

**AMENDED AND RESTATED TAX REGULATORY AGREEMENT****\$20,360,000****Colorado High Performance Transportation Enterprise  
U.S. 36 and I-25 Managed Lanes Senior Revenue Bonds  
Series 2014**

[•], 2020

In connection with the issuance of the Colorado High Performance Transportation Enterprise U.S. 36 and I-25 Managed Lanes Senior Revenue Bonds Series 2014, in the original aggregate principal amount of \$20,360,000 (the “**Series 2014 Bonds**”) by the Colorado High Performance Transportation Enterprise, a government-owned business within the Colorado Department of Transportation and a division of the Colorado Department of Transportation, as issuer of the Series 2014 Bonds (together with any successor thereto, the “**Issuer**”), and in furtherance of the covenants of each of the Issuer and Plenary Roads Denver LLC, a limited liability company organized under the laws of the State of Colorado, as Concessionaire (together with any successor thereto, the “**Concessionaire**”), and pursuant to Section 1.148-2(b)(2) of the Regulations, each of the Issuer and the Concessionaire make and enter into this Amended and Restated Tax Regulatory Agreement (this “**Tax Regulatory Agreement**”).

The covenant of the Issuer referred to in the previous paragraph is contained in Section 6.04 of the hereinafter defined Indenture and in Section 6.16 of the hereinafter defined Series 2014 Loan Agreement. The covenants of the Concessionaire referred to in the previous paragraph are contained in Section 6.16 of the Series 2014 Loan Agreement.

**WITNESSETH:**

**WHEREAS**, capitalized terms used herein and not defined herein or in Appendix 1 attached hereto have the same meanings as defined in the hereinafter defined Indenture, in the hereinafter defined Series 2014 Loan Agreement and the MSA (as defined in the Indenture), unless the context requires otherwise; and

**WHEREAS**, the Issuer was created by the Funding Advancements for Surface Transportation and Economic Recovery Act of 2009, title 43, article 4, part 8, Colorado Revised Statutes, as amended (“**FASTER**”), for the purpose of financing Surface Transportation Infrastructure Projects (as defined under **FASTER**); and

**WHEREAS**, pursuant to **FASTER**, the business purpose of the Issuer is to pursue public-private partnerships and other innovative and efficient means of completing Surface Transportation Infrastructure Projects; and

**WHEREAS**, the Colorado High Performance Transportation Enterprise entered into the Amended and Restated Concession Agreement, dated February 25, 2014, as amended (the

“**Concession Agreement**”), with the Concessionaire, pursuant to which the Concessionaire agreed to, among other things, undertake the Phase 2 Work, a Surface Transportation Infrastructure Project; and

**WHEREAS**, the Issuer is authorized by FASTER (a) to issue revenue bonds, payable from the Transportation Enterprise Special Fund for the purpose of completing Surface Transportation Infrastructure Projects; and (b) to make and enter into contracts or agreements that are necessary or incidental to the exercise of its powers and performance of its duties, including loan agreements between the Issuer and one or more private entities pursuant to which the Issuer lends certain moneys to the private entities to be used to pay the costs of Surface Transportation Infrastructure Projects; and

**WHEREAS**, on February 26, 2014, the Issuer issued the Series 2014 Bonds, pursuant to the Trust Indenture, dated February 26, 2014 (the “**Original Indenture**”), by and between the Issuer and The Bank of New York Mellon Trust Company, N.A., as trustee (together with any successor thereto, the “**Trustee**”); and

**WHEREAS**, in connection with the issuance of the Series 2014 Bonds, the Issuer, Plenary Roads Finco LP, as Borrower Finco (the “**Borrower Finco**”), Plenary Roads Finco ULC, as Finco 1 (“**Finco 1**”), Plenary Denver Finco, LLC, as Finco 2 (“**Finco 2**”) and the Concessionaire entered into the Loan Agreement, dated February 26, 2014 (the “**Original Series 2014 Loan Agreement**”), pursuant to which the Issuer loaned the proceeds of the Series 2014 Bonds to the Borrower Finco (the “**Series 2014 Loan**”); and

**WHEREAS**, the Borrower Finco on-lent the proceeds of the Series 2014 Loan to Finco 1 pursuant to the Finco 1 Bond Proceeds Loan Agreement, who on-lent such proceeds to Finco 2 pursuant to the Finco 2 Bond Proceeds Loan Agreement, who on-lent such proceeds to the Concessionaire pursuant to the Concessionaire Bond Proceeds Loan Agreement, who used such proceeds to (a) finance a portion of the costs of the Phase 2 Work, and (b) pay a portion of the Costs of Issuance of the Series 2014 Bonds; and

**WHEREAS**, the Concessionaire agreed to repay the Concessionaire Bond Proceeds Loan from Project Revenues and other moneys held in certain funds and accounts under the MSA, and Finco 2 agreed to repay the Finco 2 Bond Proceeds Loan from amounts it receives from the Concessionaire pursuant to the Concessionaire Bond Proceeds Loan Agreement and certain distributions and dividends, and Finco 1 agreed to repay the Finco 1 Bond Proceeds Loan from amounts it receives from Finco 2 pursuant to the Finco 2 Bond Proceeds Loan Agreement and certain distributions and dividends, and Borrower Finco agreed to repay the Series 2014 Loan from amounts it receives from Finco 1 pursuant to the Finco 1 Bond Proceeds Loan Agreement; and

**WHEREAS**, in connection with the issuance of the Series 2014 Bonds, the Issuer, the Borrower Finco and the Concessionaire entered into the Tax Regulatory Agreement, dated February 26, 2014 (the “**Original Tax Regulatory Agreement**”), pursuant to which the Issuer, the Borrower Finco and the Concessionaire, among other things, covenanted and agreed to comply with all applicable tax laws in order to maintain the exclusion from federal gross income of the interest on the Series 2014 Bonds; and

**WHEREAS**, pursuant to the Assignment and Variation Agreement, dated as of [•], 2020 (the “**AVA**”), by and between, amongst others, the Borrower Finco, Finco 1, Finco 2, the Concessionaire, the Issuer, the TIFIA Phase 1 Lender, the TIFIA Phase 2 Lender, the Subordinated Lenders, the Trustee, the Intercreditor Agent and the Security Trustee, Finco 2 has agreed to irrevocably sell, assign and transfer to Finco 1, and Finco 1 has agreed to irrevocably purchase and assume, all of Finco 2’s rights and obligations under the Concessionaire Bond Proceeds Loan Agreement (the “**Finco 2 Transfer**”); and

**WHEREAS**, pursuant to the AVA, as consideration for the sale, assignment and transfer of the Concessionaire Bond Proceeds Loan Agreement by Finco 2 to Finco 1, Finco 1 will irrevocably and unconditionally release Finco 2 from any and all of its obligations, whether present or future, actual or contingent, under the Finco 2 Bond Proceeds Loan Agreement; and

**WHEREAS**, pursuant to the AVA, Finco 1 has agreed to irrevocably sell, assign and transfer to Borrower Finco, and Borrower Finco has agreed to irrevocably purchase and assume, all of Finco 1’s rights and obligations under the Concessionaire Bond Proceeds Loan Agreement (the “**Finco 1 Transfer**”); and

**WHEREAS**, pursuant to the AVA, as consideration for the sale, assignment and transfer of the Concessionaire Bond Proceeds Loan Agreement by Finco 1 to Borrower Finco, Borrower Finco will irrevocably and unconditionally release Finco 1 from any and all of its obligations, whether present or future, actual or contingent, under the Finco 1 Bond Proceeds Loan Agreement; and

**WHEREAS**, pursuant to the AVA, Borrower Finco has agreed to irrevocably sell, assign and transfer to Concessionaire, and Concessionaire has agreed to irrevocably purchase and assume, all of Borrower Finco’s rights and obligations under the Original Series 2014 Loan Agreement (the “**Borrower Finco Transfer**”); and

**WHEREAS**, pursuant to the AVA, as consideration for the sale, assignment and transfer of the Original Series 2014 Loan Agreement by Borrower Finco to Concessionaire, Borrower Finco irrevocably and unconditionally releases Concessionaire from any and all of its obligations, whether present or future, actual or contingent, in respect of the Concessionaire Bond Proceeds Loan Agreement; and

**WHEREAS**, pursuant to the AVA, in connection with the Finco 2 Transfer, the Finco 1 Transfer and the Borrower Finco Transfer, the Issuer and the Trustee have determined that certain amendments are necessary and required to be made to the Original Indenture, the Issuer and the Concessionaire have determined that certain amendments are necessary and required to be made to the Original Series 2014 Loan Agreement, and the Issuer and the Concessionaire have determined that certain amendments are necessary and required to be made to the Original Tax Regulatory Agreement; and

**WHEREAS**, the Issuer and the Trustee have entered into the Amended and Restated Trust Indenture, dated as of [•], 2020 (as may be amended and supplemented from time to time hereafter, the “**Indenture**”), and the Issuer and the Concessionaire have entered into the Amended and

Restated Loan Agreement, dated as of [•], 2020 (as may be amended and supplemented from time to time hereafter, the “**Series 2014 Loan Agreement**”); and

**WHEREAS**, pursuant to Section 11 of the Original Tax Regulatory Agreement and the AVA, the Original Tax Regulatory Agreement is amended and restated in its entirety by this Tax Regulatory Agreement;

NOW THEREFORE, in consideration of the premises and the mutual covenants herein made, and subject to the conditions herein set forth, the parties hereto agree as follows:

**Section 1. Representations.**

(a) **Purpose; Sources of Funds.** The Issuer issued the Series 2014 Bonds on February 26, 2014 (the “**Date of Issuance**”). Pursuant to the Indenture, the Series 2014 Loan Agreement and the AVA, the proceeds of the Series 2014 Bonds have been loaned (the “**Series 2014 Loan**” or the “**Bond Proceeds Loan**”) to the Concessionaire to accomplish the “**Series 2014 Bonds Project**,” consisting of (i) financing a portion of the costs of the Phase 2 Work, and (ii) paying a portion of the Costs of Issuance of the Series 2014 Bonds.

Pursuant to the Concession Agreement, the Concessionaire agreed to, among other things, undertake the Phase 2 Work. The “**Phase 2 Work**” consists generally of the design and construction of a new managed highway lane in each direction on U.S. 36 between 88<sup>th</sup> Street in Louisville, Colorado, and Table Mesa/Foothills Parkway in Boulder, Colorado (the “**Phase 2 Corridor**”) and the widening and pavement replacement of the general purpose highway lanes on the Phase 2 Corridor, the design and construction of certain bus rapid transit improvements along the Phase 2 Corridor, the design and construction of other improvements to the Phase 2 Corridor, including sound and retaining walls, bikeways, dynamic messaging signs and certain intelligent system improvements, and the installation and commissioning of an electronic tolling collection system, all as more specifically described in the Concession Agreement. (See also Section 2(e) hereof regarding applicable tax law requirements relating to the Series 2014 Bonds Project.)

The portion of the Phase 2 Work not financed with Proceeds of the Series 2014 Bonds was paid or financed, as applicable, with “**Other Phase 2 Funds**,” consisting of (a) proceeds of the TIFIA Phase 2 Loan, (b) proceeds of the Subordinated Loan, [(c) Equity Contributions (as defined in the MSA),] (d) the HPTE Capital Payment (as defined in the Concession Agreement) and (e) certain Project Revenues, all as more particularly described in the MSA. As described in Section 4.03(e)(i) of the MSA, Proceeds of the Series 2014 Bonds were used to finance the Phase 2 Work before any Other Phase 2 Funds were used to pay or finance the Phase 2 Work.

(b) **Responsible Persons.** The undersigned representative of the Issuer is an officer of the Issuer and is delegated the authority and responsible for issuing the Series 2014 Bonds. As such, the certifications by the Issuer herein with respect to information pertaining to the Issuer may be relied on as provided in Section 1.148-2(b)(2)(i) of the Regulations.

The undersigned representative of the Concessionaire is an officer of the Concessionaire and has made due inquiry with respect to and is fully informed as to all matters set forth herein pertaining to the Series 2014 Bonds and the Series 2014 Bonds Project.

(c) **Statement as to Facts, Estimates and Circumstances.** The facts and estimates set forth in this Tax Regulatory Agreement on which the expectations of the Concessionaire as to the amount and use of the Gross Proceeds of the Series 2014 Bonds are based are made to the best of the knowledge and belief of the undersigned officer of the Concessionaire, and such expectations are reasonable. Neither the Issuer nor the Concessionaire is aware of any facts or circumstances that would cause it to question the accuracy or reasonableness of any representation or certification made in this Tax Regulatory Agreement or in the Original Tax Regulatory Agreement.

(d) **No Replacement; Average Maturity.** No portion of the Sale Proceeds of the Series 2014 Bonds has been or will be used as a substitute for other funds that were otherwise to be used as a source of financing for the Series 2014 Bonds Project, and that have been or will be used to acquire, directly or indirectly, Investment Property producing a yield in excess of the Bond Yield. The weighted average maturity of the Series 2014 Bonds (26.3933 years) does not exceed 120 percent of the average reasonably expected economic life of the facilities financed with Proceeds of the Series 2014 Bonds (the “**Financed Facilities**”), as shown on Exhibit B attached hereto.

(e) **Compliance with Applicable Tax Law Requirements.**

(i) At least 95 percent of the Net Proceeds (as defined in clause (ii) below) of the Series 2014 Bonds have been and will be used to provide (A) one or more surface transportation projects (which include the Phase 2 Work) that are receiving federal assistance in the form of, among other things, the TIFIA Phase 2 Loan and the Other Phase 2 Funds, under title 23, United States Code, or (B) facilities that otherwise constitute “qualified highway or surface freight transportation facilities” under Section 142(m)(1) of the Code. (Costs of Issuance of the Series 2014 Bonds, which are subject to the two percent limitation described in Section 2(j) hereof, are not considered to be used to “provide” such facilities and therefore do not count toward the 95 percent requirement.)

(ii) “**Net Proceeds**” means all Proceeds of the Series 2014 Bonds less any such Proceeds in a reasonably required reserve or replacement fund. For purposes of this Tax Regulatory Agreement, the portion of the Net Proceeds of the Series 2014 Bonds that is not included in the 95 percent portion described above is referred to as the “insubstantial portion.” Any Expenditures that are not Expenditures for a Capital Project for such qualified highway surface freight transportation facilities (including Costs of Issuance of the Series 2014 Bonds) may only be allocated to the insubstantial portion.

