover,
 

but including those portions of the Construction Work for the Cover that are necessary to safely transfer traffic traveling beneath the Cover on to the infrastructure included within Milestone 4, including, for certainty:
  - iii. the Elements of the Cover referred to in paragraphs c. and d. of the definition of Cover O&M Work in this Part A of Annex A (*Definitions and Abbreviations*); and
  - iv. the Elements referred to in paragraph e. of the definition of Cover O&M Work in this Part A of Annex A (*Definitions and Abbreviations*) that are below the protection course; and
- b. the removal of existing I-70 viaduct bridge (Brighton Boulevard to Colorado Boulevard) (E-17-FX).

- (viii) Part A of Annex A is amended by adding the following definition of **"Milestone 5"**:

**"Milestone 5"** means:

- a. the Construction Work west of Brighton Blvd;
- b. the completion of phase 6 of the UPRR Crossing, UPRR Pepsi Lead Crossing and the UPRR York Street Crossing; and
- c. the Construction Work between Brighton Blvd and Dahlia Street (Station 2000+00 to 2091+00) comprising eastbound I-70 and 46th Avenue/Stapleton Drive (south of I-70), excluding:
  - i. the Construction Work of that portion of 46th Avenue/Stapleton Drive (south of I-70) between Columbine Street and Clayton Street;
  - ii. the SMA pavement; and
  - iii. the Construction Work for Planning Area 1 and Planning Area 2 of the Cover,

but including those portions of the Construction Work for the Cover that are necessary to safely transfer traffic traveling beneath the Cover on to the infrastructure included within Milestone 5, including, for certainty:

- iv. the Elements of the Cover referred to in paragraphs c. and d. of the definition of Cover O&M Work in this Part A of Annex A (*Definitions and Abbreviations*); and
- v. the Elements referred to in paragraph e. of the definition of Cover O&M Work in this Part A of Annex A (*Definitions and Abbreviations*) that are below the protection course.

- (ix) Part A of Annex A is amended by adding the following definition of "Milestone 6":

"Milestone 6" means:

- a. the Construction Work consisting of the SMA pavement between Brighton Blvd and Dahlia Street (Station 2000+00 to 2091+00) comprising westbound I-70 and 46th Avenue (north of I-70);
- b. the Construction Work consisting of the SMA pavement between Brighton Blvd and Dahlia Street (Station 2000+00 to 2091+00) comprising eastbound I-70 and 46th Avenue (south of I-70);
- c. the Construction Work for Planning Area 1 and Planning Area 2 of the Cover; and
- d. the Construction Work for the portion of 46th Avenue (south of I-70) between Columbine Street and Clayton Street.

- (x) The definition of "Milestone Completion Target Date" is amended by deleting it in its entirety and replacing it with the following:

"Milestone Completion Target Date" means each of:

- a. for Milestone 1, December 9, 2019;
- b. for Milestone 2, November 10, 2020;
- c. for Milestone 3, October 17, 2020;
- d. for Milestone 4, September 26, 2021;
- e. for Milestone 5, March 25, 2022; and
- f. for Milestone 6, August 20, 2022,

as such dates in respect of each of Milestone 5 and Milestone 6 may be extended from time to time pursuant to:

- g. Section 15.3.1.c.iii, as a result of the occurrence of a Supervening Event, or
  - h. a Change documented in a Change Order.
- (xi) The definition of "Noncompliance Default Event" is amended by deleting it in its entirety and replacing it with the following:
- "Noncompliance Default Event" means the occurrence of any of the following:
- a. during the Construction Period, the cumulative number of Noncompliance Points accrued during:
    - i. any rolling 12 month period equals or exceeds 135; or
    - ii. any rolling 36 month period equals or exceeds 270; or
  - b. during the Operating Period, the cumulative number of Noncompliance Points accrued during:
    - i. any rolling 12 month period equals or exceeds 180; or
    - ii. any rolling 36 month period equals or exceeds 360;
- provided that, for certainty, any Noncompliance Point that is being disputed in good faith by Developer shall be disregarded for purposes of determining whether the Noncompliance Default Event has occurred until such time as it has been Agreed or Determined that the relevant Noncompliance Point was validly assigned; and provided further that any Noncompliance Points assigned in connection with reference #1.68 and reference #1.69 in Table 6A.1 of Schedule 6 shall be disregarded for purposes of determining whether a Noncompliance Default Event has occurred under clause (a) or clause (b) above.
- (xii) The definition of "Payment Milestone" is amended by deleting it in its entirety and replacing it with the following:
- "Payment Milestone" means any of Milestone 1, Milestone 2, Milestone 3, Milestone 4, Milestone 5 or Milestone 6.
- (xiii) The definition of "Payment Month" is amended by deleting it in its entirety and replacing it with the following:
- "Payment Month" means:
- a. each month that commences after the Performance Payment Start Date; and
  - b. the month during which Performance Payment Start Date occurs.
- (xiv) Part A of Annex A is amended by adding the following definition of "Performance Payment Start Date" in alphabetical order within such Part A:
- "Performance Payment Start Date" means the date that is the later to occur of:
- a. the Milestone Completion Target Date for Milestone 5; and
  - b. the Milestone Completion Date for Milestone 5.
- (xv) Part A of Annex A is amended by adding the following definition of "Substantial Completion Deadline Date" in alphabetical order within such Part A:
- "Substantial Completion Deadline Date" means the date that occurs 360 Calendar Days after the Milestone Completion Date with respect to Milestone 5, as such Substantial Completion Deadline Date may be extended from time to time pursuant to:
- a. Section 15.3.1.c.iii, as a result of the occurrence of a Supervening Event; or

- b. a Change documented in a Change Order.

## 2.2. Amendments to Section 15.3 (Resolution)

2.2.1. Section 15.3.1.c.iii of the Project Agreement is amended by deleting it in its entirety and replacing it with the following:

- iii. with respect to any such Relief Event or Compensation Event that affects or will affect the Critical Path:
  - A. if such Relief Event or Compensation Event occurred prior to the Milestone Completion Target Date for either Milestone 5 or Milestone 6, then, as applicable, the Milestone Completion Target Date for Milestone 5 and/or Milestone 6 shall be extended by the number of Calendar Days equal to the applicable Milestone Delay Period;
  - B. if such Relief Event or Compensation Event occurred after the Milestone Completion Target Date for Milestone 5 but prior to the Milestone Completion Date for Milestone 5, then the Longstop Date shall be extended by the number of Calendar Days equal to the Milestone Delay Period;
  - C. if such Relief Event or Compensation Event occurred after the Milestone Completion Date for Milestone 5 but prior to the Substantial Completion Date, then the Substantial Completion Deadline Date shall be extended by the number of Calendar Days equal to the Schedule Delay Period;
  - D. if such Relief Event or Compensation Event occurred prior to the Baseline Substantial Completion Date, then the Baseline Substantial Completion Date shall be extended by the number of Calendar Days equal to the Schedule Delay Period; and
  - E. if such Relief Event or Compensation Event occurred after the Substantial Completion Date but prior to the Final Acceptance Date, then the Final Acceptance Deadline Date shall be extended by the number of Calendar Days equal to the Schedule Delay Period.

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

2.3.1. Developer Default number (5) in Section 32.1.1 of the Project Agreement is amended in the column titled "Developer Default" in the table appearing in such Section by deleting it in its entirety and replacing it with the following:

- (5) Either (a) Milestone Completion with respect to Milestone 5 does not occur on or prior to the Longstop Date or (b) the Substantial Completion Date does not occur on or prior to the Substantial Completion Deadline Date.

## 2.4. Amendments to Schedule 3

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

- (c) subject only to any incomplete Milestone Completion Punch List Items in respect of the relevant Payment Milestone which are permitted to be completed after the relevant Milestone Completion Date, Developer shall have completed the Construction Work related to the relevant Payment Milestone in accordance with this Agreement including:
  - (i) the repair, replacement or correction and full remediation of all Defects and the remediation of all Nonconforming Work pursuant to Section 6.5 of Schedule 8 (Project Administration); and
  - (ii) any such Construction Work related to Local Agency Roadways, including such that:

- (iii) in the case of all Payment Milestones, the infrastructure constituting the relevant Payment Milestone is in a condition that can be operated for safe vehicular travel in all lanes and at all points of entry and exit; and
- (iv) in the case of Milestone 4, Milestone 5 and Milestone 6, the traffic shall have been properly transferred on to the infrastructure constituting such Payment Milestone pursuant to Schedule 10 (Design and Construction Requirements);

## 2.5. Amendments to Schedule 4

2.5.1. The title to Part 2 of Schedule 4 of the Project Agreement is amended by renaming such section "**Part 2: Performance Payments.**"

2.5.2. Section 1 of Part 2 of Schedule 4 of the Project Agreement is amended by deleting it in its entirety and replacing it with the following:

### 1. Performance Payments

The Enterprises shall pay Performance Payments to Developer commencing on the Performance Payment Start Date, as calculated in accordance with Part 2 of Schedule 6 (Performance Mechanism).

