

AMENDED AND RESTATED CONCESSION AGREEMENT SCHEDULES

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SCHEDULE 1

Definitions

All section references are to the Concession Agreement, unless otherwise noted.

“70th Avenue Maintenance Facility” means CDOT’s 70th Avenue maintenance yard, located at the intersection of E 70th Avenue and Pennsylvania, Adams County, Colorado.

“70th Avenue Maintenance Sand Dome” means CDOT’s sand dome located in the 70th Avenue Maintenance Facility.

“Abandonment” means the failure to carry out all or substantially all of the Phase 2 Work contemplated by the Contract for a period of 45 days.

“Accept,” “Acceptance” and **“Accepted”** shall be construed in accordance with Section 1.6.

“Access Permit” means a Utility Permit or a Special Permit.

“Actual Equity IRR” means the Equity IRR calculated in respect of actual cashflows properly incurred in connection with the Project from the date equity is first invested in the project but no sooner than the Commencement Date up to the relevant Cash Flow Review Date, on the basis of the net post-tax Internal Rate of Return as shown on Tab “Model Summary” Cell K56. Labeled as Cash Equity Return (Post-tax) of the Base Case Financial Model as updated in accordance with Part 2 of Schedule 11 taking into account and leaving out of account (as the case may be) the matters referred to in paragraph 3.1 of Schedule 14. For purposes of this definition, the phrase “post-tax” refers only to U.S. federal and state income tax liability of Concessionaire or its Equity Members and specifically excludes (i) any foreign income tax and other tax of any kind, and (ii) any withholding tax, including any tax that the Concessionaire or an Equity Member is obligated to withhold on Distributions (whether actual or constructive) or other payments or allocations to Equity Members or holders of debt of or equity interests in an Equity Member under 26 U.S.C. §§ 1441 – 1446, notwithstanding 26 U.S.C. § 1461.

“ADA Vehicles” means Americans with Disabilities Act RTD vehicles.

“Adjoining Owner” means all owners and occupiers of Adjoining Property.

“Adjoining Property” means any land and/or property adjoining the Site and each and every part thereof including all conduits, roads, footpaths, walls, fences, buildings and other erections and all service media and other apparatus on, under or within such land and/or property.

“Adjusted Proposal Financial Model” means a copy of the Proposal Financial Model as amended to incorporate the Concessionaire’s Financial Plan from time to time, the final amendment being to incorporate the Concessionaire’s Financial Plan implemented at Financial Close and the Financial Close Adjustment, provided that, save for the Financial Close Adjustment, this shall be the same financial model as the one provided to the Senior Lenders and the TIFIA Lender at Financial Close pursuant to the Senior Funding Agreements and the Phase 2 TIFIA Loan.

“Affected Party” has the meaning given to it in the definition of Force Majeure Event.

“Affidavit of Phase 2 Work Completion” means the executed sworn affidavit as provided in Section 19.

“Affiliate” means in relation to any Person:

- (a) Any other having Control of that Person; or
- (b) Any other over whom that Person has Control; and/or
- (c) Any Person over whom the other referred to in (a) above has Control.

“Airspace” means any and all real property, including the surface of the ground, within the vertical column extending above and below the surface boundaries of the Managed Lanes and the General Purpose Lanes and not necessary or required for the Project or developing, permitting, designing, financing, constructing, installing, equipping, operating, maintaining, tolling, repairing, reconstructing, restoring, rehabilitating, renewing or replacing the Project or the Concessionaire’s timely fulfillment of its obligations under this Contract.

“Amendment No. 1” has the meaning provided in the Recitals.

“Amendment No. 2” has the meaning provided in the Recitals.

“Amendment No. 3” has the meaning provided in the Recitals.

“Amendments” has the meaning provided in the Recitals.

“Annual Performance Report” means the report prepared in accordance with Schedule 10.

“As-Built Documents” has the meaning given to it in Schedule 5.

“Assets” means all assets used from time to time by the Concessionaire or a Sub-Contractor to perform its obligations under the Contract or otherwise used in the operation, maintenance and exploitation of the Project including:

- (a) Any land or buildings;
- (b) Any plant, machinery or equipment;
- (c) Any books and records (including operating and maintenance manuals, health and safety manuals, as built drawings and other know how);
- (d) Any spare parts, tools and other assets (together with any warranties in respect of assets being transferred);
- (e) Any revenues and any other contractual rights apart from Toll Revenues which are not within this definition of Assets;
- (f) Node 2 Building, the 70th Avenue Maintenance Facility Sand Dome, and the Magnesium Chloride Storage;
- (g) Any Intellectual Property; and
- (h) Any Necessary Consents.

“Average Vehicle Speed” means the average speed of all motor vehicles traversing any Tolling Segment.

“Base Case Financial Model” means the Base Case Financial Model which has been placed into escrow as amended and updated from time to time in accordance with the terms of this Contract.

“Basic Configuration” has the meaning given to it in Schedule 5.

“BBA LIBOR” has the meaning given to it in the definition of “Default Interest.”

“Betterment” shall have the meaning, as related to Utilities, which is given to it in the Utility Relocation Agreements included with the Reference Documents.

“BOS Corridors” has the meaning given to it in paragraph 1.1 of Schedule 25.

“Bus Delay Event” has the meaning provided in paragraph 8.1 of Schedule 16.

“**Bus Rapid Transit**” means the timetabled bus service operated by RTD between Denver and Boulder using the Managed Lanes.

“**Bus Speed Standards**” has the meaning provided in paragraph 8.1 of Schedule 16.

“**Business Day**” means any day that is not a Saturday, a Sunday or a public holiday under State law in Colorado.

“**Capital Expenditure**” means any expenditure treated as capital expenditure in accordance with generally accepted accounting principles in the United States from time to time.

“**Card Access Program**” means the program of that name specified in Schedule 27. Part 1.

“**CDOT**” has the meaning provided in the Preamble.

“**Change in Costs**” means in respect of any Relevant Event, the effect of that Relevant Event (whether of a one-off or recurring nature, and whether positive or negative) on the actual or anticipated costs, losses, revenues or liabilities of the Concessionaire and/or any Sub-Contractors (without double counting), including, as relevant, the following:

- (a) The costs of continued employment of, or making redundant, staff who are no longer required;
- (b) The costs of employing additional staff;
- (c) Reasonable professional fees;
- (d) The financing costs to the Concessionaire with respect to any Relevant Event including carry costs, to commitment fees and capital costs, interest and hedging costs, lost interest on any of the Concessionaire’s own capital employed and any finance required pending receipt of a lump sum payment or payment to cover loss of Toll Revenues;
- (e) The effects on implementation of any insurance reinstatement in accordance with this Contract, including any adverse effect on the insurance proceeds payable to the Concessionaire and any extension of the period required for implementation;
- (f) Operating costs, life cycle, maintenance or replacement costs;
- (g) Capital Expenditure;
- (h) The costs required to ensure continued compliance with the Funding Agreements;
- (i) Any deductible or increase in the level of deductible, or any increase in premium under or in respect of any insurance policy;
- (j) Losses, including reasonable legal expenses; and
- (k) Change in Revenue;

Provided that,

- (A) Where the Change in Costs is that of the Construction Sub-Contractor, then only the following categories of Change in Costs shall be taken into account and other costs of the Construction Sub-Contractor shall not be included in the calculation of a Change in Costs:
 - (i) Actual wages and benefits, including FICA, paid for additional labor not otherwise included in (v) below;
 - (ii) Costs for additional bond, insurance and tax;

- (iii) Increased costs for materials;
 - (iv) Equipment costs calculated in accordance with subsection 109.04(c) of Special Condition 109 (incorporated into this Contract by Attachment A to Section 20 of Schedule 5) for Concessionaire owned equipment and based on certified invoice costs for rented equipment;
 - (v) Costs of extended job site overhead ;
 - (vi) Costs of salaried employees not otherwise included in (i) or (v) above incurred as a result of the Dispute or claim;
 - (vii) Claims from subcontractors and suppliers at any level (the same level of detail as specified herein is required for all such claims);
 - (viii) An additional 16 percent will be added to the total of items (i) through (vii) as compensation for items for which no specific allowance is provided, including the Construction Sub-Contractor's profit and home office overhead; and
 - (ix) Interest shall be paid in accordance with CRS 5-12-102 beginning from the date of the notice of intent to file claim.
- (B) To avoid doubt the following items of damages or expense may not be included as a Change in Costs:
- (i) Profit in excess of that provided in A above;
 - (ii) Loss of profit;
 - (iii) Additional cost of labor inefficiencies in excess of that provided in A above;
 - (iv) Home office overhead in excess of that provided in A above;
 - (v) Consequential damages, including but not limited to loss of bonding capacity, loss of bidding opportunities, and Insolvency; and
 - (vi) costs or expenses of any nature in excess of that provided in A above.

"Change in Law" means the coming into effect of:

- (a) Any Law enacted after the Contract Date;
- (b) Change after the Contract Date in the judicial interpretation of any Law; or
- (c) Any modification (including repeal) of any applicable Law that comes into effect after the Contract Date

Which is materially different from or inconsistent with Law in effect on the Contract Date (excluding any such change or new Law which was passed or adopted but not yet effective as of the Contract Date).

"Change in Revenue" means in respect of any Relevant Event, the effect of that Relevant Event (whether of a one-off or recurring nature, and whether positive or negative) upon the actual or anticipated income of the Concessionaire.

"Change of Control" means:

- (a) Any sale, transfer or disposal of any legal, beneficial, equitable or other interest in relation to the equity interests in the Concessionaire or of any intermediate

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entity in the chain of ownership between any Equity Member and the Concessionaire which results in 50% or more of the interest held by the Equity Members as of the Contract Date no longer being held by those Equity Members; or

- (b) Any sale, transfer or disposal of any legal, beneficial, equitable or other interest in, a shareholder, member, partner or joint venture member of the Concessionaire or of any intermediate entity in the chain of ownership between any Equity Member (or any successor to such Equity Member) and the Concessionaire, or any other transaction of any type or description, which results in a change of Control of the Concessionaire. A Change of Control of a shareholder, member, partner or joint venture member of the Concessionaire may constitute a Change of Control of the Concessionaire if such shareholder, member, partner or joint venture member possesses the power to Control the management of the Concessionaire;

provided, that the following will not constitute a Change of Control:

- (i) A change in Control due solely to bona fide open market transactions in securities effected on a recognized public stock exchange, excluding such transactions involving an initial public offering;
- (ii) A change in Control of the Concessionaire due solely to a bona fide transaction involving securities or beneficial interests in the ultimate parent organization of a shareholder, member, partner or joint venture member of the Concessionaire, unless the transferee in such transaction is at the time of the transaction suspended or debarred or subject to a proceeding to suspend or debar from bidding, proposing or contracting with any Federal department or the State or any division of the State;
- (iii) An reorganization or transfer of direct or indirect interests in the Concessionaire or of any intermediate entity in the chain of ownership so long as there occurs no change in the entity with ultimate power to Control the Concessionaire;
- (iv) The exercise of preferred or minority equity holder veto or voting rights (whether provided by Law or by the Concessionaire's organizational documents) over major business decisions of the Concessionaire;
- (v) The grant of security pursuant to the Senior Funding Agreements in accordance with this Contract, or the exercise of TIFIA Lender, or Subordinated Lenders remedies thereunder, including foreclosure; or
- (vi) Transfers of direct or indirect ownership interests in the Concessionaire (as applicable) between or among any members of a fund constituted as a limited partnership so long as there is no change of Control of the general partner of that limited partnership.

"Change Procedure" means the procedure set out in Schedule 21.

"Civil Penalties" has the meaning provided in in Section 1.05 of the HPTE Toll Violation Enforcement Rules.

"Commencement Date" means 12:01am Denver, Colorado time on the day immediately following the date when HPTE gives notice that the Conditions Precedent to the Commencement Date have been satisfied or waived; provided, however, that the conditions described in Schedule 2, Part 1, Item 2 may not be waived by HPTE and are required to be satisfied.

"Communications and Marketing Plan" means the plan of that name which the Concessionaire is required to produce in accordance with the Contract and with HPTE's Service Requirements.