(iii) In compliance with the requirement of Section 142(m)(2)(C) of the Code (relating to private activity bond authority), the United States Secretary of Transportation made an allocation of private activity bond authority in the amount of \$100 million to the Financed Facilities (the “**Allocated Authority**”). True and correct copies of the letters evidencing the Allocated Authority are attached hereto as Exhibit C. No bonds or other obligations have heretofore been issued for any portion of the Financed Facilities pursuant to the Allocated Authority. The Issuer hereby designates that the Series 2014 Bonds will be issued using \$20,360,000 of the Allocated Authority. The aggregate face amount of the Series 2014 Bonds does not exceed the Allocated Authority.

(iv) On the Date of Issuance, the Issuer and the Concessionaire reasonably expected that at least 95 percent of the Net Proceeds of the Series 2014 Bonds would be expended for qualified highway or surface freight transfer facilities within the five-year period beginning on the Date of Issuance, as required by Section 142(m)(3) of the Code. The Concessionaire has attached hereto as Exhibit F an expenditure schedule relating to the Net Proceeds of the Series 2014 Bonds to support such expectations. The Issuer and the Concessionaire acknowledge that, if less than 95 percent of such Net Proceeds is expended by the end of such five-year period, the Series 2014 Bonds may still be treated as continuing to meet the requirements of Section 142(m)(3) of the Code summarized in this subsection (e) if the Issuer and the Concessionaire use all unspent Proceeds of the Series 2014 Bonds to redeem Series 2014 Bonds within 90 days after the end of such five-year period or obtain a spending period extension from the Secretary of Transportation pursuant to Section 142(m)(3) of the Code. The Issuer and the Concessionaire agree to contact Bond Counsel in the event the Issuer or the Concessionaire anticipates that the expenditure requirement summarized in the first sentence of this paragraph will not be satisfied.

(f) ***Compliance with Section 147(c) of the Code.*** In compliance with the requirements of Section 147(c) of the Code (relating to the limitation on land acquisition), less than 25 percent of the Proceeds of the Series 2014 Bonds have been or will be used (directly or indirectly) to finance the acquisition of land (or an interest therein).

(g) ***Compliance with Section 147(d) of the Code.*** In compliance with the requirements of Section 147(d) of the Code (relating to the prohibition on the acquisition of existing property), no portion of the Proceeds of the Series 2014 Bonds have been or will be used for the acquisition of any property (or an interest therein) unless the first use of such property is pursuant to such acquisition.

(h) ***Compliance with Section 147(e) of the Code.*** In compliance with the requirements of Section 147(e) of the Code (relating to various prohibited uses), no portion of the Proceeds of the Series 2014 Bonds have been or will be used to provide any airplane, skybox or other private luxury box, health club facility, facility primarily used for gambling, or other store the principal business of which is the sale of alcoholic beverages for consumption off premises.

(i) ***Compliance with Section 147(f) of the Code.*** In compliance with the requirements of Section 147(f) of the Code (relating to public approval), the issuance of the Series 2014 Bonds was approved by the Treasurer of the State of Colorado on September 30, 2013, following a public hearing held by the Issuer on September 11, 2013, notification of which was published on August 27, 2013, in *The Denver Post*. (See Exhibit D attached hereto.)

(j) ***Compliance with Section 147(g) of the Code.*** In compliance with the requirements of Section 147(g) of the Code (relating to restriction on issuance costs), not more than two percent of the Proceeds of the Series 2014 Bonds have been or will be used to pay Costs of Issuance of the Series 2014 Bonds.

(k) ***Bonds Not Hedge Bonds.*** On the Date of Issuance, the Concessionaire reasonably expected to expend at least 85 percent of the “spendable proceeds” of the Series 2014 Bonds within

three years of the Date of Issuance and not more than 50 percent of the proceeds of the Series 2014 Bonds would be invested in Nonpurpose Investments having substantially guaranteed yields for four years or more.

(l) **Single Issue.** The Issuer did not issue other obligations that were (i) sold at substantially the same time as the Series 2014 Bonds (*i.e.*, within 15 days of February 20, 2014, the date on which the Series 2014 Bond Purchase Agreement was executed), (ii) sold pursuant to the same plan of financing as the Series 2014 Bonds and (iii) reasonably expected to be paid from substantially the same source of funds as are used to pay the Series 2014 Bonds.

(m) **No Refunding.** None of the Proceeds of the Series 2014 Bonds have been or will be used to refund or refinance any Tax-Exempt Obligations.

(n) **Anti-Abuse.** None of the Proceeds of the Series 2014 Bonds have been or will be used in a manner that employs an abusive arbitrage device under Section 1.148-10 of the Regulations to avoid the arbitrage restrictions or to avoid the restrictions under Sections 142 through 147 of the Code.

(o) **Bonds Registered.** The Series 2014 Bonds are registered within the meaning of Section 149(a) of the Code.

**Section 3. Certain Expectations.** The Issuer and the Concessionaire make the following representations and statements of fact and expectation on the basis of which it is not expected that the Proceeds of the Series 2014 Bonds have been or will be used in a manner that will cause the Series 2014 Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code:

(a) **Application of Sale Proceeds and Other Phase 2 Funds.** The amount received by the Issuer from the sale of the Series 2014 Bonds was \$20,001,867.60 (consisting of the original aggregate principal amount of the Series 2014 Bonds of \$20,360,000.00, less an original issue discount of \$358,132.40). The Sale Proceeds of the Series 2014 Bonds were used and fully expended as set forth below:

(i) \$400,037.35 of the Sale Proceeds of the Series 2014 Bonds were transferred to the Security Trustee for deposit to the Bond Proceeds (Costs of Issuance) Subaccount and used to pay Costs of Issuance of the Series 2014 Bonds (including a portion of the underwriting discount paid to Goldman, Sachs & Co., as underwriter for the Series 2014 Bonds (the “**Underwriter**”)); and

(ii) \$19,601,830.25 of the Sale Proceeds of the Series 2014 Bonds were transferred to the Security Trustee for deposit to the Bond Proceeds (Project Costs) Subaccount and used to finance a portion of the costs of the Phase 2 Work.

All of the Sale Proceeds of the Series 2014 Bonds were fully used and allocated as described in clauses (i) through (iii) above and, as of the date hereof, no Sale Proceeds of the Series 2014 Bonds remain after application as described in such clauses. If unexpected excess Sale Proceeds of the Series 2014 Bonds arise, such excess Proceeds will be deposited to the Series 2014 Debt Service Fund described in Section 3(b)(i) below and used to pay principal of or interest on

both principal of and interest on the Series 2014 Bonds no later than one year after that date, under Section 1.148-6(d)(3)(ii)(A)(6) of the Regulations.

Attached hereto as Exhibit E is a copy of the reimbursement resolution of the Issuer adopted by the Board of Directors of the Issuer on November 20, 2013, relating to any reimbursements made with Proceeds of the Series 2014 Bonds as described in clause (iii) above. The Concessionaire certifies that any Sale Proceeds of the Series 2014 Bonds applied to reimburse the Concessionaire or an affiliate or subsidiary of the Concessionaire for Capital Expenditures of the Financed Facilities were applied no later than the later of the date that was (a) eighteen months after the expenditure being reimbursed was paid, or (b) eighteen months after the date on which the portion of the Financed Facilities to which such expenditure relates was abandoned or placed in service. In no event did the Concessionaire allocate Proceeds of the Series 2014 Bonds to reimburse Capital Expenditures of the Financed Facilities later than three years after the original expenditure was paid. The Concessionaire certifies that none of the reimbursed Expenditures were used to pay debt service on any Tax-Exempt Obligations.

(b) ***Funds and Accounts.***

(i) **Bonds Debt Service Accounts.** The “**Bonds Debt Service Accounts**” for purposes of this Tax Regulatory Agreement consist of the Series 2014 Debt Service Fund and the Senior Bonds Debt Service Account.

The Series 2014 Debt Service Fund (including the Series 2014 Interest Account, the Series 2014 Principal Account and the Series 2014 Redemption Account therein) is established in Section 5.01 of the Indenture. The Series 2014 Debt Service Fund is established to achieve a proper matching of revenues (including amounts remitted or transferred from the Senior Bonds Debt Service Account pursuant to Section 4.04(d) of the MSA) with principal and interest payments on the Series 2014 Bonds within each Bond Year. Accordingly, the Issuer will treat the amounts deposited in the Series 2014 Debt Service Fund that are to be expended to pay the principal of and interest on the Series 2014 Bonds as the same become due and which will be depleted at least once each Bond Year (except for a reasonable carryover amount not to exceed the greater of (A) the earnings on the Series 2014 Debt Service Fund for the immediately preceding Bond Year, or (B) one twelfth of the principal and interest payments on the Bonds for the immediately preceding Bond Year) as a bona fide debt service fund. It is reasonably expected that all amounts, if any, received by the Issuer as income from the investment of the Series 2014 Debt Service Fund will be expended to pay the principal of and interest on the Series 2014 Bonds within one year of receipt thereof. Such moneys may be invested without regard to investment yield limitation for a period of 13 months from the date of receipt, and thereafter, or at any time to the extent such amounts exceed the amounts described in this subsection, may not be invested in obligations bearing a yield in excess of the Bond Yield. To the extent required by the Code, such amounts are subject to the Rebate Requirement.

The Senior Bonds Debt Service Account is established in Section 4.01(b) of the MSA. Except as otherwise described in Section 4.04(d) of the MSA regarding Bankruptcy Related Events, the Senior Bonds Debt Service Account is established to achieve a proper matching of revenues with principal and interest payments on the Series 2014 Loan within each Bond



Year. Accordingly, the Concessionaire will treat the amounts deposited in the Senior Bonds Debt Service Account that are to be expended to pay the principal of and interest on the Series 2014 Loan as the same become due and which will be depleted at least once each Bond Year (except for a reasonable carryover amount not to exceed the greater of (A) the earnings on the Senior Bonds Debt Service Account for the immediately preceding Bond Year, or (B) one twelfth of the principal and interest payments on the Series 2014 Bonds for the immediately preceding Bond Year) as a bona fide debt service fund. It is reasonably expected that all amounts, if any, received by the Concessionaire as income from the investment of the Senior Bonds Debt Service Account will be expended to pay the principal of and interest on the Series 2014 Loan within one year of receipt thereof. Such moneys may be invested without regard to investment yield limitation for a period of 13 months from the date of receipt, and thereafter, or at any time to the extent such amounts exceed the amounts described in this subsection, may not be invested in obligations bearing a yield in excess of the Bond Yield. To the extent required by the Code, such amounts are subject to the Rebate Requirement.

The Concessionaire represents and covenants that no portion of the proceeds of the TIFIA Phase 2 Loan was or will be deposited to the Bonds Debt Service Accounts or otherwise used to make debt service payments on the Series 2014 Bonds or the Series 2014 Loan.

(ii) **Bond Proceeds (Costs of Issuance) Subaccount.** The Bond Proceeds (Costs of Issuance) Subaccount is established in Section 4.01(a) of the MSA. Proceeds of the Series 2014 Bonds deposited to the Bond Proceeds (Costs of Issuance) Subaccount were and will be used to pay Costs of Issuance of the Series 2014 Bonds. Proceeds of the Series 2014 Bonds, including Investment Proceeds thereof, were spent within the periods and maintained subject to the investment restrictions described in paragraph (iii) below relating to the Bond Proceeds (Project Costs) Subaccount. Section 4.03(e)(ii) of the MSA provides that any moneys remaining on deposit in the Bond Proceeds (Costs of Issuance) Subaccount on the date that is six months after the Date of Issuance will be transferred to the Bond Proceeds (Project Costs) Subaccount, and at such time the Bond Proceeds (Costs of Issuance) Subaccount is to be closed. Upon such transfer, if any, such moneys were used for the purposes of the Bond Proceeds (Project Costs) Subaccount and maintained subject to the investment restrictions described in paragraph (iii) below relating to the Bond Proceeds (Project Costs) Subaccount.

(iii) **Bond Proceeds (Project Costs) Subaccount.** The Bond Proceeds (Project Costs) Subaccount is established in Section 4.01(a) of the MSA. The Concessionaire certifies that: (A) at least 85 percent of the Net Sale Proceeds of the Series 2014 Bonds were allocated to Expenditures for Capital Projects within three years of the Date of Issuance; (B) within six months of such Date of Issuance, the Concessionaire entered into contracts with third parties constituting substantial binding obligations to make Expenditures for Capital Projects for the Series 2014 Bonds Project obligating Expenditures in excess of five percent of the Net Sale Proceeds of the Series 2014 Bonds; and (C) the Series 2014 Bonds Project and the allocation of Net Sale Proceeds to Expenditures for Capital Projects proceeded with due diligence to completion.

The Sale Proceeds of the Series 2014 Bonds deposited in the Bond Proceeds (Project Costs) Subaccount were expended for payment of costs that were directly related to and

necessary for the financing of Capital Expenditures for the Series 2014 Bonds Project substantially in accordance with the schedule set forth in Exhibit F attached hereto. All Investment Proceeds earned on amounts deposited in the Bond Proceeds (Project Costs) Subaccount were expended on Capital Expenditures for the Series 2014 Bonds Project (including Costs of Issuance of the Series 2014 Bonds).

The Proceeds of the Series 2014 Bonds deposited into the Bond Proceeds (Project Costs) Subaccount could have been invested without regard to investment yield limitation until the date that was three years from the Date of Issuance. After such period of unrestricted investment, any such Proceeds were not invested in obligations that bore a yield in excess of one eighth of one percent (0.125%) greater than the Bond Yield.

Any interest earnings or investment gains realized from the investment of the Proceeds of the Series 2014 Bonds in the Bond Proceeds (Project Costs) Subaccount could have been reinvested pending disbursement in obligations that bear a yield in excess of the Bond Yield. The period of unrestricted investment of such earnings could not exceed the longer of (A) a one-year period beginning on the date of receipt of such investment income or (B) the period ending on the date which is three years from the Date of Issuance. After the period of unrestricted reinvestment of investment earnings described in this subsection, such earnings could not have been invested in Investments that bear a yield in excess of one eighth of one percent (0.125%) greater than the Bond Yield. Such interest earnings or investment gains were allocated to Capital Expenditures for the Series 2014 Bonds Project.

(iv) **Bonds Debt Service Reserve Account.** The Bonds Debt Service Reserve Account is established in Section 4.01(a) of the MSA. The Bonds Debt Service Reserve Account will not be funded with Proceeds of the Series 2014 Bonds but will be funded from time to time as described in Section 4.05(b) of the MSA in an amount equal to the Bonds Debt Service Reserve Requirement. The Bonds Debt Service Reserve Account is created for the payment of debt service on the Series 2014 Loan (and therefore on Series 2014 Bonds) in the event that other moneys are not sufficient to make such payments.

