

## SCHEDULE 16

## TOLLING AND CIVIL PENALTY PROVISIONS

1. **Tolls and Civil Penalties**

1.1 Tolls and Civil Penalties shall be established by HPTE in accordance with the provisions of this Schedule 16.

1.2 Subject to the provisions of this Schedule 16, the Concessionaire has the right to initially submit to HPTE a proposed toll and penalty schedule for the Managed Lanes, and thereafter to propose changes to the then existing Established Toll and Penalty Schedule from time to time, and as it considers appropriate (in each case, a **“Proposed Toll and Penalty Schedule”**).

1.3 Concessionaire acknowledges and agrees that all Established Toll and Penalty Schedules must be designed to ensure that Motor Vehicle speeds

(a) For the portion of the US 36 Managed Lanes from Table Mesa to the Broomfield Park-n-Ride are an average of 55 miles per hour;

(b) For the portion of the US 36 Managed Lanes from the Broomfield Park-n-Ride to Pecos Street are an average of 50 miles per hour; and

(c) For the portion of the Managed Lanes from Pecos Street to Denver Union Station, that they maintain a travel time of no more than 8.75 minutes.

in all cases during Peak Periods only (collectively, the **“Managed Lanes Goals”**).

1.4 Tolls and Civil Penalties shall be imposed in accordance with an Established Toll and Penalty Schedule.

2. **Establishment of and Changes to Established Toll and Penalty Schedule**

2.1 Every Proposed Toll and Penalty Schedule that proposes to establish or modify Tolls shall include:

(a) All data necessary for HPTE to consider the Proposed Toll and Penalty Schedule for adoption as the Established Toll and Penalty Schedule. Each Proposed Toll and Penalty Schedule shall include:

(i) The Proposed Algorithm (if to be used by Concessionaire for determination of Dynamic Tolling);

(ii) Tolls to be charged to Tolloed Vehicles using the Managed Lanes, or any portion thereof, while using an electronic, automated system enabling the ETCS to recognize the Motor Vehicle by means other than imagery, including Transponders (in each case a **“Vehicle Recognition System”**), which in all cases must be Dynamic Tolling;

(iii) Tolls to be charged to Tolloed Vehicles using the Managed Lanes, or any portion thereof, without utilizing a Vehicle Recognition System; and

(iv) Tolls to be charged to Motor Vehicles that are not Passenger Vehicles.

## EXECUTION VERSION

- (b) A statement (if it is the case) that the Proposed Toll and Penalty Schedule is a remedial adjustment to the Established Toll and Penalty Schedule which the Concessionaire considers to be necessary to correct a Bus Delay Event, an error, or some other unintended consequence of that Established Toll and Penalty Schedule;
  - (c) A statement providing the highest and lowest Tolls that are proposed to be charged for each of the Tolls described in paragraphs 2.1(a)(i), 2.1(a)(ii), 2.1(a)(iii), and 2.1(a)(iv).
  - (d) If any of the Tolls described in paragraphs 2.1(a)(i), 2.1(a)(ii), 2.1(a)(iii), or 2.1(a)(iv) contain the right for Concessionaire to manually override the Proposed Algorithm, a schedule of what specific Tolls will be if manually overridden, a description of when and on what terms the Tolls may be overridden, and a range of what the manually overridden Tolls will be;
  - (e) An explanation of the changes between the Proposed Toll and Penalty Schedule and the current Established Toll and Penalty Schedule, including why the changes are being proposed; and
  - (f) The Concessionaire's good faith estimate, on a semi-annual basis, for as long as an effect persists, of incremental difference between the Toll Revenues generated under the Established Toll and Penalty Schedule and the Proposed Toll and Penalty Schedule once Toll Revenues are being generated in accordance with the Proposed Toll and Penalty Schedule.
- 2.2 Every Proposed Toll and Penalty Schedule that proposes to establish or modify Civil Penalties shall include:
- (a) The proposed revision to the Civil Penalties;
  - (b) An explanation of the changes between the Proposed Toll and Penalty Schedule and the current Established Toll and Penalty Schedule, including why the changes are being proposed; and
  - (c) The Concessionaire's good faith estimate of the financial benefits once Toll Revenues are being generated in accordance with the Proposed Toll and Penalty Schedule.
- 2.3 Except where paragraph 2.4(a) applies, any Proposed Toll and Penalty Schedule by the Concessionaire must be submitted to HPTE not less than 30 days prior to the proposed effective date of the Proposed Toll and Penalty Schedule.
- 2.4 Within:
- (a) Three Business Days of receipt by HPTE of a Proposed Toll and Penalty Schedule which the Concessionaire considers to be necessary to correct a Bus Delay Event, an error in, or some other unintended consequence of the application of the Established Toll and Penalty Schedule, in each case as determined by HPTE; or
  - (b) Thirty calendar days of receipt by HPTE of a Proposed Toll and Penalty Schedule if required to be submitted pursuant to paragraph 8.1(a)(c), or any other circumstance that is not described in paragraph 2.4(a) above;

