

**AMENDMENT TO AMENDED AND RESTATED CONCESSION AGREEMENT
for US 36 and the I-25 Managed Lanes**

This Amendment to Amended and Restated Concession Agreement for US 36 and the I-25 Managed Lanes (this “**Amendment**”) is made on this ■ day of ■, 2020

PARTIES

- (1) Colorado High Performance Transportation Enterprise ("HPTE"), a government owned business and a division of the Colorado Department of Transportation ("CDOT"); and
- (2) Plenary Roads Denver LLC, a Colorado limited liability company (the "Concessionaire").

RECITALS

- (A) HPTE and the Concessionaire are party to that certain Amended and Restated Concession Agreement for US 36 and the I-25 Managed Lanes dated February 25, 2014 with respect to the US 36 and the I-25 Managed lanes (the "Concession Agreement").
- (B) HPTE and the Concessionaire are party to that certain Assignment and Variation Agreement, dated on or around the date hereof, between, among others, HPTE, the Concessionaire, Plenary Roads Finco LP, Plenary Roads Finco ULC and Plenary Denver Finco, LLC (the "Assignment and Variation Agreement").
- (C) In accordance with the terms of the Assignment and Variation Agreement, HPTE and the Concessionaire now desire to amend certain provisions of the Concession Agreement pursuant to the terms and subject to the conditions set out in this Amendment.

1. INTERPRETATION OF THE CONTRACT

- 1.1 In this Amendment, those capitalized terms which are not otherwise defined herein shall have the same meanings as corresponding capitalized terms in the Concession Agreement. The division of this Amendment into Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Amendment. The terms "this Amendment", "hereof", "herein", "hereunder" and similar expressions refer to this Amendment and not to any particular Section or other portion hereof and include any agreement or instrument supplementary or ancillary hereto.
- 1.2 This Amendment is amendatory and supplemental to and shall be read with and be deemed to be part of the Concession Agreement and the Concession Agreement shall from the date of this Amendment forward be read in conjunction with this Amendment and shall have effect as if the Concession Agreement and this Amendment formed one and the same instrument with all remaining provisions of the Concession Agreement continuing in full force and effect.

2. AMENDMENTS

- 2.1 Section 2.3(e) of the Concession Agreement is hereby deleted in its entirety.

2.2 Section 2.5(a) of the Concession Agreement is hereby deleted in its entirety and replaced with the following:

“In order to achieve Financial Close, and subsequently from time to time during the Contract Period, the Concessionaire has the right, at its sole cost and expense, to enter into a Financing Assignment subject to the following requirements:

- (i) No Person other than a Qualifying Institution is entitled to the benefits and protections afforded by a Financing Assignment, except that Senior Lenders may be Persons other than Qualifying Institutions so long as any Financing Assignment securing such Senior Debt made by such Person is held by a Qualifying Institution acting as Security Trustee. PABs may be issued, acquired and held by parties other than Qualifying Institutions so long as a Qualifying Institution acts as indenture trustee for the PABs;
- (ii) The Concessionaire is prohibited from pledging or encumbering the whole of the Concessionaire's rights under this Contract to secure any indebtedness other than indebtedness in relation to the Project, and no Financing Assignment will be effective to secure any such indebtedness,
 - (1) That is issued by any Person other than the Concessionaire, any special purpose company that directly or indirectly owns the Concessionaire and has no assets except as are directly related to the Project (or the equity interests of the Concessionaire), or any special purpose subsidiary wholly owned by such company, or an issuer of PABs the proceeds of which are to be used solely for financing the performance of the Concessionaire's obligations under this Contract, or
 - (2) The proceeds of which are used in whole or in part for any purpose other than for the financing of the Project;
- (iii) No Financing Assignment or other instrument purporting to mortgage, pledge, encumber, or create a lien on or against the rights of the Concessionaire under this Contract will extend to or affect CDOT's title to or other property interest and estate in and to the Managed Lanes or the US 36 General Purpose Lanes or any interest of HPTE or any HPTE Related Party;
- (iv) HPTE will not have any obligation arising out of any Financing Assignment unless the Concessionaire and/or the Security Trustee have notified HPTE of the existence of such Financing Assignment and HPTE has entered into a Direct Agreement with the Security Trustee as contemplated hereunder;
- (v) All Financing Assignments shall contain an express term in which, without prejudice to the Direct Agreement, the Security Trustee on behalf of itself and the beneficiaries of the Financing Assignments acknowledges that:
 - (1) The Financing Assignment will give the Security Trustee, the Senior Lenders and the Subordinated Lenders no greater rights to or interest

in the Project than the Concessionaire has from time to time pursuant to this Contract;

- (2) HPTE has no obligation to join in, execute or guarantee any Financing Assignment;
- (3) Neither the Security Trustee, nor the Senior Lenders, nor the Subordinated Lenders will seek any damages or other amounts from HPTE or any HPTE Related Party for a breach of this Contract, except for the rights or claims which the Security Trustee or a Senior Lender or a Subordinated Lender may have as a successor to the Concessionaire's interests by foreclosure or transfer in lieu of foreclosure;
- (vi) No Financing Assignment will grant any right to apply funds in the Handback Reserve Fund or in the Joint Insurance Account, except for the express purposes for which the reserve or account is established."