Based on representations of the Underwriter on the Date of Issuance contained in the Certificate of the Underwriter attached hereto as Exhibit A (the “**Certificate of the Underwriter**”), the establishment of the Bonds Debt Service Reserve Account and the funding thereof in the amount of the Bonds Debt Service Reserve Requirement as described in Section 4.05(b) of the MSA was reasonably required. The total of the amounts deposited in the Bonds Debt Service Reserve Account may be invested without regard to investment yield limitation to the extent that such amounts do not exceed the least of (A) 10 percent of the stated principal amount of the Series 2014 Bonds, (B) the maximum annual debt service on the Series 2014 Bonds and (C) 125 percent of average annual debt service on the Series 2014 Bonds. Amounts in excess of such investment limits must be invested at a yield not in excess of the Bond Yield. In measuring whether such unrestricted investment limits have been reached, any discount on the purchase of investments bearing a yield in excess of the Bond Yield must be accounted for ratably each Bond Year as additional amounts invested at the yield on such investment. (The Issuer will be permitted to make yield reduction payments under Section 1.148-5(c) of the Regulations in measuring whether the investment limits have been reached.)

(v) **Bonds Redemption Account.** The MSA creates the Bonds Redemption Account and requires such account to be funded from time to time with any Sinking Fund Amounts as further described in Section 4.20 of the MSA. The Bonds Redemption Account will not be funded with Proceeds of the Series 2014 Bonds. The Bonds Redemption Account is created for the payment of debt service on the Series 2014 Bonds to the extent Sinking Fund Amounts are deposited therein and made available to the Series 2014 Bonds. To the extent moneys in the Bonds Redemption Account constitute part of the Minor Portion, moneys in the Bonds Redemption Account may be invested without regard to investment yield limitation. Moneys on deposit in the Bonds Redemption Account that do not constitute part of the Minor Portion may not be invested at a Yield in excess of the Bond Yield. Neither the Issuer nor the Concessionaire reasonably expected on the Date of Issuance or on the date hereof that any Sinking Fund Amounts would be or will be deposited to the Bonds Redemption Account. The Issuer and the Concessionaire acknowledge that moneys on deposit in the Bonds Redemption Account constitute Replacement Proceeds of the Series 2014 Bonds to the extent such moneys are available to pay debt service on the Series 2014 Bonds.

(vi) **No Other Replacement Proceeds.** Except for the establishment of the funds and accounts described in paragraphs (i) through (v) above, none of the Issuer or the Concessionaire nor a related person (as defined in Section 147 of the Code) to the Issuer or the Concessionaire, as the case may be, nor any other substantial beneficiary of the Series 2014 Bonds has created or established and none of the foregoing parties are expected to create or establish any other fund to pay debt service on the Series 2014 Loan or the Series 2014 Bonds, or a debt service reserve fund or any other similar fund with respect to the Series 2014 Loan or the Series 2014 Bonds, or a negative pledge or right of set-off in any funds, accounts or assets of the Issuer or the Concessionaire. Further, there are no other funds that are reasonably expected to be used to pay debt service on the Series 2014 Loan or the Series 2014 Bonds and for which there is a reasonable assurance that amounts on deposit therein or the investment income earned thereon will be available to pay debt service on the Series 2014 Loan or the Series 2014 Bonds if the applicable obligor encounters financial difficulties. None of the Issuer or the Concessionaire will create or establish, or will allow to be created or established, any such fund, account, negative pledge or right of set-off unless the Issuer obtains an opinion of Bond Counsel to the effect that the creation or establishment of such fund, account, negative pledge or right of set-off will not adversely affect the excludability of interest on the Series 2014 Bonds from the gross income of the registered owners thereof for federal income tax purposes.

(vii) **Rebate Account.** The Rebate Account is established in Section 4.01(a) of the MSA. Any moneys of the Concessionaire deposited in the Rebate Account from time to time and not constituting Gross Proceeds of the Series 2014 Bonds, together with any Investment earnings on such moneys, may be invested without regard to investment yield limitation, and any such earnings are not subject to the Rebate Requirement described herein. Investment Proceeds of the Series 2014 Bonds deposited in the Rebate Account may be invested without regard to investment yield limitation for a period of one year beginning on the date of receipt thereof and thereafter at a yield not in excess of the Bond Yield. Investment of such Proceeds of the Series 2014 Bonds in the Rebate Account is subject to the Rebate Requirement

described herein. No Sale Proceeds of the Series 2014 Bonds will be deposited to the Rebate Account.

(viii) **Other Accounts and Subaccounts.** In addition to the Bonds Debt Service Accounts, the Bond Proceeds (Costs of Issuance) Subaccount, the Bond Proceeds (Project Costs) Subaccount, the Bonds Debt Service Reserve Account, the Bonds Redemption Account and the Rebate Account, the MSA establishes certain other accounts and subaccounts (the “**Other Accounts and Subaccounts**”) related to the TIFIA Phase 1 Loan, the TIFIA Phase 2 Loan, the Assumed Subordinated Loan, the Cash Interest Subordinated Loan, the [Equity Commitment Amount,] the Interim Capital Payments (as defined in the Concession Agreement), and the Phase 2 Work including but not limited to the following: (A) Distribution Account; (B) Cash Reserve Account; (C) Distribution Account; (D) Equity Lock-Up Account; (E) Equity Subaccount; (F) Handback Requirements Reserve Account; (G) HPTE Capital Subaccount; (H) HPTE Cashflow Share Account; (I) HPTE Cashflow Sharing Account; (J) Joint Insurance Account; (K) Loss Proceeds Account; (L) Major Maintenance Reserve Account; (M) O&M Reserve Account; (N) Project Account; (O) Project O&M Account; (P) Project Proceeds Account; (Q) Project Revenue Subaccount; (R) Ramp Up Reserve Account; (S) Sinking Fund Account; (T) Subordinated Debt Subaccount; (U) Subordinated Loan Debt Service Account; (V) Subordinated Loan Lock-Up Account; (W) Subordinated Loan Prepayment Account; (X) Subordinated Loan Restricted Payment Account; (Y) Termination Compensation Subaccount; (Z) TIFIA Phase 1 Debt Service Account; (AA) TIFIA Phase 1 Debt Service Reserve Account; (BB) TIFIA Phase 1 Loan Prepayment Account; (CC) TIFIA Phase 1 Revenue Share Account; (DD) TIFIA Phase 2 Debt Service Account; (EE) TIFIA Phase 2 Debt Service Reserve Account; (FF) TIFIA Phase 2 Loan Subaccount; (GG) TIFIA Phase 2 Loan Prepayment Account; and (HH) TIFIA Phase 2 Revenue Share Account. None of the Issuer or the Concessionaire expect that amounts deposited in any of the Other Accounts and Subaccounts will be used to pay principal of or interest on the Series 2014 Loan or the Series 2014 Bonds, and there is no assurance that any such amounts will be available to pay debt service on the Series 2014 Loan or the Series 2014 Bonds if the Concessionaire encounters financial difficulties. Amounts that are not Gross Proceeds of the Series 2014 Bonds and that are deposited in the Other Accounts and Subaccounts may be invested without regard to investment yield limitation.

(ix) **Other Gross Proceeds of the Series 2014 Bonds.** Except as otherwise provided in paragraphs (i) through (viii) above, any amounts constituting Gross Proceeds of the Series 2014 Bonds may not be invested in Investments bearing a yield in excess of the Bond Yield.

(x) **Rebate Requirement.** Investments described in this subsection (b) are, to the extent required by the Code and the Regulations, subject to the Rebate Requirement.

[Remainder of page intentionally left blank.]

(c) **Summary Chart of Applicable Yield Restrictions.**

<b>Account or Subaccount</b>	<b>Temporary Period of Unrestricted Investment</b>	<b>Restriction After Temporary Period</b>	<b>Excepted From Rebate (Y)/(N)</b>
Bonds Debt Service Accounts	13 months	Bond Yield plus 1/1000 of one percentage point	Y/N <sup>1</sup>
Bond Proceeds (Costs of Issuance) Subaccount	3 years	Bond Yield plus 1/8 of one percentage point	Y/N <sup>2</sup>
Bond Proceeds (Project Costs) Subaccount	3 years	Bond Yield plus 1/8 of one percentage point	Y/N <sup>2</sup>
Bonds Debt Service Reserve Account	Unlimited <sup>3</sup>	N/A	N
Bonds Redemption Account and other Replacement Proceeds	30 days	Bond Yield plus 1/1000 of one percentage point	N
Investment Earnings on Bond Proceeds (Project Costs) Subaccount	Later of 3 years from the date hereof or 1 year from the date of receipt	Bond Yield plus 1/8 of one percentage point	Y/N <sup>1</sup>
Investment Earnings on Bond Debt Service Accounts and Bonds Debt Service Reserve Account	One Year	Bond Yield plus 1/8 of one percentage point	N

(d) **Yield on the Series 2014 Loan.** The Concessionaire expects to make payments pursuant to the Series 2014 Loan Agreement and the therein defined Series 2014 Note in amounts that are sufficient to pay debt service on the Series 2014 Bonds and to pay certain fees relating to the issuance of the Series 2014 Bonds. For purposes of calculating the yield on the Series 2014 Loan, the Issuer reasonably expects and has assumed that the Concessionaire will cause to be paid (i) an amount sufficient to pay the principal of, premium, if any, and interest due on the Series 2014 Bonds and (ii) the reasonable fees and expenses of the Issuer related to the issuance of the Series 2014 Bonds. The Concessionaire does not expect to pay or cause to be paid any amounts with respect to the Series 2014 Loan, the Series 2014 Note and the Series 2014 Bonds other than

<sup>1</sup> To the extent that the gross earnings on such accounts do not exceed \$100,000 for the Bond Year, such earnings are not subject to rebate.

<sup>2</sup> Depending upon whether or not one of the rebate exceptions described in Appendix IV is met.

<sup>3</sup> Subject to Section 3(b)(iv) above.

those described herein and in the Series 2014 Loan Agreement. The yield on the Series 2014 Loan, taking the foregoing amounts into account, is not greater than the Bond Yield plus one-eighth of one percentage point.

(e) ***Price of the Series 2014 Bonds and Bond Yield.*** On the Date of Issuance, the Underwriter represented in the Certificate of the Underwriter that the initial offering price to the public (excluding bond houses, brokers and other intermediaries) at which a substantial amount of the Series 2014 Bonds was sold was the Issue Price. There was no Pre-Issuance Accrued Interest on the Series 2014 Bonds.

As used in this Tax Regulatory Agreement, the term “yield” refers to the discount rate which, when used in computing the present worth of all payments of principal and interest to be paid on an obligation, produces an amount equal to the Issue Price. The calculations of yield are to be made on the basis of semiannual compounding using a 360-day year and upon the assumption that payments are made on the last day of each semiannual interest payment period (unless a different reasonable standard financial convention is explicitly adopted in accordance with Section 1.148-4(a) of the Regulations). For purposes of computing yield, the purchase price of any obligation is equal to the Fair Market Value as of the date of a binding contract to acquire such obligation. The Bond Yield has been calculated to be not less than 5.8830% (using a 360-day year of twelve 30-day months, as such convention has been adopted in the Indenture).

**Section 4. Rebate Requirement, Calculations And Payment.** The Issuer and the Concessionaire hereby covenant to comply with the rebate requirements of Section 148(f) of the Code (the “**Rebate Requirement**”). The Concessionaire agrees to make, or cause to be made, any calculations necessary to comply with the Rebate Requirement. A summary of the Regulations promulgated with respect to the Rebate Requirement is included in Appendix II attached hereto. Certain exceptions to the Rebate Requirement are available. For a summary of these exceptions see Appendix III attached hereto.

**Section 5. Allocation and Accounting Rules.** The Issuer and the Concessionaire hereby covenant to comply with the allocation and accounting rules described in Appendix IV attached hereto for purposes of allocating Gross Proceeds to the Series 2014 Bonds, allocating Gross Proceeds to investments, and allocating Gross Proceeds to Expenditures.

**Section 6. Prohibited Investments and Dispositions.** Upon the purchase or sale of a Nonpurpose Investment, Gross Proceeds of the Series 2014 Bonds are not allocated to a payment for that Nonpurpose Investment in an amount greater than, or to a receipt from that Nonpurpose Investment in an amount less than, the fair market value of the Nonpurpose Investment as of the purchase or sale date. The fair market value of a Nonpurpose Investment is adjusted to take into account Qualified Administrative Costs allocable to the investment. Thus, Qualified Administrative Costs increase the payments for, or decrease the receipts from, a Nonpurpose Investment. The Issuer and the Concessionaire will comply with the procedures described in Appendix V attached hereto relating to these requirements.

## **Section 7. Post-Issuance Compliance And Remedial Action.**

(a) Attached hereto as Exhibit G-1 is a copy of the Issuer's post-issuance compliance policy, which the Issuer hereby adopts, with respect to tax-advantaged bonds, notes, leases, loans or similar types of obligations issued by the Issuer as a conduit issuer.

(b) Pursuant to the Issuer's post-issuance compliance policy, the Issuer hereby delegates to the Concessionaire the responsibility with respect to general post-issuance compliance matters and remedial action procedures, and the Concessionaire accepts such delegation and agrees to comply with such obligations. The Concessionaire has attached as Exhibit G-2 hereto a copy of its post-issuance compliance policy which it hereby adopts. The Concessionaire agrees to comply with such policy in connection with the Series 2014 Bonds and any other tax-advantaged bonds, notes, leases, loans or similar types of obligations heretofore or hereafter issued or executed and delivered on its behalf or for its benefit.

(c) In Section II.A of its post-issuance compliance policy, the Concessionaire has assigned to the Responsible Person defined in the policy the primary responsibility for ensuring that the obligations issued for the benefit of the Concessionaire are, and will remain, in compliance with federal tax law. The Concessionaire agrees to provide timely notice to the Issuer of any changes to the identity of the person or persons responsible for ensuring such compliance.

(d) In the event that a remedial action is taken by the Concessionaire under Section 1.142-2 of the Regulations in connection with a change in use of the Financed Facilities, the Concessionaire agrees to give written notice to the Issuer and the Trustee accompanied by an opinion of Bond Counsel addressed to the Issuer and the Trustee to the effect that, as a result of the remedial action taken, the change in use will not adversely affect the federal tax status of the Series 2014 Bonds.

**Section 8. No Federal Guarantee.** The Issuer and the Concessionaire represent that the Series 2014 Bonds are not and shall not become directly or indirectly "federally guaranteed." Unless otherwise excepted under Section 149(b) of the Code, the Series 2014 Bonds will be considered "federally guaranteed" if (a) the payment of principal and interest with respect to the Series 2014 Bonds is guaranteed (in whole or in part) by the United States (or any agency or instrumentality thereof), (b) five percent or more of the Proceeds of the Series 2014 Bonds is (i) to be used in making loans, the payment of principal or interest with respect to which are to be guaranteed (in whole or in part) by the United States (or any agency or instrumentality thereof) or (ii) to be invested (directly or indirectly) in federally insured deposits or accounts or (c) the payment of principal or interest on the Series 2014 Bonds is otherwise indirectly guaranteed (in whole or in part) by the United States of America (or any agency or instrumentality thereof).