HPTE shall consider the Proposed Toll and Penalty Schedule and shall either establish the Proposed Toll and Penalty Schedule as the Established Toll and Penalty Schedule or reject the Proposed Toll and Penalty Schedule so that the Established Toll and Penalty Schedule

## EXECUTION VERSION

which is then in force will remain unchanged. If a Proposed Toll and Penalty Schedule is established by HPTE pursuant to this Schedule 16, such Proposed Toll and Penalty Schedule shall be deemed the “**Established Toll and Penalty Schedule.**” Notwithstanding anything to the contrary contained herein, the timeframes described in this paragraph 2.4 shall not apply for any Proposed Toll and Penalty Schedule that requires revisions to HPTE Toll Violation Enforcement Rules. In the event that revisions to HPTE Toll Violation Enforcement Rules are required to establish a Proposed Toll and Penalty Schedule, HPTE shall have no obligation to establish such Proposed Toll and Penalty Schedule unless and until the HPTE Toll Violation Enforcement Rules have been appropriately modified to permit the then requested Proposed Toll and Penalty Schedule and all appeals and objection periods have expired.

2.5 If HPTE does not establish a Proposed Toll and Penalty Schedule as the Established Toll and Penalty Schedule then, unless one or more of the conditions in paragraph 2.6 applies, HPTE shall pay to the Concessionaire the Concessionaire’s good faith estimate of the financial benefits which would arise from the implementation of the Proposed Toll and Penalty Schedule as and when those benefits would have accrued to the Concessionaire, as described in the estimate referred to in paragraph 2.1(f).

2.6 The conditions referred to in paragraph 2.5 are the following, each in the reasonable opinion of HPTE:

- (a) The contents of the Proposed Toll and Penalty Schedule are not in compliance with this Contract (and in particular this Schedule 16);
- (b) The safety of users of the Managed Lanes or of the US 36 General Purpose Lanes would be adversely affected;
- (c) The Maximum Toll is exceeded in relation to Tolls charged for Tolloed Vehicles within paragraph 2.1(a)(ii) unless it is reasonably required to charge a Toll in excess of the Maximum Toll in order to achieve any of the other requirements of this Schedule;
- (d) An amendment, revision, or other modification of the HPTE Toll Violation Enforcement Rules is required;
- (e) The travel times for the I-25 North Managed Lanes will be materially impaired; or
- (f) The Managed Lanes Goals will not be satisfied.

### 3. **First Established Toll and Penalty Schedules for the Managed Lanes**

3.1 The Concessionaire shall propose a Proposed Toll and Penalty Schedule in accordance with paragraph 2 at least 60 days prior to the expected date of each of the Commencement Date, the Phase 1 Services Commencement Date and the Full Services Commencement Date. On receipt of the Proposed Toll and Penalty Schedule HPTE shall proceed in accordance with paragraph 2.

### 4. **Vehicles which may travel in the Managed Lanes without payment of a Toll**

4.1 The following categories of Motor Vehicles are “Non-Tolloed Vehicles” and are exempt from all Tolls in the Managed Lanes:

- (a) Prior to the HOV Change Event, HOV 2+ Vehicles
- (b) On and after the HOV Change Event, HOV 3+ Vehicles;

- (c) Motorcycles;
- (d) ILEVs;
- (e) RTD Buses;
- (f) Support Vehicles; and
- (g) All public safety and emergency vehicles with jurisdiction, as applicable, and in all cases when engaged in the delivery of public safety or emergency services.