2.5.3. Section 2.1 of Part 2 of Schedule 4 of the Project Agreement is amended by deleting it in its entirety and replacing it with the following:

2.1 No later than the tenth Working Day in each Payment Month (other than the First Payment Month if the Performance Payment Start Date occurs after the tenth Working Day of such month), Developer shall submit a payment request for the Performance Payment payable in respect of the Payment Month in which such payment request is submitted, together with:

- (a) through the Substantial Completion Date, a Monthly Deductions Report in accordance with Section 2 of Part 1 of Schedule 4; or
- (b) during the Operating Period, a Monthly Deductions Report in accordance with Section 3 of this Part 2.

2.5.4. Section 2.2 of Part 2 of Schedule 4 of the Project Agreement is amended by deleting it in its entirety and replacing it with the following:

2.2 If the Performance Payment Start Date occurs after the tenth Working Day of the First Payment Month, Developer shall submit a separate Payment Request for the Performance Payment payable in respect of the First Payment Month at the same time as, pursuant to Section 2.1 of this Part 2, it submits a Payment Request for the Performance Payment payable in respect of the second Payment Month.

2.5.5. Section 2.3 of Part 2 of Schedule 4 of the Project Agreement is amended by deleting it in its entirety and replacing it with the following:

2.3 Each Payment Request shall set out, as applicable:

- (a) the amount of the Performance Payment payable in respect of the relevant Payment Month;
- (b) the calculation of the amount of the Operations Goal Deduction in respect of the relevant Payment Month as calculated in accordance with Section 1.2(d) of Part 2 of Schedule 6 (Performance Mechanism);
- (c) the Agreed or Determined amount of any Monthly Noncompliance Deductions, Construction Closure Deductions, and/or Operating Period Closure Deductions that accrued in any month prior to the relevant Payment Month which have not been reflected in any prior Payment Request (including as a result of the accrual or amount thereof having been in dispute);

- (d) any amount required to be reflected in such Payment Request pursuant to the proviso to Section 2.4 of Part 1 of this Schedule 4;
- (e) if such Payment Request is in respect of the first Payment Month following the Substantial Completion Date and the Substantial Completion Deduction Amount exceeded the Substantial Completion Milestone Payment, an amount equal to such excess, provided that each Payment Request submitted after such Payment Request shall include any portion of such amount that has not been taken into account in a prior Payment Request;
- (f) any other amounts due under this Agreement from Developer to the Enterprises or from the Enterprises to Developer and not previously included in a Payment Request or Milestone Payment Request (including, if applicable, any amount payable by the Enterprises to the Developer pursuant to Section 1.3.1.c of Schedule 15 (Federal and State Requirements));
- (g) any adjustments to reflect over-payments and/or under-payments (each such adjustment stated separately) of any amount due prior to the relevant Payment Month (for which adjustment has not already been made);
- (h) any interest payable by the Enterprises or Developer in respect of any amount that previously became payable to, respectively, Developer or the Enterprises and not previously included in a Payment Request or Milestone Payment Request; and
- (i) the net amount owing to Developer by the Enterprises or by Developer to the Enterprises in respect of the relevant Payment Month.

**2.6. Amendments to Schedule 5**

2.6.1. Section 1 of Schedule 5 of the Project Agreement is amended by deleting it in its entirety and replacing it with the following:

- 1. The table in this Section 1 sets out the amount (each a "Milestone Payment") payable by the Enterprises in respect of the achievement of each Payment Milestone and Substantial Completion, subject to the provisions of this Schedule 5. For certainty, the descriptions of the Payment Milestones in the table below are for reference only; the full definitions of each Payment Milestone are set out in Part A of Annex A (Definitions and Abbreviations) to the Project Agreement and the conditions to achievement of each Payment Milestone and Substantial Completion are set out in, respectively, Parts 4 and 5 of Schedule 3 (Commencement and Completion Mechanics).