The Concessionaire covenants not to invest five percent or more of the Proceeds of the Series 2014 Bonds in federally insured deposits or accounts or otherwise invest such Proceeds in any obligation the payment of principal or interest on which is (in whole or in part) a direct obligation of or guaranteed by the United States of America (or any agency or instrumentality thereof). Notwithstanding the foregoing in this paragraph and the preceding paragraph, subject to

any applicable limitations in the Series 2014 Loan Agreement, the Indenture or the MSA or other applicable transaction documents relating to the Series 2014 Bonds, the Concessionaire may invest the Proceeds of the Series 2014 Bonds in any investment guaranteed by the following agencies of the United States of America: (a) the Federal Housing Administration; (b) the Veterans Administration; (c) Fannie Mae; (d) the Federal Home Loan Mortgage Corporation; and (e) the Government National Mortgage Association. Moreover, the Concessionaire may invest the Proceeds of the Series 2014 Bonds (a) during an initial temporary period until such Proceeds are needed for the purpose for which the Series 2014 Bonds were issued, (b) in a bona fide debt service fund, (c) in a reasonably required reserve or replacement fund, (d) in obligations issued by the United States Treasury, (e) in obligations issued pursuant to Section 21B(d)(3) of the Federal Home Loan Bank Act, as amended by Section 511(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, or (f) in a refunding escrow.

The Concessionaire covenants not to use (or permit the use of) any proceeds allocable to the TIFIA Phase 2 Loan for payment of principal of or interest on any of the Series 2014 Bonds or the Series 2014 Loan nor to use or allocate such funds or loan proceeds to any reserve fund for the Series 2014 Bonds or the Series 2014 Loan. All of such funds and loan proceeds were fully used to finance portions of the Phase 2 Work or to accomplish other purposes determined by the Concessionaire not relating to the payment of debt service on the Series 2014 Bonds or the Series 2014 Loan.

**Section 9. Information Reporting.** On the Date of Issuance, the Issuer and the Concessionaire reviewed the Internal Revenue Service Form 8038 prepared by Bond Counsel that was filed in connection with the issuance of the Series 2014 Bonds, a copy of which is attached hereto as Exhibit H, and, as of the Date of Issuance, all of the information contained therein was, to the best of the Issuer's and the Concessionaire's knowledge, true and complete.

**Section 10. Later Allocations.** [Not later than 18 months after the date the Phase 2 Work was placed in service (but in no event later than the date 60 days after 5 years from the Date of Issuance) the Concessionaire memorialized an allocation memorandum in which it allocated Proceeds of the Series 2014 Bonds to Capital Expenditures for the Series 2014 Bonds Project in such a manner to further assure that (a) not less than 95% of the Proceeds of the Series 2014 Bonds were allocated to eligible costs (constituting capital costs properly chargeable to the capital account of the Phase 2 Work or would be so chargeable with a proper election under federal tax principles) of qualified highway or surface freight transfer facilities under Section 142(m)(1) of the Code and (b) not more than 2 percent of the Proceeds of the Series 2014 Bonds (\$400,037.35) were allocated to pay Costs of Issuance of the Series 2014 Bonds.]

**Section 11. Amendments.** This Tax Regulatory Agreement sets forth the information, representations, and procedures necessary in order for Bond Counsel to render its opinion regarding the excludability of interest on the Series 2014 Bonds from gross income for federal income tax purposes and may be amended or supplemented from time to time to maintain such tax status only with the consent of the Issuer and the Concessionaire and the approval of Bond Counsel.

Notwithstanding any other provision herein, the covenants and obligations contained herein may be and will be deemed modified to the extent the Issuer and the Concessionaire secure



an opinion of Bond Counsel that any action required hereunder is no longer required or that some further action is required in order to maintain the tax status of interest on the Series 2014 Bonds for federal income tax purposes.

**Section 12. Supplementation of Tax Regulatory Agreement.** The Issuer and the Concessionaire understand the need to supplement this Tax Regulatory Agreement periodically to reflect further developments in the federal income tax laws governing the exclusion from federal gross income of interest on the Series 2014 Bonds, and the Issuer and the Concessionaire agrees to seek the advice of Bond Counsel from time to time as to the propriety of seeking the review of and supplements to this Tax Regulatory Agreement from Bond Counsel.

**Section 13. Term of Tax Regulatory Agreement.** This Tax Regulatory Agreement is effective from the Date of Issuance through the date that is four years after the last Series 2014 Bond is redeemed or paid pursuant to the Indenture.

**Section 14. Colorado Governmental Immunity Act and Federal Torts Claims Act.** No term or condition of this Tax Regulatory Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b) and 2671 et seq., as applicable now or hereafter amended.

**Section 15. Amendment and Restatement.** This Tax Regulatory Agreement amends and restates in its entirety the Tax Regulatory Agreement and from and after [•], 2020 all references made to the Original Tax Regulatory Agreement in any other instrument or document shall without more, be deemed to refer to this Tax Regulatory Agreement. This Tax Regulatory Agreement shall become effective and supersede all provisions of the Original Tax Regulatory Agreement upon the execution of this Tax Regulatory Agreement by each of the parties hereto and the fulfillment of all conditions precedent hereof but is not intended to be or operate as a novation or an accord and satisfaction of the Original Tax Regulatory Agreement or the indebtedness, obligations and liabilities of the Issuer evidenced or provided for thereunder.

**Section 16. Execution in Counterparts; Electronic Signatures.** This Tax Regulatory Agreement may be executed in several counterparts, including counterparts that are manually executed and counterparts that are in the form of electronic records and are electronically executed, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

An electronic signature means a signature that is executed by symbol attached to or logically associate with a record and adopted by a party with the intent to sign such record, including facsimile or e-mail signatures. The parties hereby acknowledge and agree that electronic records and electronic signatures, as well as facsimile signatures, may be used in connection with the execution of this Tax Regulatory Agreement and electronic signatures, facsimile signatures or signatures transmitted by electronic mail in so-called PDF format shall be legal and binding and shall have the same full force and effect as if a paper original of this Tax Regulatory Agreement had been delivered that had been signed using a handwritten signature. All parties to this Tax Regulatory Agreement (a) agree that an electronic signature, whether digital or encrypted, of a party to this Tax Regulatory Agreement is intended to authenticate this writing and to have the

same force and effect as a manual signature; (ii) intended to be bound by the signatures (whether original, faxed, or electronic) on any document sent or delivered by facsimile or electronic mail or other electronic means; (iii) are aware that the other party(ies) will rely on such signatures; and, (iv) hereby waive any defenses to the enforcement of the terms of this Tax Regulatory Agreement based on the foregoing forms of signature. If this Tax Regulatory Agreement has been executed by electronic signature, all parties executing this Tax Regulatory Agreement are expressly consenting, under the United States Federal Electronic Signatures in Global and National Commerce Act of 2000 (“**E-SIGN**”), the Colorado Uniform Electronic Transactions Act (“**CETA**”) (C.R.S. Section 24-71.3-101 *et seq.*), the New York Electronic Signatures and Records Act (“**NYESRA**”) or any other similar state laws based on Uniform Electronic Transactions Act, that a signature by fax, e-mail, or other electronic means shall constitute an Electronic Signature to an Electronic Record under E-SIGN, CUETA and NYESRA with respect to this specific transaction.

[Remainder of page intentionally left blank; signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Tax Regulatory Agreement to be duly executed, all as of the date first above written.

COLORADO HIGH PERFORMANCE  
TRANSPORTATION ENTERPRISE, as Issuer

By: \_\_\_\_\_  
Nicholas J. Farber, Director

PLENARY ROADS DENVER LLC, as  
Concessionaire

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*[Signature page to Amended and Restated Tax Regulatory Agreement]*

## APPENDIX I

### GENERAL DEFINITIONS

“*Bond Counsel*” means Kutak Rock LLP or any other law firm appointed by the Issuer, having a national reputation in the field of municipal finance whose opinions are generally accepted by purchasers of municipal bonds.

“*Bond Year*” means each one-year period that ends on the day selected by the Concessionaire on behalf of the Issuer. The first and last Bond Years may be short periods. If no day is selected by the Concessionaire before the date that is five years from the issue date, each Bond Year ends on the anniversary of the issue date and on the final maturity date.

“*Bond Yield*” has the meaning set forth in the Tax Regulatory Agreement.

“*Capital Expenditure*” means any cost of a type that is properly chargeable to a capital account (or would be so chargeable with a proper election or with the application of the definition of placed in service under Section 1.150-2(c) of the Regulations) under general federal income tax principles. For example, costs incurred to acquire, construct or improve land, buildings and equipment generally are Capital Expenditures. Whether an Expenditure is a Capital Expenditure is determined at the time the Expenditure is paid with respect to the property. Future changes in law do not affect whether an Expenditure is a Capital Expenditure.

“*Capital Project*” means all Capital Expenditures, plus related working capital expenditures to which the de minimis rule under Section 1.148-6(d)(3)(ii)(A) of the Regulations applies, that carry out the governmental purposes of the Series 2014 Bonds. For example, a Capital Project may include Capital Expenditures for one or more building improvements or equipment, plus related start-up operating costs and capitalized interest through the placed-in-service date for the Capital Project.

“*Code*” mean the Internal Revenue Code of 1986, as amended.

“*Commingled Fund*” means any fund or account containing both Gross Proceeds of the Series 2014 Bonds and amounts in excess of \$25,000 that are not Gross Proceeds of the Series 2014 Bonds if the amounts in the fund or account are invested and accounted for collectively, without regard to the source of funds deposited in the fund or account.

“*Computation Date*” means each date on which the rebate amount for the Series 2014 Bonds is computed.

“*Computation Date Credit*” means, with respect to the Series 2014 Bonds, the “computation credit” treated as a payment for Nonpurpose Investments allocable to the Series 2014 Bonds as of the end of each Bond Year for the Series 2014 Bonds and on the final Computation Date for the Series 2014 Bonds pursuant to Section 1.148-3(d)(1)(iv) of the Regulations.

“*Computation Period*” means the period between Computation Dates. The first Computation Period begins on the date of issuance of the Series 2014 Bonds and ends on the first Computation Date. Each succeeding Computation Period begins on the date immediately following the Computation Date and ends on the next Computation Date.

“*Current Outlay of Cash*” means an outlay reasonably expected to occur not later than five banking days after the date as of which the allocation of Gross Proceeds to the Expenditure is made.

“*Expenditure*” means a book or record entry which allocates Proceeds of the Series 2014 Bonds in connection with a Current Outlay of Cash.

“*Gross Proceeds*” means any Proceeds and Replacement Proceeds of the Series 2014 Bonds.

“*Investment Proceeds*” means any amounts actually or constructively received from investing Proceeds of the Series 2014 Bonds.

“*Investment Property*” means any security or obligation within the meaning of Section 148(b)(2) of the Code, any annuity contract, any interest in any residential rental property for family units which is not located within the jurisdiction of the Issuer, any “specified private activity bond” within the meaning of Section 57(a)(5)(C) of the Code, and any other Investment-Type Property.

“*Investment-Type Property*” means any property, other than property described in Section 148(b)(2)(A), (B), (C) or (E) of the Code that is held principally as a passive vehicle for the production of income. Except as otherwise provided, a prepayment for property or services is Investment-Type Property if a principal purpose for prepaying is to receive an Investment return from the time the prepayment is made until the time payment otherwise would be made. Generally, a prepayment is not Investment-Type Property if: (a) prepayments on substantially the same terms are made by a substantial percentage of persons who are similarly situated to the Issuer or the Concessionaire, as applicable, but who are not beneficiaries of tax-exempt financing; (b) the prepayment is made within 90 days of the reasonably expected date of delivery to the Issuer or the Concessionaire, as applicable, of all of the property or services for which the prepayment is made; or (c) the prepayment meets the requirements of Section 1.148-1(e)(2)(iii)(A) or (B) of the Regulations, relating to certain natural gas prepayments and electricity prepayments.

“*Issue Price*” of obligations means, except as otherwise provided, issue price as defined in Sections 1273 and 1274 of the Code. Generally, the Issue Price of obligations that are publicly offered is the first price at which a substantial amount of the obligations is sold to the public. Ten percent is a substantial amount. The public does not include bond houses, brokers or similar persons or organizations acting in the capacity of underwriters or wholesalers. The Issue Price does not change if part of the issue is later sold at a different price. The Issue Price of obligations that are not substantially identical is determined separately. The Issue Price of obligations for which a bona fide public offering is made is determined as of the sale date based on reasonable expectations regarding the initial public offering price. If an obligation is issued for property, the applicable federal tax-exempt rate is used in lieu of the federal rate in determining the Issue Price

under Section 1274 of the Code. If the obligations are sold to one purchaser that intends to hold the obligations for investment and not resale to the general public, the Issue Price means the fair market value of the obligations paid by the purchaser. The Issue Price of obligations may not exceed their fair market value as of the sale date.

“*Minor Portion*” means Gross Proceeds of the Series 2014 Bonds not exceeding the lesser of (a) \$100,000 and (b) five percent of the Sale Proceeds of the Series 2014 Bonds, referred to the minor portion in Section 148(c) of the Code.

“*Multipurpose Issue*” means an issue that is used for two or more separate governmental purposes.

“*Net Sale Proceeds*” means Sale Proceeds, less the portion of those Sale Proceeds invested in a reasonably required reserve or replacement fund.

“*Nonpurpose Investment*” means any Investment Property that is not a Purpose Investment.

“*Nonpurpose Payment*” means: (1) amounts actually or constructively paid to acquire a Nonpurpose Investment (or treated as paid to a Commingled Fund); (2) in the case of a Nonpurpose Investment that is first allocated to the Series 2014 Bonds on a date after it is actually acquired (e.g., an investment that becomes allocable to Transferred Proceeds or to Replacement Proceeds) or that becomes subject to the Rebate Requirement on a date after it is actually acquired (e.g., an investment allocated to a reasonably required reserve or replacement fund for a construction issue at the end of the two year spending period), the Value of that investment on that date; (3) in the case of a Nonpurpose Investment that was allocated to the Series 2014 Bonds at the end of the preceding Computation Period, the Value of that Nonpurpose Investment at the beginning of the Computation Period; and (4) the Computation Date Credit.

