

Amendment to Direct Agreement

THIS AMENDMENT TO DIRECT AGREEMENT (this “**Amendment**”) is made on this ■ day of ■, 2020 among

- (1) E-470 Public Highway Authority, a public highway authority established pursuant to the Public Highway Authority Law, Colorado Revised Statutes Title 43, Article 4, Part 5 (“**E-470**”),
- (2) The Bank of New York Mellon, in its capacity as security trustee (in such capacity, together with its permitted successors, designees and assigns in such capacity, the “**Security Trustee**”) for the benefit of the Secured Parties in connection with the Security Agreement,
- (3) Colorado High Performance Transportation Enterprise, a government owned business and a division of the Colorado Department of Transportation Colorado (“**HPTE**”), and
- (4) Plenary Roads Denver LLC, a Colorado limited liability company (the “**Concessionaire**”), each a “**Party**” and together the “**Parties.**”

WHEREAS:

- (A) Each of the Parties is party to that certain Consent and Agreement dated as of February 25, 2014 (the “**Direct Agreement**”).
- (B) The Parties hereto desire to amend certain provisions of the Direct Agreement pursuant to the terms and subject to the conditions set out in this Amendment.

NOW THEREFORE, in consideration of the foregoing and the agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto hereby agree as follows:

1. INTERPRETATION

- 1.1 In this Amendment, those capitalized terms which are not otherwise defined herein shall have the same meanings as corresponding capitalized terms in the Direct Agreement.
- 1.2 Except as expressly modified by this Amendment, all other provisions of the Direct Agreement shall remain in full force and effect.

2. AMENDMENTS

- 2.1 The first whereas clause of the Direct Agreement is hereby deleted in its entirety and replaced with the following:

“WHEREAS, following the completion of a competitive procurement process carried out by HPTE, the Concessionaire was selected by HPTE to undertake the Concession Project on and subject to the terms of a concession agreement, dated June 27, 2013, as amended pursuant to the first amendment to the Concession Agreement dated October 4, 2013, and amended and restated on or about February 25, 2014, and as further amended on or about [●], 2020, between HPTE and the Concessionaire (the “Concession Agreement”); and”

- 2.2 The fourth, fifth and sixth whereas clauses of the Direct Agreement are hereby deleted in their entirety and replaced with the following:

“WHEREAS, HPTE, the Concessionaire and the Contracting Party (the “TSA Parties”) hereto have entered into that certain Managed Lanes Tolling Services Agreement for Phases 1 and 2 US Highway 36 and I-25, dated as of May 7, 2015 (as such agreement may be amended, modified, supplemented or restated from time to time, and including all attachments thereto,

collectively, the "I-25 TSA"), pursuant to which, inter alia, the Contracting Party will provide certain Tolling Services for the existing I-25 Managed Lanes; and

WHEREAS, concurrently with the entry into the I-25 TSA, the TSA Parties have entered into the Trademark License Agreement, dated as of May 7, 2015 (as such agreement may be amended, modified, supplemented or restated from time to time, and including all attachments thereto, the "TLA" and, collectively with the I-25 TSA, the "Assigned Agreements"); and

- 2.3 The eighth whereas clause of the Direct Agreement is hereby deleted in its entirety and replaced with the following:

"WHEREAS, as collateral security for all obligations of the Concessionaire under the Financing Documents and related documents, the Concessionaire has granted to the Security Trustee, for the benefit of the Secured Parties, a first-priority security interest in all of its right, title and interest in, to and under the Assigned Agreements (collectively, the "Assigned Interest") pursuant to that certain Amended and Restated Master Security Agreement, dated as of [●], 2020 (as may be amended, restated, supplemented, replaced or otherwise modified from time to time, the "Security Agreement"), among the Concessionaire, HPTE, as issuer, the Security Trustee and the other parties thereto; and"

- 2.4 Section 4.01 is amended by deleting the phrase: "or, if executed and delivered, the termination of the Project TSA".

- 2.5 The definition of "Project TSA" in Section 6.01 of the Direct Agreement is hereby deleted in its entirety.

- 2.6 The definition of "Tolls" in Section 6.01 of the Direct Agreement is hereby amended by deleting the phrase: "and is expected to direct, pursuant to the Project TSA,".

- 2.7 The notice information in respect of the Concessionaire, Contracting Party, the Security Trustee and HPTE in Exhibit A of the Direct Agreement is deleted in its entirety and replaced with the following:

Contracting Party

E-470 Public Highway Authority
22470 E. Stephen D. Hogan Parkway
Suite 100
Aurora, CO 80018
Attention: Executive Director
Telephone: 303-537-3745
Facsimile: 303-537-3472
Email: tstewart@e-470.com

Concessionaire

Plenary Roads Denver LLC
400 Burrard Street, Suite 2000
Vancouver, BC V6C 3A6
Attention: Nigel Kirkwood / Ed Snider
Telephone: 604-638-3905
Facsimile: 604-638-3906
Email: nigel.kirkwood@plenarygroup.com, Edward.snider@plenarygroup.com

Security Trustee

The Bank of New York Mellon
240 Greenwich Street, 7E
New York, NY 10286
Attention: Mary E. Miselis
Telephone: 212-815-4812
Facsimile: 212-815-5802
Email: mary.miselis@bnymellon.com

HPTE

Colorado High Performance Transportation Enterprise
c/o Colorado Department of Transportation
2829 W. Howard Place
Denver, Colorado 80204
Attention: Director
Telephone: 720-248-8544
Facsimile: 720-[•]
Email: nicholas.farber@state.co.us

3. **GOVERNING LAW**

This Amendment shall be governed by and construed in accordance with the laws of the State of Colorado, other than any provision thereof that permits or requires the application of the laws of another jurisdiction (and regardless of any other jurisdiction's choice of law rules).

4. **COUNTERPARTS**

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

THIS DOCUMENT is executed and delivered on the date stated at the beginning of this Amendment.

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

**COLORADO HIGH PERFORMANCE
TRANSPORTATION ENTERPRISE**

by _____
Name:
Title:

**THE BANK OF NEW YORK MELLON,
as Security Trustee**

by _____
Name:
Title:

**PLENARY ROADS DENVER LLC, as
Concessionaire**

by _____
Name:
Title:

Name:
Title:

