

Central 70 – Documents for HPTE and Bridge Enterprise

1. KMP PowerPoint slides
2. CDOT PowerPoint slides
3. Short form summary
4. TC/HPTE memo and long form summary
5. HPTE Resolution #252 Approving First Amendment to the Central 70 IAA
6. First Amendment to the Central 70 IAA (word doc)
7. HPTE Resolution #253 Approving the Central 70 Project Agreement & Related Agreements
8. [Central 70 Project Agreement \(Main Body\) \(PDF\)](#)
9. [Schedules 1-9 and 11-29 to the Project Agreement \(PDF\)](#)
10. [Schedule 10 \(Technical Requirements\) to Project Agreement \(PDF\)](#)
11. [Construction Contractor Direct Agreement \(PDF\)](#)
12. [O&M Contractor Direct Agreement \(PDF\)](#)
13. [Financial Model Escrow Agreement \(PDF\)](#)

Full versions of items 1-7 are available in the HPTE Board packet.

For items 8-13 please click on the title above for a link to the materials.



Central 70

An Introduction to Kiewit-Meridiam Partners (KMP)

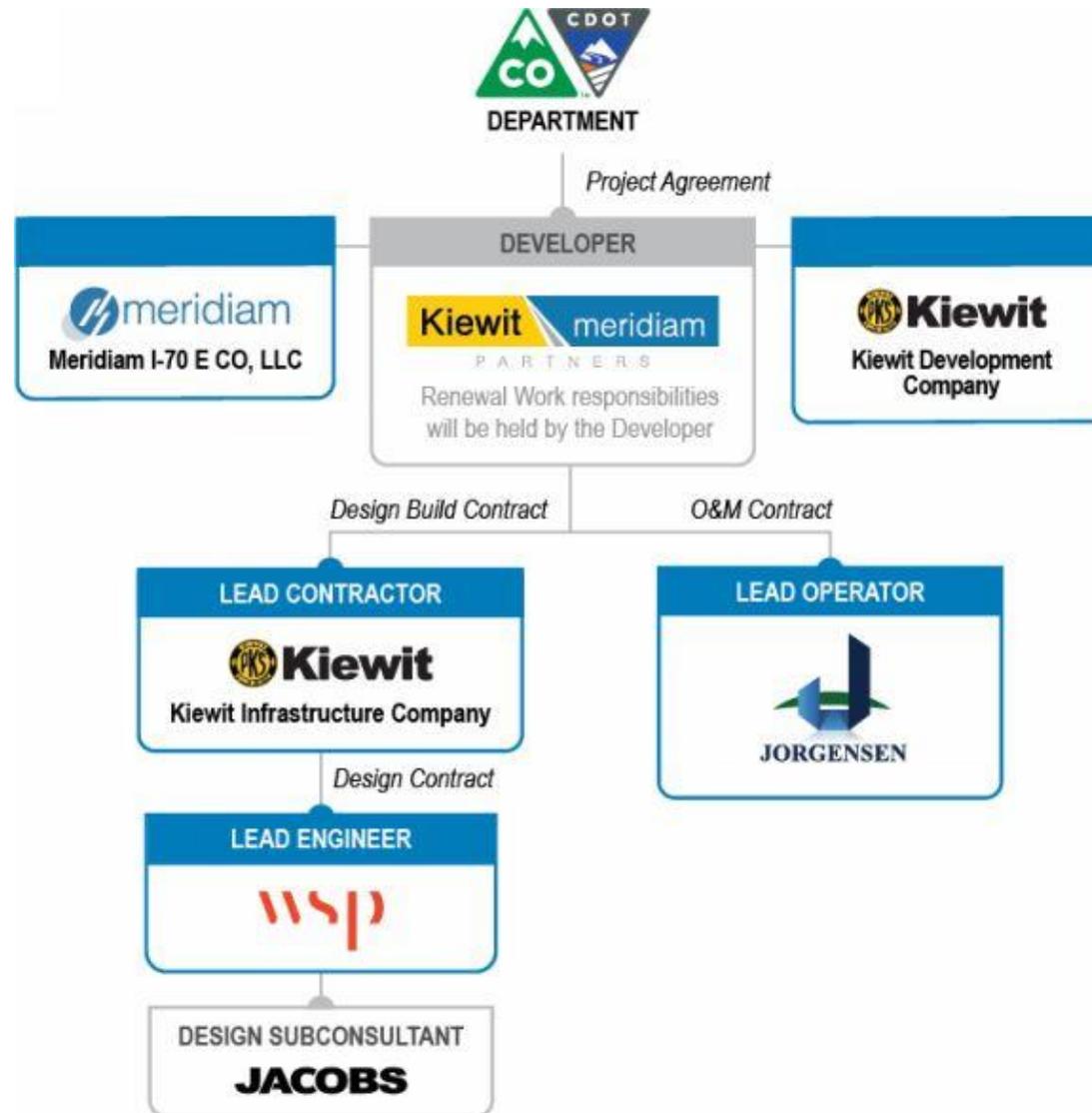


P A R T N E R S

1

Organization

KMP Members and Organization



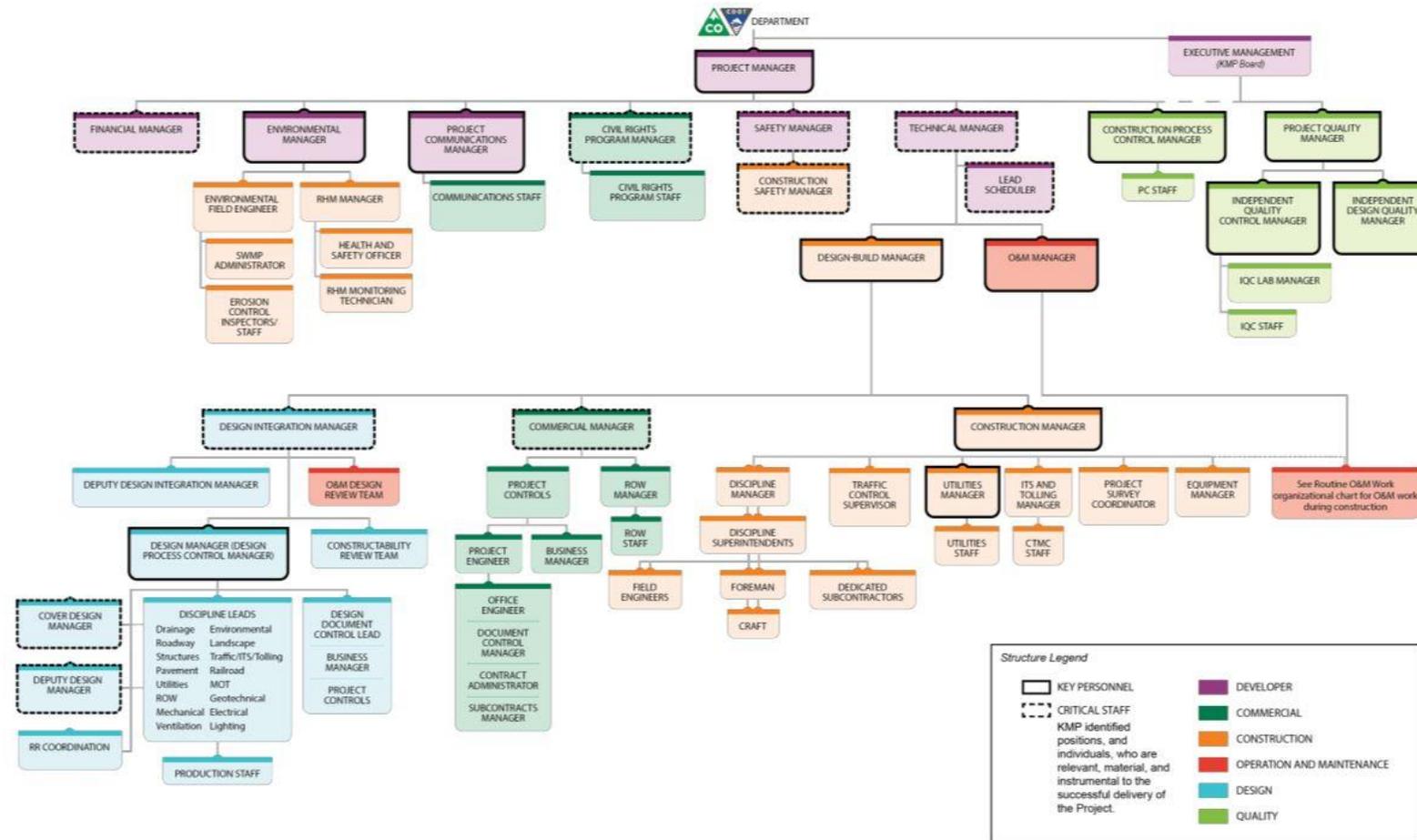
KMP Members and Organization

	Entity	Project Role	Entity Overview	Representative Projects
Equity Sponsors		<ul style="list-style-type: none"> Project Leadership / Oversight Equity Investment Renewal work 	<p>Meridiam</p> <ul style="list-style-type: none"> Leading international equity investment firm that has achieved financial close on more than 56 projects globally with a total project value of more than \$50 billion <p>Kiewit Development</p> <ul style="list-style-type: none"> Leading infrastructure developer and investor in North America staffed with over 35 professionals is one of the largest teams dedicated to the North American P3 market 	 <p>New Terminal B</p> <p>LaGuardia Airport Terminal B Replacement (NY Meridiam)</p>
Construction Contractor		<ul style="list-style-type: none"> Construction (fixed-price, date-certain basis) Ensure all systems fully functional 	<ul style="list-style-type: none"> A leading North American construction and engineering organization that, over the past 10 years, has constructed more than 1,100 transportation projects totaling more than \$30 billion in contract revenue Capabilities are reinforced by one of the largest privately owned fleets of construction equipment in North America 	 <p>Pecos Street Bridge Over I-70 (CO Kiewit)</p>
Maintenance Contractor		<ul style="list-style-type: none"> Routine operations and maintenance (fixed-price basis) Construction and Operations period responsibilities 	<ul style="list-style-type: none"> Operates in 26 states on contracts for routine and preventive maintenance activities for highways, toll roads, facilities, airports and ports 	 <p>I-595 Corridor Roadway O&M (FL Jorgensen)</p>