4.2 The Concessionaire shall provide RTD with devices that communicate with the Vehicle Recognition System for RTD Buses and shall provide RTD, CDOT and HPTE with devices that communicate with the Vehicle Recognition System for Support Vehicles at no cost to RTD, CDOT or HPTE.

**5. Peak Period Minimum Tolls**

5.1 The minimum Toll during Peak Periods for Tolloed Vehicles shall be as follows:

- (a) For I-25 Managed Lanes: The Toll shall not be less than the then existing RTD I-25 Express Bus Fare.
- (b) For the Managed Lanes:
  - (i) The Toll for driving the full length of the Managed Lanes (in either direction) shall not be less than the greater of the then existing fare for the Regional Service or the lowest publically available adult fare for the Express Service for the direction being travelled.
  - (ii) For trips that are less than the full length of the Managed Lanes (in either direction), there shall only be a minimum Toll during Peak Periods for trips by Tolloed Vehicles which terminate at either the Downtown Denver end of the Managed Lanes or at the Table Mesa end of the Managed Lanes. In such cases the minimum Toll shall be as follows:

<b>EASTBOUND TRAVEL</b>		<b>WESTBOUND TRAVEL</b>	
<b>Point where Tolloed Vehicle enters Managed Lanes</b>	<b>Minimum Toll fare which sets minimum Toll</b>	<b>Point where Tolloed Vehicle enters Managed Lanes</b>	<b>Minimum Toll fare which sets minimum Toll</b>
After Table Mesa, but before McCaslin Blvd	Fare for Express Service from Boulder to Denver	After Downtown Denver but before the Sheridan Park-n-Ride	Fare for Express Service from Denver to Boulder
At or after McCaslin Blvd, but before Flatiron Circle	Fare for Express Service from McCaslin Blvd to Denver	At or after Sheridan Park-n-Ride, but before the Church Ranch Park-n-Ride	Fare for Express Services from Sheridan to Boulder

**EXECUTION VERSION**

At or after Flatiron Circle but the Broomfield Park-n-Ride	Fare for Express Service from Flatiron Circle to Denver	At or after the Church Ranch Park-n-Ride, but before the Broomfield Park-n-Ride	Fare for Express Service the Church Ranch Park-n-Ride to Boulder
At or after Broomfield Park-n-Ride but before the Church Ranch Park-n-Ride	Fare for Express Service from Broomfield Park-n-Ride	At or after the Broomfield Park-n-Ride, but before Flatiron Circle	Fare for Express Service from the Broomfield Park-n-Ride to Boulder
At or after Church Ranch Park-n-Ride, but before the Sheridan Park-n-Ride	Fare for Express Service from Church Ranch Park-n-Ride	At or after Flatiron Circle but before McCaslin Blvd	Fare for Express Service from Flatiron Circle to Boulder
At or after Sheridan Park-n-Ride	Fare for Express Service Sheridan Park-n-Ride	At or after McCaslin	Fare for Express Service from McCaslin Blvd to Boulder

5.2 Minimum Tolls apply only to Tolloed Vehicles that either terminate their trip in the Project at the Table Mesa Park-N-Ride for westbound trips or terminate their trip in the Project at Downtown Denver for eastbound trips. For illustrative purposes, there is no minimum Toll for a Tolloed Vehicle that enters the US 36 Managed Lanes at McCaslin Blvd, and exits at Sheridan Blvd.

5.3 Fares for Express Service and for Regional Service may be changed by RTD providing written notice to HPTE no more often than once per Year. Upon receipt of such notice from RTD, HPTE agrees to promptly provide such written notice to Concessionaire.

**6. Maximum Tolls**

The Maximum Toll for the Managed Lanes for Tolloed Vehicles within paragraph 2.1(a)(ii) from and after the first Year after the Full Services Commencement Date will be \$13.91 (Indexed).