“Compensation Event” means:

- (a) A breach by HPTE of any provision of this Contract;
- (b) The existence of any Encumbrance affecting the Site or the Managed Lanes apart from :
 - (i) those Encumbrances held by third parties as disclosed in the Disclosed Data;
 - (ii) the Permitted Encumbrances; and
 - (iii) rights of third parties as required by Law;
- (c) The circumstances described as such in Section 8.2;
- (d) The circumstances described as such in Section 17.2(c);
- (e) The circumstances described as such in Section 23.5;
- (f) A Phase 1 Latent Defect;
- (g) The circumstances described as such in Section 24.4(k)(ii);
- (h) The circumstances described as such in Section 38.4(h)(ii);
- (i) A Change in Law coming into effect after the Commencement Date which permits vehicles for which Tolls could be charged prior to the Change in Law to travel on the Managed Lanes without paying the full Tolls established in accordance with this Agreement (to avoid doubt, including increasing beyond 2,000 the number of permits for low emission vehicles to use the Managed Lanes without payment of Tolls);
- (j) A Change in Law that results in the imposition of new or added federal, State or local taxes on Tolls and gross Toll receipts save to the extent that, at the time such Change in Law comes into effect the Concessionaire has achieved the 3rd Cash Flow Sharing Threshold (as defined in Schedule 14);
- (k) The construction and operation of an Unplanned Revenue Impacting Facility;
- (l) The construction of an interchange or interchanges in the vicinity of where the Northwest Parkway terminates near US 36 directly related to a highway connection to Northwest Parkway on the north of US 36 and/or a highway connection south of US 36, including access ramps flyovers, and highways to, from and over US 36, and access to other tolled and non-tolled highways and roads related to such interchange, interchanges, or Northwest Parkway: to avoid doubt, this Compensation Event applies only to provide compensation and/or relief in relation to the (i) impacts of any such construction work during the construction work, and (ii) after the construction work is completed, for the immediate period of 3 consecutive months for any negative impact on revenues which Concessionaire can reasonably demonstrate relate directly from the disruption caused by such construction including reduced traffic volume, but specifically does not provide compensation and /or relief in relation to (x) any effect on the revenue obtained by the Concessionaire (except as specified in (ii) above) or (y) on the costs incurred by the Concessionaire, arising out of or connected with any such interchange or interchanges after they have been constructed unless such cost is as a result of damage or disruption caused to any of the US 36 Managed Lanes or the US 36 General Purpose Lanes by such construction;
- (m) Any law, rule, regulation, order, decree, judgment or administrative decision issued by a Governmental Authority or judicial authority having jurisdiction over

the Project preventing the Concessionaire or HPTE from performing its obligations or exercising its rights under this Contract;

- (n) Any delay in the timely issuance of a Necessary Consent that is caused by the imposition of a moratorium by or on the issuing Governmental Authority relating to the acceptance or processing of applications or the issuance of Necessary Consents generally; and
- (o) Any other matter which this Contract refers to as or deems to be a Compensation Event, or which is to be treated as if it were a Compensation Event.

“Concession Agreement” has the meaning provided in the Recitals.

“Concession Project Website” means that secure website as defined in the RFP.

“Concessionaire” has the meaning provided in the Preamble.

“Concessionaire Change” means a change proposed by the Concessionaire in accordance with Schedule 21.

“Concessionaire Default” means any one or more of the following events:

- (a) A breach by the Concessionaire of any of its obligations under this Contract which materially and adversely affects the performance of the Phase 2 Work and/or the Services;
- (b) Insolvency of the Concessionaire;
- (c) A breach of Section 60.2;
- (d) A breach of Section 47;
- (e) Abandonment of the Phase 2 Work by the Concessionaire;
- (f) Subject to Sections 39 and 40 a breach by the Concessionaire of its obligations to take out and maintain any of the Required Insurances;
- (g) The Concessionaire fails to pay an undisputed amount in excess of \$500,000 (Indexed) for a period of thirty (30) Business Days following delivery of a written demand of HPTE;
- (h) Failure by the Concessionaire to achieve the Full Services Commencement Date by the Full Services Commencement Longstop Date; and
- (i) A Concessionaire Default arises in relation to the number of uncured or unexpired Noncompliance Points pursuant to paragraph 4.1 of Schedule 10.

“Concessionaire Related Party” means the Concessionaire’s agents and Sub-Contractors (including without limitation the Construction Sub-Contractor) and its or their sub-contractors of any tier and its or their directors, officers, employees and workmen in relation to the Project and any Person on or at the Managed Lanes(s) at the express or implied invitation of the Concessionaire (other than HPTE or any HPTE Related Party and other than any other individual who is the driver or a passenger in a vehicle being driven on the Managed Lanes who is otherwise unconnected with the Concessionaire or the Concessionaire’s business in relation to the Project).

“Concessionaire Warranted Information” means then information relating to the Concessionaire and its Affiliates contained in Schedule 3 (Concessionaire Warranted Information).

“Concessionaire’s Design Manager” means the Concessionaire’s design manager tasked with providing the Design Documents pursuant to the terms of the Contract.

“Concessionaire’s Phase 2 Construction Work Proposals” means the Concessionaire’s proposals to satisfy the HPTE Phase 2 Construction Work Requirements, as set out in Schedule 7, Part 1.

“Concessionaire’s Phase 2 ETCS Proposals” means the Concessionaire’s Proposals to satisfy the HPTE Phase 2 ETCS Requirements, as set out in Schedule 7 Part 2.

“Concessionaire’s Phase 2 Work Proposals” means the Concessionaire’s Phase 2 Construction Work Proposals and the Concessionaire’s Phase 2 ETCS Proposals.

“Concessionaire’s Proposals” means Concessionaire’s Phase 2 Work Proposals, Concessionaire’s Service Proposals and the Concessionaire’s Snow and Ice Control Services Proposals.

“Concessionaire’s Representative” means the person designated by the Concessionaire in writing prior to the Contract Date.

“Concessionaire’s Service Proposals” means the Concessionaire’s proposals to satisfy HPTE’s Service Requirements, as set out in Schedule 8 (Concessionaire’s Service Proposals).

“Concessionaire’s Snow and Ice Control Services Proposals” means the proposals of the Concessionaire set out in Schedule 26.

“Conditions Precedent to the Commencement Date” means those conditions set out in Part 1 of Schedule 2.

“Conditions Precedent to the Full Services Commencement Date” means those conditions set out in Part 3 of Schedule 2.

“Conditions Precedent to the Phase 1 Services Commencement Date” means those conditions set out in Part 2 of Schedule 2.

“Confidential Information” means all information disclosed from one Party to the others as provided for in Section 55, but shall expressly not include information described in Section 55.3.

“Construction Documents” means the Design Documents and any specification, plan, method statement working procedure, manual of any sort whatsoever related to or in connection with the Phase 2 Construction Work.

“Construction Period” means the period from (and including) the Commencement Date up to (and including) the date when Phase 2 Work Completion occurs.

“Construction Project Manager” means Ernie Green.

“Construction Sub-Contract” means the sub-contract entered into between the Concessionaire and the Construction Sub-Contractor for the performance of the Phase 2 Work as amended or replaced from time to time in accordance with this Contract.

“Construction Sub-Contract Price Payment” means a payment by the Concessionaire of a part of the Contract Price as defined under the Construction Sub-Contract, but excluding any element of any such payment arising out of any variation, change or claim (however described) under the Construction Sub-Contract save to the extent that such variation, change or claim corresponds to an amount due under this Contract in relation to a Compensation Event or as a consequence of the operation of the Change Procedure.

“Construction Sub-Contractor” means Ames-Granite Joint Venture, a joint venture formed by its members, Granite Construction Company and Ames Construction, Inc. each holding a joint and several interest, or such other Person appointed under a Construction Sub-Contract from time to time in accordance with this Contract.

“Contract” has the meaning provided in the Recitals.

“**Contract Date**” has the meaning provided in the Recitals.

“**Contract Documents**” means the Contract and related documents executed on or prior to the Commencement Date.

“**Contract Period**” means the period from and including the Commencement Date to the Expiration Date, or if earlier, the Termination Date.

“**Contract Schedule**” has the meaning given to it in Schedule 5.

“**Contributed Investment**” means (a) any form of direct investment by Equity Members, including the purchase of equity shares in the Concessionaire; (b) any bona fide indebtedness of the Concessionaire for funds borrowed that: (i) is held by any Equity Member and (ii) is subordinated in priority of payment and security to the amounts due under the Subordinated Funding Agreements and to all concessionaire debt held by Persons who are not Equity Members (including any amounts due under the Senior Debt Conduit Loan Agreements and/or the Phase 2 TIFIA Conduit Loan Agreements); or (c) an irrevocable on-demand letter of credit issued by or for the account of an Equity Member naming the Concessionaire as beneficiary and guaranteeing the provision of the direct investment or loan referenced in clause (a) or (b) of this definition.

“**Control**” of a Person by another, means that other (whether alone or with others and whether directly or indirectly):

- (a) Holds the majority of voting rights in the person;
- (b) Has the right to appoint the majority of the board of directors (or equivalent) of that person; or
- (c) Exercises direct or indirect control over that person’s affairs.

“**CORA**” means the Colorado Open Records Act.

“**CPI**” means United States Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U) for Denver-Boulder-Greeley, Colorado metropolitan area.

“**CSP**” means the Colorado Department of Public Safety, Division of Colorado State Patrol.

“**DBE**” has the meaning given to it in Section 14.9.

“**Default Interest Rate**” means for each day during any Interest Period, the rate per annum equal to the 30 day British Bankers Association LIBOR Rate (“**BBA LIBOR**”), as published by Reuters (or other commercially available source providing quotations of BBA LIBOR as designated by the HPTE from time to time) at approximately 11:00 a.m., London time for Dollar deposits (for delivery on the first day of such Interest Period) plus 200 basis points. If such rate is not available at such time for any reason, then the “Default Interest” rate for such Interest Period shall be the rate per annum determined by HPTE as provided by a similar organization.

“**Denver Maintenance Yard**” means CDOT’s maintenance yard located at the intersection of Fox Street/Park Avenue West and Globeville Road, Denver, Colorado.

“**Design Documents**” has the meaning provided in Section 14.2(a).

“**Differing Site Conditions**” shall mean:

- (a) Subsurface or latent conditions encountered at the exact boring holes identified in the geotechnical reports included in Schedule 5D which differ materially from those conditions indicated in the geotechnical reports for such boring holes;
- (b) Physical conditions of an unusual nature, differing materially from those ordinarily encountered in the area and generally recognized as inherent in the type of work provided for in the Contract; or

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- (c) The presence of any paleontological, archeological or cultural resources or biological resources (which term shall be deemed to mean any threatened or endangered species, raptors or eagles).

The term shall specifically exclude all such conditions of which the Concessionaire had actual or constructive knowledge as of the Commencement Date. The foregoing definition specifically excludes:

- (x) Utility facilities;
- (y) Hazardous Substances; and
- (z) Any conditions which constitute or are caused by a Force Majeure Event or a Relief Event.

“Direct Agreement” means the direct agreement entered into between HPTE, the Concessionaire and the Security Trustee on or about the date of this Contract, in substantially the form of Schedule 18.

“Disclosed Data” has the meaning given to it in Section 4.1.

“Discriminatory Change in Law” means a Change in Law, the terms of which apply expressly to:

- (a) The Project and not to similar projects;
- (b) The Concessionaire and not to other persons; and/or
- (c) Companies engaged in projects similar to the Project and not to other persons.

“Dispute” means any dispute between HPTE and the Concessionaire arising out of or in connection with the Contract.

“Dispute Resolution Procedure” means the procedure for the resolution of Disputes set out in Schedule 24 (Dispute Resolution Procedure).

“Distribution” means whether in cash or in kind any:

- (a) Dividend or other distribution in respect of share capital;
- (b) Reduction of capital, redemption or purchase of shares or any other reorganization or variation to share capital;
- (c) Payment, loan, contractual arrangement or transfer of assets or rights to the extent (in each case) it was put in place after the date of this Contract and was neither in the ordinary course of business nor on reasonable commercial terms; or
- (d) The receipt of any other benefit which is not received in the ordinary course of business and on reasonable commercial terms.

“Downtown Denver” means either the terminus of the Managed Lanes at 19th/20th Street in downtown Denver, or the entrance/exit with the general purpose lanes of I-25 near 20th Street in downtown Denver.

“Dynamic Tolling” means tolling that uses (a) software based on the Proposed Algorithm to modify and alter the amount of tolls charged to users based on a series of variables, including but not limited to, the volume of traffic in the Managed Lanes, US 36 General Purpose Lanes, and I-25 GP Lanes, the weather and incidents either exclusively, or in combination with Variable Tolling, and in any instance, or (b) Variable Tolling, or (c) a combination of (a) and (b), which in any event may be manually overridden at Concessionaire’s election under the terms of Schedule 16.

“E-470” means the E-470 Public Highway Authority, a political subdivision of the State formed under the Public Highway Authority Law, Part 5 of Article 4 of Title 23, Colorado Revised Statutes, as amended.