Key Organizational Staff Structure

- ✓ Highly experienced local staff
- ✓ Team includes technical, project development, and financial experts
- ✓ Streamlined communication and partnership facilitates on time delivery
- ✓ Construction workforce opportunities for local residents

Construction Period Organization Chart

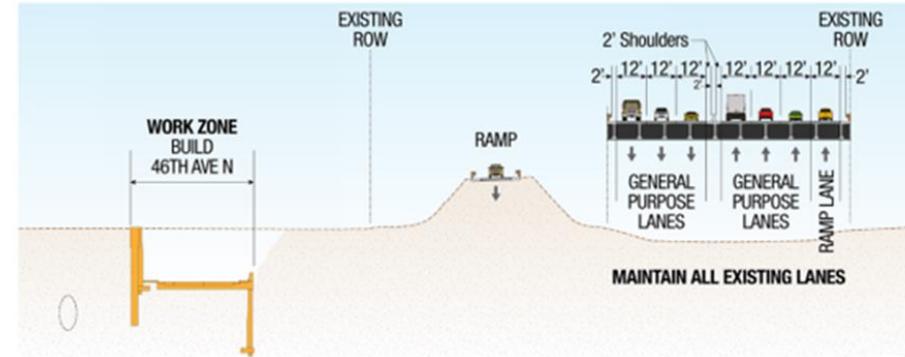


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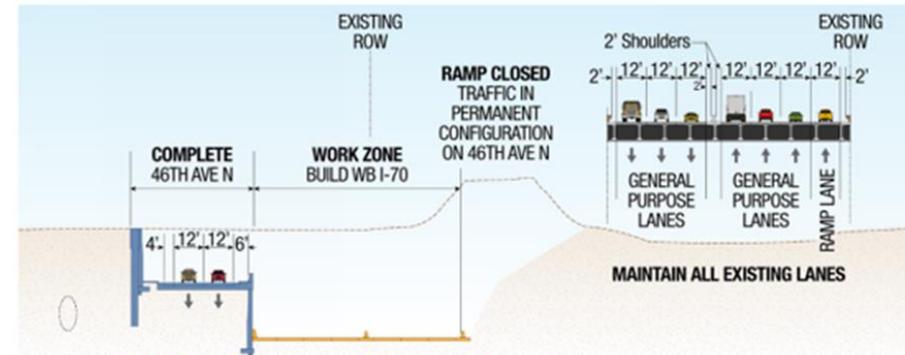
Key Technical Innovations

Key Technical Innovations

- KMP's schedule shaves one construction season off the CDOT schedule
- Compliant with permitted ramp closures
- Only two major traffic switches required in Lowered Section
- Construction will begin in 2018



Work Area West, Lowered Section, Phase 1

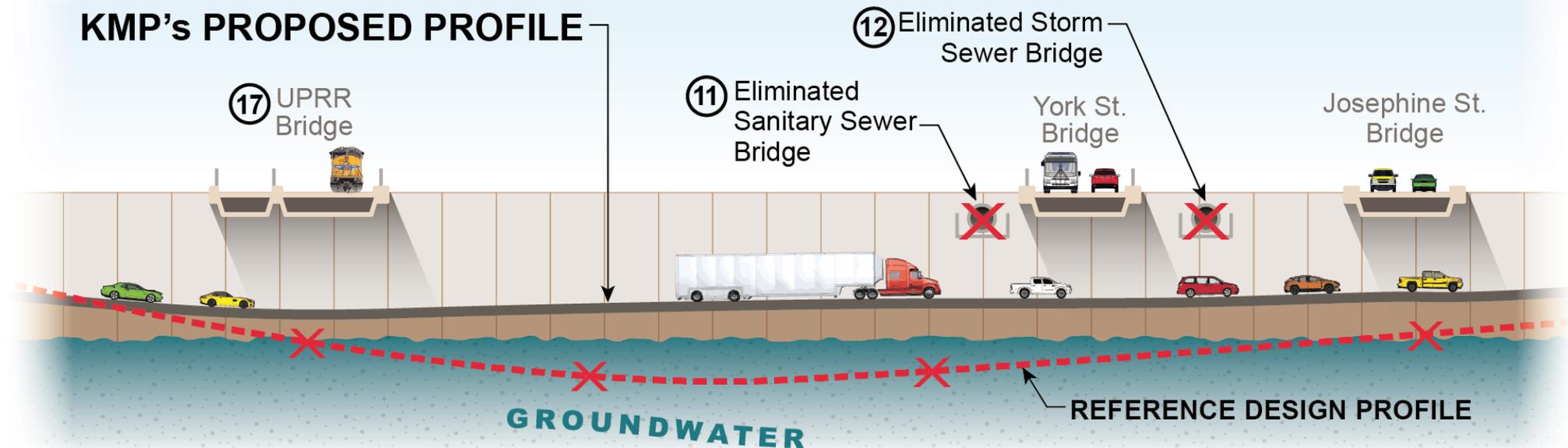


Work Area West, Lowered Section, Phase 2

Key Technical Innovations

The Team's preliminary design has eliminated the risk associated with long-term groundwater handling

- The Reference Design's roadway profile was below the groundwater table and required a permanent solution. KMP's roadway profile is above the groundwater table and does not require a permanent treatment solution.
- Temporary treatment will be required during construction. Treatment is nearly identical to Lead Contractor's previous experience at Denver Union Station



3

Community Involvement

Community Involvement

KMP is committed to enhancement and development of the local community while constructing Denver's Corridor of Opportunity.

INVESTING IN THE COMMUNITY

- \$1,000,000 in funding and in-kind services for a variety of community enhancement programs (e.g., loans or grants, food access, college scholarships, and construction education) over the 35 year Project Term

PROFESSIONALS PROVIDING THE COMMUNITY WITH PROJECT INFORMATION

- Strong relationships with local leaders. Hunter Sydnor (Communications) and Ana Mostaccero (Bilingual Liaison) are familiar with the community and its culture.

A STRONG TEAM WORKING WITH THE COMMUNITY

- Kiewit knows Denver and has maintained strong relationships with project stakeholders, major subcontractors, and DBE/ESB companies
- Our Team has already included DBE/ESBs throughout procurement
- Meridiam has a history of implementing robust community involvement plans, such as Operation 305, a WDP for the Port of Miami Tunnel Project.





Commercial Close Overview for HPTE and Bridge Enterprise Board of Directors

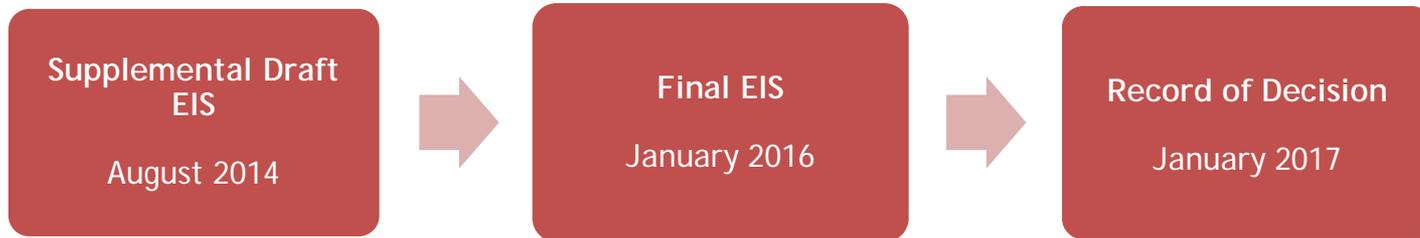
November 15, 2017

Central to Communities, Commerce, Connections and Colorado



Major Milestones

Environmental Impact Statement (EIS)



Project Delivery



Public Outreach

Environmental Study Process

2003 - Began EIS

2008 - Draft EIS Published

2011 - Community committee process

2012 - Second review of alternatives

2014 - Supplemental Draft EIS

2016 - Final EIS

Jan. 2017 - Record of Decision

- 300+ community meetings
 - Block, small group, corridor-wide
- 3 Telephone Town Halls
- Surveys of Swansea Elementary parents
- Door-to-door outreach to residents
- Attendance at dozens of community events, church fairs and school events
- Local Project Office
- Thousands of informational flyers
- Bilingual website, flyers and full translation at all mtgs