2.3 Section 3.1(b) of the Concession Agreement is hereby deleted in its entirety and replaced with the following:

"It will inform HPTE promptly upon becoming aware of the fact that litigation, arbitration or administrative proceedings or a dispute treated in another manner may be threatened or pending against the Concessionaire if such proceedings or dispute would materially adversely affect the ability of the Concessionaire to perform its obligations under this Contract, the other Project Documents or the Funding Agreements;"

2.4 Section 6.2 of the Concession Agreement is hereby deleted in its entirety and replaced with the following:

"New Funding Agreements and Changes to Funding Agreements

- (a) Before
 - (i) entering into any Funding Agreement (other than the initial Funding Agreements); or
 - (ii) amending, or waiving its rights under the Funding Agreements (other than in relation to an Exempt Funding Agreement Transaction);

the Concessionaire shall provide notice of such proposed course of action and a draft of any proposed agreement, amendment or waiver to HPTE at least 20 Business Days prior to the date on which it is proposed to take the relevant action.

- (b) HPTE shall be entitled to object to the Concessionaire implementing the course of action if the new Funding Agreement does not comply with this Section 6.2 or with Section 2.3 or if it is secured by a Financing Assignment which does not comply with

Section 2.5(a) or if the effect of the course of action in relation to an Existing Funding Agreement would introduce any such non-compliance.”

- 2.5 The notice information in respect of the Concessionaire and HPTE contained in Section 64.1 of the Concession Agreement is hereby deleted in its entirety and replaced with the following:

“The Concessionaire

Plenary Roads Denver LLC
400 Burrard Street, Suite 2000
Vancouver, BC V6C 3A6
Attention: CFO
Facsimile Number: (604) 638 3906”

“HPTE

US 36 Coordinator

Colorado Department of Transportation
Colorado High Performance Transportation Enterprise
2829 W. Howard Place
Denver, Colorado 80204
Facsimile Number: (720) [■]”

- 2.6 The definition of “Contributed Investment” in Schedule 1 of the Concession Agreement is hereby deleted in its entirety and replaced with the following:

““**Contributed Investment**” means (a) any form of direct investment by Equity Members, including the purchase of equity shares in the Concessionaire; (b) any bona fide indebtedness of the Concessionaire for funds borrowed that: (i) is held by any Equity Member and (ii) is subordinated in priority of payment and security to the amounts due under the Subordinated Funding Agreements and to all concessionaire debt held by Persons who are not Equity Members; or (c) an irrevocable on-demand letter of credit issued by or for the account of an Equity Member naming the Concessionaire as beneficiary and guaranteeing the provision of the direct investment or loan referenced in clause (a) or (b) of this definition.”

- 2.7 The definition of “Direct Agreement” in Schedule 1 of the Concession Agreement is hereby deleted in its entirety and replaced with the following:

““**Direct Agreement**” means the direct agreement entered into between HPTE, the Concessionaire and the Security Trustee on or about the date of this Contract, in substantially the form of Schedule 18, as such agreement may be amended, restated or supplemented from time to time.”

- 2.8 The definition of “Equity Members” in Schedule 1 of the Concession Agreement is hereby deleted in its entirety and replaced with the following:

“**Equity Members**” means Plenary Group USA Concessions Ltd. a corporation registered in Delaware, and all of its Affiliates.”

- 2.9 The definition of “Funding Agreements” in Schedule 1 of the Concession Agreement is hereby deleted in its entirety and replaced with the following:

“**Funding Agreements**” means all or any of the agreements entered into or to be entered into by the Concessionaire relating to the financing of the Project (and any agreements to be entered into by the Concessionaire relating to the re-scheduling of their indebtedness or any refinancing).”