“EEO Officer” means CDOT’s Equal Opportunity Officer.

“Encumbrance” means any mortgage, pledge, hypothecation, deed of trust, mortgage, security interest, lien, financing statement, charge, option, assignment or encumbrance of any kind or any arrangement to provide priority or preference, including any easement, right-of-way, restriction (whether on voting, sale, transfer, disposition, use or otherwise), right, lease and other encumbrance on title to real or personal property (whether or not of record), whether voluntary or imposed by Law, and any agreement to give any of the foregoing.

“Environmental Laws” means any Laws applicable to the Project relating to Remediation Work for generation, production, installation, use, storage, treatment, transportation, Release, threatened Release, or disposal of Hazardous Substances, or noise control, or the protection of human health, safety and welfare in relation to exposure to Hazardous Substances, or protection of natural resources, or the Environment, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC Section 9601 et seq., the Resource Conservation and Recovery Act, 42 USC Section 6901 et seq., the Federal Clean Water Act, 33 USC Section 1351 et seq., the Federal Clean Air Act, 42 USC Section 7401 et seq., the Occupational Safety and Health Act, 29 USC Section 651 et seq.

“Environmental Manager” means the person appointed by the Concessionaire in accordance with Section 9.2.

“Environmental Requirements” means the requirements outlined in paragraph 5 of Schedule 5, and Schedule 6.

“Equal Opportunity Clause” has the meaning provided in Part 1 of Schedule 13.

“Equity IRR” means the nominal post-tax Internal Rate of Return on Contributed Investment over the Contract Period projected in the Base Case Financial Model.

“Equity Members” means Plenary Group (Canada) Ltd. a company registered in British Columbia, Canada, and all of its Affiliates.

“ESB” has the meaning given to it in Section 14.9.

“Escrow Agent” means the escrow agent appointed by the Parties pursuant to the Source Code Escrows.

“Escrow Documents” means the Base Case Financial Model (including forecast revenue and expected non-financial costs of the Project and all applicable assumptions) and the Source Code Escrow.

“Established Toll and Penalty Schedule” has the meaning provided for in paragraph 2.4 of Schedule 16.

“Estimated Change in Costs” means in respect of any Relevant Event the aggregate of any estimated Change in Costs.

“ETCS” or **“Electronic Toll Collection System”** means the electronic toll collection system installed, or to be installed, and operated and maintained on the Managed Lanes comprising the I-25 ETCS, the Phase 1 ETCS and the Phase 2 ETCS.

“Exempt Funding Agreement Transaction” means:

- (a) A change in taxation or change in accounting treatment;
- (b) The exercise of rights, waivers, consents and similar actions which relate to day to day administrative and supervisory matters, and which are in respect of:

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- (i) Breach of representations and warranties or undertakings;
 - (ii) Movement of monies between the Project Accounts in accordance with the terms of the Senior Funding Agreements or the TIFIA Loan Agreement as at Financial Close (or as amended with the prior written approval of HPTE);
 - (iii) Late or non-provision of information, consents or licenses;
 - (iv) Amendments to Sub-Contracts;
 - (v) Approval of revised technical and economic assumptions for financial model runs (to the extent required for forecasts under the Funding Agreements as at Financial Close (or as amended with the prior written approval of HPTE));
 - (vi) Restrictions imposed by the Senior Lenders and/or the TIFIA Lender on the dates at which the Senior Debt or the TIFIA Loan Agreement can be advanced to the Concessionaire under the Senior Funding Agreements or the TIFIA Loan Agreement, each as defined in the Senior Funding Agreements as at Financial Close (or as amended with the prior written approval of HPTE) and which are given as a result of any failure by the Concessionaire to ensure that the construction work is performed in accordance with the agreed construction schedule and which are notified in writing by the Concessionaire or the Senior Lenders or the TIFIA Lender to HPTE prior to being given;
 - (vii) Changes to milestones for drawdown as at Financial Close (or as amended with the prior written approval of HPTE) and which occur as a result of any failure by the Concessionaire to ensure that construction work is performed in accordance with the agreed construction schedule and which are notified in writing by the Concessionaire or the Senior Lenders or the TIFIA Lender to HPTE prior to being given; or
 - (viii) Voting by the Senior Lenders or the TIFIA Lender and the voting arrangements between the Senior Lenders or the TIFIA Lender in respect of the levels of approval required by them under the Senior Funding Agreements and the Phase 2 TIFIA Loan as at Financial Close (or as amended with the prior written approval of HPTE);
- (c) Any amendment, variation or supplement of any agreement approved by HPTE as part of any HPTE Change, or Qualifying Change in Law under this Contract;
 - (d) Any sale of shares in the Concessionaire by the shareholders or securitization of the existing rights and/or interests attaching to shares in the Concessionaire;
 - (e) Any sale or transfer of the Subordinated Lenders' existing rights and/or interests under the Subordinated Funding Agreement or securitization of the Subordinated Lenders' existing rights and/or interests under the Subordinated Funding Agreements;
 - (f) Any Scheduled Refinancing; or
 - (g) Any Qualifying Bank Transaction.

“Executive Order” means Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246).

“Existing Design” means the existing design contained in the Disclosed Data and provided to the Concessionaire in accordance with Section 4.1.

“Existing Phase 1 MTI” means the master trust indenture between HPTE and Zions First National Bank dated as of September 1, 2011, which provides security in respect of the Phase 1 TIFIA Loan;

“Expiration Date” means the date 50 years after the Planned Full Services Commencement Date.

“Express Service” and **“Regional Service”** are RTD Bus routes that provide limited stops and either begin or terminate at the Table Mesa Park-N-Ride or Downtown Denver.

“Final Inspection” has the meaning provided in Section 48.6.

“Financial Close” means the event when all of the conditions set out in Part 1b of Schedule 2 have been fulfilled.

“Financial Close Adjustment” means the adjustment to the HPTE Capital Payment pursuant to Section 2.7.

“Financial Close Deadline Date” means March 14, 2014 or such other date as may be fixed by HPTE in accordance with Section 2.6.

“Financial Close Security” means the security of that name provided in accordance with the RFP having an expiry date 74 days after the Financial Close Deadline Date.

“Financial Plan” means the Concessionaire’s plan for financing the Project which formed part of its proposal submitted to HPTE in relation to the Project as amended or replaced by the Concessionaire from time to time until Financial Close occurs.

“Financing Assignment” means an agreement through which the Concessionaire pledges, hypothecates, mortgages, charges, encumbers, creates a lien over or assigns the Toll Revenues and the Concessionaire’s rights under this Contract as security for any Senior Debt and/or any loan from a TIFIA Lender, and/or any Subordinated Debt provided that only the whole of the Concessionaire’s rights under this Contract and the whole of the Toll Revenues may be the subject of a Financing Assignment.

“Final Warning Notice” has the meaning provided in Section 51.2.

“Financial Model Audit Letter” means an audit letter from an independent, nationally recognized auditor acceptable to HPTE that confirms that the logic and integrity of the Proposal Financial Model, the Adjusted Proposal Financial Model or the Base Case Financial Model, as the case may be, (including the model reference number) reflect the terms of this Contract, are materially consistent with this Contract and are suitable for use in connection with those matters where this Contract envisages use of the any such financial model, and covering such other matters as may be reasonably requested by HPTE, all in form and substance reasonably acceptable to HPTE.

“Finco” means any person apart from HPTE which borrows Senior Debt or the Phase 2 TIFIA Loan or Subordinated Debt and on-lends that Senior Debt and/or the Phase 2 TIFIA Loan and/or the Subordinated Debt to the Concessionaire through a Senior Debt Conduit Loan Agreement or a Phase 2 TIFIA Conduit Loan Agreement or a Subordinated Debt Conduit Loan Agreement (either directly, or through one or more other Fincos and/or through one or more other Senior Debt Conduit Loan Agreements or Phase 2 TIFIA Conduit Loan Agreements or Subordinated Debt Conduit Loan Agreements).

“Force Majeure Event” means the occurrence of an event or circumstance arising after the Contract Date beyond either parties’ reasonable control (including events which could not be avoided by the exercise of caution or due diligence) due to no fault of either party, or those for whom either party is responsible, and which event or circumstance (or its consequences) could not have been foreseen and overcome, that materially prevents or delays either Party (the **“Affected Party”**) from performing any of its obligations pursuant to this Contract including war, civil war, armed conflict or terrorism or nuclear, chemical or biological contamination unless the source or cause of the contamination is the result of any actions or breach of Contract by the

Affected Party. Notwithstanding the previous sentence, until the Phase 1 Services Commencement Date, pending or threatened litigation substantially similar to the litigation described in a disclosure statement made by HPTE dated on or about the date of Financial Close in connection with the Funding Agreements shall be deemed to be a Force Majeure Event. An event is not a Force Majeure Event if such event is otherwise specifically dealt with in this Contract or is, or arises by reason of:

- (a) A Compensation Event;
- (b) A Relief Event;
- (c) A lack of or insufficiency of funds or failure to make payment of monies or to provide security required by this Contract;
- (d) Any:
 - (i) Official or unofficial strike;
 - (ii) Lockout;
 - (iii) Go-slow;
 - (iv) Other labor dispute;
- (e) Any market conditions or economic conditions affecting the availability, supply, or cost of any of labor, equipment, materials, supplies or commodities.

“Full Services Commencement Date” means the later of the date of Phase 2 Work Completion and the date when HPTE has given notice to the Concessionaire that the Conditions Precedent to the Full Services Commencement Date have been satisfied or waived.

“Full Services Commencement Longstop Date” means the date which is one year after the Planned Full Services Commencement Date.

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

“Good Industry Practice” means that degree of skill, care, prudence and foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced professional designer, engineer, maintainer, operator (engaged in the same type of undertaking as that of the Concessionaire) or Construction Sub-Contractor or any sub-contractor under the same or similar circumstances.

“Governmental Authority” means any municipal, State, regional or local agency or authority body or Person operating in Colorado and having authority and jurisdiction within Colorado to exercise official powers or such similar rights in respect of the Contract, or any of the items addressed therein.

“GP Routine Maintenance Fee” means the fee of that name specified in Schedule 15.

“GP Routine Maintenance Services” means those services to be provided by the Concessionaire on the US 36 General Purpose Lanes to fulfill the requirements of the GP Routine Maintenance Service Requirements set out in Schedule 6.

“GP Snow and Ice Control Services Fee” means fee of that name specified in Schedule 15 for the performance of the Snow and Ice Control Services solely with respect to the US 36 General Purpose Lanes.

“Handback Certificate” means a certificate confirming that all Renewal Works have been completed.

“Handback Plan” means the Concessionaire’s plan for completing the Renewal Works to be prepared in accordance with Section 48.2.

“Handback Requirements” means those requirements set out in Schedule 20 and referred to in Section 48.

“Handback Reserve Fund” means the deposit account or letter of credit described in Section 48.8(a).

“Hazardous Substances” means any of the following:

- (a) A substance, product, waste, or other solid, liquid or gaseous material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC Section 9601, et seq. (“CERCLA”); the Hazardous Materials Transportation Act, 49 USC Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 USC Section 6901 et seq. (“RCRA”); the Toxic Substances Control Act, 15 USC Sections 2601 et seq.; the Clean Water Act, 33 USC Sections 1251 et seq.; the Clean Air Act, 42 USC Sections 7401 et seq.; all as amended, or any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect;
- (b) Any substance, product, waste or other or other solid, liquid or gaseous material, of any nature whatsoever heat, sound, vibration or radiation, which in each case is regulated or may give rise to liability in each case under any of the above statutes or under any statutory basis or any common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court;
- (c) Petroleum or crude oil excluding de minimis amounts and excluding petroleum and petroleum products contained within regularly operated motor vehicles; and
- (d) Asbestos or asbestos-containing materials in structures and or other improvements on or in the Site (other than mineral asbestos naturally occurring in the ground).

“HOV Change Event” has the meaning as provided in paragraph 7.1 of Schedule 16.

“HOV 2+ Vehicles” means Passenger Vehicles which are carrying two or more people.

“HOV 3+ Vehicles” means Passenger Vehicles which are carrying three or more people.

“Hourly Volume” means the number of Passenger Car Equivalent during any period of 60 consecutive minutes.

“HPTE” has the meaning provided in the Preamble.

“HPTE Capital Payment” means the amount of \$44,950,000.00.

“HPTE Capital Payment Maximum Amount” means \$49,650,000.