Procurement Process

Date	Point in Process	Documents <i>(Available on website)</i>	Transparency <i>(Specific to Procurement)</i>
2014-15	<ul style="list-style-type: none"> • Visioning Stage 	<ul style="list-style-type: none"> • Summary of P3 benefits and procurement issues • Value for Money Analysis 	<ul style="list-style-type: none"> • Public Meetings <ul style="list-style-type: none"> ✓ June 25 and July 8 2014 • Video on project delivery options • CDOT/HPTE/BE Meetings
2015	<ul style="list-style-type: none"> • Request for Qualifications (RFQ) • Selecting Shortlist 	<ul style="list-style-type: none"> • RFQ • Statement of Qualifications from shortlisted teams 	<ul style="list-style-type: none"> • Public Meetings <ul style="list-style-type: none"> ✓ March 11-12 2014 - Industry Forum ✓ Oct 16 and Nov 5 2014 • Press Release annc shortlist • CDOT/HPTE/BE Meetings
2015	<ul style="list-style-type: none"> • Pre-Final Request for Proposals (RFP) 	<ul style="list-style-type: none"> • Overview of I-70 East RFP • Sources and Flow of Funds 	<ul style="list-style-type: none"> • Public Meetings <ul style="list-style-type: none"> ✓ Aug 17-20 2015 • CDOT/HPTE/BE Meetings
2015-16	<ul style="list-style-type: none"> • Request for Proposals (RFP), including draft Project Agreement (PA) 	<ul style="list-style-type: none"> • RFP, including draft PA (5 addendums) 	<ul style="list-style-type: none"> • Public Meetings <ul style="list-style-type: none"> ✓ February 15 and 16 • Press Release annc RFP release • CDOT/HPTE/BE Meetings
2017	<ul style="list-style-type: none"> • Selection of preferred proposer 	<ul style="list-style-type: none"> • Overview of KMP Team • KMP Submission project highlights 	<ul style="list-style-type: none"> • Press Release announcing KMP • CDOT/HPTE/BE Meetings
2017	<ul style="list-style-type: none"> • Contract Finalization 	<ul style="list-style-type: none"> • Project Agreement, short & long form summaries 	CDOT/HPTE/BE Meetings 15 of 47

Project Agreement

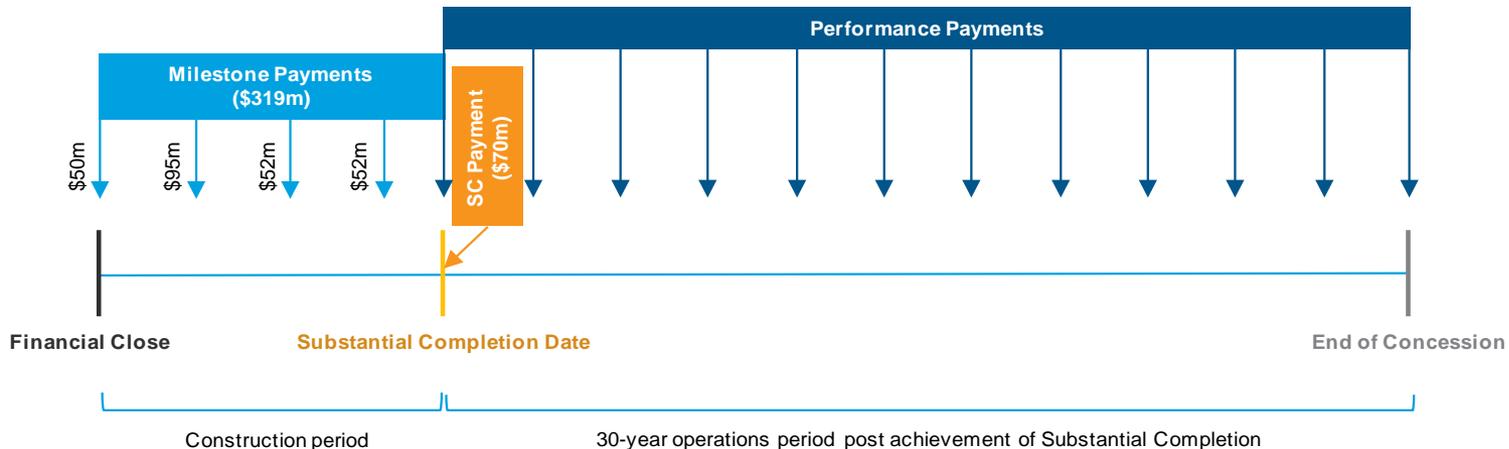
- Design, Build Operate and Maintain (DBFOM)
- Construction Period
 - Developer completes design and builds project
 - Fixed-price, date certain delivery
 - Developer also assumes maintenance of existing roadway and structure assets at “notice to proceed 2”
 - Snow removal obligations start winter of 2018

Project Agreement

- Operating Period
 - 30-year term
 - Developer responsible for all operations, maintenance and renewal work
 - “Handback” Requirements
 - Developer must return Project elements (e.g. pavement and guardrails) in high level condition at conclusion of term
 - At year 24, entire roadway assessed to determine residual life of critical elements for handback
 - Developer required in final years to provide a plan for renewal work

Project Agreement—Payment Structure

- Developer borrows money and contributes equity to help finance the construction cost
- CDOT pays Developer during construction for milestones achieved, and then pays Developer performance payments during 30-year operating period if performance measures are achieved
 - Performance payment is under maximum set in RFP
 - Performance payments subject to deductions for non-performance
- Toll collection performed by HPTE and toll revenues remitted back to HPTE, not Developer



Project Agreement: Project Risk and Termination

Risk Allocation

- In general, the PA allocates cost, performance, and schedule risk to the Developer during both the construction and operating periods
- Also accounts for “supervening events” where risk is not transferred

Termination Rights

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

Community Commitments

- \$1,000,000 Developer contribution to community needs
- Environmental commitments and regulations
 - Soil management, construction equipment and staging, air quality monitoring
- Goals for DBE, ESB, OJT and local hiring
- Communications and maintenance of traffic requirements

Next Steps

- Developer/Enterprise Team Co-locate
- Financial close
- Complete ROW acquisitions
- Ground Breaking (Summer 2018)



CENTRAL 70 PROJECT PROJECT AGREEMENT SUMMARY

Background

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

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

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

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

Developer Team

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

Project Agreement Summary

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

1) Project Agreement Term

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



2) Financing and Financial Close

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

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

3) Construction Period

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

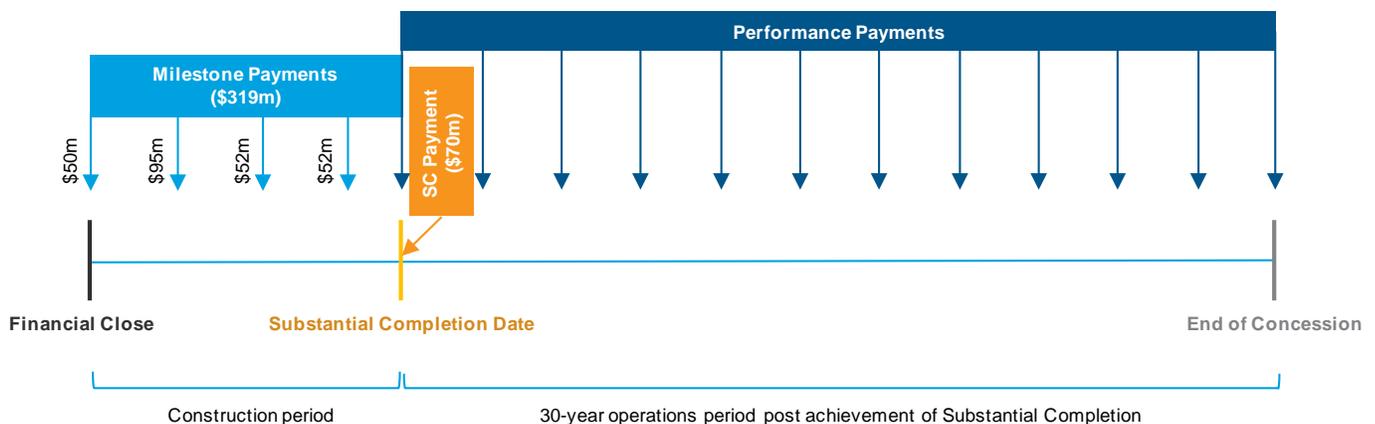
4) Operating Period

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

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

5) Payments to the Developer

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



Milestone Payments

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

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

Performance Payments

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

Performance-based Payment Deductions

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

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

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

7) Supervening Events

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

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

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

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

8) Enterprise Termination Rights

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

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

9) Subcontracting Terms and Requirements

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

10) Other State and Federal Requirements

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



Central 70

DATE: November 15, 2017

TO: Board of Directors of the Colorado Bridge Enterprise (“BE”)
Board of Directors of the High Performance Transportation Enterprise (“HPTE”)

FROM: Tony DeVito, Central 70 Project Director
David Spector, HPTE Director

SUBJECT: Central 70 Project Agreement - Commercial Close

Purpose

A request for approval of the Project Agreement and associated other agreements as part of Commercial Close for the Central 70 Project (the “Project”) is scheduled for November 15, 2017. Prior to approving execution of the Project Agreement, the Boards are being asked to review and approve, in their entirety, the Project Agreement and the associated financial, commercial and technical schedules (together, the “PA”), as well as direct agreements between the Enterprises and the Construction Contractor and O&M Contractor, as well as a Financial Model Escrow Agreement. This memorandum provides a summary of the Project and key provisions of the PA.

Action

Staff requests that the BE and HPTE Boards of Directors (the “Boards”) authorize execution of the PA for the Project as part of Commercial Close of the Project, as well as execution of the associated Construction Contractor Direct Agreement and O&M Contractor Direct Agreement (the “Direct Agreements”) and the Financial Model Escrow Agreement.

Background

At the direction of the Colorado Transportation Commission, and acting in collaboration with CDOT, the Colorado Bridge Enterprise and the Colorado High Performance Transportation Enterprise (each individually an “Enterprise” and, together, the “Enterprises” or “Procuring Authorities”) are procuring the design, construction, financing, operation and maintenance of a 9.4-mile portion of the I-70 East Corridor in Greater Denver (such portion, the “Project”) as a public-private partnership with a private sector partner (the “Developer”).