Milestone Payment Table

<b>Event</b>	<b>Milestone Payment</b>
Completion of Milestone 1 (Sand Creek Bridge to Chambers Road)	\$50,000,000
Completion of Milestone 2 (Dahlia Street to Sand Creek Bridge)	\$95,000,000
Completion of Milestone 3 (UPRR Crossing)	\$52,000,000
Completion of Milestone 4 (Removal of I-70 viaduct)	\$52,000,000
Completion of Milestone 5 (EB I-70 Brighton Boulevard to Dahlia Street)	\$53,400,000

Event	Milestone Payment
Completion of Milestone 6 (SMA pavement and the Cover)	\$3,000,000
Substantial Completion	\$13,600,000
<b>TOTAL</b>	<b>\$319,000,000</b>

**2.7. Amendments to Schedule 6**

2.7.1. Part 2 of Schedule 6 of the Project Agreement is amended by deleting it in its entirety and replacing it with the following:

**1. Monthly Performance Payments**

**1.1 Monthly Performance Payments Prior to Substantial Completion**

The Performance Payment ("PP") payable in respect of any Payment Month (m) commencing prior to the Substantial Completion Date shall be calculated in accordance with the following formula:

$$PP_m = \text{MaxPP}_m$$

Where:

$\text{MaxPP}_m$  = the Maximum Performance Payment in respect of Payment Month (m), which shall be calculated in accordance with the following formula:

$$\text{MaxPP}_m = \left( \frac{d_m}{d_y} \right) \times \text{MaxPP}_y$$

Where:

(i)  $d_m$  = the number of Calendar Days in Payment Month (m) from and including the first day of Payment Month (m) (or, in the case of the First Payment Month, from and excluding the Performance Payment Start Date) to and including the earlier of the final day of Payment Month (m) or the Substantial Completion Date (or to and excluding the Termination Date, if earlier than either);

(ii)  $d_y$  = the number of Calendar Days in Contract Year (y); and

(iii)  $\text{MaxPP}_y$  = the amount of the Maximum Performance Payment calculated in accordance with Section 2 of this Part 2 in respect of Contract Year (y).

**1.2 Monthly Performance Payments During the Operating Period**

The Performance Payment ("PP") payable in respect of any Payment Month (m) during the Operating Period shall be calculated in accordance with the following formula:

$$PP_m = \text{MaxPP}_m - \text{MPD}_{m-1} - \text{OGD}_m$$

Where:

(a)  $PP_m$  = 0, if  $\text{MPD}_{m-1} \geq \text{MaxPP}_m$ ;

(b)  $\text{MaxPP}_m$  = the Maximum Performance Payment in respect of Payment Month (m), which shall be calculated in accordance with the following formula:

$$\text{MaxPP}_m = \left( \frac{d_m}{d_y} \right) \times \text{MaxPP}_y$$

Where:

- (i)  $d_m$  = the number of Calendar Days in Payment Month (m) from and including the first day of Payment Month (m) (or, in the case of the first Payment Month following Substantial Completion, from and excluding the Substantial Completion Date) to and including the final day of Payment Month (m) (or to and excluding the Termination Date, if earlier);
- (ii)  $d_y$  = the number of Calendar Days in Contract Year (y); and
- (iii)  $\text{MaxPP}_y$  = the amount of the Maximum Performance Payment calculated in accordance with Section 2 of this Part 2 in respect of Contract Year (y);
- (c)  $\text{MPD}_{m-1}$  = the Monthly Performance Deduction for month (m-1) (for clarity, month (m-1) in respect of Payment Month (m) is defined as the OP Deduction Month in respect of Payment Month (m)) calculated in accordance with Section 1 of Part 3 of this Schedule 6, provided that:
  - (i) for certainty,  $\text{MPD}_{m-1} = 0$  where Payment Month (m) is the first Payment Month following Substantial Completion; and
  - (ii) where Payment Month (m) is the Final Payment Month,  $\text{MPD}_{m-1}$  shall equal the aggregate of the Monthly Performance Deduction for each of (A) the month immediately preceding the Final Payment Month and (B) the Final Payment Month (provided that, for purposes of calculating the Monthly Performance Deduction for the Final Payment Month, references in Part 3 of this Schedule 6 to OP Deduction Month (m) shall be deemed to be references to the Final Payment Month); and
- (d)  $\text{OGD}_m$  = the "Operations Goal Deduction" in respect of Payment Month (m) which shall be calculated as follows:

$$\text{OGD}_m = \text{ROMESBGD}_m + \text{RWDBEGD}_m + \text{RWOJTGD}_m$$

Where:

- (i)  $\text{ROMESBGD}_m$  =
  - (A) in respect of each Payment Month (m) in which the first Payment Request is submitted after the amount of the five year Routine O&M Work ESB Goal deduction has been Agreed or Determined in respect of the previous five Contract Year period in accordance with Section 1.3.2.a of Schedule 15 (*Federal and State Requirements*), such amount; and
  - (B) subject to the proviso to this Section 1.2(d), in respect of each other Payment Month (m), nil;
- (ii)  $\text{RWDBEGD}_m$  =

- (A) in respect of each Payment Month (m) in which the first Payment Request is submitted after the amount of the five year Renewal Work DBE Goal deduction has been Agreed or Determined in respect of the previous five Contract Year period in accordance with Section 1.3.2.b of Schedule 15 (*Federal and State Requirements*), such amount; and
  - (B) subject to the proviso to this Section 1.2(d), in respect of each other Payment Month (m), nil; and
- (iii)  $RWOJTG D_m =$
- (A) in respect of each Payment Month (m) in which the first Payment Request is submitted after the amount of the annual Renewal Work OJT Goal deduction has been Agreed or Determined in respect of the previous Contract Year in accordance with Section 1.3.2.c of Schedule 15 (*Federal and State Requirements*), such amount; and
  - (B) subject to the proviso to this Section 1.2(d), in respect of each other Payment Month (m), nil.

provided that, if  $OGD_m$  in any Payment Month (m) exceeds the amount of the Performance Payment otherwise payable in respect of such Payment Month (for certainty, determined as  $MaxPP_m - MPD_{m-1}$ , taking into account Section 1.2(a) of this Part 2), such excess shall be included by Developer in the next Payment Request submitted by it until the full amount of the deductions Agreed or Determined in accordance with Sections 1.3.2.a, b and c of Schedule 15 (*Federal and State Requirements*) have been deducted from Performance Payments.

**2. Maximum Performance Payment in each Payment Year**

The Maximum Performance Payment ("MaxPP") in respect of any Contract Year (y) shall be calculated in accordance with the following formula:

$$MaxPP_y = (Base_{CPP} \times (1.02)^n) + (Base_{OMRP} \times \left(\frac{CPI_y}{CPI_{2017}}\right))$$

Where:

- (a)  $Base_{CPP}$  = the Base Capital Performance Payment in July 1, 2017 Dollars set out in the table in Section 2(f) of this Part 2;
- (b)  $Base_{OMRP}$  = the Base OMR Payment in July 1, 2017 Dollars set out in the table in Section 2(f) of this Part 2;
- (c)  $CPI_y$  = CPI as of July 1 of Contract Year (y);
- (d)  $CPI_{2017}$  = CPI as of July 1, 2017;
- (e) n = the number of Contract Years from and including the Contract Year commencing on July 1, 2017 to and excluding Contract Year (y); and

(f)

Base Capital Performance Payment (in nominal dollars as of July 1, 2017)	\$27,946,550
Base OMR Payment (in nominal dollars as of July 1, 2017)	\$7,115,042

2.7.2. Table 6A.1 of Schedule 6 of the Project Agreement is amended by adding the following Noncompliance Events:

Ref	Activity Type	Heading	Noncompliance Event – Failure to:	Cure Period (Calendar Days, except where specified otherwise)	Grace Period (Calendar Days)	Number of Points
1.68	Project Delivery	Milestone Completion with respect to Milestone 6	Achieve Milestone Completion with respect to Milestone 6 by the Milestone Completion Target Date with respect to Milestone 6	1	N/A	1
1.69	Project Delivery	Substantial Completion	Achieve Substantial Completion by the Baseline Substantial Completion Date	1	N/A	10

2.8. **Amendments to Schedule 11**

2.8.1. Reference #18 (applicable to reference #18.1 to 18.18) contained in Appendix A-1 of Schedule 11 is amended by deleting it and replacing it with the following:

18. COVER (Note. The requirements in REF 18.1 to 18.18 of Section 18 (Cover) of Appendix A-2 (Performance and Measurement Criteria After Construction) shall apply to this Section 18 (Cover) of this Appendix A-1 (Performance and Measurement Criteria During Construction) at completion of Milestone 4.)