“HPTE-CDOT Agreement” means the agreement of that name between HPTE and CDOT as approved by the HPTE Board of Directors on May 15, 2013, pursuant to Resolution – HPTE #97, and as approved by the Transportation Commission on May 23, 2013, pursuant to Resolution #TC-3079.

“HPTE Change” means a change required by HPTE in accordance with Schedule 21.

"HPTE Cost Reimbursement Amount" means the amount of \$375,000 Indexed, being HPTE's reasonable estimate of its costs in monitoring the Concessionaire's activities and managing this Contract, including the creation of reserves for its obligations under the Contract.

"HPTE Default" means one of the following events:

- (a) Any confiscation, condemnation or appropriation of a material part of the Assets and/or shares of the Concessionaire by HPTE or the State or of any division or agency of any of them excluding a termination under any provision of this Contract;
- (b) Except to the extent that whether an amount of money is due and payable is the subject of a bona fide dispute, a failure by HPTE to make payment of any amount of money exceeding \$375,000 (Indexed) that is due and payable by HPTE under this Contract within thirty (30) Business Days of service of a formal written demand by the Concessionaire, where that amount fell due and payable prior to the date of service of the written demand; or
- (c) A breach or breaches by HPTE of its obligations under this Contract which (in the case of more than one breach, when taken together) substantially frustrates or renders it impossible for the Concessionaire to perform all or a substantial part of its obligations or to exercise a substantial part of its rights under this Contract in each case for a continuous period of two (2) Months;
- (d) a transfer and assignment of HPTE's interests in this Contract or the Project other than one permitted by Section 60.1;
- (e) a failure to complete the Phase 1 Managed Lanes or the installation of the Phase 1 ETCS by December 31 2015; and
- (f) the construction of the Phase 1 Managed Lanes or the installation of the Phase 1 ETCS is abandoned by CDOT.

"HPTE Hazardous Substances Circumstances" means the presence, release or threatened release of Hazardous Substances on or from the Site or the Managed Lanes which were generated or introduced:

- (a)
 - (i) On the Site before the Commencement Date;
 - (ii) On the I-25 Managed Lanes before the Commencement Date;
 - (iii) On the Phase 1 Managed Lanes before the Phase 1 Services Commencement Date; or
 - (iv) After the dates referred to in paragraphs (i) – (iii) other than by reason of any act or omission of the Concessionaire or any Concessionaire Related Party;

In each case irrespective of whether CDOT or HPTE was aware of, or directly involved in, the generation or introduction of such materials;

- (b) as a result of the non-negligent performance by the Concessionaire or any Concessionaire Related Parties, in the handling of such Hazardous Substances; and/or
- (c) as a result of the activities of any Persons (including HPTE and CDOT) other than the Concessionaire and/or any Concessionaire Related Parties in relation to such Hazardous Substances.

“HPTE Phase 2 Construction Work Requirements” means the requirements of HPTE set out in Schedule 5.

“HPTE Phase 2 ETCS Requirements” means the requirements of HPTE set out in Schedule 5C.

“HPTE Phase 2 Work Requirements” means HPTE Phase 2 Construction Work Requirements and HPTE Phase 2 ETCS Requirements.

“HPTE Property” has the meaning provided in Section 36.1(b).

“HPTE Related Party” means any of the following:

- (a) CDOT;
- (b) The State;
- (c) An officer, employee or agent of HPTE, or of CDOT or of the State acting in that capacity; or
- (d) Any contractor or sub-contractor of HPTE, or of CDOT or of the State of any tier and their directors, officers, employees or agents acting in that capacity,

but excluding in any case HPTE, the Concessionaire and any Concessionaire Related Parties.

“HPTE Service Requirements” means the requirements of HPTE set out in Schedule 6.

“HPTE Snow and Ice Control Service Requirements” means the requirements of HPTE set out in Schedule 25.

“HPTE-Sub-Contractor Agreement” means an agreement executed by HPTE and either (as the case may be) the Construction Sub-Contractor or the Operating Sub-Contractor, in the relevant form as set out in Schedule 19.

“HPTE’s Representative” means the representative appointed by HPTE pursuant to Section 7.1(a).

“HPTE’s Requirements” means the HPTE Phase 2 Work Requirements, the HPTE Service Requirements and the HPTE Snow and Ice Control Service Requirements.

“HPTE Toll Violation Enforcement Rules” means those rules pertaining to the enforcement of toll collection and providing a civil penalty for toll evasion adopted by resolution of the board of HPTE on April 14, 2013.

“I-25 ETCS” means the electronic toll collection system on the I-25 Managed Lanes which will form part of the ETCS.

“I-25 Express Bus Fare” means the fare for Express Service that either (a) starts at the Westminster Park-N-Ride and terminates in Downtown Denver; or (b) starts in Downtown Denver and terminates at the Westminster Park-N-Ride.

“I-25 Bridges” means the 15 bridges supporting the I-25 Managed Lanes, and in some cases also supporting the I-25 GP Lanes, designated by CDOT as D-03-V-045(A); D-03-V-046; E-16-OP; E-17-OO; E-16-EM; E-16-FA; E-16-GC; E-16-NW; E-17-OX; E-17-OW; E-17-PA; E-17-PU; E-17-JK; E-16-RB; and E-17-NB.

“I-25 Bridge Substructures” means the substructure elements supporting the I-25 Bridge Deck Superstructure including the pier/cap and column(s), abutments, wingwalls and foundations.

“I-25 Bridge Deck Superstructure” means all components of the superstructure of the I-25 Bridges including the deck, expansion joints, bearings, girders, railings and barriers (to avoid doubt in relation to both the I-25 Managed Lanes and I-25 GP Lanes which are carried by the I-25 Bridges).

"I-25 GP Lanes" means the general purpose lanes on I-25 which run alongside the I-25 Managed Lanes.

"I-25 Initial Work Package" means the works defined in Section 15.2.3.10 of Schedule 5.

"I-25 Initial Work Package Price" means \$6,875,000.00.

"I-25 Managed Lanes" means:

- (a) for the purpose of performance of the Services, the existing tolled lanes on Interstate Highway 25 described at Section 1.2.12 of the HPTE Services Requirements including all Assets associated with or forming part of, or necessary for the operation and maintenance of, the I-25 Managed Lanes, but excluding:
 - (i) the sub-grade supporting the pavement of the I-25 Managed Lanes where the pavement rests on sub-grade together with all structures lying within that sub-grade;
 - (ii) the I-25 Bridge Substructures,
- (b) for the purpose of the performance of the Snow and Ice Control Services means those parts of the existing tolled lanes on Interstate Highway 25 described at Section 2 of the HPTE Snow and Ice Control Services Requirements.

"I-25 Managed Lanes Assets" means the I-25 Managed Lanes assets described in the document "I-25 Managed Lanes Inventory" posted to the "Misc RFP Documents" folder of the Concession Project Website on November 20, 2012.

"I-25 Managed Lanes IP" means to the extent HPTE owns, or has rights to use, the books and records, copyrights (including moral rights), trademarks (registered and unregistered), designs (registered, including applications, and unregistered), patents (including applications), circuit layouts, Source Code and Source Code Documentation, plant varieties, business and domain names, inventions, trade secrets, proposals, copyrightable works, customer and supplier lists and information, and other results of intellectual activity, copies and tangible embodiments of all of the foregoing (in whatever form or medium) and licenses granting any rights with respect to any of the foregoing (to the extent assignable), in each case, relating solely to the I-25 Managed Lanes.

"I-25 North Managed Lanes" means any Managed Lanes on I-25 to north of the I-25 Managed Lanes.

"I-25 North Managed Lanes Installation Project" means CDOT's required closure of the entry and exit lanes of the I-25 Managed Lanes immediately north of the intersection with US 36 for work relating to connecting the I-25 North Managed Lanes to the I-25 Managed Lanes for a period not to exceed three (3) consecutive periods, each period being between a Friday no earlier than 10:00pm Denver time, and ending no later than the immediately following Monday at 5:00am Denver time (each an **"I-25 North Permitted Closure Event"**), and provided further that each such closure occurs prior to the Full Services Commencement Longstop Date.

"I-25 North Liquidated Damages" means in relation to the I-25 North Managed Lanes Installation Project, damages that HPTE shall pay to Concessionaire in the event the entry and exit lanes of the I-25 Managed Lanes immediately north of the intersection with US 36 are closed for any period other than an I-25 North Permitted Closure Event. Upon such first occurrence, if at all, HPTE shall pay Concessionaire within forty-five days the following amounts:

- (a) In the event such lanes are closed for any period between 5:00am and 6:00am on the Monday following an I-25 North Permitted Closure Event, \$1,000;

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- (b) In the event such lanes are closed for any period beginning at 5:00am and continuing to a point between 6:01am and 7:00am on the Monday following an I-25 North Permitted Closure Event, \$3,000;
- (c) In the event such lanes are closed for any period beginning at 5:00am and continuing to a point between 7:01am and 8:00am on the Monday following an I-25 North Permitted Closure Event, \$11,000;
- (d) In the event such lanes are closed for any period beginning at 5:00am and continuing to a point between 8:01am and 9:00am on the Monday following an I-25 North Permitted Closure Event, \$15,700; and
- (e) In the event such lanes are closed for any period beginning at 5:00am and continuing to any point through 4:59am of the following day as result of the I-25 North Managed Lanes Installation Project, \$30,000. For illustrative purposes, this would apply in both examples where the applicable lanes are not opened until 9:15am or 4:00pm on the day following an I-25 North Permitted Closure Event.

In the event of a second occurrence, the provisions of (a) through (e) shall apply, except that the dollar values shall be increased by ten percent (10%). In the event of a third occurrence, the provisions of (a) through (e) shall apply, except that the dollar values shall be increased by twenty percent (20%). The Parties acknowledge and agree that the I-25 North Liquidated Damages have been set based on an evaluation by the Concessionaire of damages, it will incur if there is a failure to confine the lane closures to an I-25 North Permitted Closure Event. The Concessionaire and HPTE agree that the amount of such damages is a genuine pre-estimate of the loss which is reasonably expected to arise as of the date of execution of this Contract, and the Parties have agreed to such I-25 North Liquidated Damages in order to fix the HPTE's costs and to avoid later disputes over which items are properly chargeable to HPTE. The Parties agree that any I-25 North Liquidated Damages payable are in the nature of liquidated damages and not a penalty and that such sums are reasonable under the circumstances existing as of the date of execution and delivery of this Contract. If requested by HPTE, Concessionaire further agrees to provide to HPTE the Concessionaire's projections and calculations which give rise to the figures described in items (a) through (e) above including the increase in dollar values arising on subsequent occurrences.

"I-25 Preventative Maintenance Program" means that program of activities in relation to the I-25 Bridge Deck Superstructure specified in Section 1.4.1.1.2 of Schedule 6;

"I-25 Shared Bridge Decks" means the bridge decks, road pavement carrying the I-25 Managed Lanes and the I-25 GP Lanes and the expansion joints within those bridge decks of the I-25 Bridges designated by CDOT as follows: E-17-OO, E-16-EM, E-16-FA, E-16-GC, E-16-NW, E-17-OX, E-17-OW, E-17-PA, E-16-RB and E-17-NB.

"ILEV" means a motor vehicle with a hybrid propulsion system that uses an alternative fuel by operating on both an alternative fuel, including electricity, and a traditional fuel or an inherently low-emission vehicles, in all cases to the extent such Passenger Vehicle has received the applicable permit and associated stickers and transponders as provided for in Section 5.2 of Department of Revenue Rules CCR 204-28, effective as of April 30, 2008.

"Indemnified Parties" has the meaning provided in Section 61.1.

"Independent Expert" means the independent expert appointed to resolve Services Disputes in accordance with Part 3 of Schedule 24.

"Initial Equity IRR" means the value of the post-tax Equity IRR in the Proposal Financial Model which is 13.68%.

"Initial Inspection" has the meaning provided in Section 48.4.

"Initial Phase 2 DB Schedule" means the schedule shown at Schedule 9.