The PA is the contract that the Developer will sign with the Procuring Authorities that establishes the Developer’s scope of work in delivering the Project, and sets forth the Developer’s and Enterprises’ respective rights and obligations, including cost and risk allocation, over the term of the PA.

On March 3, 2017, the Boards reviewed a draft form of the PA that was issued to the four Proposer teams as the Final Request for Proposals (“RFP”) for the Project on March 6, 2017. On June 1, 2017, and August 1, 2017, the Enterprises received, respectively, technical and financial proposals in response to the Final RFP for the Project from the four shortlisted Proposer teams.

The Enterprises conducted a robust evaluation of the of the Proposers’ technical and financial proposals. The several-month long evaluation process included twelve different technical advisor teams, a substantive evaluation team and a coordination team. The final determination was made by the Executive Oversight Committee.

Following the evaluation, on August 24, 2017, the Enterprises issued a notice identifying Kiewit Meridiam Partners (“KMP”) as the preferred Proposer. The equity partners of KMP, Meridiam I-70 East CO, LLC (as holder of a 60% direct membership



interest) and Kiewit C70 Investors, LLC (as holder of a 40% direct membership interest), have formed Developer for purposes of executing the PA with the Enterprises.

The RFP/PA was first issued publicly in two parts on September 19 and 25, 2015, and each subsequent version has been made available to the public in its entirety on the public procurement website. With each release, Staff has notified interested parties, including state elected officials, that the procurement documents are available on the Project website.

A summary of the PA begins on the following page.

Board Options/Decision Matrix

- 1) Staff Recommendation: Approve the Central 70 Project Agreement, Direct Agreements, and Financial Model Escrow Agreement.
- 2) Review, but do not approve the Central 70 Project Agreement and associated agreements. Provide feedback on desired changes. Staff will work with Developer to negotiate any such changes and will report back to the Boards. Selecting this alternative would delay commercial close and financial close of the Project.

Recommendation

Staff recommends approval of the Central 70 Project Agreement, Direct Agreements, and Financial Model Escrow Agreement.

Next Steps

If the Boards approve the Project Agreement and associated agreement, Staff and Developer will move forward towards financial close, expected in January 2018.

Attachments

Central 70 Project Agreement Summary (attached, beginning on following page)

Attachment A - Central 70 Project Agreement Summary required by Executive Order 2014-010 and the HPTE Transparency Policy

Attachment B - Project Agreement (Main Body) - PDF #1

Attachment C - Schedules 1-9 and 11-29 to the Project Agreement - PDF #2

Attachment D - Schedule 10 (Technical Requirements) to the Project Agreement - PDF #3

Attachment E - Construction Contractor Direct Agreement - PDF #4

Attachment F - O&M Contractor Direct Agreement - PDF #5

Attachment G - Financial Model Escrow Agreement - PDF #6

This memorandum is intended to be a summary for Board consideration only, and neither Proposers nor other third parties are entitled to rely on this memorandum, nor is this memorandum intended to constitute an addendum or other modification to the Final RFP.

Central 70 Project Agreement Summary

This summary of the Project Agreement is sectionalized as follows: 1) Project Agreement term 2) construction period overview, 3) operating period overview, 4) payments to the Developer, 5) financial close deadline, 6) Procuring Authorities' financial close deadline extension right, 7) Developer reimbursement of Procuring Authorities costs, 8) supervening events, 9) change procedure, 10) insurance and indemnity, 11) financing, 12) defaults, 13) enterprise assignment rights, 14) termination, 15) general provisions, 16) explanation of schedules to the Project Agreement, 17) overview of the Construction Contractor Direct Agreement and O&M Contractor Direct Agreement, and 18) overview of the Financial Model Escrow Agreement.

1) Project Agreement Term

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

2) Construction Period Overview

During the construction period, the Developer will be responsible for the design and construction of the Project, including working with railroad and utility owners. The Developer will also be responsible for conducting certain O&M work, including snow and ice removal, during the construction period. While the Developer, a special purpose entity formed by KMP's equity partners, will be the party executing the Project Agreement with the Enterprises, it will be part of a broader team in delivering the Project. The Developer will contract with Kiewit Infrastructure Co., KMP's lead contractor to perform the design and construction work for the Project, who will provide a fixed-price, date-certain construction contract. Any cost overruns or schedule delays will be the responsibility of the Developer, except where relief is provided in certain circumstances in the PA, as further discussed below. The longstop period, which is the maximum period of time by which the Developer can be delayed in achieving substantial completion without being in default under the PA, is 585 days (approximately 19.5 months).

Schedule 10: Design and Construction Requirements of the PA sets out all of the Developer's design and construction requirements for the Project. Further, *Schedule 29: Reference Documents* includes the "Reference Design" which is the preliminary technical blueprint and description of essential elements for the Project. The Developer must construct the cover between Clayton and Columbine according to the contract drawings within the PA which were agreed upon by CDOT, City of Denver, Denver Public Schools and the community. Given that some elements of the construction scope will be transferred to the City of Denver and Denver Public Schools after they are constructed, the PA requires that the Developer provide warranties to the City of Denver and Denver Public Schools for these elements. The Developer will be required to maintain payment and performance bonds in an amount equal to 50% of the value of the work to be performed during construction.

3) Operating Period Overview

During the 30-year operating period the Developer will be obligated to perform all operations, maintenance, renewal and replacement work in accordance with the terms and performance standards set out in the PA. The Developer will be required to submit to the Enterprises an "Operations Management Plan" that sets out how it will comply with its operations obligations. Roy Jorgensen Associates Inc., KMP's lead operator, will perform the operations and maintenance work during at least the first ten years of the operating period. KMP's equity partners have a track record of operations and maintenance capabilities, and its Developer has elected to employ a self-perform strategy with respect to the renewal and handback work for the Project, as well as operations and maintenance work after the expiration of the O&M contract with Roy Jorgensen (subject to submitting a transition plan to the Enterprises prior to transitioning to a self-perform operations and maintenance strategy).

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

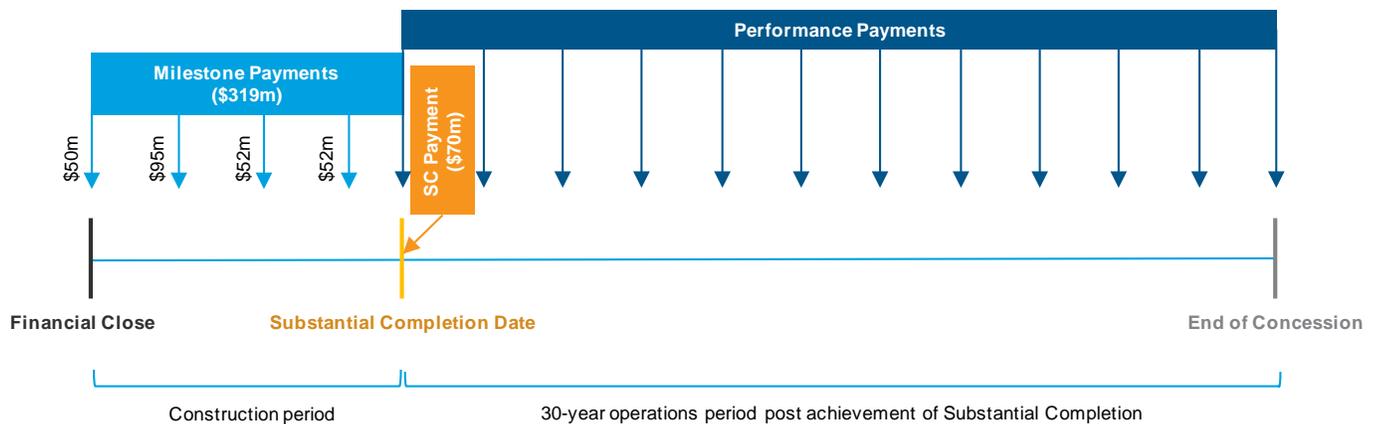
the PA. The Enterprises will have the handback reserve as security in the event the Developer fails to satisfy its handback obligations, ensuring that the Procuring Authorities can complete any work the Developer fails to complete to bring the Project back up to the specified condition at the end of the term.

Schedule 11: Operations and Maintenance Requirements and *Schedule 12: Handback Requirements* specify the Developer’s exact operations maintenance and handback obligations, and are discussed further below.

In addition to maintaining the Project in accordance with the operations and maintenance standards of the PA, the Developer will be required to maintain payment and performance security in an amount equal to 100% of the annual value of the O&M work to be performed each year during operations.

4) Payments to the Developer

In consideration for its work, the Developer will receive a combination of milestone payments during the construction period and monthly performance payments (availability payments) during the operating period. An illustrative example of when milestone payments and performance payments will be paid is provided in the figure below, with further detail following (actual timing of the milestone payments in the graphic below will depend on the Developer’s schedule).



Milestone Payments: there are five milestone events, each defined by a specific scope of work, for which the Developer is entitled to compensation upon completion. *Schedule 5: Milestone Payments* includes a table that specifies the timing for when funding is available for the milestones. The milestone events for the Project are as set forth below. Note that the amounts to be paid for each milestone represent less than the estimated cost of the work to complete each milestone.