2.8.2. The portions Appendix D of Schedule 11 applicable to the New Structure Nos. identified below are deleted.

Existing Structure No.	New Structure No.	Structure Location and Description	Operations and Maintenance Responsibility (O&M Period During Construction)	Operations and Maintenance Responsibility (Operating Period)
N/A	MISC-E-17-IT	Sanitary Sewer Bridge over I-70 (at York Street)	Developer (at completion of Milestone 4)	Developer
N/A	MISC-E-17-IU	Storm Sewer Bridge over I-70 (at York Street)	Developer (at completion of Milestone 4)	Developer

2.8.3. The portions Appendix D of Schedule 11 applicable to the New Structure Nos. identified below are amended by deleting each row and replacing it with the following. For certainty, those portions of Appendix D of Schedule 11 applicable to structures not referenced below shall remain unchanged.

Existing Structure No.	New Structure No.	Structure Location and Description	Operations and Maintenance Responsibility (O&M Period During Construction)	Operations and Maintenance Responsibility (Operating Period)
N/A	E-17-AEY	York Street over I-70	Developer (as per <u>Section 2.2.2</u> of this <u>Schedule 11</u> )	Developer (as per <u>Section 3.2.2</u> of this <u>Schedule 11</u> )
N/A	E-17-AEZ	Josephine Street over I-70	Developer (as per <u>Section 2.2.2</u> of this <u>Schedule 11</u> )	Developer (as per <u>Section 3.2.2</u> of this <u>Schedule 11</u> )
N/A	E-17-AEL	Cover (Columbine to Clayton)	Developer (as per <u>Section 2.2.2</u> of this <u>Schedule 11</u> )	Developer (as per <u>Section 3.2.2</u> and <u>Section 3.2.3</u> of this <u>Schedule 11</u> )
N/A	E-17-AEN	Fillmore Street over I-70	Developer (as per <u>Section 2.2.2</u> of this <u>Schedule 11</u> )	Developer (as per <u>Section 3.2.2</u> of this <u>Schedule 11</u> )
N/A	E-17-AEO	Steele Street over I-70	Developer (as per <u>Section 2.2.2</u> of this <u>Schedule 11</u> )	Developer
N/A	E-17-AEP	Cook Street over I-70	Developer (as per <u>Section 2.2.2</u> of this <u>Schedule 11</u> )	Developer (as per <u>Section 3.2.2</u> of this <u>Schedule 11</u> )
N/A	E-17-AFA	BNSF Market Lead over I-70	Developer (as per <u>Section 2.2.2</u> of this <u>Schedule 11</u> )	Developer (excluding ballast, track, and railroad signals)
N/A	E-17-AFC	Monroe Street over I-70	Developer (as per <u>Section 2.2.2</u> of this <u>Schedule 11</u> )	Developer (as per <u>Section 3.2.2</u> of this <u>Schedule 11</u> )

**3. REPLACEMENT OF FINANCIAL MODEL**

The Financial Model attached in digital format as Exhibit A to this Amendment is hereby Approved by the Enterprises and, in accordance with Section 28.6 of the Project Agreement, is the Financial Model for the purposes of the Project Agreement until further amendment pursuant to Section 28 or 29 of the Project Agreement.

**4. DOCUMENTS OTHERWISE UNCHANGED**

Except as herein provided, the Project Agreement shall remain unchanged and in full force and effect in accordance with its terms. As of the Amendment Date, each reference to the Project Agreement, and references in the Project Agreement to such agreement itself, shall reference the

Project Agreement as amended hereby and as the same may be further amended, modified or supplemented from time to time.

## **5. CHOICE OF LAW**

5.1. This Amendment shall be governed by and construed in accordance with the laws of the State of Colorado, other than any provision thereof that permits or requires the application of the laws of another jurisdiction, and regardless of any other jurisdiction's choice of law rules. Any provision incorporated herein by reference which purports to negate this provision, in whole or in part, shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Amendment, to the extent capable of execution.

5.1.1. Sections 37 and 38 of the Project Agreement are incorporated by reference as if set forth herein.

## **6. BINDING EFFECT; SUCCESSORS AND ASSIGNS**

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

## **7. SEVERABILITY**

7.1. Notwithstanding Section 2.4.1 of the Project Agreement (as incorporated herein pursuant to Section 1.23 of this Amendment), if any provision (or part of any provision) of this Amendment is ruled invalid (including due to Change in Law) by a court having proper jurisdiction, then the Parties shall:

(i) promptly meet and negotiate a substitute for such provision or part thereof which shall, to the greatest extent legally permissible, effect the original intent of the Parties; and

(ii) if necessary or desirable, apply to the court which declared such invalidity for an interpretation of the invalidated provision (or part thereof) to guide the negotiations.

7.2. If any provision (or part of any provision) of this Amendment shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such provision (or part thereof) shall not affect the validity, legality and enforceability of any other provision of (or the other part of such provision) or any other documents referred to in this Amendment, and this Amendment shall be construed as if such invalid, illegal, or unenforceable provision (or part thereof) had never been contained herein.

## **8. COSTS AND EXPENSES OF THE PARTIES**

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

## **9. COUNTERPARTS**

This Amendment may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by each of the Parties and, to the extent required by Law, the Colorado State Controller or its delegate, shall constitute a full and original instrument for all purposes.

*[The remainder of this page left intentionally blank; signature page immediately follows.]*



Central 70 Project: Second Amendment to the Project Agreement

**IN WITNESS WHEREOF**, the Parties hereto have executed this Amendment as of the date it is approved and signed by the Colorado State Controller or its designee below.

**KIEWIT MERIDIAM PARTNERS LLC**

By:   
\_\_\_\_\_  
Paulo Andre  
Project Manager

**COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE**

By: \_\_\_\_\_  
Nicholas Farber  
Acting Director

**COLORADO BRIDGE ENTERPRISE**

By: \_\_\_\_\_  
Joshua Laipply, P.E.  
Chief Engineer

**APPROVED:**  
**Philip J. Weiser, Attorney General**

By: \_\_\_\_\_  
Andrew J. Gomez  
Assistant Attorney General

**ALL AGREEMENTS REQUIRE APPROVAL BY THE STATE CONTROLLER**

C.R.S. § 24-30-202 requires the State Controller to approve all State Agreements. This Agreement is not valid until signed and dated below by the State Controller or its delegate. Developer is not authorized to begin performance until such time. If Developer begins performing prior thereto, the State of Colorado is not obligated to pay Developer for such performance and/or for any goods and/or services provided hereunder.

<p><b>STATE CONTROLLER</b> <b>Robert Jaros, CPA, MBA, JD</b></p> <p>By: _____</p> <p>Date: _____, 2019</p>
----------------------------------------------------------------------------------------------------------------



IN WITNESS WHEREOF, the Parties hereto have executed this Amendment as of the date it is approved and signed by the Colorado State Controller or its designee below.

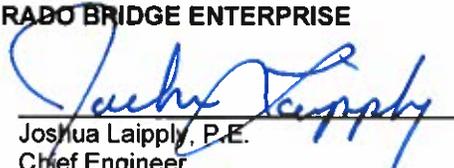
**KIEWIT MERIDIAM PARTNERS LLC**

By: \_\_\_\_\_  
Paulo Andre  
Project Manager

**COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE**

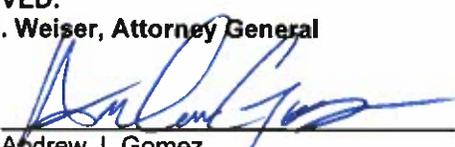
By:   
Nicholas Farber  
Acting Director

**COLORADO BRIDGE ENTERPRISE**

By:   
Joshua Laipply, P.E.  
Chief Engineer

**APPROVED:**

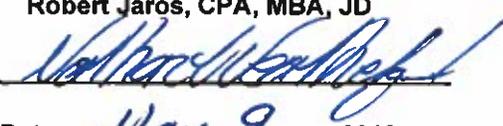
Philip J. Weiser, Attorney General

By:   
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**STATE CONTROLLER**  
Robert Jaros, CPA, MBA, JD

By:   
Date: May 9, 2019



**Exhibit A**  
**Financial Model**

Attached in digital format.



**Exhibit B**  
**CC Amendment**