

Central 70 Project: Third Amendment to the Project Agreement

Execution Version

This Third 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, and the Second Amendment to the Project Agreement, dated May 9, 2019, the "Project Agreement"), in connection with the design, construction, financing, operation and maintenance of a portion of the I-70 East corridor in Greater Denver, Colorado as more fully described in the Project Agreement.
- (B) 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 "Closure Default Event" is amended by deleting it in its entirety and replacing it with the following:

"Closure Default Event" means the occurrence of any of the following:

- a. [*Reserved.*];
- b. during the Operating Period, the cumulative amount of Operating Period Closure Deductions accrued during:
 - i. any 1 month period equals or exceeds \$600,000 (indexed); or

- ii. any rolling 4 month period equals or exceeds \$800,000 (indexed);
or
- iii. any rolling 12 month period equals or exceeds \$1,000,000 (indexed),

provided that, for certainty, any Operating Period Closure Deduction that is being disputed in good faith by Developer shall be disregarded for purposes of determining whether a Closure Default Event has occurred until such time as it has been Agreed or Determined that the relevant deduction was valid.

- (ii) Part A of Annex A is amended by adding the following definition of "Executive Oversight Threshold":

"Executive Oversight Threshold" means the occurrence of any of the following during the Construction Period:

- a. the cumulative amount of Construction Closure Deductions accrued during any rolling 12 month period equals or exceeds \$400,000 (indexed);
or
- b. 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 Construction Closure Deduction or Noncompliance Point that is being disputed in good faith by Developer shall be disregarded for purposes of determining whether the Executive Oversight Threshold has been met or exceeded until such time as it has been Agreed or Determined that the relevant Construction Closure Deduction or Noncompliance Point was validly assigned.

- (iii) The definition of "Increased Oversight Threshold" is amended by deleting it in its entirety and replacing it with the following:

"Increased Oversight Threshold" 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 225;
 - ii. any rolling 36 month period equals or exceeds 450; or
- b. during the Operating Period, the cumulative number of Noncompliance Points accrued during:
 - i. any rolling 12 month period equals or exceeds 120; or
 - ii. any rolling 36 month period equals or exceeds 240;

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 Increased Oversight Threshold has been met or exceeded until such time as it has been Agreed or Determined that the relevant Noncompliance Point was validly assigned.

- (iv) The definition of "Noncompliance Default Event" is amended by deleting it in its entirety and replacing it with the following:

"Noncompliance Default Event" means the occurrence of any of the following:

- a. during the Construction Period, the cumulative number of Noncompliance Points accrued during:
 - i. any rolling 12 month period equals or exceeds 270; or

- ii. any rolling 36 month period equals or exceeds 540; or
- b. during the Operating Period, the cumulative number of Noncompliance Points accrued during:
 - i. any rolling 12 month period equals or exceeds 180; or
 - ii. any rolling 36 month period equals or exceeds 360;

provided that, for certainty, any Noncompliance Point that is being disputed in good faith by Developer shall be disregarded for purposes of determining whether the Noncompliance Default Event has occurred until such time as it has been Agreed or Determined that the relevant Noncompliance Point was validly assigned; and provided further that any Noncompliance Points assigned in connection with reference #1.68 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.

2.2. Amendments to Section 21 (Inspection and Audits)

Section 21 of the Project Agreement is amended by adding the following Section 21.4:

21.4 Executive Oversight

21.4.1 The Enterprises may, in their discretion, at any time when the Executive Oversight Threshold has been met or exceeded, without prejudice to any other right or remedy available to them, and without limiting Developer's other obligations under this Agreement (including obligations to remedy Defects and to otherwise perform in accordance with the requirements set out in this Agreement), by notice to Developer, require Developer to promptly prepare and submit for Approval a remedial plan to, as applicable:

- a. remedy such Defects or failure and prevent its recurrence; or
- b. improve performance so as to address the causes of the Executive Oversight Threshold being met or exceeded,

and, following Approval of such plan, Developer shall be required to comply with such plan.