“Insolvency” means:

- (f) The Concessionaire
 - (i) admits, in writing, that it is unable to pay its debts as such become due,
 - (ii) makes an assignment for the benefit of creditors,
 - (iii) files a voluntary petition under Title 11 of the United States Code,
 - (iv) files any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future United States bankruptcy code or any other present or future applicable Law,
 - (v) seeks or consents to or acquiesces in or suffers the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of the Concessionaire, or of all or any substantial part of its assets or any material interest therein, or
 - (vi) takes any corporate action in furtherance of any action described in this paragraph (a);
- (g) Any proceeding has been commenced against the Concessionaire seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future United States bankruptcy code or any other present or future applicable Law, and such proceeding has not been dismissed if within 90 days after its commencement;
- (h) Any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of the Concessionaire or of all or any substantial part of its assets or any material interest therein, has been appointed without the consent or acquiescence of the Concessionaire and such appointment has not been vacated or stayed on appeal or otherwise within 90 days after such appointment and (in the case of a stay) if, within 90 days after the expiration of any such stay, such appointment has not been vacated;
- (i) If a levy under execution or attachment has been made against all or any material portion of the Concessionaire’s assets or any material interest therein as a result of any lien, levy, execution or attachment created, incurred, assumed or suffered to exist by the Concessionaire or any Person claiming through it, and such execution or attachment has not been vacated, removed or stayed by court order, bonding or otherwise within 60 days after the Concessionaire becomes aware of such levy or attachment; or
- (j) Any similar step or procedure is commenced or taken under the law of any other jurisdiction.

“Insurance Term” means a term which must be included in the Required Insurances in order to comply with Schedule 17.

“Intellectual Property” means the ETCS books and records, Escrow Documents, copyrights (including moral rights), trademarks (registered and unregistered), designs (registered, including applications, and unregistered), patents (including applications), circuit layouts, Source Code and Source Code Documentation, plant varieties, business and domain names, inventions, trade secrets, proposals, copyrightable works, customer and supplier lists and information, and other results of intellectual activity, copies and tangible embodiments of all of the foregoing (in whatever form or medium) and licenses granting any rights with respect to any of the foregoing (to the extent assignable), in each case, relating to the Project, but excluding the I-25 Managed Lanes IP.

“Interest Period” means, as to Default Interest, the period commencing on the date such Default Interest becomes applicable pursuant to the terms of the Contract, and ending on the date when such performance that caused the imposition of the Default Interest to be applied has been cured, or this Contract has terminated, provided, however, any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

“Interim Capital Payment” means a payment on account of the HPTE Capital Payment to be made to the Concessionaire by HPTE pursuant to Section 28.

“Interim Capital Payment Cap” means the amount defined to be the Interim Capital Payment Cap from time to time in accordance with Schedule 12.

“Intermediate Inspection” has the meaning provided in Section 48.5.

“Joint Insurance Account” means the joint bank account in the names of HPTE and the Concessionaire, such account to be opened prior to the Commencement Date.

“Key Personnel” means:

- (a) The person responsible for overall management of the Project;
- (b) The person responsible for overall management and/or control of the Project's finances;
- (c) The person responsible for public relations and community outreach;
- (d) Concessionaire's Design Manager;
- (e) Construction Project Manager;
- (f) Concessionaire's quality manager;
- (g) The Environmental Manager;
- (h) The person responsible for Concessionaire's operations; and
- (i) The person responsible for Concessionaire's maintenance.

“Law” means:

- (a) Any laws, regulations, or any other regulatory or legal requirement which is valid and generally binding in Colorado;
- (b) Relevant internal rules or regulations, guidelines, methodologies or other regulations that are binding on HPTE or the Concessionaire;
- (c) Any order, writ, injunction, decree, judgment, law, ordinance, decision, principle of common law, ruling, statute, code, rule or regulation of any Governmental Authority; and/or.
- (d) Any Federal legislation.

“Life Cycle Maintenance” means the design, construction, completion, commissioning and testing of and related updating of relevant documentation (including “as-built” drawings and operation and maintenance manuals) in connection with all work of reconstruction, rehabilitation, restoration, renewal or replacement of:

- (a) Any Element, or an individual structure or Asset; or
- (b) In relation to the road pavement and sub-structure, where a part of:

- (i) The pavement; or
- (ii) Sub-structure

where the cost of such work applicable to that individual Element, structure or the road surface or sub-structure (which cost shall include the cost of all labor, plant, equipment, consumables, materials and professional fees) is above the Maintenance Expenditure Threshold.

“Life Cycle Maintenance Plan” means the plan of that name described in HPTE’s Service Requirements.

“Liquidated Damages” means the damages for failure to achieve Phase 2 Work Completion payable in accordance with Section 20.

“Lock Up Period” means the period expiring on the date that is three years after the Full Services Commencement Date.

“Losses” means all damages, losses (including loss of Toll Revenues), liabilities, costs, expenses (including legal and other professional charges and expenses) and charges whether arising under law or contract, or in connection with judgments, proceedings or internal costs.

“Magnesium Chloride Storage” means CDOT’s magnesium storage containers located in the 70th Avenue Maintenance Facility.

“Maintained Elements” means those elements of the Managed Lanes and the GP Lanes described in Appendix 6-1 and Appendix 6-2 to Schedule 6.

“Maintenance Expenditure Threshold” means \$25,000 indexed;

“Maintenance Management Plan” means the plan of that name which the Concessionaire is required to produce in accordance with the Contract and with HPTE’s Service Requirements.

“Maintenance Yards” means the 70th Avenue Maintenance Facility and the Denver Maintenance Yard.

“Major Non-Equity Member” means each of the Operating Sub-Contractor, Ames Construction, Inc., Granite Construction Company, the Construction Sub-Contractor, HDR Engineering, Inc., and Goldman Sachs & Co.

“Managed Lanes” means the US 36 Managed Lanes and I-25 Managed Lanes, together with all improvements, technology, signage, and all Assets used to enable Tolls to be charged in accordance with this Contract.

“Managed Lanes Goals” has the meaning provided in paragraph 1.3 of Schedule 16.

“Material Phase 1 Change Order” means a Phase 1 Change Order which, when implemented, will have or can reasonably be expected to have a material impact on

- (a) The Concessionaire’s ability to perform its obligations under this Contract;
- (b) The cost to the Concessionaire of performing its obligations under this Contract; or
- (c) The Toll Revenues which the Concessionaire may reasonably expect the Project to generate.

“Maximum Toll” means the amount specified in Schedule 16 as the maximum Toll which may be charged to Trolled Vehicles pursuant to paragraph 2.1(a)(ii) of Schedule 16 subject to the right to exceed that amount in order to comply with the other requirements of Schedule 16.

“Month” means a calendar month.

“Monthly Progress Report” means the document of that name to be prepared by the Concessionaire in accordance with paragraph 2 of Schedule 5.

“Monthly Service Report” means the service report that is required to be filed by Concessionaire pursuant to paragraph 1.8 of Schedule 6.

“Motor Vehicle” means all motor vehicles, including Passenger Vehicles, vehicles with more than two axles, and motorcycles.

“Necessary Consent” all permissions, consents, approvals, certificates, permits, licenses and authorizations of a Relevant Authority required for the performance of any of the Concessionaire’s obligations under this Contract.

“Necessary Consents List” has the meaning provided in Section 13.2(c)(i).

“Net Present Value” means the aggregate of the discounted values of each of the projected Distributions, calculated as of the date of Financial Close Date in each case discounted using the Initial Equity IRR.

“New Concessionaire” means a new concessionaire selected for the Project, or any portion thereof, pursuant to the terms of the Contract.

“Node 1 Building” means CDOT node building No. 1, located within the Denver Maintenance Yard.

“Node 2 Building” means CDOT node building No. 2, located within the 70th Avenue Maintenance Facility.

“Node Users” has the meaning given to it in Schedule 27, Part 1.

“Noncompliance Points” means the points of that description which may be allocated in accordance with Schedule 10.

“Noncompliance Revenue Share” means the reduction in the consideration earned by the Concessionaire by payment of a share Toll Revenues to HPTE as provided for by paragraph 3.2 of Schedule 10.

“Nonconforming Phase 2 Construction Work” means any item or component of Phase 2 Construction Work which does not fulfill a requirement of this Contract.

“Nonconforming Phase 2 Work” means any item or component of Phase 2 Work which does not fulfill a requirement under this Contract.

“Non-Separable Price Percentage” means:

- (a) In respect of Non-Separable Tasks in relation to the US 36 Managed Lanes and the US 36 General Purpose Lanes 64.7 %;
- (b) In respect of Non-Separable Tasks in relation to the I-25 Shared Bridge Decks the following percentages in relation to the bridges designated as follows:

Bridge	Percentage
E-16-EM	82
E-16-FA	84
E-16-GC	77
E-16-NW	81
E-17-OX	82
E-17-OW	83
E-17-PA	81
E-17-OO	80
E-16-RB	70

“Non-Separable Proposal” means a proposal setting out the proposed tender documents, including the proposed terms and conditions of contract, for the performance of a Non-Separable Work Package.

“Non-Separable Reinstatement Date” has the meaning provided in Section 38.4(b).

“Non-Separable Reinstatement Proposal” means a proposal setting out the proposed tender documents, including the proposed terms and conditions of contract, for the performance of a Non-Separable Reinstatement Work Package.

“Non-Separable Reinstatement Work” means a task comprising work of repair, reinstatement or replacement following an incident which has caused damage to both the Managed Lanes and the General Purposes lanes and for which the responsibility for delivering the work cannot or should not be divided in accordance with Good Industry Practice.

“Non-Separable Reinstatement Work Package” has the meaning provided in Section 38.4(b)(ii).

“Non-Separable Task” means a task comprising Life Cycle Maintenance

- (a) for a component that is within both the US 36 Managed Lanes and the US 36 General Purpose Lanes and for which the responsibility for delivering the work cannot or should not be divided in accordance with Good Industry Practice. The major elements that are included are as follows: (1) sign structures that span the Managed Lanes and the US 36 General Purpose Lanes (2) Bridge deck, superstructure and substructures (3) major rehabilitation or reconstruction of concrete pavement; and (4) media filter drains and such other Elements as are agreed or determined to be Non-Separable Tasks or
- (b) which is within the I-25 Preventative Maintenance Program.

“Non-Separable Task Date” has the meaning provided in Section 24.4(b).

“Non-Separable Work Package” means the package of works which includes a Non-Separable Task.

“Non-Tolled Vehicles” means those Motor Vehicles described in paragraph 4.1 of Schedule 16.

“Northwest Parkway” means the toll road that connects from I-25 on the eastern terminus to near US 36 on the western terminus, as the same may be expanded or rebuilt.

“Notice of Phase 2 Work Completion” means the notice to be issued by HPTE under Section 19.5.

“NTP1” means the Notice to Proceed 1 for the commencement of Phase 2 Construction Work and Services for the I-25 Managed Lanes.

“Officer” means a Manager of the Concessionaire as that term is defined in the Operating Agreement of the Concessionaire dated as of May 2, 2013;

“Operation Sub-Contract” means the sub-contract entered into between the Concessionaire and any Operation Sub-Contractor for the operation and maintenance of the Managed Lanes and of the US 36 General Purpose Lanes as may be amended or replaced from time to time in accordance with this Contract.

“Operating Sub-Contractor” means Transfield Services Infrastructure Inc.

“Operations Management Plan” means the plan of that name which the Concessionaire is required to produce in accordance with the Contract and with HPTE’s Service Requirements.

“**Option Period**” has the meaning provided in Section 39.4.

“**Organizational Conflict of Interests**” has the meaning given in 23 CFR 636.103 where the “person” referred to in that definition is an Equity Member or a Major Non-Equity Member or adviser or consultant to the Proposer (as each of those terms is defined in the RFP) whose Proposals led to the Concessionaire entering into this Contract and the “owner” referred to in that definition is HPTE and/or CDOT.

“**PAB**” means private activity bonds issued by HPTE.

“**Parties**” means HPTE and the Concessionaire.

“**Passenger Car Equivalents**” means the following for each of the categories of Motor Vehicles identified below:

- (a) Buses, trucks, and other heavy Motor Vehicles (other than recreational vehicles): 3.0 Passenger Car Equivalents;
- (b) Recreational Motor Vehicles: 2.0 Passenger Car Equivalents;
- (c) All other Motor Vehicles: 1.0 Passenger Car Equivalents.

“**Passenger Vehicle**” means a Motor Vehicle with up to three axles including Motor Vehicles with two axles towing a trailer with a single axle.

“**Peak Period**” means 6:45 A.M. to 8:45 A.M. Denver, Colorado time, and 4:30 P.M. to 6:00 P.M., Denver, Colorado time, in all instances only on Business Days.

“**Performance Security**” means the payment and performance bonds or letters of credit in the forms set out in Form 11 and Form 12 (respectively) to the RFP (and with such written changes as approved in writing in advance by HPTE), to ensure the completion of the Phase 2 Construction Work in an amount equal to the price for the Construction Sub-Contract. In relation to such instruments:

- (a) bonds or letters of credit shall be provided by an institution with a current credit rating no lower than “A-” from Standard & Poor’s Rating Services, “A-” by Fitch Ratings or “A3” by Moody’s Investors Service, Inc., provided that the outlook for such ratings is “stable” or better;
- (b) in addition, any bond shall be obtained from a surety which is rated VIII or better according to A.M. Best’s Financial Size Rating.

“**Permitted Encumbrance**” means, with respect to the Project:

- (a) The rights and interests of the Concessionaire under the Contract;
- (b) Any Encumbrance that is being contested by the CDOT (but only for so long as such contesting effectively postpones enforcement of any such Encumbrance);
- (c) Mechanic’s, materialmen’s, repairmen’s, employee’s, contractor’s, operator’s or other similar Encumbrances or charges arising by operation of Law, in the ordinary course of business for amounts not yet delinquent (including any amounts being withheld as provided by Law);
- (d) Any recorded or unrecorded easement, right, claim, license, privilege, covenant, condition, right-of-way or servitude, or other similar reservation, right, limitation or restriction, relating to, affecting or encumbering the Project or the development, use or operation of the Project (including easements and rights-of-way for Utilities), or any defect or irregularity in the title to the Project, including those discoverable by a physical inspection or survey of the Project, in each case that

does not materially interfere with the operations of the Project or the right and benefits of the Concessionaire and HPTE under the Contract;

- (e) Any zoning, building, environmental, health or safety Law now or hereafter in effect relating to, affecting or governing the Project or the development, use or operation of the Project, together with all amendments, modifications, supplements or substitutions thereto or therefore (to avoid doubt, including this paragraph (e) in this definition is without prejudice to any right which the Concessionaire may have under this Contract in relation to any Change in Law);
- (f) Any right reserved to or vested in any Relevant Authority (other than HPTE) by any statutory provision;
- (g) any Encumbrance created, incurred, assumed or suffered to exist by the Concessionaire or any Person claiming through it;
- (h) any Encumbrance associated with or related to any Utility which Utility has been disclosed under Section 5D.5 of the Reference Documents and in particular associated with or related to any Utility referred to in the Utility Relocation Agreements and draft Utility Relocation Agreements disclosed as part of the Reference Documents; and
- (i) any amendment, extension, renewal or replacement of any of the foregoing.

“Person” means any of a natural person, a corporation, any entity recognized as having legal personality under the laws of the State, a limited liability company, a trust, a partnership, a limited liability partnership, a joint stock company, a consortium, a joint venture, or an unincorporated association, as the context may require.

“Phase 1 CDOT Initiated Discretionary Change Order” means a Phase 1 Change Order that CDOT is requesting pursuant to Section 12 or Section 13 of the Phase 1 DB Contract.

“Phase 1 Change Order” means any Change Order as defined in the Phase 1 DB Contract.

“Phase 1 Construction Work” means the work completed pursuant to the Phase 1 DB Contract.

“Phase 1 DB Contract” means the US 36 Express Lanes Design/Build Contract by and between CDOT and the Phase 1 DB Contractor, Contract Routing No. 12HA6642252, PO No 261000985, Project No NH 0361-093, Sub-Accounts (17516, 18194, 18195), as amended by Change Orders CO-038, CO-040, CO-041, CO-042, CO-046, CO-054, CO-055, CO-056, CO-057, CO-058, C)-059, CO-060, CO-061, and CO-062.

“Phase 1 DB Contractor” means the Ames/Granite Joint Venture.

“Phase 1 DB Contractor Initiated Discretionary Change Order” means a Phase 1 Change Order that Phase 1 DB Contractor is requesting pursuant to Section 12 of the Phase 1 DB Contract, or pursuant to Section 13 of the Phase 1 DB Contract, to the extent such change order does not meet the requirements of Section 13.1.1.1 of the Phase 1 DB Contract.

“Phase 1 ETCS” means the electronic toll collection system to be installed and commissioned in relation to the Phase 1 Managed Lanes by HPTE which will subsequently be operated and maintained by the Concessionaire pursuant to this Contract.

“Phase 1 ETCS Installation Contract” means Task Order Letter 11 HTC 33423, #5 from HPTE, dated June 3, 2013.

“Phase 1 GP Lanes” means:

- (a) For the purpose of the work being carried out under the Phase 1 DB Contract the general purpose lanes to be constructed under the Phase 1 DB Contract;

- (b) For the purpose of the performance of the Services, the general purpose lanes on US 36 described at Section 1.2.12 of the HPTE Services Requirements;
- (c) For the purpose of the performance of the Snow and Ice Control Services means the general purpose lanes and the BOS Corridors (as defined in Schedule 25) on US 36 described at Section 2 of the HPTE Snow and Ice Control Services Requirements.

“Phase 1 Latent Defect” means a defect in the Phase 1 Managed Lanes or the Phase 1 ETCS which existed, but was not in fact discovered as at the Phase 1 Services Commencement Date, or which was not reasonably discoverable by the Concessionaire as a consequence of the Concessionaire’s participation in acceptance of the Managed Lanes under the Phase 1 DB Contract and the Phase 1 ETCS under the Phase 1 ETCS Installation Contract pursuant to Section 23.

“Phase 1 Managed Lanes” means:

- (a) For the purpose of the work being carried out under the Phase 1 DB Contract, means the managed lanes to be constructed under the Phase 1 DB Contract;
- (b) For the purpose of the performance of the Services, the managed lanes on US 36 described at Section 1.2.12 of the HPTE Services Requirements including all Assets associated with or forming part of, or necessary for the operation and maintenance of, the Phase 1 Managed Lanes; and
- (c) For the purpose of the performance of the Snow and Ice Control Services means the managed lanes on US 36 described at Section 2 of the HPTE Snow and Ice Control Services Requirements.

“Phase 1 Mandatory Change Order” means a Phase 1 Change Order that (a) Phase 1 DB Contractor is requesting pursuant to Section 13 of the Phase 1 DB Contract, and (b) meets the requirements of Section 13.3.1.1 of the Phase 1 DB Contract, including, for illustrative purposes only, Utility Relocations as provided for in Section 6.2 of the Phase 1 DB Contract.

“Phase 1 TIFIA Loan AAR Agreement” means the agreement between HPTE, the Concessionaire and the TIFIA Lender dated on or around the date of Financial Close which provides for the substitution of the Concessionaire as borrower in place of HPTE in respect of the Phase 1 TIFIA Loan.

“Phase 1 TIFIA Loan” means the secured loan, for up to \$54,000,000, originally entered into between the TIFIA Lender and HPTE pursuant to a loan agreement dated as of September 1, 2011, including as amended and restated so as to substitute the Concessionaire as the Borrower in respect of that loan by an Amended and Restated Phase 1 TIFIA Loan Agreement to be dated on or around the date of Financial Close.

“Phase 1 Services Commencement Compensation Date” means June 30, 2015.

“Phase 1 Services Commencement Date” means the later of the date of Final Acceptance under the Phase 1 DB Contract and the date upon which HPTE has given notice to the Concessionaire that the Conditions Precedent to Phase 1 Services Commencement have been satisfied or waived.

“Phase 2 Construction Work” means all of the works (including design, construction, testing, defect rectification and works necessary for obtaining access to the Site) to be undertaken in accordance with the Concessionaire’s Phase 2 Construction Work Proposals in order to fulfill the HPTE Phase 2 Construction Work Requirements all in accordance with this Contract.

“Phase 2 DB Schedule” means the Initial Phase 2 DB Schedule and those schedules referred to as “Contract Schedules” in paragraph 2 of Schedule 5;

“Phase 2 ETCS” means the electronic toll collection system to be installed and commissioned by the Concessionaire in accordance with the Concessionaire’s ETCS Proposals in order to fulfill the HPTE Phase 2 ETCS Requirements, which will be operated and maintained by the Concessionaire as part of the ETCS.

“Phase 2 GP Lanes” means

- (a) For the purpose of all matters pertaining to the Phase 2 Work the general purpose lanes within the scope of the Phase 2 Construction Work;
- (b) For the purpose of the performance of the Services, the general purpose lanes on US 36 described at Section 1.2.12 of the HPTE Services Requirements; and
- (c) For the purpose of the performance of the Snow and Ice Control Services means the general purpose lanes and the BOS Corridors (as defined in Schedule 25) on US 36 described at Section 2 of the HPTE Snow and Ice Control Services Requirements,

“Phase 2 Managed Lanes” means

- (a) For the purpose of all matters pertaining to the Phase 2 Work the Managed Lanes within the scope of the Phase 2 Construction Work;
- (b) For the purpose of the performance of the Services, the managed lanes on US 36 described at Section 1.2.12 of the HPTE Services Requirements including all Assets associated with or forming part of, or necessary for the operation and maintenance of, the Phase 2 Managed Lanes; and
- (c) For the purpose of the performance of the Snow and Ice Control Services means the managed lanes on US 36 described at Section 2 of the HPTE Snow and Ice Control Services Requirements.

“Phase 2 TIFIA Conduit Loan Agreement” means any Funding Agreement between a Finco and another Finco, or between a Finco and the Concessionaire in each case for the purpose of on-lending the Phase 2 TIFIA Loan.

“Phase 2 TIFIA Loan” means the loan by the TIFIA Lender to the Concessionaire or to a Finco pursuant to a loan agreement expected to be entered into between the Concessionaire or a Finco and the TIFIA Lender entered into on or around the date of Financial Close.

“Phase 2 Work” means the Phase 2 Construction Work and the Phase 2 ETCS.

“Phase 2 Work Completion” means date specified as the date of Phase 2 Work Completion in the Notice of Phase 2 Work Completion.

“Phase 2 Work Completion Preliminary Requirements” means those requirements set out in Section 19.1.

“Phase 2 Work Completion Requirements” means the matters set out in Section 19.3.

“Physical Damage Policies” means the Required Insurances to be taken out and maintained pursuant to paragraph 2.6 of Part 1 of Schedule 17 and paragraph 1.1 of Part 2 of Schedule 17 except to the extent that such insurances provide coverage for:

- (a) loss of income/delayed startup of Toll Revenue pursuant to paragraph 2.6(c)(ii) of Part 1 of Schedule 17 and
- (b) Business Interruption pursuant to paragraph 1.1(d)(iii) of part 2 of Schedule 17.

“Planned Full Services Commencement Date” means December 31, 2015 or such other date agreed or determined to be the Planned Full Services Commencement Date pursuant to this Agreement.

“Planned Phase 1 Services Commencement Date” means January 1, 2015.

“Prohibited Act” means:

- (a) Committing an act in contravention of Section 3.4;
- (b) Offering, giving or agreeing to give to any public official or any civil servant or to any employees or other persons providing goods or services to HPTE on a contractual basis of HPTE or any other division or agency of the State or of the Federal Government any gift or consideration of any kind as an inducement or reward:
 - (i) For doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Contract or any other contract with HPTE, the Federal Government, the State, or any division, subdivision or agency of the either of them; or
 - (ii) For showing or not showing favor or disfavor to any Person in relation to this Contract or any other contract with HPTE, the Federal Government or the State or any division, subdivision or agency of either of them;
- (c) The existence of an Organizational Conflict of Interests which was known, or should have been known, to any Equity Member or a Major Non-Equity Member of the Proposer (as each of those terms is defined in the RFP) whose Proposal led to the entry into this Contract by the Concessionaire which was not disclosed to HPTE before the Contract Date;
- (d) Entering into this Contract or any other contract with the Federal Government, the State or any division, subdivision or agency of either of them in connection with which commission has been paid or has been agreed to be paid by the Concessionaire or any Equity Member or a Major Non-Equity Member of the Proposer (as each of those terms is defined in the RFP) whose Proposal led to the entry into this Contract by the Concessionaire, or by any Person on behalf of any of them, or to any the knowledge of any of them, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to HPTE; or
- (e) Defrauding or attempting to defraud or conspiring to defraud HPTE, the Federal Government, the State or any division, subdivision or agency of either of them,

in each case regardless of whether or not it is a criminal offence pursuant to Law.

“Project” means the performance of the Phase 2 Work, the delivery of the Services, the collection of Toll Revenue and delivery of the Snow and Ice Control Services all in accordance with this Contract.

“Project Accounts” means the accounts referred to in and required to be established under the Senior Funding Agreements.

“Project Documents” means the Concession agreement, the Sub-Contracts, the Tolling Services Agreement and any other material agreements entered into by the Concessionaire for the purposes of implementing the Project.

“Project Right of Way” means the physical area necessary for the completion of the Phase 2 Work and for the provision of the Services.

“Proposal” the proposal submitted in response to the RFP which led to the Concessionaire entering into this Contract;

“Proposal Due Date” means 4:00 p.m. Denver, Colorado Time on March 1, 2013.