“*Nonpurpose Receipt*” means: (1) amounts actually or constructively received from a Nonpurpose Investment (including amounts treated as received from a Commingled Fund); (2) in the case of a Nonpurpose Investment that ceases to be allocated to the Series 2014 Bonds before its disposition or redemption date (e.g., an investment that becomes allocable to Transferred Proceeds of another issue or that ceases to be allocable to the Series 2014 Bonds pursuant to the Universal Cap) or that ceases to be subject to the Rebate Requirement on a date earlier than its disposition or redemption date (e.g., an investment allocated to a fund initially subject to the Rebate Requirement but that subsequently qualifies as a bona fide debt service fund), the Value of that Nonpurpose Investment on that date; and (3) in the case of a Nonpurpose Investment that is held at the end of a Computation Period, the Value of that Nonpurpose Investment at the end of that Computation Period.

“*Plain Par Bond*” or “*Plain Par Investment*” means a bond (or an investment) (i) issued (or, in the case of an investment acquired on a date other than the issue date, acquired) with not more than a de minimis amount (i.e., two percent of stated principal amount) of discount or premium, (ii) issued for a price that does not include accrued interest, other than Pre-Issuance Accrued Interest, (iii) that bears interest from the issue date at a single, stated, fixed rate or that is a variable rate debt instrument under Section 1275 of the Code, in each case with interest unconditionally payable at least annually, and (iv) that has a lowest stated redemption price that is

not less than its outstanding stated principal amount. In addition, a plain Par Bond includes a “qualified tender bond” as defined in I.R.S. Notice 88-130.

“*Pre-Issuance Accrued Interest*” means amounts representing interest that has accrued on an obligation for a period of not greater than one year before its issue date but only if those amounts are paid within one year after the issue date.

“*Proceeds*” means any Sale Proceeds, Investment Proceeds and Transferred Proceeds of the Series 2014 Bonds.

“*Purpose Investment*” means an investment that is acquired to carry out the governmental purpose of the Series 2014 Bonds.

“*Qualified Administrative Costs*” means reasonable, direct administrative costs, other than carrying costs, such as separately stated brokerage or selling commissions, but not legal and accounting fees, recordkeeping, custody and similar costs. General overhead costs and similar indirect costs of the Issuer and the Concessionaire such as employee salaries and office expenses and costs associated with computing the rebate amount are not Qualified Administrative Costs. In general, administrative costs are not reasonable unless they are comparable to administrative costs that would be charged for the same Investment or a reasonably comparable Investment if acquired with a source of funds other than Gross Proceeds of Tax-Exempt Obligations.

“*Rebate Bond Yield*” means the Bond Yield unless either: (1) the Issuer or the Concessionaire enters into a hedge transaction (*e.g.*, interest rate swap, interest rate cap or collar) which has not otherwise been taken into account in computing the Bond Yield, in which case the Issuer shall consult with Bond Counsel prior to entering into such a transaction to obtain guidance as to the determination of the Rebate Bond Yield; or (2) the Issuer or the Concessionaire, in a transaction that is separate and apart from the original sale of the Series 2014 Bonds, transfers, waives or modifies any right that is part of the terms of the Series 2014 Bonds (*e.g.*, a sale of the call rights on the Series 2014 Bonds). The Issuer must consult with Bond Counsel prior to entering into any such transaction.

“*Rebate Requirement*” has the meaning set forth in Section 4 of the Tax Regulatory Agreement.

“*Regulation*” or “*Regulations*” means the temporary, proposed or final Income Tax Regulations, and any amendments thereto, promulgated by the Department of the Treasury, including but not limited to Sections 1.141-0 through 1.141-16, Sections 1.148-0 through 1.148-11, 1.149(b)-1, 1.149(d)-1, 1.149(g)-1 and 1.150-1 and 1.150-2.

“*Replacement Proceeds*” means amounts that have a sufficiently direct nexus to the Series 2014 Bonds to conclude that the amounts would have been used for that governmental purpose if the Proceeds of the Series 2014 Bonds were not used or to be used for that governmental purpose. For this purpose, governmental purposes include the expected use of amounts for the payment of debt service on a particular date. The mere availability or preliminary earmarking of amounts for a governmental purpose, however, does not in itself establish a sufficient nexus to cause those amounts to be Replacement Proceeds. Replacement Proceeds include, but are not limited to, amounts held in a sinking fund or a pledged fund. For these purposes, an amount is pledged to

pay principal of or interest on the Series 2014 Bonds if there is reasonable assurance that the amount will be available for such purposes in the event that the Concessionaire encounters financial difficulties. Replacement Proceeds also include working capital reserves that are directly or indirectly financed with Proceeds of the issue. Replacement Proceeds also include amounts held under an agreement to maintain the amount at a particular level for the direct or indirect benefit of the holders of the Series 2014 Bonds or any guarantor of the Series 2014 Bonds (known as a “negative pledge”), unless either (i) the Issuer or the Concessionaire may grant rights in the amount that are superior to the rights of the bondholders or the guarantor or (ii) the amount is not in excess of the reasonable needs for which it is maintained, is tested not more frequently than once every six months and may be spent without any substantial restriction other than it be replenished before the next testing date.

“*Sale Proceeds*” means any amounts actually or constructively received by the issuer from the sale of the Series 2014 Bonds, including amounts used to pay underwriters’ discount or compensation and accrued interest other than Pre-Issuance Accrued Interest.

“*Tax-Exempt Obligations*” means any obligations the interest on which is excludable from gross income under Section 103 of the Code. In addition, in the context of investments of Gross Proceeds in Tax-Exempt Obligations, such investments also include (i) an interest in a regulated investment company to the extent that at least 95 percent of the income to the holder thereof is interest excludable from gross income under Section 103 of the Code or (ii) a United States Treasury State and Local Government Series-Demand Deposit Certificate of Indebtedness.

“*Universal Cap*” means the Value of all then outstanding Series 2014 Bonds.

“*Value*” (of a Bond) means with respect to a Plain Par Bond, the outstanding principal amount, plus accrued unpaid interest; for any other bond, its present value.

“*Value*” (of an Investment) has the following meaning in the following circumstances:

(1) *General Rules.* Subject to the special rules in the following paragraph, an issuer may determine the Value of an investment on a date using one of the following valuation methods consistently applied for all purposes relating to arbitrage and rebate with respect to that investment on that date: (i) an investment with not more than a two percent original issue discount or original issue premium may be valued at its outstanding stated principal amount, plus accrued unpaid interest; (ii) a fixed rate investment may be valued at its present value; (iii) an investment may be valued at its fair market value on a date.

(2) *Special Rules.* Yield restricted investments are to be valued at present value provided that (except for purposes of allocating transferred proceeds to an issue, for purposes of the universal cap and for investments in a commingled fund other than a bona fide debt service fund unless it is a certain commingled fund): (i) an investment must be valued at its fair market value when it is first allocated to an issue, when it is disposed of and when it is deemed acquired or deemed disposed of, and provided further that; (ii) in the case of transferred proceeds, the value of a nonpurpose investment that is allocated to transferred proceeds of a refunding issue on a transfer date may not exceed the value of that investment



on the transfer date used for purposes of applying the arbitrage restrictions to the refunded issue.

## APPENDIX II

### REBATE REQUIREMENT

(a) **Generally.** Section 148(f) of the Code requires that certain earnings on Nonpurpose Investments allocable to the Gross Proceeds of the Series 2014 Bonds be paid to the United States of America to prevent the Series 2014 Bonds from being arbitrage bonds. The arbitrage that must be rebated is based on the difference between the amount actually earned on Nonpurpose Investments and the amount that would have been earned if those investments had a yield equal to the yield on the Series 2014 Bonds. As of any date, the rebate amount for the Series 2014 Bonds is the excess of the future value, as of that date, of all receipts on Nonpurpose Investments over the future value, as of that date, of all payments on Nonpurpose Investments. The future value of a payment or receipt at the end of any period is determined using the economic accrual method and equals the value of that payment or receipt when it is paid or received (or treated as paid or received), plus interest assumed to be earned and compounded over the period at a rate equal to the yield on the Series 2014 Bonds, using the same compounding interval and financial conventions used to compute that yield.

(b) **Computation Dates (Other than the Final Computation Date).** For the Series 2014 Bonds, the Concessionaire, on behalf of the Issuer, may treat any date as a Computation Date provided such date is within five years of the issue date. After the first rebate payment, if any, is due, the Concessionaire, on behalf of the Issuer, must consistently treat either the end of each Bond Year or the end of each fifth Bond Year as Computation Dates and may not change these Computation Dates after the first rebate payment, if any, is due.

(c) **Final Computation Date.** The date that the Series 2014 Bonds are discharged is the Final Computation Date. For the Series 2014 Bonds retired within three years of their issue date, however, the Final Computation Date need not occur before the end of eight months after the issue date or during the period in which the Concessionaire, on behalf of the Issuer, reasonably expect that any of the spending exceptions to the Rebate Requirement will apply to the Series 2014 Bonds.

(d) **Amount of Required Rebate.** The arbitrage rebate is generally paid in installments. The first rebate installment payment must be made for a Computation Date that is not later than five years after the issue date of the Series 2014 Bonds. Subsequent installment payments must be made for a Computation Date that is not later than five years after the previous Computation Date for which an installment payment was made. For installment payment Computation Dates other than the Final Computation Date, the Issuer (upon receipt of moneys from the Concessionaire) must rebate an amount that when added to the future value, as of that Computation Date, of previous rebate payments made for the Series 2014 Bonds, equals at least 90 percent of the rebate amount as of that date. For the Final Computation Date, a final rebate payment must be paid in an amount that, when added to the future value of previous rebate payments made for the Series 2014 Bonds, equals 100 percent of the rebate amount as of that date.

(e) **Time and Manner of Payment.** Each rebate payment must be paid no later than 60 days after the Computation Date to which the payment relates. Any rebate payment paid within this 60-day period may be treated as paid on the Computation Date to which it relates. Each

payment made pursuant to this Appendix must be filed with the Internal Revenue Service Center, Ogden, Utah 84201, and must be accompanied by Form 8038-T.

(f) **Penalty in Lieu of Loss of Tax Exemption.** The failure to pay the correct rebate amount when required will cause the Series 2014 Bonds to be arbitrage bonds, unless the Commissioner determines that the failure was not caused by willful neglect and the issuer promptly pays a penalty to the United States of America. If no Series 2014 Bond is a private activity bond (other than a qualified 501(c)(3) bond), the penalty equals 50 percent of the rebate amount not paid when required to be paid, plus interest on that amount. Otherwise, the penalty equals 100 percent of the rebate amount not paid when required to be paid, plus interest on that amount. Interest accrues at the underpayment rate under Section 6621 of the Code, beginning on the date the correct rebate amount is due and ending on the date 10 days before it is paid. The penalty is automatically waived if the rebate amount that the Issuer (from the moneys provided by the Concessionaire) failed to pay plus interest is paid within 180 days after discovery of the failure, unless the Commissioner determines that the failure was due to willful neglect, or the Series 2014 Bonds are under examination by the Commissioner at any time during the period beginning on the date the failure first occurred and ending on the date 90 days after the receipt of the rebate amount. Generally, extensions of this 180-day period and waivers of the penalty in other cases will be granted by the Commissioner only in unusual circumstances.

(g) **Recovery of Overpayment of Rebate.** The Issuer (at the direction of the Concessionaire) may recover an overpayment of a rebate amount for the Series 2014 Bonds by establishing to the satisfaction of the Commissioner that the overpayment occurred. An overpayment is the excess of the amount paid to the United States of America for the Series 2014 Bonds under Section 148 of the Code over the sum of the rebate amount for the Series 2014 Bonds as of the most recent Computation Date and all amounts that are otherwise required to be paid under Section 148 of the Code as of the date the recovery is requested. Notwithstanding the preceding sentence, an overpayment may be recovered only to the extent that a recovery on the date that it is first requested would not result in an additional rebate amount if that date were treated as a Computation Date. Furthermore, except for overpayments in certain limited circumstances, an overpayment of less than \$5,000 may not be recovered before the Final Computation Date.

(h) **Recordkeeping Requirement.** The Issuer and the Concessionaire must retain records of the determination of the Rebate Requirement until four years (or such longer period as may be required by the transaction documents relating to the obligations) after the retirement of the last Series 2014 Bond.

(i) **Exception for earnings on gross proceeds in certain “bona fide debt service funds.”** Earnings on Nonpurpose Investments of Gross Proceeds in a bona fide debt service fund are not taken into account in computing the arbitrage rebate liability for the Series 2014 Bonds if either (i) the gross earnings on such fund for the Bond Year is less than \$100,000 or (ii) the Series 2014 Bonds is a long-term, fixed rate governmental bond issue (*i.e.*, the issue has an average maturity of at least five years and each of the bonds that are part of such issue are neither private activity bonds nor have rates of interest that vary during the term of the issue). For purposes of clause (i), the Issuer and the Concessionaire may treat the Series 2014 Bonds with average annual debt service not exceeding \$2,500,000 as satisfying the \$100,000 limitation and therefore not earning more than \$100,000 in any Bond Year.

## APPENDIX III

### SPENDING EXCEPTIONS TO REBATE

(a) **Generally.** All, or certain discrete portions, of the Series 2014 Bonds are treated as meeting the Rebate Requirement if one or more of the spending exceptions set forth in this Appendix are satisfied. Use of the spending exceptions is not mandatory, except that where the Concessionaire, on behalf of the Issuer, elect to apply the 1-1/2 percent penalty (as described below) the Concessionaire, on behalf of the Issuer, must apply that penalty to the Construction Issue. The Issuer and the Concessionaire may apply the Rebate Requirement to the Series 2014 Bonds that otherwise satisfies a spending exception. Special definitions relating to the spending exceptions are contained in section (h) of this Appendix.

Where several obligations that otherwise constitute a single issue are used to finance two or more separate governmental purposes, the issue constitutes a “multipurpose issue” and the bonds, as well as their respective proceeds, allocated to each separate purpose may be treated as separate issues for purposes of the spending exceptions. In allocating the Series 2014 Bonds among its several separate governmental purposes, “common costs” are generally not treated as separate governmental purposes and must be allocated ratably among the discrete separate purposes unless some other allocation method more accurately reflects the extent to which any particular separate discrete purpose enjoys the economic benefit (or bears the economic burden) of the certain common costs (*e.g.*, a newly funded reserve for a parity issue that is partially new money and partially a refunding for savings on prior bonds).

Separate purposes include refunding a separate prior issue, financing a separate Purpose Investment (*e.g.*, a separate loan), financing a Construction Issue, and any clearly discrete governmental purpose reasonably expected to be financed by the issue. In addition, as a general rule, all integrated or functionally related capital projects qualifying for the same initial temporary period (*e.g.*, three years) are treated as having a single governmental purpose. Finally, separate purposes may be combined and treated as a single purpose if the proceeds are eligible for the same initial temporary period (*e.g.*, advance refundings of several separate prior issues could be combined, or several non-integrated and functionally unrelated capital projects such as airport runway improvements and a water distribution system).