21.4.2. At any time when the Executive Oversight Threshold has been met or exceeded, the causes of the Executive Oversight Threshold being met or exceeded shall be added to the agenda for discussion at the regularly scheduled meetings between executives of the Enterprises, the Department, Developer and the Construction Contractor.

2.3. Amendments to Schedule 4

Sections 2.2(i) and 2.2(k) of Part 1 of Schedule 4 of the Project Agreement are amended by deleting them in their entirety and replacing them with the following:

- (j) sufficient information to evidence whether:
 - (i) either of the Noncompliance Default Events specified in paragraph a.i or a.ii of the definition thereof in Part A of Annex A (Definitions and Abbreviations) to the Project Agreement;
 - (ii) either of the Increased Oversight Thresholds specified in paragraph a.i or a.ii of the definition thereof in Part A of Annex A (Definitions and Abbreviations) to the Project Agreement; and/or
 - (iii) either of the Executive Oversight Thresholds specified in paragraph b.i or b.ii of the definition thereof in Part A of Annex A (Definitions and Abbreviations) to the Project Agreement,

has occurred, which information shall include the cumulative number of Noncompliance Points accrued during each of the 12 month period and the 36 month period ending at the end of the CP Deduction Month; and

- (k) sufficient information to evidence whether the Executive Oversight Thresholds specified in paragraph a. of the definition thereof in Part A of Annex A (Definitions and Abbreviations) to the Project Agreement has occurred, which information shall include the cumulative amount of Construction Closure Deductions accrued during the 12 month period ending at the end of the CP Deduction Month.

2.4. Amendments to Schedule 6

Section 2.2 of Part 6 of Schedule 6 of the Project Agreement is amended by deleting it in its entirety and replacing it with the following:

2.2 The database shall also record on a real-time basis:

- (a) the cumulative number of Noncompliance Points that have accrued and cumulative number of relevant Noncompliance Events that have occurred in such a manner as to allow the Parties to establish at any time whether any Noncompliance Default Event has occurred or any Increased Oversight Threshold or Executive Oversight Threshold has been met or exceeded; and
- (b) the cumulative amount of Construction Closure Deductions and Operating Period Closure Deductions that have accrued in such a manner as to allow the Parties to establish at any time whether any Closure Default Event has occurred or any Executive Oversight Threshold has been met or exceeded.

3. 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.

4. CHOICE OF LAW

4.1. 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.

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

5. 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.

6. SEVERABILITY

6.1. Notwithstanding Section 2.4.1 of the Project Agreement (as incorporated herein pursuant to Section 1.2 of this Amendment), if any provision (or part of any provision) of this Amendment is ruled invalid (including due to Change in Law) by a court having proper jurisdiction, then the Parties shall:

- (i) promptly meet and negotiate a substitute for such provision or part thereof which shall, to the greatest extent legally permissible, effect the original intent of the Parties; and
- (ii) if necessary or desirable, apply to the court which declared such invalidity for an interpretation of the invalidated provision (or part thereof) to guide the negotiations.

6.2. 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.

7. 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.

8. COUNTERPARTS

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

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

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


KIEWIT MERIDIAM PARTNERS LLC

By: 
Paulo Andre
Project Manager

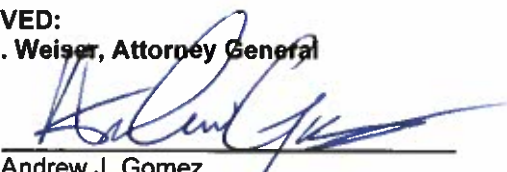
COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE

By: 
Nicholas Farber
Director

COLORADO BRIDGE ENTERPRISE


By:  3 Dec 2019
Stephen Hareison, 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.

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD
By: 
Date: December 11th, 2019