Event	Milestone Payment	KMP Target Completion Date ¹
Milestone 1 - Sand Creek Bridge to Chambers Road	\$50,000,000	November 18, 2019
Milestone 2 - Dahlia Street to Sand Creek Bridge	\$95,000,000	October 20, 2020
Milestone 3 - WB I-70 Brighton Boulevard to Dahlia Street	\$52,000,000	September 26, 2020
Milestone 4 - EB I-70 Brighton Boulevard to Dahlia Street	\$52,000,000	September 5, 2021
Milestone 5 - Substantial Completion	\$70,000,000	March 4, 2022
TOTAL	\$319,000,000	

Performance Payments: Performance payments are monthly availability payments paid to the Developer if the Project is being operated according to the performance requirements. The base performance payment, or the annual payment performance amount bid by the Developer, is \$35.5 million, and will increase by set rates as described below over the 30 year term. These payments can be reduced if the Developer fails to perform under the PA. Performance payments will have two main components: 1) an operations, maintenance, and renewal portion (the “OMRP”), which will amount to 20% of the total performance payment, and 2) a capital payment that compensates the Developer for the debt and equity it raised

¹ Each such date will be modified on a day for day basis to reflect any delay in achieving financial close relative to November 30, 2017 (the date assumed in the Instructions to Proposers)

during construction to fund the Project (the "CPP"), which will amount to 80% of the total performance payment. The OMRP will escalate each year at the Consumer Price Index and the CPP will escalate at a fixed 2% rate per year.

Toll revenues will be collected and retained by HPTE and, together with annual payments to be made by the City and County of Denver pursuant to the Intergovernmental Agreement entered into effective September 14, 2015, will be available to contribute toward payment of the OMRP. Unlike on the US36 Managed Lanes Project, where the Concessionaire bears the toll revenue risk, HPTE and CDOT will be responsible for payment of the OMRP irrespective of toll revenue collections, in accordance with the previously approved C70 Project Intra-agency Agreement.

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

Interest Rate and Credit Spread Protection

Base Rates - The Procuring Authorities will bear 100% of the movement in base interest rates from 10 days prior to the date of the Financial Proposal submittal until financial close for the TIFIA and the tax-exempt PABs financings raised by KMP.

Credit Spreads - The Procuring Authorities will bear 85% of the movement in credit spreads (the margin between base interest rates and actual rates paid to investors) from 10 days prior to the date of the Financial Proposal submittal until financial close for the tax-exempt PABs financings.

5) Financial Close Deadline

The Developer is obligated to achieve Financial Close of the Project by the Financial Close Deadline of January 28, 2018, subject to relief in the event of a limited number of Key Financial Events which gives the Procuring Authorities the right to terminate the PA or agree certain mitigation measures with the Developer (including additional compensation) to mitigate the impact of such Key Financial Event. At Commercial Close, KMP will post Financial Close Security in the amount of \$20,000,000 to secure its obligations to achieve Financial Close on the Project, which will be returned to the Developer upon Financial Close.

6) Procuring Authorities' Financial Close Deadline Extension Right

The Enterprises have a unilateral right to extend the Financial Close Deadline following Commercial Close by up to 180 days in the event of certain Key Financial Events, subject to compensating the Developer for such extension. Compensation to the Developer will include: 1) escalation on their construction price during the extension period, 2) reimbursement of external costs incurred in connection with the extension (subject to a \$1.5 million cap), and 3) 100% credit spread protection for bond financings for the period beyond the original Financial Close Deadline.

7) Preferred Proposer Reimbursement of Costs

The Preferred Proposer will be required to make a \$25 million payment to the Procuring Authorities to reimburse the Procuring Authorities and/or CDOT for costs incurred in connection with the procurement process. The Developer will also reimburse the Procuring Authorities and/or CDOT for previously incurred PABs and TIFIA financing fees.

8) Supervening Events

While the PA allocates cost, performance, and schedule risk to the Developer during both the construction and operating periods, there are certain risks that are not completely transferred to the Developer - either because they are out of the control of the Developer, uninsurable, or prohibitively expensive for the Developer to price. These risks are referred to as "Supervening Events" in the PA. Generally speaking, the basic risk allocation principles of the PA are as follows:
Compensation Events: Risks that are within the control of the Enterprises, or where it is a better value proposition for the public sector to take the risk, are retained by the Enterprises and the Developer is entitled to full compensation - e.g.

schedule relief, performance relief, financing costs, and additional costs incurred by the Developer as a result of these events.

Delay Relief Events: Risks for which neither party has control but where a better value proposition arises from the Enterprises assuming some portion of the risk (and which are otherwise uninsurable) give rise to schedule relief, performance relief, and financing costs incurred by the Developer as a result of these events.

Relief Events: Risks for which neither party has control, for example force majeure events, but that are insurable give rise to schedule and performance relief.

Before the Developer is entitled to relief, it is required to bear certain risk sharing allowances. In the construction period, the Developer is subject to a \$20,000 per event claim threshold (\$10,000 during operations) prior to an event becoming compensable. Further, the Developer must bear the first \$500,000 of aggregate compensable claims during construction (\$100,000 during operations) before it is entitled to any compensation for Supervening Events where compensation is provided for (certain hazardous substances and utility related events are outside of this deductible regime and are discussed separately below).

The chart below summarizes the Supervening Event treatment for some of the Project’s key risks - please note this summary is not exhaustive.

Supervening Events ²
Compensation Events (schedule relief, performance relief, financing costs, and additional costs)
Breach of the PA by the Enterprises Enterprises’ failure to provide Developer with timely possession of ROW Parcel Provision by the Enterprises of possession of a ROW Parcel subject to unanticipated restrictions Physical damage, delay or disruption caused by installation, testing or maintenance of ETC or ITS Elements Physical damage, delay or disruption caused by Other Department Projects, or other Enterprise and/or CDOT projects/facilities Enterprise Release of Hazardous Substances (note: excludes releases into groundwater) Issuance of Safety Compliance Order Issuance of TRO, injunction or other interlocutory relief Discriminatory Change in Law Qualifying Change in Law Unexpected Geological Conditions Unexpected Historically Significant Remains Unexpected Endangered Species Unexcused Utility Owner Delays CCD breach of Denver IGA re. waiver of fees or quantum of fill dirt
Delay Relief Events (schedule relief, performance relief, and financing costs)
Unexcused Railroad Delay Unexpected Governmental Approval Delay Breach by CCD of Denver IGA resulting in reduced duration of street occupancy permit Breach by CCD of Denver IGA resulting in CCD unreasonably withholding or delaying any required permit
Relief Events (schedule relief and performance relief)
Force Majeure Event (i.e., war/conflict, terrorism/sabotage, construction, blockage/embargo, or labor dispute) Fire or explosion Geomagnetic storm Earthquake

² The treatment described in this table is a summary of PA and is not meant to be exhaustive. In certain instances, some of the events described are not subject to the sharing of schedule float with the Enterprises, not subject to the \$20k per event claim threshold (\$10k during operations), and not subject to the \$500k aggregate claims threshold during construction (\$100k during operations).

Riot or illegal civil commotion
Change in Law (excl. Discriminatory Change in Law and Qualifying Change in Law)
Third party release of hazardous substances during the construction period
Accidental loss or damage to ROW, Additional ROW or Permit Areas
Delay of or disruption caused to the Developer by a failure by the Cove Maintainer to perform its obligations
Delay or disruption to the Work caused by operation or maintenance of Limited O&M Work Segments

Unexpected Utility Conditions

Unexpected Utility Condition Events are Supervening Events for utilities that were not identified or incorrectly shown in available utility information. For these events, the Developer and the Enterprises share equally in the first \$5,000,000 of costs (financing costs and additional costs) that result from the event. The Enterprises compensate the Developer 100% for costs above \$5,000,000.

Hazardous Substances

For hazardous substances, the PA divides the Project's footprint in two categories of parcels: 1) parcels where the risk of contamination is higher, but for which significant diligence exists for the Developer to estimate the risk of contamination (these parcels are known as "Appendix B Parcels" and represent approximately 10% of the area of the Project's footprint); and 2) parcels where boring diligence has not revealed any contamination (these parcels are known as "Non-Appendix B Parcels" and represent approximately 90% of the area of the Project's footprint).

For Appendix B Parcels, the Developer must bear 100% of the first \$25,000,000 of costs (financing costs and additional costs, which for hazardous substances events are limited to a more narrow scope of compensable costs for the purpose of satisfying this risk sharing threshold) associated with hazardous substances on these parcels. The Enterprises compensate the Developer 100% for costs (financing costs and additional costs) above \$25,000,000.

For Non-Appendix B Parcels, the Developer must bear 100% of the first \$6,000,000 of costs (financing costs and additional costs, which for hazardous substances events are limited to a more narrow scope of compensable costs for the purpose of satisfying this risk sharing threshold) associated with hazardous substances on these parcels. The Enterprises compensate the Developer 100% for costs (financing costs and additional costs, also limited to a more narrow scope of items in this scenario) above \$6,000,000.

Extended Events

In certain circumstances, when Supervening Events persist and delay the Project for an extended period of time (depending on the event, anywhere from 180 continuous days for a single event to 730 days in aggregate for multiple events), they become known as "Extended Events." Extended Events give rise to termination rights for both the Developer and the Enterprises. However, the Enterprises have the right to reject a termination notice from the Developer and to elect to continue the Project. In this circumstance, the Enterprises are required to compensate the Developer for electing to continue. The nature of this compensation is dependent upon the type of Supervening Event that became an Extended Event.

9) Change Procedure

Both the Enterprises and the Developer will have the right to propose changes. The protocol for negotiating and implementing a change is detailed in *Schedule 24 (Change Procedure)*, which details how the components of compensation due pursuant to a change order or directive letter are to be calculated.