The spending exceptions described in this Appendix are applied separately to each separate issue component of a multipurpose issue unless otherwise specifically noted.

(b) **Six-Month Exception.** The Series 2014 Bonds are treated as meeting the Rebate Requirement under this exception if (i) the gross proceeds of the Series 2014 Bonds are allocated to expenditures for the governmental purposes of the Series 2014 Bonds within the six-month period beginning on the issue date of the Series 2014 Bonds (the “six-month spending period”) and (ii) the Rebate Requirement is met for amounts not required to be spent within the six-month spending period (excluding earnings on a bona fide debt service fund). For purposes of the six-month exception, “gross proceeds” means Gross Proceeds other than amounts (i) in a bona fide debt service fund, (ii) in a reasonably required reserve or replacement fund, (iii) that, as of the issue date, are not reasonably expected to be Gross Proceeds but that become Gross Proceeds after

the end of the six-month spending period, (iv) that represent Sale Proceeds or Investment Proceeds derived from payments under any Purpose Investment of the Series 2014 Bonds and (v) that represent repayments of grants (as defined in Section 1.148-6(d)(4) of the Regulations) financed by the Series 2014 Bonds. In the case of the Series 2014 Bonds no bond of which is a private activity bond (other than a qualified 501(c)(3) bond) or a tax or revenue anticipation bond, the six-month spending period is extended for an additional six months for the portion of the proceeds of the Series 2014 Bonds which are not expended within the six-month spending period if such portion does not exceed the lesser of five percent of the Proceeds of the Series 2014 Bonds or \$100,000.

(c) **18-Month Exception.** The Series 2014 Bonds is treated as meeting the Rebate Requirement under this exception if all of the following requirements are satisfied:

(1) the gross proceeds are allocated to expenditures for a governmental purpose of the Series 2014 Bonds in accordance with the following schedule (the “18-month expenditure schedule”) measured from the issue date of the Series 2014 Bonds: (A) at least 15 percent within six months, (B) at least 60 percent within 12 months and (C) 100 percent within 18 months;

(2) the Rebate Requirement is met for all amounts not required to be spent in accordance with the 18-month expenditure schedule (other than earnings on a bona fide debt service fund); and

(3) all of the gross proceeds of the Series 2014 Bonds qualify for the initial temporary period under Section 1.148-2(e)(2) of the Regulations.

For purposes of the 18-month exception, “gross proceeds” means Gross Proceeds other than amounts (i) in a bona fide debt service fund, (ii) in a reasonably required reserve or replacement fund, (iii) that, as of the issue date, are not reasonably expected to be Gross Proceeds but that become Gross Proceeds after the end of the 18-month expenditure schedule, (iv) that represent Sale Proceeds or Investment Proceeds derived from payments under any Purpose Investment of the issue and (v) that represent repayments of grants (as defined in Section 1.148-6(d)(4) of the Regulations) financed by the Series 2014 Bonds. In addition, for purposes of determining compliance with the first two spending periods, the investment proceeds included in gross proceeds are based on the Issuer’s and the Concessionaire’s reasonable expectations as of the issue date rather than the actual Investment Proceeds; for the third, final period, actual Investment Proceeds earned to date are used in place of the reasonably expected earnings. The Series 2014 Bonds do not fail to satisfy the spending requirement for the third spending period above as a result of a Reasonable Retainage if the Reasonable Retainage is allocated to expenditures within 30 months of the issue date. The 18-month exception does not apply to the Series 2014 Bonds any portion of which is treated as meeting the Rebate Requirement as a result of satisfying the two-year exception.

(d) **Two-Year Exception.** A Construction Issue is treated as meeting the Rebate Requirement for Available Construction Proceeds under this exception if those proceeds are allocated to expenditures for governmental purposes of the Series 2014 Bonds in accordance with the following schedule (the “two-year expenditure schedule”), measured from the issue date: (1)

at least 10 percent within six months; (2) at least 45 percent within one year; (3) at least 75 percent within 18 months; and (4) 100 percent within two years. The Series 2014 Bonds do not fail to satisfy the spending requirement for the fourth spending period above as a result of unspent amounts for Reasonable Retainage if those amounts are allocated to expenditures within three years of the issue date.

(e) **Expenditures for Governmental Purposes of the Issue.** For purposes of the spending exceptions, expenditures for the governmental purposes of the Series 2014 Bonds include payments for interest, but not principal, on the issue, and for principal or interest on another issue of obligations. The preceding sentence does not apply for purposes of the 18-month and two-year exceptions if those payments cause the Series 2014 Bonds to be a refunding issue.

(f) **De Minimis Rule.** Any failure to satisfy the final spending requirement of the 18-month exception or the two-year exception is disregarded if the Concessionaire exercises due diligence to complete the project financed and the amount of the failure does not exceed the lesser of three percent of the issue price of the issue or \$250,000.

(g) **Elections Applicable to the Two-Year Exception.** The Issuer (at the direction of the Concessionaire) may make one or more of the following elections with respect to the two-year spending exception:

(1) **Earnings on Reasonably Required Reserve or Replacement Fund.** The Issuer (at the direction of the Concessionaire) may elect on or before the issue date to exclude from Available Construction Proceeds the earnings on any reasonably required reserve or replacement fund. If the election is made, the Rebate Requirement applies to the excluded amounts from the issue date.

(2) **Actual Facts.** For the provisions relating to the two-year exception that apply based on the Concessionaire's reasonable expectations, the Issuer (at the direction of the Concessionaire) may elect on or before the issue date to apply all of those provisions based on actual facts. This election does not apply for purposes of determining whether the Series 2014 Bonds is a Construction Issue if the 1-1/2 percent penalty in lieu of rebate election described in subsection (g)(4) of this Appendix is made.

(3) **Separate Issue.** For purposes of the two-year exception, if any proceeds of the Series 2014 Bonds are to be used for Construction Expenditures, the Issuer (at the direction of the Concessionaire) may elect on or before the issue date to treat the portion of the Series 2014 Bonds that is not a refunding issue as two, and only two, separate issues, if (i) one of the separate issues is a Construction Issue, (ii) the Concessionaire reasonably expect, as of the issue date, that such Construction Issue will finance all of the Construction Expenditures to be financed by the Series 2014 Bonds and (iii) the Issuer (at the direction of the Concessionaire) makes an election to apportion the Series 2014 Bonds in which it identifies the amount of the issue price of the Series 2014 Bonds allocable to the Construction Issue.

(4) **Penalty in Lieu of Rebate.** The Issuer (at the direction of the Concessionaire) of a Construction Issue may irrevocably elect on or before the issue date to pay a penalty (the "1-1/2 percent penalty") to the United States of America in lieu of the obligation to pay the

rebate amount on Available Construction Proceeds upon failure to satisfy the spending requirements of the two-year expenditure schedule. The 1-1/2 percent penalty is calculated separately for each spending period, including each semiannual period after the end of the fourth spending period, and is equal to 1.5 percent times the underexpended proceeds as of the end of the spending period. For each spending period, underexpended proceeds equal the amount of Available Construction Proceeds required to be spent by the end of the spending period, less the amount actually allocated to expenditures for the governmental purposes of the issue by that date. The 1-1/2 percent penalty must be paid to the United States of America no later than 90 days after the end of the spending period to which it relates. The 1-1/2 percent penalty continues to apply at the end of each spending period and each semiannual period thereafter until the earliest of the following: (i) the termination of the penalty under Section 1.148-7(l) of the Regulations, (ii) the expenditure of all of the Available Construction Proceeds or (iii) the last stated final maturity date of the Series 2014 Bonds and any bonds that refund the Series 2014 Bonds. If the Series 2014 Bonds meets the exception for Reasonable Retainage except that all retainage is not spent within three years of the issue date, the Concessionaire must pay the 1-1/2 percent penalty to the United States of America for any Reasonable Retainage that was not so spent as of the close of the three-year period and each later spending period.

**(h) Special Definitions Relating to Spending Exceptions.**

“*Available Construction Proceeds*” means, with respect to the Series 2014 Bonds, the amount equal to the sum of the issue price of the Series 2014 Bonds, earnings on such issue price, earnings on amounts in any reasonably required reserve or replacement fund not funded from the Series 2014 Bonds (subject to the election referred to in section (g)(1) of this Appendix) and earnings on all of the foregoing earnings, less the amount of such issue price in any reasonably required reserve or replacement fund and less the issuance costs financed by the Series 2014 Bonds. For purposes of this definition, earnings include earnings on any Tax-Exempt Obligations. Unless the Issuer (at the direction of the Concessionaire) otherwise elects as described in section (g)(2) of this Appendix, for the first three spending periods of the two-year expenditure schedule described in Section 1.148-7(e) of the Regulations, Available Construction Proceeds include the amount of future earnings that the Issuer and the Concessionaire reasonably expected as of the issue date. For the fourth spending period described in Section 1.148-7(e) of the Regulations and any subsequent date, as of which computations are made, Available Construction Proceeds include the actual earnings received to that date and earnings expected as of that date to be earned in the future. Earnings on any reasonably required reserve or replacement fund are Available Construction Proceeds only if the Issuer (at the direction of the Concessionaire) did not elect to exclude such earnings pursuant to the election described in paragraph (g)(1) of this Appendix and only to the extent that those earnings accrue before the earlier of (i) the date construction is substantially completed or (ii) the date that is two years after the issue date. For this purpose, construction may be treated as substantially completed when the Concessionaire abandons construction or when at least 90 percent of the total costs of the construction that the Concessionaire reasonably expects as of such date will be financed with proceeds of the Series 2014 Bonds have been allocated to expenditures. If only a portion of the construction is abandoned, the date of substantial completion is the date that the non-abandoned portion of the construction is substantially completed.

“*Construction Expenditures*” means capital expenditures (as defined in Section 1.150-1 of the Regulations) that are allocable to the cost of Real Property or Constructed Personal Property. Construction Expenditures do not include expenditures for acquisitions of interests in land or other existing Real Property.

“*Construction Issue*” means any issue that is not a refunding issue if (i) the Issuer reasonably expects, as of the issue date, that at least 75 percent of the Available Construction Proceeds of the issue will be allocated to Construction Expenditures for property owned by a governmental unit or a 501(c)(3) organization and (ii) any private activity bonds that are part of the issue are qualified 501(c)(3) bonds or private activity bonds issued to finance property to be owned by a governmental unit or a 501(c)(3) organization.

“*Constructed Personal Property*” means Tangible Personal Property or Specially Developed Computer Software if (i) a substantial portion of the property is completed more than six months after the earlier of the date construction or rehabilitation commenced and the date the Concessionaire entered into an acquisition contract; (ii) based on the reasonable expectations of the Concessionaire, if any, or representations of the person constructing the property, with the exercise of due diligence, completion of construction or rehabilitation (and delivery to the Concessionaire) could not have occurred within that six-month period; and (iii) if the Concessionaire itself builds or rehabilitates the property, not more than 75 percent of the capitalizable cost is attributable to property acquired by the Concessionaire.

“*Real Property*” means land and improvements to land, such as buildings or other inherently permanent structures, including interests in real property. For example, Real Property includes wiring in a building, plumbing systems, central heating or air-conditioning systems, pipes or ducts, elevators, escalators installed in a building, paved parking areas, roads, wharves and docks, bridges, and sewage lines.

“*Reasonable Retainage*” means an amount, not to exceed five percent of (i) Available Construction Proceeds as of the end of the two-year expenditure schedule (in the case of the two-year exception to the Rebate Requirement) or (ii) Net Sale Proceeds as of the end of the 18-month expenditure schedule (in the case of the 18-month exception to the Rebate Requirement), that is retained for reasonable business purposes relating to the property financed with the Series 2014 Bonds. For example, a Reasonable Retainage may include a retention to ensure or promote compliance with a construction contract in circumstances in which the retained amount is not yet payable, or in which the Concessionaire reasonably determines that a dispute exists regarding completion or payment.

“*Specially Developed Computer Software*” means any programs or routines used to cause a computer to perform a desired task or set of tasks, and the documentation required to describe and maintain those programs, provided that the software is specially developed and is functionally related and subordinate to Real Property or other Constructed Personal Property.

“*Tangible Personal Property*” means any tangible property other than Real Property, including interests in tangible personal property. For example, Tangible Personal Property



includes machinery that is not a structural component of a building, subway cars, fire trucks, automobiles, office equipment, testing equipment, and furnishings.

## APPENDIX IV

### ALLOCATION AND ACCOUNTING RULES

(a) **General Rule.** The Issuer and the Concessionaire may use any reasonable, consistently applied accounting method to account for Gross Proceeds, investments and expenditures of the Series 2014 Bonds. An accounting method is “consistently applied” if it is applied uniformly within a Fiscal Period (as defined in section (f) of this Appendix) and between Fiscal Periods to account for Gross Proceeds of the Series 2014 Bonds and any amounts that are in a Commingled Fund.

(b) **Allocation of Gross Proceeds to an Issue.** Amounts are allocable to only one issue at a time as Gross Proceeds. Amounts cease to be allocated to the Series 2014 Bonds as Proceeds only when those amounts (i) are allocated to an expenditure for a governmental purpose; (ii) are allocated to transferred proceeds of another issue of obligations; or (iii) cease to be allocated to that issue at retirement of the issue or under the Universal Cap.

(c) **Allocation of Gross Proceeds to Investments.** Upon the purchase or sale of a Nonpurpose Investment, Gross Proceeds of the Series 2014 Bonds are not allocated to a payment for that Nonpurpose Investment in an amount greater than, or to a receipt from that Nonpurpose Investment in an amount less than, the fair market value of the Nonpurpose Investment as of the purchase or sale date. The fair market value of a Nonpurpose Investment is adjusted to take into account Qualified Administrative Costs allocable to the investment. Thus, Qualified Administrative Costs increase the payments for, or decrease the receipts from, a Nonpurpose Investment.

(d) **Allocation of Gross Proceeds to Expenditures.** Reasonable accounting methods for allocating funds from different sources to expenditures for the same governmental purpose include a “specific tracing” method, a “gross-proceeds-spent-first” method, a “first-in-first-out” method or a “ratable allocation” method, so long as the method used is consistently applied. An allocation of Gross Proceeds of the Series 2014 Bonds to an expenditure must involve a current outlay of cash for a governmental purpose of the Series 2014 Bonds. A current outlay of cash means an outlay reasonably expected to occur not later than five banking days after the date as of which the allocation of Gross Proceeds to the expenditure is made.