“Proposal Financial Model” means the financial model submitted by the Concessionaire on the Proposal Due Date.

“Proposed Algorithm” means that portion of the Proposed Toll and Penalty Schedule which provides a framework of processes or rules to determine Dynamic Tolling (if the same is based on the Proposed Algorithm), which may be continually optimized based on historical data and expected future traffic usage, in each case to the extent presented by Concessionaire in each Proposed Toll and Penalty Schedule.

“Proposed Toll and Penalty Schedule” has the meaning provided for in paragraph 1.2 of Schedule 16.

“Proposer” means the proposers who responded to the RFP pursuant to the terms contained therein, including the Concessionaire.

“Proprietary Intellectual Property” means any Intellectual Property that is patented or copyrighted by the Concessionaire, HPTE or any other Person, as applicable, or any of its respective contractors or subcontractors, or, if not patented or copyrighted, is created, held and managed as a trade secret or confidential, proprietary information by the Concessionaire, HPTE or any other Person, as applicable, or any of its respective contractors or subcontractors, but excludes any item of Intellectual Property that is produced for multiple purposes and is not unique to the technology that is being applied to or for the Project.

“Punch List” has the meaning provided in Section 19.8(a).

“Punch List Item” a minor defect, deficiency or omission from the Phase 2 Work which either individually, or in the aggregate with other such items, has no adverse effect on the safety or operability of the Phase 2 Work.

“Punch List Program” has the meaning provided in Section 19.8(c).

“Qualification Documentation” means the documentation in electronic and printed form, prepared on the basis of the inspections required by the sampling and qualification plans approved by HPTE, certifying compliance with the HPTE Phase 2 Work Requirements.

“Qualifying Bank Transaction” means:

- (a) The syndication by a Senior Lender, in the ordinary course of its business, of any of its rights or interests in the Senior Funding Agreements;
- (b) The grant by a Senior Lender or the TIFIA Lender of any rights of participation, or the disposition by a Senior Lender or the TIFIA Lender of any of its rights or interests (other than as specified in paragraph (a) above), in respect of the Senior Funding Agreements or the Phase 2 TIFIA Loan in favor of:
 - (i) Any other Senior Lender;
 - (ii) The TIFIA Lender;
 - (iii) The Subordinated Lenders;
 - (iv) Any Qualifying Institution; or
 - (v) Any other institution in respect of which the prior written consent of HPTE has been given;
- (c) The grant by a Senior Lender or the TIFIA Lender of any other form of benefit or interest in either the Senior Funding Agreements or the revenues or assets of the Concessionaire or of any Finco, whether by way of security or otherwise, in favor of:
 - (i) Any other Senior Lender;

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

“Qualifying Change in Law” means:

- (a) A Discriminatory Change in Law; and/or
- (b) A Specific Change in Law;

Provided, however, that any assignment by HPTE in accordance with Section 60.1 shall not be considered a Qualifying Change in Law.

“Qualifying Institution” means

- (a) The United States of America, any state or commonwealth thereof or any agency or instrumentality of any of them, any municipal agency, public benefit corporation or public authority, advancing or insuring mortgage loans or making payments which, in any manner, assist in the financing, development, operation and maintenance of projects,
- (b) Any
 - (i) Savings bank, savings and loan association, commercial bank, trust company (whether acting individually or in a fiduciary capacity) or insurance company organized and existing under the laws of the United States of America or any state or commonwealth thereof;
 - (ii) Foreign insurance company or commercial bank qualified to do business as an insurer or commercial bank as applicable under the laws of the United States or any state thereof;
 - (iii) Pension fund, foundation or university or college or other endowment fund;
 - (iv) An entity which is formed for the purpose of securitizing mortgages, whose securities are sold by public offering or to qualified investors under the US Securities Act of 1933, as amended;
 - (v) Real estate investment fund, infrastructure investment fund, investment bank, pension advisory firm, mutual fund, investment company or money management firm;

provided that an entity described in this paragraph (b) only qualifies as a Qualifying Institution if it is subject to the jurisdiction of state and federal courts in the State in any actions;

- (c) Any “qualified institutional buyer” under Rule 144(A) under the Securities Act of 1933 or any other similar Law hereinafter enacted that defines a similar category of investors by substantially similar terms,
- (d) A governmental authority acting (directly or through a trust or other single purpose vehicle controlled by it) as a conduit for the purpose of issuing private activity bonds authorized by Law for the benefit of the Concessionaire; or
- (e) Any other financial institution or entity designated by the Concessionaire and Accepted by HPTE;

provided that an institution within paragraphs (b)(i), (ii), (iii) and (v) shall only be a Qualifying Institution if it has a net asset value of \$500 million (indexed).

“Quality Management Documentation” means the documentation describing the quality control and quality assurance system required by Section 25.1.

“Quarterly Report” has the meaning provided for in paragraph 9.1 of Schedule 16.

“Record of Decision” or “ROD” means Record of Decision from the FHWA and the FTA, dated December, 2009.

“Recovery Schedule” means the document of that name referred to in paragraph 2 of Schedule 5.

“Reference Documents” means those documents listed at Schedule 5D.

“Reinstatement Plan” means the plan for carrying out Non-Separable Reinstatement Work to be developed in accordance with Section 38.4.

“Reinstatement Work” has the meaning provided in Section 38.3(a).

“Release” means any presence, emission, spill, seepage, leak, escape, leaching, discharge, injection, pumping, pouring, emptying, dumping, disposal, migration, or release of Hazardous Materials from any source into or upon the environment, including the indoor and outdoor air, soil, improvements, surface water, groundwater, the sewer, septic system, storm drain, publicly owned treatment works, or waste treatment, storage, or disposal systems.

“Relevant Authority” means any Federal, state, municipal or other governmental authority, agency of any sort whatsoever with jurisdiction to grant or withhold any permissions, consents, approvals, certificates, permits, licenses and authorizations which is required for the performance of any of the Concessionaire’s obligations under this Contract.

“Relevant Event” means an HPTE Change, a Qualifying Change in Law, a Compensation Event or any other matter as a result of which this Contract provides for compensation to be paid by HPTE to the Concessionaire in respect of any Change in Costs.

“Relevant Incident” has the meaning provided in Section 38.3.

“Relevant Payment” has the meaning provided in Section 39.4.

“Relevant Proceeds” has the meaning provided in Section 38.3(c).

“Relief Event” means:

- (a) Fire, explosion, lightning, storm, tempest, tornado, flood, bursting or overflowing of water tanks, apparatus or pipes, ionizing radiation (to the extent it does not constitute a Force Majeure Event), earthquakes, riot and civil commotion;
- (b) A Utility Delay to the extent permitted by Schedule 22, Part 1;
- (c) Any unforeseeable accidental loss or damage to the Phase 2 Work, the Managed Lanes or the us 36 General Purpose Lanes;
- (d) Any failure or shortage of power, fuel or transport in the Denver metropolitan area;
- (e) Any blockade or embargo which directly impacts the Project but which does not constitute a Force Majeure Event;
- (f) Any:
 - (i) Official or unofficial strike;

- (ii) Lockout;
- (iii) Go-slow; or
- (iv) Other labor dispute;

in each case, generally affecting the road construction industry in the Denver metropolitan area or a significant sector of it;

- (g) Any temporary restraining order or injunction by the court prohibiting the construction of the Project;
- (h) An injunction or other order issued by a Governmental Authority having jurisdiction over the Project preventing the Concessionaire or HPTE from the performing its obligations or exercising its rights under the Contract;
- (i) Compliance by the Concessionaire with an order or direction by police, fire officials or any comparable Governmental Authority having the legal authority to make such order or give such direction;
- (j) The closure, due to an accident of a road necessary for direct access to the Project by order of a Governmental Authority having police power; or
- (k) in relation to the Phase 2 Work, but not in relation to the Services, if a Utility is not indicated with Reasonable Accuracy, as that term is defined in Schedule 22 Part 1;

unless any of the events listed in paragraphs (a) to (j) inclusive arises as a result of any willful default, willful act, negligence or breach of this Contract of the Concessionaire or any Concessionaire Related Party.

“Remediation Work” means the work necessary to address or remediate HPTE Hazardous Substances Circumstances.

“Renewal Amount” means the estimated cost of the Renewal Works, including reasonable amounts for any design and supervision of that work.

“Renewal Works” means all of the work necessary to ensure that the Maintained Elements will comply with the Handback Requirements on the Expiration Date.

“Residual Life” means the projected duration of the Serviceable Life of a Maintained Element after the Expiration Date.

“Residual Life Expert” has the meaning given in Section 48.3.

“Residual Life Inspections” means the inspections described in Section 48.

“Residual Life Methodology” means the methodology used to assess and calculate the Residual Life for each Maintained Element specified in Schedule 20.

“Residual Life Requirements” means the required duration of the Residual Life of Maintained Elements specified in Schedule 20.

“Requested Relocations” means a relocation of a Utility pursuant to Schedule 22, Part 1 requested by the Utility Owner as referred to in paragraph 3 of that Schedule.

“Required Action” has the meaning given in Section 27.3.

“Required Insurances” means the insurances specified in Schedule 17 (Required Insurances).

“Revenue Compensation Payment” means a payment of to be made by HPTE to the Concessionaire in those circumstances when this Contract provides for payment of a Revenue

Compensation Payment, the purpose of which is to compensate the Concessionaire for lost Toll Revenue and/or Changes in Costs following a Relevant Event and which is to be assessed and paid pursuant to Part 2 of Schedule 11.

“**RFP**” means the Request for Proposals for the Project issued by HPTE, dated December 14, 2012, as modified by Addendum 4 for the RFP itself, and Addendum 5 for this Contract and schedules related thereto.

“**RFQ**” means the Request for Qualifications for the Project issued by HPTE, dated February 21, 2012.

“**Routine Maintenance**” means:

- (a) In respect of the Managed Lanes all those activities required as for delivery of the Services which are not Life Cycle Maintenance or Snow and Ice Control Services;
- (b) drainage clearance of the drains associated with the I-25 Managed Lanes;
- (c) all those activities to be performed in respect of the US 36 General Purpose Lanes in accordance with the HPTE Service Requirements in accordance with the Concessionaire’s Service Proposals.

“**RTD**” means the Regional Transportation District.

“**RTD Buses**” means RTD’s scheduled transportation buses, ADA vehicles, and RTD contractor operated buses and ADA vehicles available to the general public over designated routes with specified stops, provided however, in each case such vehicle is equipped with a Transponder pursuant to the terms of paragraph 4.2 of Schedule 16.

“**RTD-CDOT-HPTE Agreement**” means the US 36 Intergovernmental Agreement made June 13th, 2013 by and among HPTE, CDOT and RTD.

“**Safety Plan**” means the plan of that name which the Concessionaire is required to produce in accordance with the Contract and with HPTE’s Service Requirements.

“**Scheduled Refinancing**” means a refinancing of the debt under the Senior Funding Agreements which is planned by the Concessionaire and included in the Base Case Financial Model save, to the extent that there is any change in the terms and conditions applicable to the sums outstanding immediately prior to the refinancing which was not a change contemplated in the Base Case Financial Model so that, to that extent the refinancing will not be an Exempt Funding Agreement Transaction.

“**Security Trustee**” means the Qualifying Institution acting on behalf of or at the direction of the other Lenders or the Person or Persons so designated in an intercreditor agreement or other document executed by the Senior Lenders, TIFIA Lender, and the Subordinated Lenders.

“**Senior Debt**” means the financing provided by the Senior Lenders under the Senior Funding Agreements.

“**Senior Debt Conduit Loan Agreement**” means any Funding Agreement between a Finco and another Finco, or between a Finco and the Concessionaire in each case for the purpose of on-lending Senior Debt.

“**Senior Funding Agreements**” means the Phase 1 TIFIA Loan from the time when the Concessionaire or a Finco is substituted for HPTE as the borrower in respect of the Phase 1 TIFIA Loan and any other Funding Agreement between the Concessionaire or a Finco and a person who is not a Finco for the provision of, or relating to (including any Financial Assignment with respect to) any debt which ranks pari passu with the Phase 1 TIFIA Loan (or which will rank pari passu from the time when the Concessionaire or a Finco is substituted for HPTE as aforesaid).

“Senior Lenders” means the persons (excluding any Finco) providing finance to the Concessionaire or to a Finco under the Senior Funding Agreements including any person acting as agent for such persons and, from the time when the Concessionaire is substituted for HPTE as the borrower in respect of the Phase 1 TIFIA Loan, the TIFIA Lender in respect of the Phase 1 TIFIA Loan.