10) Insurance and Indemnity

The PA requires that the Developer maintain certain insurance policies (e.g. property, commercial general liability, workers' compensation, pollution liability, automobile liability, etc.) at minimum coverage limits and deductibles. The insurance requirements are bifurcated for the construction and operating periods. The PA also includes a risk-sharing regime during the operating period whereby significant increases or decreases in premiums due to market factors are shared by the Enterprises and the Developer.

Further, the Developer is required to indemnify the Enterprises, CDOT, and the State of Colorado against any claims that are a consequence of the Developer’s actions. The Developer’s indemnity obligations are excused for situations where claims arise due to the fault, fraud, willful misconduct, criminal conduct, recklessness, bad faith, negligence, violation of law, or violation of the Project Agreement on behalf of the Enterprises, CDOT, or the State of Colorado, as applicable. Neither the Enterprises nor CDOT have any obligation to indemnify the Developer.

11) Financing

Equity: The Developer will be required to maintain at least 10% equity (calculated based on long-term debt) in the Project through substantial completion. Equity transfers during the term of the Project will generally require the consent of the Enterprises, outside of a few limited circumstances where control of the Developer remains unaffected as a result of such transfer.

Debt: The Developer is permitted to grant security interests in (or assign its interest in) the PA, its subcontracts, payment and performance security, insurance policies, and the Supplemental Indenture from BE to lenders exclusively for purposes of securing debt for the Project.

12) Defaults

The PA includes “Developer Defaults” - events that, upon their occurrence, make the Developer noncompliant with the PA - and “Enterprise Defaults” - events that likewise make the Enterprises noncompliant with the PA. Most defaults have a “Cure Period” (i.e. a time period to rectify a default by the offending party) before it gives the other party a right to terminate the PA; however, some severe Developer Defaults do not. Illustrative examples of Developer Defaults and Enterprise Defaults are provided below (note this list has been abridged and is not exhaustive).

Developer Defaults	Enterprise Defaults
Insolvency Events (e.g. bankruptcy) of the Developer or its principal subcontractors (e.g. construction contractor or O&M contractor), or their guarantors Termination of a principal subcontract Failure to achieve substantial completion by the longstop date Noncompliance with project and operating standards Persistent breach Illegal acts (fraud, bribes, corruption, noncompliance with law) Debarment from contracting with state or federal agencies Unpermitted equity transfers Failure to maintain insurance, payment, or performance security Failure to comply with handback requirements Abandonment of the Project Failure to make a payment to the Enterprises	Failure of the Enterprises to maintain enterprise status Failure to make a payment to the Developer Condemnation of the Project Failure of the Enterprises to enforce certain rights of theirs under the IAA Prohibited assignment or transfer by the Enterprises of their interests in the PA Persistent breaches by the Enterprises that prohibit the developer from performing its obligations under the PA

13) Enterprise Assignment Rights

The Enterprises have assignment and transfer rights that allow either Enterprise to transfer its interest in the Project to the other Enterprise and/or CDOT or another Person, if certain conditions are met. Either Enterprise can transfer its interest in the Project to the other Enterprise and/or CDOT if allowed by law and collectively the new counterparties have equivalent legal authority and financial capacity to carry out the Project as the original counterparties. The Enterprises can transfer to any other person with the consent of the Developer.

14) Termination

There are three main types of termination: 1) Termination for Convenience or Enterprise Default, 2) Termination for an Uninsurable Risk, Extended Event, or Court Ruling; and 3) Termination for Developer Default. Each of these types of termination has a specific formulation for calculating the compensation payable to the Developer, as detailed below.

Compensation on Termination		
Termination for Convenience or Enterprise Default	Termination for Uninsurable Risk, Extended Event, or Court Ruling	Termination for Developer Default
The fair market value of the Developer's projected equity distributions; <i>plus</i> Debt and hedge costs outstanding; <i>plus</i> Subcontractor breakage costs; <i>plus</i> Developer breakage costs; <i>minus</i> Account balances; <i>minus</i> Insurance proceeds available	All equity amounts contributed into the Developer less dividends and other distributions already paid to equity members; <i>plus</i> Debt and hedge costs outstanding; <i>plus</i> Subcontractor breakage costs; <i>plus</i> Developer breakage costs; <i>minus</i> Account balances; <i>minus</i> Insurance proceeds available <u>Note, unlike Termination for Convenience or Enterprise Default, future equity distributions are not paid</u>	Prior to substantial completion: The lesser of 1) the construction contract price, less the remaining cost to complete, less any milestone payments previously paid; and 2) debt and hedge costs outstanding, <i>minus</i> account balances, <i>minus</i> insurance proceeds available After substantial completion: The lesser of 1) debt and hedge costs outstanding, <i>minus</i> maintenance rectification costs, <i>minus</i> account balances, <i>minus</i> insurance proceeds available; and 2) 80% of debt and hedge costs outstanding, <i>minus</i> account balances, <i>minus</i> insurance proceeds available

15) General Provisions

Project Information, Reliance, and Diligence

The PA provides for very limited circumstances where the Developer can claim reliance on information provided by the Procuring Authorities, as the Developer is required to conduct its own due diligence prior to bid.

Project License

The Developer is not granted an ownership interest in real property under the PA. Instead, the Developer is granted an exclusive "Project License" that allows it to design, construct, finance, operate and maintain the Project.

Subcontracting Terms and Requirements

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

Safety Compliance, Suspension of Work and Public Sector Rights to Intervene

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

Restrictions on Revenue Generating Activities

The PA prohibits the Developer from engaging in any other revenue generating businesses on the site of the Project.

Financial Model

The Developer is required to submit its financial model under the PA so that its assumptions can be verified. Additionally, the financial model will be used for cost calculations in circumstances where the Developer is entitled to compensation under the PA (e.g. for a Supervening Event or change order). The model will also be used to verify financial costs (interest expense, debt balances, equity contributions/dividends, etc.). Note that the financial model will be held in escrow for the term of the PA pursuant to the Financial Model Escrow Agreement, described separately below.

Remedies and Liability

The Developer will be required to pursue losses incurred in connection with the Project from its insurers, and any compensation payable by the Enterprises to the Developer will be net of the Developer's insurance proceeds, so as to avoid double recovery.

16) Explanations of Schedules to the Project Agreement

Schedule	Description
Schedule 1: Financial Close	Outlines the mechanics for achieving Financial Close including conditions precedent for both the Enterprises and the Developer to satisfy, interest rate and credit spread risk sharing (Enterprises bear 100% of base rate risk and 85% of credit spread risk), Key Financial Events, and termination rights prior to Financial Close.
Schedule 2: Representations and Warranties	Includes representations and warranties given by the Developer and each Enterprise.
Schedule 3: Commencement and Completion Mechanics	Includes the conditions the Developer is required to meet to progress the Project into operations (e.g. NTP 1 conditions, NTP 2 conditions, Milestone Completion conditions, Substantial Completion conditions, and Final Acceptance conditions).
Schedule 4: Payments	Includes general provisions for payments to the Developer including submission of deductions reports and payment requests from the Developer.
Schedule 5: Milestone Payments	Sets forth the milestone payment amounts for each milestone and the schedule by which funds will be available for payment of milestone payments during the construction period.
Schedule 6: Performance Mechanism	Includes the formulation for calculating performance payments to the Developer, including the calculation of Noncompliance and Closure deductions/points.
Schedule 7: Compensation on Termination	Includes the formulations for calculating termination compensation for the various types of termination (Convenience, Uninsurable Risk, Developer Default, etc.).
Schedule 8: Project Administration	Deliverables the Developer is responsible for in managing and administering its work under the PA, including a Project Management Plan, schedules, progress reports, quality management plans, and safety plans.
Schedule 9: Submittals	Protocol for submittals, including review standards (e.g. acceptance vs. approval) and process for reviews of deliverables.
Schedule 10: Design and Construction Requirements	Includes design and construction requirements for the Project, including applicable standards and specifications and contract drawings. Detailed requirements are further specified for work elements, as follows: maintenance of traffic, ITS and tolling equipment, utilities, survey, roadway pavements, earthwork, drainage, railroads, signing, pavement markings, signalization and lighting, cover MEP system, structures, and landscaping and aesthetics.
Schedule 11: Operations and Maintenance Requirements	Operations and maintenance requirements and scope for the Developer, including the standards the Developer is required to comply with. The O&M scope includes snow and ice removal, incident response, cleaning, drainage, groundwater treatment, traffic signals and lighting, and fencing among other items.
Schedule 12: Handback Requirements	Includes calculation of handback requirements, schedule for handback process, and operation of handback reserve account.
Schedule 13: Required Insurances	Specifies the policy types, limits, and deductibles required to be placed by the Developer for both the construction and operations periods.
Schedule 14: Strategic Communications	Requirements for achieving strategic communication goals, including plans to develop two-way communication with the public about the Project.
Schedule 15: Federal and State Requirements	Includes Federal and State law requirements the Developer must comply with. Covers civil rights, Americans with Disabilities Act, FHWA Buy America requirement, small business and workforce development goals. Specifies monetary penalties to the Developer for failure to achieve these goals.