(e) **Commingled Funds.** Any fund or account that contains both Gross Proceeds of the Series 2014 Bonds and amounts in excess of \$25,000 that are not Gross Proceeds of the Series 2014 Bonds if the amounts in the fund or account are invested and accounted for collectively, without regard to the source of the funds deposited therein, constitutes a “commingled fund.” All payments and receipts (including deemed payments and receipts) on investments held by a commingled fund must be allocated (but not necessarily distributed) among each different source of funds invested in the commingled fund in accordance with a consistently applied, reasonable ratable allocation method. Reasonable ratable allocation methods include, without limitation, methods that allocate payments and receipts in proportion to either (i) the average daily balances of the amounts in the commingled fund from each different source of funds during any consistent time period within its fiscal year, but at least quarterly (the “Fiscal Period”); or (ii) the average of

the beginning and ending balances of the amounts in the commingled fund from each different source of funds for a Fiscal Period that does not exceed one month.

Funds invested in the commingled fund may be allocated directly to expenditures for governmental purposes pursuant to a reasonable, consistently applied accounting method. If a ratable allocation method is used to allocate expenditures from the commingled fund, the same ratable allocation method must be used to allocate payments and receipts on investments in the commingled fund.

Generally a commingled fund must treat all its investments as if sold at fair market value either on the last day of the fiscal year or on the last day of each Fiscal Period. The net gains or losses from these deemed sales of investments must be allocated to each different source of funds invested in the Commingled Fund during the period since the last allocation. This mark-to-market requirement does not apply if (i) the remaining weighted average maturity of all investments held by a commingled fund during a particular fiscal year does not exceed 18 months, and the investments held by the commingled fund during that fiscal year consist exclusively of obligations; or (ii) the commingled fund operates exclusively as a reserve fund, sinking fund or replacement fund for two or more issues of the same issuer.

(f) **Universal Cap.** Amounts that would otherwise be Gross Proceeds allocable to the Series 2014 Bonds are allocated (and remain allocated) to the Series 2014 Bonds only to the extent that the Value of the Nonpurpose Investments allocable to those Gross Proceeds does not exceed the Value of all outstanding Series 2014 Bonds. Nonpurpose Investments allocated to Gross Proceeds in a bona fide debt service fund for the Series 2014 Bonds are not taken into account in determining the Value of the Nonpurpose Investments, and those Nonpurpose Investments remain allocated to the Series 2014 Bonds. To the extent that the Value of the Nonpurpose Investments allocable to the Gross Proceeds of the Series 2014 Bonds exceed the Value of all outstanding Series 2014 Bonds, the Issuer should seek the advice of Bond Counsel for the procedures necessary to comply with the Universal Cap.

(g) **Expenditure for Working Capital Purposes.** Subject to certain exceptions, the Proceeds of the Series 2014 Bonds may only be allocated to “working capital expenditures” as of any date to the extent that those expenditures exceed “available amounts” as of that date (*i.e.*, “proceeds-spent-last”).

For purposes of this section, the term “working capital expenditures” means all expenditures other than “capital expenditures.” “Capital expenditures” are costs of a type properly chargeable (or chargeable upon proper election) to a capital account under general Federal income tax principles. Such costs include, for example, costs incurred to acquire, construct, or improve land, buildings and equipment having a reasonably expected useful life in excess of one year. Thus, working capital expenditures include, among other things, expenditures for current operating expenses and debt service.

For purposes of this section, “available amount” means any amount that is available to the Concessionaire for working capital expenditure purposes of the type financed by the Series 2014 Bonds. Available amount excludes Proceeds of the Series 2014 Bonds but includes cash, investments and other amounts held in accounts or otherwise by the Concessionaire or a related

party if those amounts may be used by the Concessionaire for working capital expenditures of the type being financed by the Series 2014 Bonds without legislative or judicial action and without a legislative, judicial, or contractual requirement that those amounts be reimbursed. Notwithstanding the preceding sentence, a “reasonable working capital reserve” is treated as unavailable. A working capital reserve is reasonable if it does not exceed five percent of the actual working capital expenditures of the Concessionaire in the fiscal year before the year in which the determination of available amounts is made. For purposes of the preceding sentence only, in determining the working capital expenditures of the Concessionaire for a prior fiscal year, any expenditures (whether capital or working capital expenditures) that are paid out of current revenues may be treated as working capital expenditures.

The proceeds-spent-last requirement does not apply to expenditures to pay (i) any Qualified Administrative Costs; (ii) fees for qualified guarantees of the Series 2014 Bonds or payments for a qualified hedge for the Series 2014 Bonds; (iii) interest on the Series 2014 Bonds for a period commencing on the issue date and ending on the date that is the later of three years from the issue date or one year after the date on which the financed project is placed in service; (iv) amounts to the United States of America for yield reduction payments (including rebate payments) or penalties for the failure to meet the spend down requirements associated with certain spending exceptions to the Rebate Requirement; (v) costs, other than those described in (i) through (iv) above, that do not exceed five percent of the Sale Proceeds of the Series 2014 Bonds and that are directly related to capital expenditures financed by the Series 2014 Bonds (*e.g.*, initial operating expenses for a new capital project); (vi) principal or interest on the Series 2014 Bonds paid from unexpected excess sale or investment proceeds; (vii) principal or interest on the Series 2014 Bonds paid from investment earnings on a reserve or replacement fund that are deposited in a bona fide debt service fund; and (viii) principal, interest, or redemption premium on a prior issue and, for a crossover refunding issue, interest on that issue. Notwithstanding the foregoing, the exceptions described in this paragraph do not apply if the allocation merely substitutes Gross Proceeds for other amounts that would have been used to make those expenditures in a manner that gives rise to Replacement Proceeds.

## APPENDIX V

### VALUE OF INVESTMENTS

(a) **Fair Market Value.** The fair market value of an investment is the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm's-length transaction. Fair market value generally is determined on the date on which a contract to purchase or sell the Nonpurpose Investment becomes binding (*i.e.*, the trade date rather than the settlement date). An investment that is not of a type traded on an established securities market, within the meaning of Section 1273 of the Code, is rebuttably presumed to be acquired or disposed of for a price that is not equal to its fair market value. The fair market value of a United States Treasury obligation that is purchased directly from the United States Treasury is its purchase price.

(b) **Certificates of Deposit Safe Harbor.** A certificate of deposit that has a fixed interest rate, a fixed payment schedule, and a substantial penalty for early withdrawal shall be treated as purchased at its fair market value if the yield on the certificate of deposit is not less than (i) the yield on reasonably comparable direct obligations of the United States of America; and (ii) the highest yield that is published or posted by the provider to be currently available from the provider on reasonably comparable certificates of deposit offered to the public.

(c) **Guaranteed Investment Contracts.** The purchase price of a guaranteed investment contract is treated as its fair market value on the purchase date if (i) the Concessionaire makes a bona fide solicitation from at least three reasonably competitive providers (*i.e.*, a provider that has an established industry reputation as a competitive provider of the type of investments being purchased) for a specified guaranteed investment contract and receives at least three bona fide bids from providers (one of which is from a reasonably competitive provider) that have no material financial interest in the issue (*e.g.*, a lead underwriter, financial advisor or broker); (ii) the Concessionaire purchases the highest-yielding guaranteed investment contract for which a qualifying bid is made (determined net of broker's or other third party's fees); (iii) the yield on the guaranteed investment contract (determined net of broker's or other third party's fees) is not less than the yield then available from the provider on reasonably comparable guaranteed investment contracts, if any, offered to other persons from a source of funds other than gross proceeds of tax-exempt obligations; (iv) the determination of the terms of the guaranteed investment contract takes into account as a significant factor the Concessionaire's reasonably expected drawdown schedule for the amounts to be invested, exclusive of amounts deposited in debt service funds and reasonably required reserve or replacement funds; (v) the terms of the guaranteed investment contract, including collateral security requirements, are reasonable; (vi) the obligor on the guaranteed investment contract certifies the administrative costs that it is paying (or expects to pay) to third parties in connection with the guaranteed investment contract; and (vii) the fee does not exceed the lesser of (a) \$38,000 or (b) the greater of (A) 0.2 percent of the amount of gross proceeds the Concessionaire reasonably expects, as of the date the contract is acquired, to be deposited in the contract over the term of the contract, or (B) \$4,000.

The Issuer or the Concessionaire must maintain records adequate to determine the fair market value of the investments described above.

**EXHIBIT A**  
**CERTIFICATE OF THE UNDERWRITER**

## EXHIBIT B

### FINANCED FACILITIES AND ECONOMIC LIFE CALCULATIONS

<b>Financed Facility</b>	<b>Project Cost</b>	<b>Useful Life (years)<sup>1</sup></b>
- Phase 2 Work	\$19,231,830.25	40
- Capitalizable work/equipment to be performed/purchased by Transfield Services Infrastructure Inc.	370,000.00	15

<sup>1</sup> Utilized ADRs and Issuer useful lives to calculate Useful Lives.

**EXHIBIT C**

**EVIDENCE OF ALLOCATION OF PRIVATE ACTIVITY BOND AUTHORITY**



**EXHIBIT D**  
**PUBLIC HEARING DOCUMENTATION**  
**(TEFRA)**

**EXHIBIT E**  
**REIMBURSEMENT RESOLUTION**

**EXHIBIT F**

**EXPENDITURE SCHEDULE**

On the Date of Issuance, the Concessionaire reasonably expect to allocate funds on deposit in the Bond Proceeds (Project Costs) Subaccount, together with any Investment Proceeds thereon, to Capital Expenditures for the Series 2014 Bonds Project substantially in accordance with the schedule set forth below.

<u>Date of Expenditure</u>	<u>Amount of Expenditure</u>
On or about March 7, 2014	\$19,356,452.00
End of March 2014	245,378.25

## **EXHIBIT G-1**

### **ISSUER'S POST-ISSUANCE COMPLIANCE POLICY**

#### **COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE (AS CONDUIT ISSUER) POST-ISSUANCE TAX COMPLIANCE POLICY**

When acting as a conduit issuer of tax-advantaged bonds, notes and other obligations (collectively, the “Bonds”), the Colorado High Performance Transportation Enterprise (the “Transportation Enterprise”) lends the proceeds of its Bonds to borrowers (the “Borrowers”) who are the ultimate users of the Bond proceeds and the projects financed therewith. To further compliance with the Internal Revenue Code of 1986, as amended (the “Code”), and the regulations promulgated thereunder, the Transportation Enterprise delegates the responsibility for on-going post-issuance compliance to the Borrowers, who are in a better position to do the appropriate monitoring as the beneficiaries of the aforementioned proceeds and projects. In furtherance of this delegation, in a tax regulatory agreement or certificate executed by a Borrower in connection with the issuance of the Bonds, the Borrower will agree that it will have written post-issuance compliance procedures (the “Policy”) in place to ensure that the Borrower is taking appropriate steps to limit the chance of non-compliance with the Code and the regulations promulgated thereunder.

The Policy is to be prepared with the assistance of bond counsel and a copy is to be provided to the Transportation Enterprise prior to the filing of the Form 8038 (or, if applicable, 8038-G) with respect to the Bonds. The Borrower must also provide the Transportation Enterprise in a timely manner with any updates, amendments or supplements to the Policy and any changes to the officer designated in the Policy as the compliance officer of the Borrower.

The Director of the Transportation Enterprise is designated as the officer of the Transportation Enterprise responsible for the post-issuance compliance duties of the Transportation Enterprise and will be the contact person for all Borrower notices and other communications.

[•], 2020

## EXHIBIT G-2

### CONCESSIONAIRE'S POST-ISSUANCE COMPLIANCE POLICY

#### Plenary Roads Denver LLC Post-Issuance Tax Compliance Policy & Written Procedures

Dated: [●], 2020

#### I. Purpose

This policy and the procedures set forth herein are adopted by Plenary Roads Denver LLC (the “**Concessionaire**”) in connection with Colorado High Performance Transportation Enterprise U.S. 36 and I-25 Managed Lanes Senior Revenue Bonds Series 2014 (“**Series 2014 Bonds**”), to ensure that interest on such Series 2014 Bonds remains excludable from gross income of the holder under Section 103 of the Internal Revenue Code of 1986, as amended (the “**Code**”). Capitalized terms not otherwise defined herein shall have the meanings set forth in the Amended and Restated Tax Regulatory Agreement, dated [●], 2020 (the “**Tax Regulatory Agreement**”) by and between the Colorado High Performance Transportation Enterprise, as issuer of the Series 2014 Bonds (the “**Issuer**”) and the Concessionaire.

#### II. Use of Series 2014 Bond Proceeds

A. Expenditure of Series 2014 Bond proceeds will be reviewed by [Brian Clark, Vice President], or his/her assignee (the “**Responsible Person**”) for consistency with the Series 2014 Loan Agreement and the Tax Regulatory Agreement.

B. The Concessionaire has separately established procedures for preparation and review of disbursement requests for Series 2014 Bond proceeds as part of its accounting system.

C. Disbursement requests must identify the property being financed with proceeds of Series 2014 Bonds in conformity with covenants made by the Concessionaire in the Series 2014 Loan Agreement and the Tax Regulatory Agreement.

D. No proceeds of any Series 2014 Bonds will be used to reimburse the Concessionaire for costs paid prior to the date of issuance of the Series 2014 Bonds, unless the Concessionaire shall have fully complied with the provisions of Section 1.150-2 of the Treasury Regulations with respect to such reimbursed amounts.

E. Sale proceeds applied to finance issuance costs of the Series 2014 Bonds shall not in any case exceed 2% of the total sale proceeds of the Series 2014 Bonds.

F. Staff costs may be financed with Series 2014 Bond proceeds only to the extent that they are properly capitalized as a cost of a capital project under generally accepted accounting principles and federal tax law.

G. Expenditure of Series 2014 Bond proceeds will be summarized in an “allocation memorandum” not later than 18 months after the date the Phase 2 Work is placed-in-service (and in any event not later than 5 years and 60 days after the issuance of the Series 2014 Bonds or not later than 60 days after earlier retirement of issue) in a manner consistent with allocations made to determine compliance with arbitrage yield restriction and rebate requirements by the Responsible Person. Such “allocation memorandum” will identify the categories of property financed with Series 2014 Bond proceeds, and, if applicable, those paid or financed from other sources.

H. Expenditure of proceeds of the Series 2014 Bonds will be measured against the expectations identified in the Tax Regulatory Agreement regarding the expenditure of Series 2014 Bond proceeds within either six months or two years, that would result in an exemption from the federal rebate requirements. In the event that spending exceptions from rebate available under the Code are not met, the Responsible Person will make, or cause to be made, calculations of rebate liability on the basis required under the Tax Regulatory Agreement.

I. If there are any Series 2014 Bond proceeds remaining after completion of the financed project, such proceeds shall be applied as provided in the MSA.

### **III. Use of Series 2014 Bond-Financed Property**

A. Records will be maintained by the Responsible Person identifying the assets or portion of assets that are financed with Series 2014 Bond proceeds.