“Service Line” means, as related to Utilities, a Utility line, the function of which is to directly connect the improvements on an individual property to another Utility line located off such property, which other Utility line connects more than one such individual line to a larger system. (The term “Service Line” also includes any Utility on public or private property that services structures located on such property.)

“Services” means the whole of the services or any of them to be provided by the Concessionaire pursuant to this Contract which are necessary to comply with the HPTE Service Requirements and the other provisions of this Contract, but excluding the Phase 2 Work and the Snow and Ice Control Services.

“Services Period” means the period from the Full Services Commencement Date to the earlier of the Expiration Date and the Termination Date.

“Site” means the land identified in paragraph 8 of Schedule 5 to be provided to the Concessionaire by HPTE for the performance of the Phase 2 Work.

“Snow and Ice Control Services” means the clearance of snow and ice and actions to mitigate the impact of the snow and ice in relation to the Managed Lanes and the US 36 General Purpose Lanes in order to fulfill the requirements of Schedule 25 in accordance with Schedule 26.

“Software” means (a) computer instructions, including programs, routines and databases and applications supplied, procured or developed by the Concessionaire or the Department in connection with the operation of the Project or in connection with Reserved Rights, including but not limited to that which monitors, controls or executes on ETCS Equipment or ITS equipment or hardware, and (b) all modifications, updates and revisions made to the matter described in clause (a) above, including those made to correct errors or to support new models of computer equipment and/or new releases of operating systems.

“Source Code and Source Code Documentation” means Software written in programming languages, such as C, including all comments and procedural code, such as job control language statements, in a form intelligible to trained programmers and capable of being translated into object or machine readable code for operation on computer equipment through assembly or compiling, and accompanied by documentation, including flow charts, schematics, statements of principles of operations, architectural standards, and commentary, explanations and instructions for compiling, describing the data flows, data structures, and control logic of the software in sufficient detail to enable a trained programmer through study of such documentation to maintain and/or modify the software without undue experimentation. Source Code and Source Code Documentation also include all modifications, additions, substitutions, updates, upgrades and corrections made to the foregoing items.

“Source Code Escrows” has the meaning provided in Section 5.2(b).

“Special Permit” means a permit issued by CDOT to permit a Person with a right under a Law to have access to the Managed Lanes for a purpose which does not include carrying out any excavation to exercise that right.

“Specific Change in Law” means any Change in Law which specifically refers to:

- (a) The provision of any services the same as or similar to any of the services to be provided under this Contract; or
- (b) The construction, operation and maintenance of highways or to the charging of tolls for the use of highways, or to the provision of any services the same as or similar to the any of the services to be provided under this Contract; or

- (c) To the holding of shares in companies whose main business is
 - (i) Providing services the same as or similar to the any of the services to be provided under this Contract;
 - (ii) The construction operation and maintenance of highways; or
- (d) Charging tolls for the use of highways.

“Standard Federal Equal Employment Opportunity Construction Contract Specifications” has the meaning provided for in Part 1 of Schedule 13.

“State” means the State of Colorado.

“State Highways” means the highway system in the State.

“State Treasurer’s Reinvestment Rate” means the rate specified from time to time by the Colorado Department of Treasury for the purpose of its Time Deposit Program for 182 day deposits.

“Stipend” means the lump sum amount of Five Hundred Thousand and 00/100 Dollars (\$500,000.00).

“Sub-Contractor” means each of the counterparties of the Concessionaire to the Construction Sub-Contract and the Operation Sub-Contract or any Person engaged by the Concessionaire from time to time as may be permitted by this Contract to procure the provision of the Phase 2 Work and/or the Services and/or the Snow and Ice Control Services (or any of them).

“Sub-Contracts” means the contracts entered into between the Concessionaire and the Sub-Contractors, which as of the Commencement Date are Design-Build Agreement between the Construction Sub-Contractor and Concessionaire, the Operating Agreement between Operating Sub-Contractor and Concessionaire, and the Tolling Services Agreement between E-470 and Concessionaire.

“Subordinated Debt” means the financing provided under the Subordinated Funding Agreements.

“Subordinated Debt Conduit Loan Agreement” means any Funding Agreement between a Finco and another Finco, or between a Finco and the Concessionaire in each case for the purpose of on-lending Subordinated Debt.

“Subordinated Funding Agreements” any Funding Agreement between the Concessionaire or a Finco and a person (other than the TIFIA Lender) who is not a Finco for the provision of any debt which is subordinated to Senior Debt.

“Subordinated Lenders” means a Person providing finance under a Subordinated Funding Agreement.

“Suitable Substitute Concessionaire” means a Person approved by HPTE (such approval not to be unreasonably withheld or delayed) as:

- (a) Having the legal capacity, power and authority to become a party to and perform the obligations of the Concessionaire under the Contract; and
- (b) Employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and sub-contracts) which are sufficient to enable it to perform the obligations of the Concessionaire under the Contract.

“Support Vehicles” means RTD, CDOT, and HPTE maintenance and incident support vehicles, including by contractors engaged by such party, but only to the extent they are servicing vehicles in the Managed Lanes.

“Table Mesa Park-N-Ride” means RTD’s transit facility located at 5170 Table Mesa Drive, Boulder, Colorado 80303, or such replacement facility.

“Technical Representative” means any person appointed by HPTE under Section 16.1.

“Technical Utility Requirements” means paragraph 7 of Schedule 5;

“Termination Date” means any date of early termination of this Contract in accordance with Part 11.

“Termination Notice” means a notice of termination issued in accordance with this Contract.

“TIFIA” means credit assistance provided or available through the FHWA pursuant to the Transportation Infrastructure Finance and Innovation Act.

“TIFIA Lender” means the US Department of Transportation, acting through the Administrator of the Federal Highway Administration, and its successors and assigns.

“Toll” means a user fee established by HPTE for the privilege of using the Managed Lanes; and to avoid doubt includes a surcharge which may be established by the HPTE for persons who may pay the user fee other than by use of a transponder but does not include any administrative fee for the collection of the user fee or any civil penalty arising pursuant to the HPTE Toll Violation Enforcement Rules.

“Toll Revenues” means all revenue actually received (or expected to be received, as the context may require) by the Concessionaire as a result of HPTE charging Tolls in accordance with this Contract for the use of the Managed Lanes.

“Tolled Vehicles” means Motor Vehicles that are not expressly described as “Non-Tolled Vehicles” in paragraph 4.1 of Schedule 16.

“Tolling Back Office Control Services” means back-office, customer service and related activities including the review of transponder data and license plate images provided by the Concessionaire and the collection of Tolls from users of the Managed Lanes who are required to pay Tolls for travelling on the Managed Lanes.

“Tolling Segment” means a portion of the Managed Lanes between any two points where Motor Vehicles may lawfully enter and exit the Managed Lanes.

“Tolling Services Agreement” means the agreement from time to time in force between the Concessionaire, HPTE and the Tolling Services Provider for the provision to the Concessionaire of Tolling Back Office Control Services, the delivery of the first such agreement being a Condition Precedent to the Commencement Date

“Tolling Services Provider” means the Person providing Tolling Back Office Control Services to the Concessionaire which, at the date of this Contract, is expected to be E-470.

“Transit Delay” occurs when an RTD Bus has a travel time in either direction of travel within the I-25 Managed Lanes during Peak Periods that exceeds 8.75 minutes between Denver Union Station and Pecos Street.

“Transition Management Plan” means the plan of that name which the Concessionaire is required to produce in accordance with the Contract and with HPTE’s Service Requirements.

“Transferrable Assets” means all Assets except for those Assets described in subsection (a), (b), and (d) of the definition of “Assets” that are not owned or operated by a Sub-Contractor exclusively for the purposes of the Project. The exception in the preceding sentence shall only

apply if the benefit of the Sub-Contract with such Sub-Contractor is transferred to HPTE or to another Person as directed by HPTE pursuant to Section 49.3.

“Transponder” means a device that receives a radio signal and automatically transmits a different signal, or any supplemental or replacement device that communicated with the then applicable Vehicle Recognition System.

“TSP Change” means HPTE requiring the Concessionaire to replace its then-current Tolling Services Provider with an alternative Tolling Services Provider nominated by HPTE in accordance with Section 29.10;

“Ultimate Configuration” means the ultimate configuration for the US 36 corridor described in the ROD.

“Uninsurable” means in relation to a risk, either that:

- (a) Insurance is not available to the Concessionaire in respect of the Project in the United States insurance market with reputable insurers of good standing in respect of that risk; or
- (b) The insurance premium payable for insuring that risk is at such a level that the risk is not generally being insured against in the worldwide insurance market with reputable insurers of good standing by concessionaires in the United States.

“Unplanned Revenue Impacting Facilities” means any limited access main lane of a highway that did not exist prior to the Contract Date, which CDOT, HPTE or the State or an entity pursuant to a contract with any of them or on behalf of any of them, builds within the Airspace which opens to traffic during the Contract Period, whether resulting from new construction or the upgrade of an existing non-limited access road excluding the following:

- (a) The Managed Lanes and the I-25 General Purpose Lanes and the US 36 General Purpose Lanes in the form that it is intended to construct those lanes as at the Contract Date including any work and improvements of the type defined in paragraph (e) of this definition;
- (b) All elements of the Combined Alternative Package (Preferred Alternative) described in the October 2009 US 36 Final Environmental Impact Study;
- (c) All work and improvements necessary for improved safety, maintenance or operational purposes;
- (d) Work, on any highway project required by environmental regulatory agencies;
- (e) Any work and improvements undertaken to increase traffic capacity by modifying highway projects in operation at the Contract Date through the installation of traffic sensors, metering devices, intelligent traffic management systems, through reconstructing existing lanes, through intersection grade separations, or localized operational improvements through the restriping of traffic lanes, medians and shoulders, but specifically not including restriping that adds lanes;
- (f) All projects referred to in the DRCOG 2012 – 2017 Transportation Improvement Program plus Amendments as of May 15, 2013, and the 2035 DRCOG Metro Vision Transportation Plan;
- (g) The introduction of tolled managed lanes on I-25 north of its junction with US 36;
- (h) The introduction of tolled managed lanes on I-270; and
- (i) The introduction of an interchange or interchanges in the vicinity of where the Northwest Parkway terminates near US 36 directly related to a highway connection to Northwest Parkway on the north of US 36 and/or a highway

connection south of US 36, including access ramps flyovers, and highways to, from and over US 36, and access to other tolled and non-tolled highways and roads related to such interchange, interchanges, or Northwest Parkway.

“**US**” means the United States of America.

“**USDOT**” means the US Department of Transportation.

“**US 36 General Purpose Lanes**” means the Phase 1 GP Lanes and the Phase 2 GP Lanes.

“**US 36 Managed Lanes**” means the Phase 1 Managed Lanes and the Phase 2 Managed Lanes.

“**Utility**” means a privately, publicly or cooperatively owned line, facility and/or system for producing, transmitting or distributing communications, cable television, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, or any other similar commodity. The necessary appurtenances to each utility facility shall be considered part of such utility. Without limitation, any Service Line connecting directly to a utility shall be considered an appurtenance to that utility, regardless of the ownership of such Service Line. The meaning of Utility does not include stormwater facilities.

“**Utility Relocation Agreement**” means the agreement(s) between CDOT, HPTE, and Utility Owners for the Phase 2 Work that is required pursuant to the Contract.

“**Utility Data**” means utility information provided by the Utility Owners as provided in the Utility Data Reference Documents.

“**Utility Data Reference Documents**” means Reference Documents that are specific to Utilities.

“**Utility Delay**” means a delay to the Phase 2 Work arising out of a delay by a Utility Owner in performing Utility Work which the Utility Owner has elected to perform under a Utility Relocation Agreement.

“**Utility Owner**” means the owner of a Utility.

“**Utility Permit**” means a permit issued by CDOT to permit a Utility with a right under a Law to have access to the Managed Lanes to exercise that right.

“**Utility Work**” means the work to be performed by the Concessionaire pursuant to Section 7 of Schedule 5.

“**Variable Tolling**” means tolling rates that vary based on the time of day and/or day of week which may be manually overridden at Concessionaire’s election in accordance with Schedule 16.

“**Vehicle Recognition System**” has the meaning provided in paragraph 2.1(a)(ii) of Schedule 16.

“**Year**” means a period of twelve (12) Months commencing on 1 July, provided that:

- (a) The first Year shall be the period commencing on the Commencement Date and ending on the immediately following 30 June; and
- (b) The final Year shall be the period commencing on 1 July immediately preceding the last day of the Contract Period and ending on that last day of the Contract Period.