Schedule 16: Mandatory Terms	Specifies certain mandatory terms for contracts with subcontractors and financing documents.
Schedule 17: Environmental Requirements	Includes environmental management and environmental compliance requirements that the Developer is required to comply with, including responsibility for obtaining required environmental permits.
Schedule 18: Right-of-Way	Includes CDOT's schedule for making each right-of-way parcel available to the Developer.
Schedule 19: Forms of Direct Agreements	Forms of direct agreements for lenders and principal subcontractors to be entered into with the Enterprises that provide for step-in and substitution rights.
Schedule 20: Forms of Contractor Bond	Forms for payment and performance bonds required under the PA.
Schedule 21: Forms of Supervening Event Notices and Submissions	Forms of notices to be provided by the Developer as part of the Supervening Events regime.
Schedule 22: Forms of Legal Opinions	Forms of legal opinions for the Enterprises, CDOT, and the Developer.
Schedule 23: Form of Financial Model Escrow Agreement	Escrow agreement for depositing the Developer's financial model with the escrow agent.
Schedule 24: Change Procedure	Details the processes for Enterprise change orders, directive letters and Developer change orders. Includes formulation for how the components of compensation due pursuant to a change order or directive letter are to be calculated.
Schedule 25: Dispute Resolution Procedure	Details each action or step the Developer and Enterprises must take in the event of a dispute.
Schedule 26: Base Financial Model	Microsoft Excel attachment of the Developer's financial model.
Schedule 27: Key Personnel	Submission of Developer's key personnel filling the following positions: project manager, construction manager, design-build manager, design manager, O&M manager, project quality manager, independent design quality manager, construction process manager, independent quality control manager, environmental manager, utilities manager, and project communications manager.
Schedule 28: Proposal Extracts	Extracts from the Preferred Proposer's proposal for items like Alternative Technical Concepts.
Schedule 29: Reference Documents	Documents released to Proposers during the bid phase of the Project. This includes documents related to maintenance of traffic, ITS and tolling equipment, utilities (including utility relocation agreements), survey, roadway pavements, earthwork, drainage, railroads (including railroad agreements), signing, pavement markings, signalization, lighting, cover MEP system, structures, landscaping and aesthetics, operations and maintenance, and right-of-way.

17) Construction Contractor Direct Agreement and O&M Contractor Direct Agreement

The Direct Agreements, incorporated as Schedule 19 to the PA, will be separately approved by the Boards and executed by the Enterprises. The Direct Agreements provide direct contractual privity between the Enterprises and the Construction Contractor and O&M Contractor, and also provide the Enterprises with certain substitution and step-in rights in the contracts between the Developer and its Construction Contractor and O&M Contractor following the occurrence of certain events set forth in the PA.

18) Financial Model Escrow Agreement

The Financial Model Escrow Agreement will be separately approved by the Boards and entered into by the Enterprises, Developer, and U.S. Bank National Association, acting as the Escrow Agent for the Project. The Escrow Agent will hold the Developer's Financial Model, which is exempt from disclosure under the Colorado Open Records Act, for the term of the

Project and only release it under the terms provided for in the Escrow Agreement. All costs to maintain the escrow will be borne by the Developer.

Resolution – HPTE #253

Approving the Project Agreement for the Central 70 Project among HPTE, the Colorado Bridge Enterprise and Kiewit Meridiam Partners LLC; Approving the Construction Contractor Direct Agreement; Approving the O&M Contractor Direct Agreement; and Approving the Financial Model Escrow Agreement

WHEREAS, the General Assembly created the Colorado High Performance Transportation Enterprise (“HPTE”) pursuant to Section 43-4-806, C.R.S., as a government-owned business within the Colorado Department of Transportation (“CDOT”) to pursue innovative means of more efficiently financing important surface transportation projects that will improve the safety, capacity, and accessibility of the surface transportation system; and

WHEREAS, the General Assembly created the Colorado Bridge Enterprise (“BE”) pursuant to Section 43-4-805, C.R.S., as a government-owned business within CDOT to accelerate the repair and reconstruction of deficient bridges further defined as structures that are “poor”; and

WHEREAS, the HPTE Board of Directors (the “HPTE Board”) is empowered, pursuant to Section 43-4-806(6)(g), C.R.S., to enter into contracts or agreements with any private or public entity to facilitate a public-private partnership; and

WHEREAS, the BE Board of Directors (the “BE Board”) is similarly empowered, pursuant to Section 43-4-805(5)(h)(II), C.R.S., to enter into agreements pursuant to which a private entity designs, develops, constructs, reconstructs, repairs, operates, or maintains all or any portion of a designated bridge project on behalf of BE; and

WHEREAS, HPTE and BE (together, the “Enterprises”) are, at the direction of the Colorado Transportation Commission and in collaboration with CDOT, jointly procuring the design, construction, financing, operations, and maintenance of the reconstruction of the 9.4-mile portion of the I-70 East Corridor in the Denver area (the “Central 70 Project” or the “Project”) as a public-private partnership; and

WHEREAS, the HPTE Board and BE Board have each reviewed multiple drafts of the Project Agreement and related agreements over the course of the procurement and, on March 3, 2017, the HPTE Board and BE Board each received and reviewed a final draft form of the Project Agreement, which were subsequently released to four shortlisted proposer teams as the Final Request for Proposals (“Final RFP”); and

WHEREAS, on June 1, 2017, and August 1, 2017, the Enterprises received, respectively, technical and financial proposals in response to the Final RFP from each of the four shortlisted proposer teams; and

WHEREAS, the Enterprises, in collaboration with CDOT, conducted a robust evaluation of the four proposals and, on August 24, 2017, issued a notice identifying Kiewit Meridiam Partners (“KMP”) as the preferred proposer; and

WHEREAS, the equity partners of KMP, Meridiam I-70 East CO, LLC (as holder of a 60% direct membership interest) and Kiewit C70 Investors, LLC (as holder of a 40% direct membership interest) formed a special purpose vehicle, Kiewit Meridiam Partners, LLC (the “Developer”) for purposes of completing the Project; and

WHEREAS, the Project Agreement for the Central 70 Project (the “Project Agreement”) attached hereto, incorporating a main body and twenty-nine schedules, sets forth the rights and obligations of the Enterprises and the Developer with respect to the design, construction, operations, maintenance, renewal and replacement of the Project, during both the construction period and 30-year operating period, including, *inter alia*, provisions related to the design and construction requirements for the Project, milestone payments to the Developer during construction, performance payments to the Developer during operations, financial close procedures, risk allocation between the Enterprises and the Developer, change procedures, insurance and indemnity requirements, defaults, and termination provisions; and

WHEREAS, in conjunction with the execution of the Project Agreement, the Enterprises will also enter into a Construction Contractor Direct Agreement with the Developer, Kiewit Infrastructure Co. (a “Principal Subcontractor” to the Developer), and Kiewit Infrastructure Group, Inc. (as “Guarantor” to the Developer), as well as an O&M Contractor Direct Agreement with the Developer and Roy Jorgensen Associates, Inc. (a “Principal Subcontractor” to the Developer), each of which provide for direct contractual privity between the Enterprises and the Construction Contractor and O&M Contractor, respectively, and which provide the Enterprises with certain substitution and step-in rights following the occurrence of certain events as provided for in the Project Agreement; and

WHEREAS, also in conjunction with the execution of the Project Agreement, the Enterprises will enter into a separate Financial Model Escrow Agreement with the Developer and U.S. Bank National Association, as Escrow Agent under the Project Agreement, which agreement will provide the terms and conditions under which the Developer’s Financial Model, which is exempt from disclosure under the Colorado Open Records Act, will be released and made available to the Developer, Enterprises, and/or third parties as required to effectuate the requirements of the Project Agreement; and

WHEREAS, the HPTE Board has reviewed the Project Agreement for the Central 70 Project, the Construction Contractor Direct Agreement, the O&M Contractor Direct Agreement, and the Financial Model Escrow Agreement and now desires to approve and authorize execution of the same as part of the Commercial Close for the Project.

NOW THEREFORE BE IT RESOLVED, the HPTE Board hereby approves the Project Agreement for the Central 70 Project, the Construction Contractor Direct Agreement, the O&M Contractor Direct Agreement, and the Financial Model Escrow Agreement, each in substantially the form presented to the HPTE Board prior to the meeting at which this Resolution is adopted, with such changes thereto, not inconsistent with this Resolution,

as may be approved by both the HPTE Director and the office of the Colorado Attorney General.

BE IT FURTHER RESOLVED, the HPTE Board hereby authorizes the HPTE Director or his designee to execute and deliver the Project Agreement for the Central 70 Project, the Construction Contractor Direct Agreement, the O&M Contractor Direct Agreement, and the Financial Model Escrow Agreement, and to deliver such other documents and take such other actions as may be necessary or convenient to the accomplishment of the purposes of this Resolution, including, without limitation, effecting Commercial Close of the Central 70 Project.

Signed as of November 15, 2017

Kari V. Grant
Secretary, HPTE Board

**FIRST AMENDMENT TO
CENTRAL 70 PROJECT
INTRA-AGENCY AGREEMENT**

THIS FIRST AMENDMENT (the “Amendment”) to the CENTRAL 70 PROJECT INTRA-AGENCY AGREEMENT is made this _____ day of _____, 2017 by and between the COLORADO DEPARTMENT OF TRANSPORTATION (“CDOT”), an executive agency of the State of Colorado (“State”), the COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE, a government-owned business and a division of CDOT (“HPTE”) and the COLORADO BRIDGE ENTERPRISE, a government-owned business within CDOT (“BE”). CDOT, HPTE and BE are hereinafter referred to as a “Party” and collectively as the “Parties.” HPTE and BE are hereinafter referred to individually as an “Enterprise” and collectively as the “Enterprises.”

RECITALS

A. The Parties entered into that certain *Central 70 Project Intra-Agency Agreement* dated August 22, 2017 (the “IAA”), pursuant to which the Parties agreed, *inter alia*, to allocate certain Pre-Development Costs (as defined in the IAA) and other payment obligations necessary to implementing the Project amongst themselves.