- 2.10 The definition of “Phase 1 TIFIA Loan” in Schedule 1 of the Concession Agreement is hereby deleted in its entirety and replaced with the following:

“**Phase 1 TIFIA Loan**” means the secured loan made by the TIFIA Lender pursuant to a loan agreement entered into on September 1, 2011, as such agreement and related loan has been assigned to and assumed by the Concessionaire, and as such agreement may have been and may be amended, restated or supplemented from time to time.”

- 2.11 The definition of “Phase 2 TIFIA Loan” in Schedule 1 of the Concession Agreement is hereby deleted in its entirety and replaced with the following:

“**Phase 2 TIFIA Loan**” means the loan made by the TIFIA Lender pursuant to a loan agreement entered into on February 25, 2014, as such agreement and related loan has been assigned to and assumed by the Concessionaire, and as such agreement may have been and may be amended, restated or supplemented from time to time.”

- 2.12 Paragraph (c) of the definition of “Qualifying Bank Transaction” in Schedule 1 of the Concession Agreement is hereby deleted in its entirety and replaced with the following:

“The grant by a Senior Lender or the TIFIA Lender of any other form of benefit or interest in either the Senior Funding Agreements or the revenues or assets of the Concessionaire, whether by way of security or otherwise, in favor of:

- (i) Any other Senior Lender;
- (ii) The TIFIA Lender;
- (iii) The Subordinated Lenders;
- (iv) Any Qualifying Institution; or
- (v) Any other institution in respect of which the prior written consent of HPTE has been given.”

- 2.13 The definition of “Senior Funding Agreements” in Schedule 1 of the Concession Agreement is hereby deleted in its entirety and replaced with the following:

“**Senior Funding Agreements**” means the Phase 1 TIFIA Loan and any other Funding Agreement for the provision of, or relating to (including any Financial Assignment with respect to) any debt which ranks pari passu with the Phase 1 TIFIA Loan.”

- 2.14 The definition of “Senior Lenders” in Schedule 1 of the Concession Agreement is hereby deleted in its entirety and replaced with the following:

“**Senior Lenders**” means the persons providing finance to the Concessionaire under the Senior Funding Agreements including any person acting as agent for such persons and the TIFIA Lender in respect of the Phase 1 TIFIA Loan.”

- 2.15 Schedule 3 of the Concession Agreement is hereby deleted in its entirety and replaced with Schedule 3 attached hereto.

- 2.16 Section 3.3 of Schedule 14 to the Concession Agreement is hereby deleted in its entirety and replaced with the text “[not used]”.

3. GOVERNING LAW

The law of the State of Colorado, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Amendment. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this 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. BINDING NATURE

This Amendment shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

5. COUNTERPARTS

This Amendment may be executed in any number of counterparts, including by electronic means, each of which shall be an original and all of which taken together shall constitute one and the same instrument, and any Party and the State Controller may execute this Amendment by signing any such counterpart. Delivery of an executed signature page to this Amendment by electronic transmission shall be as effective as delivery of a manually signed counterpart of this Amendment. Each Party and the State Controller acknowledges and agrees that they may execute this Amendment, and any variation or amendment hereto, using Electronic Signatures. Such Electronic Signatures are intended to authenticate this writing and to have the same force and effect as handwritten signatures. For purposes hereof, “Electronic Signature” means any electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a Party or the State Controller with the intent to sign such record, including facsimile or email electronic signatures, pursuant to the Colorado Uniform Electronic Transactions Act.

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**COLORADO HIGH PERFORMANCE
TRANSPORTATION ENTERPRISE**

By: _____
Name: Nicholas Farber
Title: HPTE Director

PLENARY ROADS DENVER LLC

By: _____
Name:
Title:

By: _____
Name:
Title:

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance 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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[Signature page to Amendment to Concession Agreement for US 36 and I-25 Managed Lanes]

SCHEDULE 3

Concessionaire Warranted Information

This Schedule 3 (*Concessionaire Warranted Information*) sets out the Concessionaire Warranted Information, which is true and accurate in all material respects as at ■:

The Equity Member of the Concessionaire is:

Plenary Group USA Concessions Ltd. a company registered in Delaware with corporation number 130456667, and registered office at The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington Delaware 19801.

Plenary Group USA Concessions Ltd. owns the Concessionaire through the following intermediate holding companies (each such company holding 100% of the company which appears next in the list).

Company	Jurisdiction for incorporation	Registered Number	Registered Office
Plenary Roads Denver Ltd.	Colorado	20131275453	Suite 3800-1700 Lincoln Street, Denver, CO, 80203 Attn: Russell Dykstra
Plenary Roads Denver LLC (the Concessionaire)	Colorado	20131275417	Suite 3800-1700 Lincoln Street, Denver, CO, 80203 Attn: Russell Dykstra