B. Upon issuance of Series 2014 Bonds, there shall be no expectation that the Financed Facilities will be sold or otherwise disposed of by the Concessionaire during the term of the Series 2014 Bonds.

C. No item of Financed Facilities will be sold or transferred by the Concessionaire without approval of the Responsible Person, who shall seek advice of Bond Counsel, as necessary, to provide guidance as to “remedial action” that may be required under the applicable Treasury Regulations if Series 2014 Bonds financing such property remain outstanding as of the date of sale or transfer of such property. Remedial action is summarized in Exhibit H to the Tax Regulatory Agreement.

### **IV. Investments**

A. Investment of Series 2014 Bond proceeds in compliance with the arbitrage and rebate requirements of the Code and applicable Treasury Regulations will be managed and supervised by the Responsible Person.

B. Guaranteed investment contracts (“GICs”) will be purchased according to the fair market value provisions of applicable Treasury Regulations, including bid requirements and fee limitations. Certificates of deposit will be purchased only according to the fair market value provisions of applicable Treasury Regulations.

C. Upon final expenditure of the gross proceeds of Series 2014 Bonds, and in any event promptly following the fifth anniversary of the date of issuance of the Series 2014 Bonds or earlier retirement of the Series 2014 Bonds, the Responsible Person will prepare or cause to be prepared a spending exception report or an arbitrage rebate computation (as applicable) for the issue of Series 2014 Bonds. Rebate payments, if due, will be made in compliance with applicable Treasury Regulations.

## **V. Record Management and Retention**

A. Management and retention of records related to Series 2014 Bonds will be supervised by the Responsible Person.

B. Records for Series 2014 Bonds will be retained for not less than the life of the Series 2014 Bonds, plus any refunding bonds, plus four years. Such records may be in the form of documents or electronic copies of documents, appropriately indexed to specific Series 2014 Bond issues and compliance functions.

C. Retainable records pertaining to Series 2014 Bond issuance, use and investment of Series 2014 Bond proceeds, and use of the Financed Facilities shall include the following, which shall be retained under the supervision of the Responsible Person:

- The Series 2014 Bond closing transcript and any amendments to the Series 2014 Loan Agreement, the Tax Regulatory Agreement or the MSA.
- Documents relating to capital expenditures financed by Series 2014 Bond proceeds. Such documents will include requests for Series 2014 Bond proceeds, construction contracts, purchase orders, invoices, and payment records. Such documents will include documents relating to costs reimbursed with Series 2014 Bond proceeds.
- Records identifying the assets or portion of assets that are financed with Series 2014 Bond proceeds.
- Records of investments, GICs or other investment agreements, and records of investment activity sufficient to permit calculation of arbitrage rebate or demonstration that no rebate is due; arbitrage reports; and copies of rebate calculations and records of payments, including Forms 8038-T.

## **VI. Overall Responsibility**

A. Overall administration and coordination of these guidelines are the responsibility of the Responsible Person.

B. Review of compliance with this policy and the procedures set forth herein shall be undertaken periodically and, in any event, not less than annually.

C. The Concessionaire understands that failure to comply with these policies and procedures could result in the retroactive loss of the exclusion of interest on Series

2014 Bonds from federal gross and state taxable net income and, thus, it would be advisable to consult with Bond Counsel in advance regarding deviations from the facts and expectations as set forth in the closing certifications relating to any issue of Series 2014 Bonds.

D. Any violations or potential violations of federal tax requirements shall promptly be reported to the Responsible Person who, if necessary, will engage qualified consultants and Bond Counsel to further investigate potential violations or undertake appropriate remedial actions.

E. The Responsible Person shall initiate and supervise the training of all personnel who are responsible, from time to time, for compliance with these policies and procedures.



## EXHIBIT H

### MEMORANDUM OF BOND COUNSEL

TO: COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE  
PLENARY ROADS DENVER LLC

FROM: KUTAK ROCK LLP

DATE: [●], 2020

RE: WRITTEN PROCEDURES WITH RESPECT TO THE CHANGE IN USE  
RULES AND REMEDIAL ACTION REQUIREMENTS APPLICABLE TO THE  
COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE  
U.S. 36 AND I-25 MANAGED LANES SENIOR REVENUE BONDS SERIES  
2014

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**Introduction.** The purpose of this memorandum (this “Memorandum”) is to set forth certain written procedures that may be required to be taken by the Colorado High Performance Transportation Enterprise, as issuer of the hereinafter defined Series 2014 Bonds (the “Issuer”), and/or Plenary Roads Denver LLC, as Concessionaire (the “Concessionaire”) with regard to the Colorado High Performance Transportation Enterprise U.S. 36 and I-25 Managed Lanes Senior Revenue Bonds Series 2014 (the “Series 2014 Bonds”). Capitalized terms used herein without definition shall have the meanings ascribed to such terms in the Amended and Restated Tax Regulatory Agreement, dated [●], 2020 (the “Tax Regulatory Agreement”), executed and delivered by the Issuer and the Concessionaire in connection with the issuance of the Series 2014 Bonds.

**Background.** The Issuer issued the Series 2014 Bonds for the purpose of making a loan (the “Series 2014 Loan” or the “Bond Proceeds Loan”) to the Concessionaire. The Concessionaire used the proceeds of the Series 2014 Loan to accomplish the “Series 2014 Bonds Project,” consisting of (i) financing a portion of the costs of the Phase 2 Work, and (ii) paying a portion of the Costs of Issuance of the Series 2014 Bonds.

The maintenance of the status of the Series 2014 Bonds as tax-exempt obligations of the Issuer for purposes of federal tax law depends upon the Issuer’s and the Concessionaire’s compliance with the requirements set forth in the Internal Revenue Code of 1986, as amended (the “Code”) as described in the Tax Regulatory Agreement (the “Tax Requirements”). ***The purpose of this Memorandum is to set forth written procedures to be used in the event that the Issuer or the Concessionaire takes any deliberate actions not in compliance with the Tax Requirements with respect to the Series 2014 Bonds, the Proceeds thereof, or the Series 2014 Bonds Project.***

**General Rule.** If less than 95 percent of the net proceeds of an exempt facility bond are actually used to provide an exempt facility, and for no other purpose, the issue will be treated as meeting the use of proceeds requirement of Section 142(a) of the Code if the issue meets the

conditions described under “—Reasonable Expectations Requirement” below and the issuer takes the remedial action described in “—Redemption or Defeasance” below.

***Reasonable Expectations Requirement.*** In order to take the remedial action described in “—Redemption or Defeasance” below, the Issuer and the Concessionaire must have reasonably expected on the issue date of the issue of the Series 2014 Bonds that 95 percent of the net proceeds of the Series 2014 Bonds would be used to provide “qualified highway or surface freight transportation facilities” under Section 142(m)(1) of the Code and for no other purpose for the entire term of the Series 2014 Bonds (disregarding any redemption provisions). To meet this condition the amount of the issue must have been based upon reasonable estimates about the cost of the Series 2014 Bonds Project. The requirement set forth in this paragraph was satisfied at closing of the issue of obligations described in the Tax Regulatory Agreement to which this Exhibit is attached.

***Redemption or Defeasance.***

(a) In General. The requirements of this section are met if all of the nonqualified bonds of the issue are redeemed on the earliest call date after the date on which the failure to properly use the proceeds occurs. Proceeds of tax-exempt bonds (other than certain proceeds described in paragraph (a) under “—When a Failure to Properly Use Proceeds Occurs” below) must not be used for this purpose. If Series 2014 Bonds that are nonqualified bonds are not redeemed within 90 days of the date on which a failure to properly use proceeds occurs, a defeasance escrow must be established for those bonds within 90 days of that date.

(b) Notice of Defeasance. The Issuer must provide written notice to the Commissioner of Internal Revenue of the establishment of a defeasance escrow within 90 days of the date the escrow is established.

(c) Special Limitation. The establishment of a defeasance escrow does not satisfy the requirements of this section if the period between the issue date and the first call date is more than ten and one half (10.5) years.

(d) Special Rule for Dispositions of Personal Property. For dispositions of bond-financed personal property exclusively for cash, the requirements of this section are met if the Issuer expends the disposition proceeds within six (6) months of the date of the disposition to acquire replacement property for the same qualifying purpose of the issue under Section 142 of the Code.

(e) Definition of Disposition Proceeds. Disposition proceeds means any amounts (including property, such as an agreement to provide services) derived from the sale, exchange, or other disposition of property (other than investments) financed with the proceeds of the Series 2014 Bonds.

### ***When a Failure to Properly Use Proceeds Occurs***

(a) Proceeds Not Spent. For net proceeds that are not yet spent, a failure to properly use proceeds occurs on the earlier of the date on which the Concessionaire reasonably determines that the Financed Facility will not be completed or the date on which the financed facility is placed in service.

(b) Proceeds Spent. For net proceeds that are spent, a failure to properly use proceeds occurs on the date on which an action is taken that causes the bonds not to be used for the qualifying purpose for which the bonds were issued.

### ***Nonqualified Bonds***

(a) Amount of Nonqualified Bonds. For purposes of this Exhibit, the nonqualified bonds are a portion of the outstanding bonds in an amount that, if the remaining bonds were issued on the date on which the failure to properly use the proceeds occurs, at least 95 percent of the net proceeds of the remaining bonds would be used to provide “qualified highway or surface freight transportation facilities” under Section 142(m)(1) of the Code. If no proceeds have been spent to provide “qualified highway or surface freight transportation facilities” under Section 142(m)(1) of the Code, all of the outstanding bonds are nonqualified bonds.

(b) Allocation of Nonqualified Bonds. Allocations of nonqualified bonds must be made on a pro rata basis, except that an issuer may treat any bonds of an issue as the nonqualified bonds so long as—

(i) The remaining weighted average maturity of the issue, determined as of the date on which the nonqualified bonds are redeemed or defeased (determination date), and excluding from the determination the nonqualified bonds redeemed or defeased by the issuer to meet the requirements set forth under “— Reasonable Expectations Requirement” above, is not greater than

(ii) The remaining weighted average maturity of the issue, determined as of the determination date, but without regard to the redemption or defeasance of any bonds (including the nonqualified bonds) occurring on the determination date.

***Change in Law.*** This Memorandum is based on law in effect as of this date, and we undertake no obligation to monitor or update the status of this Memorandum. Statutory or regulatory changes, including but not limited to clarifying Regulations, may affect the matters set forth in this Memorandum.

The Concessionaire will need to consult with Bond Counsel periodically in order to determine if this Memorandum should be updated.

KUTAK ROCK LLP

**EXHIBIT I**  
**IRS FORM 8038**

## EXHIBIT J

### FORM OF ALLOCATION MEMORANDUM

Colorado High Performance Transportation Enterprise  
c/o Colorado Department of Transportation  
4201 East Arkansas Avenue  
Denver, Colorado 80222-3400  
Attention: Director

**Re: Federal Tax Allocation of Proceeds of \$20,360,000 Colorado High Performance Transportation Enterprise, U.S. 36 and I-25 Managed Lanes Senior Revenue Bonds, Series 2014**

Ladies and Gentlemen:

This memorandum and attached expenditure list (together, this “**Memorandum**”) was prepared by Plenary Roads Denver, LLC (the “**Concessionaire**”) as required by Section 10 of the Tax Regulatory Agreement, dated February 26, 2014 (the “**Tax Regulatory Agreement**”), among the Colorado High Performance Transportation Enterprise (the “**Enterprise**”), the Concessionaire, and Plenary Roads Finco LP. The undersigned certifies that the undersigned is duly authorized by the Concessionaire to execute and deliver this Memorandum on the date hereof on behalf of the Concessionaire. Capitalized terms used in this Memorandum but not defined herein are defined in the Tax Regulatory Agreement. The undersigned represents as follows with respect to the expenditure of Proceeds of the referenced Series 2014 Bonds:

1. Not less than 95 percent of the Net Proceeds of the Series 2014 Bonds has been allocated to eligible costs of qualified highway or surface freight transfer facilities under Section 142(m)(1) of the Code (“**Eligible Costs**”). The Concessionaire has determined that Net Proceeds for this purpose equals \$\_\_\_\_\_, consisting of (a) the Issue Price of the Series 2014 Bonds of \$20,001,867.60 plus (b) all investment earnings of \$\_\_\_\_\_ on the Issue Price. All Eligible Costs paid with Proceeds of the Series 2014 Bonds consist of Capital Expenditures for the Phase 2 Work.
2. Not more than two percent of the Sale Proceeds of the Series 2014 Bonds (*i.e.*, not more than \$400,037.35 has been allocated to pay Costs of Issuance of the Series 2014 Bonds.
3. In support of the Concessionaire’s representations in the paragraphs above, the Concessionaire has prepared the lists attached hereto as Schedule I identifying the Eligible Costs and Costs of Issuance to which the Proceeds of the Series 2014 Bonds have been allocated. Such lists are intended to constitute the final allocation of Proceeds of the Series 2014 Bonds. Schedule I also includes a complete description of the Phase 2 Work (as completed) and identifies the additional costs of the Phase 2 Work that were paid or financed from sources other than Proceeds of the Series 2014 Bonds.

4. The date of this Memorandum is not later than April 27, 2019, which is the date that is 60 days after the fifth anniversary of the issue date of the Series 2014 Bonds. Furthermore, with respect to each expenditure described in tables B and C of Schedule I hereto, the date of this Memorandum is not later than 18 months after the later of the date such expenditure is paid or the date the Phase 2 Project is placed in service.

The Concessionaire agrees to retain this Memorandum with the Concessionaire's records for the Series 2014 Bonds for a period of not less than the life of the Bonds plus any refunding bonds plus three years, as required by Section V(B) of Concessionaire's Post-Issuance Compliance Policy, a copy of which is attached as Exhibit G-2 to the Tax Regulatory Agreement.

Dated: \_\_\_\_\_, 20\_\_

PLENARY ROADS DENVER LLC, as  
Concessionaire

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SCHEDULE I  
ALLOCATED EXPENDITURE LIST

**A. Description of the Phase 2 Work**

*Portion financed by bonds.* [Describe the portions of the Phase 2 Work, as completed, that were financed with Proceeds of the Series 2014 Bonds.]

*Portion financed with other funds.* [Describe the portions of the Phase 2 Work, as completed, that were paid or financed with sources other than the Proceeds of the Series 2014 Bonds.]

**B. List of Costs of Issuance**

The following table identifies all Costs of Issuance paid with Proceeds of the Series 2014 Bonds. The total of this table does not exceed \$400,037.35.

<b>Costs of Issuance Description</b>	<b>Proceeds Allocated</b>	<b>Date Paid</b>
	\$	

[Remainder of page intentionally left blank]







**EXHIBIT K**  
**FINAL PRICING NUMBERS**