B. In recognition of anticipated cost savings to BE over the full term of the C-70 Project Agreement with the Developer, Kiewit Meridiam Partners, the Parties desire to amend Section III.2 of the IAA to make available additional BE contributions toward Pre-Development Costs on the Project.

C. The Parties further acknowledge that the total amount payable by BE in respect of Pre-Development Costs, construction period Milestone Payments, and repayment of the CPP (as further described in the IAA, as modified by this Amendment, and the C-70 Project Agreement) remains compliant with the \$850 million (discounted August 2015 dollars) BE funding commitment to the Project.

D. The Parties also desire to reaffirm CDOT’s obligations to make payments in respect of CDOT’s mitigations commitments under the Record of Decision for the Project and to Utility Owners under the terms of the Project Utility Relocation Agreements, to the extent any such commitments and work are not to be undertaken by the Developer under the terms of the C-70 Project Agreement, and to clarify that such payments are to be made from funds made available for Pre-Development Costs under the IAA and this Amendment.

E. The Parties further desire to clarify that to the extent any CDOT Backup Loans (as defined in the IAA) is made to either HPTE or BE pursuant to any CDOT HPTE Backup Loan Agreement or CDOT BE Backup Loan Agreement, respectively (each a “CDOT Backup Loan Agreement”), such executed CDOT Backup Loan Agreement shall not be amended without the prior consent of the Developer.

F. The Parties acknowledge they are each vested with the legal power to satisfy their respective obligations under this Amendment.

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING RECITALS, AND THE VARIOUS TERMS, COVENANTS, AND CONDITIONS SET FORTH HEREIN, AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES TO THIS AMENDMENT HEREBY AGREE AS FOLLOWS:

TERMS AND CONDITIONS

1. The first sentence of Section II.4 of the IAA shall be replaced with the following:

There shall be constituted an Executive Oversight Committee (“EOC”), which will include the CDOT Chief Engineer, CDOT Chief Financial Officer, CDOT Director of Communications, CDOT Director of Project Support, CDOT Director of the Office of Policy and Government Relations, HPTE Director (or HPTE Director’s designee), BE Director (or BE Director’s designee), and representatives of the Colorado Attorney General’s Office, FHWA, and the City of Denver.

2. Section III.2 of the IAA shall be replaced with the following language in its entirety:

Pre-Development Costs. Except as otherwise specifically identified as a responsibility of HPTE or BE in this Section III, CDOT shall be primarily responsible for the performance of and payment of costs associated with preliminary design, environmental approvals, acquisition of right of way, managing the procurement of the Project in coordination with the Enterprises, and certain other pre-development activities associated with the Project (together the “Pre-Development Costs”). In consideration of the benefit of CDOT’s participation in the design and construction of the Project pursuant to Section III.14, BE has agreed to initially fund a portion of the Pre-Development Costs for the Project, provided that such contribution by BE shall not exceed \$172,309,333. CDOT agrees and acknowledges that BE’s \$172,309,333 contribution shall be in full satisfaction of any obligations the Enterprises might have with respect to funding of Pre-Development Costs of the Project, with any amount in excess thereof being paid by CDOT. If Pre-Development Costs for the Project exceed CDOT’s estimated contribution of \$171,045,502, CDOT, and not the Enterprises, shall be solely responsible for identifying and obtaining additional funding sources to cover any shortfalls.

3. Section III.14.c of the IAA shall be replaced with the following language in its entirety:

c. CDOT shall be responsible for completion of the environmental review process under the National Environmental Policy Act (“NEPA”) and related statutes, as well as any subsequent compliance, modifications to the ROD and oversight of the completion of mitigation measures. CDOT shall be responsible for making payments due

in respect of any mitigation commitments that are to be undertaken by CDOT, and not by the Developer pursuant to the terms of the C-70 Project Agreement, from moneys available for Pre-Development Costs. CDOT shall be responsible for costs incurred by the Enterprises, including as a result of any delays that are compensable under the terms of the C-70 Project Agreement, as such relate to compliance with NEPA and the ROD.

4. Section III.14.h of the IAA shall be replaced with the following language in its entirety:

h. CDOT shall be responsible for administering and enforcing the URAs, including, but not limited to, undertaking Reasonable Efforts to enforce Claims against Utility Owners in respect of any Unexcused Utility Owner Delay Compensation Event claimed by the Developer against the Enterprises. CDOT agrees to promptly remit amounts recovered, less the reasonable cost and expense incurred by CDOT in pursuing such claim, to the Enterprises for payment to the Developer in accordance with the C-70 Project Agreement. CDOT shall be responsible for making payments due to any Utility Owner pursuant to the terms of the URAs and the C-70 Project Agreement from moneys available for Pre-Development Costs.

5. The following sentence shall be added at the end of Section VII.3 of the IAA:

Amendments or modifications to any executed CDOT HPTE Backup Loan Agreement shall require Developer's consent during the term of this Agreement.

6. The following sentence shall be added at the end of Section VII.4 of the IAA:

Amendments or modifications to any executed CDOT BE Backup Loan Agreement shall require Developer's consent during any time that the Central 70 Note remains outstanding.

7. General Provisions. All capitalized terms used in this Amendment but not otherwise defined in this Amendment shall have the meaning for such terms as set forth in the IAA. With the exception of those terms and conditions specifically modified and amended herein, the IAA shall remain in full force and effect in accordance with all of its terms and conditions. In the event of any conflict between the terms and provisions of the IAA and the term and provisions of this Amendment, the terms and provisions of this Amendment shall supersede and control. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, and all of such counterparts shall constitute one agreement.

[Signature pages follow.]

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment as of the Effective Date.

FOR THE COLORADO DEPARTMENT OF TRANSPORTATION:

STATE OF COLORADO
JOHN W. HICKENLOOPER, Governor

By: _____
Shailen P. Bhatt
Executive Director

FOR THE COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE:

By: _____
David I. Spector
HPTE Director

FOR THE COLORADO BRIDGE ENTERPRISE:

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

APPROVED:

CYNTHIA H. COFFMAN
Attorney General

By: _____
Brent E. Butzin
Assistant Attorney General

[Signature page 1 of 2 to the First Amendment to the Central 70 Project IAA]

ALL AGREEMENTS REQUIRE APPROVAL BY THE STATE CONTROLLER

Section 24-30-202, C.R.S. requires that the State Controller to approve all agreements. This Agreement is not valid until the State Controller, or such assistant as he may delegate, has signed it.

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

By: _____

Date: _____

[Signature page 2 of 2 to the First Amendment to the Central 70 Project IAA]

Resolution HPTE #252

Approving the First Amendment to the Intra-Agency Agreement between the Colorado Department of Transportation, the Colorado High Performance Transportation Enterprise and the Colorado Bridge Enterprise for the Central 70 Project.

WHEREAS, the General Assembly created the Colorado High Performance Enterprise (“HPTE”), pursuant to Section 43-4-806, C.R.S., as a government-owned business within CDOT to pursue innovative means of more efficiently financing important surface transportation projects that will improve the safety, capacity, and accessibility of the surface transportation system; and

WHEREAS, on February 19, 2016 the Transportation Commission approved a governance structure between the Colorado Department of Transportation (“CDOT”), the Colorado Bridge Enterprise (“BE”) and HPTE in which BE is the managing partner of Central 70 Project (“Project”) and BE and HPTE will enter into an anticipated agreement (“Project Agreement”) with a private partner (“Developer”); and

WHEREAS, on June 21, 2017, the HPTE Board of Directors (the “Board”), by Resolution #234, approved the *Central 70 Project Intra-Agency Agreement* (the “Central 70 IAA”) between CDOT, BE and HPTE to further define their roles and responsibilities with respect to funding the construction of the Project, management of the Project and cooperation on the operation and maintenance of the Project and financial obligations to each party with respect to the Project; and

WHEREAS, specifically with regard to HPTE, the Central 70 IAA outlines that HPTE will be responsible for contracting tolling equipment for the Project during the construction period of the Project and outlines the methodology under which HPTE, with contributions from CDOT and the City and County of Denver as describes in the Central 70 IAA, will make a monthly Operations, Maintenance, and Renewal Payment (“OMRP”) to the Developer as provided for in the Project Agreement; and

WHEREAS, the attached First Amendment to the Central 70 Intra-Agency Agreement (the “Amendment”) between CDOT, HPTE and BE does not change any of HPTE’s contributions outlined the Central 70 IAA, but memorializes that BE’s maximum contribution to the Project’s pre-development costs shall be increased by \$30 million to \$172,309,333; and

WHEREAS, BE’s contribution of an additional \$30 million to pre-development costs will still bring BE’s contribution to the Project at or under the \$850 million commitment the BE Board of Directors made in BE Resolution #BE-15-2-3; and

WHEREAS, the Amendment does not change the requirement that CDOT, and not HPTE or BE, shall be solely responsible for identifying and obtaining additional funding sources to cover any shortfalls after BE contributes the amended amount to the Project’s pre-development costs; and

WHEREAS, the Amendment also makes certain other modifications regarding CDOT's ongoing responsibilities to the Project, the makeup of the Project's Executive Oversight Committee, and the consent rights of the Developer regarding modifications to agreements for backup loans made by CDOT pursuant to the Central 70 IAA.

NOW THEREFORE BE IT RESOLVED, the Board hereby approves the First Amendment to the Central 70 Project Intra-Agency Agreement between CDOT, HPTE, and BE and authorizes the HPTE Director or his designee to execute the Amendment on behalf of HPTE, with such revisions or modifications, not inconsistent with this Resolution, and at such time, as the HPTE Director may determine to be necessary or appropriate.

Signed as of November 15, 2017

Kari V. Grant
Secretary, HPTE Board