

This First 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 (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) It is a condition precedent to Financial Close under the Project Agreement that the Parties execute a Project Agreement Amendment adjusting certain terms of the Project Agreement, and on such basis the Parties have agreed to the terms of this Amendment for purposes of satisfying such condition and for making such other amendments as they have mutually agreed.

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 Financial Close Date the Project Agreement shall be amended as provided in this Section 2.

2.1. Amendments to Representations and Warranties

Section 5.1.2 of the Project Agreement is amended by deleting it in its entirety and replacing it with the following:

"5.1.2. Each Enterprise hereby represents and warrants to Developer that each representation and warranty made by it and set out in Part B and Part C of Schedule 2 (*Representations and Warranties*) is true and correct as of the Agreement Date."

2.2. Amendments to Governmental Approvals and Permits

Section 8.4.1 of the Project Agreement is amended by deleting it in its entirety and replacing it with the following:

"8.4.1 The Department Provided Approvals were obtained prior to the Agreement Date by CDOT, with the exception of the Central 70 Reevaluation #2, which will be obtained by CDOT on or prior to the date on which the Developer satisfies the NTP2 Conditions, and, subject to

Section 8.4.3.b, shall be maintained by the Enterprises, acting in coordination with CDOT, at their cost and expense (excluding any cost or expense borne by Developer pursuant to Section 8.4.3.b.)”

2.3. Amendments to Definitions

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

- a. The definition of “Base Case Equity IRR” is amended by deleting it in its entirety and replacing it with the following:

““Base Case Equity IRR” means 9.59%.”

- b. The definition of “Base Financial Model” is amended by deleting it in its entirety and replacing it with the following:

““Base Financial Model” means the financial model generated and computed by spreadsheet software as submitted in the Developer’s Proposal and subsequently replaced in this Agreement, pursuant to the Project Agreement Amendment, a copy of which replacement model is attached as Schedule 26 (Base Financial Model).”

- c. 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 March 25, 2022.”

- d. 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; and
- d. for Milestone 4, September 26, 2021.”

- e. The definition of “Project Agreement Amendment” is amended by deleting it in its entirety and replacing it with the following:

““Project Agreement Amendment” means the First Amendment to the Project Agreement dated as of December 21, 2017 among the Enterprises and Developer.”

2.4. Amendments to Base Capital Performance Payment

Section 2(f) of Part 2 of Schedule 6 (Performance Mechanism) is amended by deleting it in its entirety and replacing it with the following:

“(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”

2.5. Amendments to Department Provided Environmental Approvals

Section 7 and Table 17-1 of Schedule 17 (Environmental Requirements) are amended by deleting them in their entirety and replacing them with the following:

“7. DEPARTMENT PROVIDED ENVIRONMENTAL APPROVALS

The Environmental Approvals listed in Table 17-1 were or, as applicable, will be obtained by the Department pursuant to Section 8.4.1 of the Project Agreement. These represent a portion of the Department Provided Approvals. Subject to Section 8.4 of the Project Agreement, Law, the terms of the applicable Department Provided Approvals and, with respect to the Programmatic Agreement only, Section 12.1.5 of this Schedule 17, the Department hereby delegates to the Developer responsibility to perform all conditions, commitments and requirements contained in or arising out of these and all other Department Provided Approvals.

Table 17-1 Department Provided Approvals

Environmental Approvals	Permitting Agency/Approval Agency
Record of Decision and Section 4(f) Evaluation	Federal Highway Administration (“FHWA”)
Central 70 Reevaluation #1, dated September 18, 2017	FHWA
Central 70 Reevaluation #2, to be obtained pursuant to Section 8.4.1 of the Project Agreement	FHWA
Programmatic Agreement	State Historic Preservation Office (“SHPO”), CDOT and FHWA”

2.6. Amendments to Base Financial Model

The Base Financial Model attached in digital format to Schedule 26 (*Base Financial Model*) to the Project Agreement is deleted in its entirety and replaced with the financial model attached in digital format as Exhibit A to this Amendment.

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 1.23 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:

- a. 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
- b. 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.

[remainder of page left intentionally blank; signature page 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 their designee below.

KIEWIT MERIDIAM PARTNERS LLC

By: 
John Dionisio
Authorized Person

COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE

By: _____
David I. Spector
Director

COLORADO BRIDGE ENTERPRISE

By: _____
Joshua Laipply, P.E.
Chief Engineer

APPROVED:
Cynthia H. Coffman, Attorney General

By: _____
Brent E. Butzin
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>STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By: _____</p> <p>Date: _____</p>
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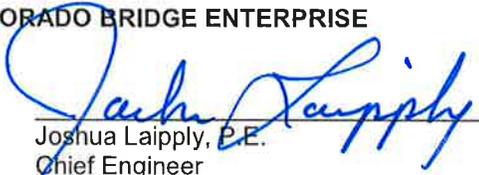
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STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By:  _____

Date: 12/21/17

Exhibit A
Updated Base Financial Model

Attached in digital format.