**7. HOV Change Event**

7.1 Upon the earliest to occur of any of the following:

- (a) The number of Transit Delays exceeds two (2) per week in the same Peak Period (morning or evening) in each of three (3) consecutive weeks;
- (b) The Average Vehicle Speed in either direction of travel within the Managed Lanes during Peak Periods, measured over 15 minute intervals, is less than 45 miles per hour for any single such 15 minute interval on at least one (1) day in four (4) out of six (6) consecutive weeks;
- (c) The Average Vehicle Speed in either direction of travel within the Managed Lanes during Peak Periods is less than 50 miles per hour for any such Peak Period on at least one (1) day in each of four (4) consecutive weeks;

## EXECUTION VERSION

- (d) The Hourly Volume of HOV 2+ Vehicles travelling in one direction during Peak Periods measured at any tolling point, exceeds 1,000 Passenger Car Equivalents within the Managed Lanes on any three (3) days in four (4) out of six (6) consecutive weeks; or
- (e) The date established in a resolution adopted by CDOT, HPTE, the Colorado Transportation Commission or any other public authority with jurisdiction to make the decision, after which free travel by high occupancy vehicles on any other tolled managed lane in the State of Colorado is limited to HOV 3+ Vehicles;

then, the HOV Change Event shall have occurred and the Concessionaire shall submit a Proposed Toll and Penalty Schedule to reflect the fact that HOV 2+ Vehicles are no longer Non-Tolled Vehicles.

Occurrences caused by Force Majeure Events or Relief Events are not to be included in any of the items 7.1(a) through (e), except to the extent Force Majeure Events occur outside of the Airspace, and such event causes a persistent and recurrent triggering of one of the instances described above, as reasonably determined by HPTE.

### 8. **Managed Lanes Speeds**

- 8.1 In the event any Quarterly Report, or any other data gathering, indicates that RTD Buses are not meeting the Managed Lanes Goals during Peak Periods after the HOV Change Event has occurred (collectively, the “**Bus Speed Standards**”), then a “**Bus Delay Event**” shall have occurred.
  - (a) In the event a Bus Delay Event occurs two times or less in the same hour, then Concessionaire is not obligated to take any action.
  - (b) In the event a Bus Delay Event occurs three times or more in the same hour, but has occurred less than one day of every week in a rolling four-week period, then Concessionaire is not obligated to take any action.
  - (c) In the event a Bus Delay Event occurs three times or more in the same hour, and such occurrence happened one day or more every week in a rolling four-week period, the Concessionaire is obligated to promptly submit a Proposed Toll and Penalty Schedule that eliminates future Bus Delay Events from occurring.
- 8.2 Notwithstanding anything to the contrary in paragraph 8.1(c), in the event of a Bus Delay Event that meets the thresholds of paragraph 8.1(c) that has been caused by a Force Majeure Event, Relief Event, or Compensation Event, then Concessionaire is not required to submit a Proposed Toll and Penalty Schedule to address future Bus Delay Events from occurring, and the provisions of paragraph 8.1(b) shall apply for such Quarterly Report.

### 9. **Reporting Requirements on the Managed Lanes**

- 9.1 No later than thirty (30) days after the end of each calendar quarter, Concessionaire shall provide the following to RTD and HPTE (each a “**Quarterly Report**”):
  - (a) The number and type of transactions with the Vehicle Reporting System in all Tolling Segments;
  - (b) Vehicle speeds between all Tolling Segments;
  - (c) Travel time for RTD Buses between all Tolling Segments;

**EXECUTION VERSION**

- (d) Accidents in the Managed Lanes to the extent that vehicle travel times were disrupted in any material manner;
  - (e) The number of Non-Tolled Vehicles, broken down by the categories described in paragraph 4.1 for each month in the applicable quarter; and
  - (f) The number of Tolled Vehicles.
- 9.2 The Concessionaire agrees to meet once each Year with HPTE and RTD to review methodology for assessing performance of RTD Buses.
- 9.3 Concessionaire agrees and acknowledges that to the extent any survey or audit is produced pursuant to Section 22.6 of the Contract, HPTE may provide such survey or audit to RTD.