

SCHEDULE 18

Direct Agreement

THIS CONSENT AND AGREEMENT (this "Agreement") is made on this ___ day of _____, 2013 among

- (1) Colorado High Performance Transportation Enterprise, a government owned business and a division of the Colorado Department of Transportation Colorado ("**HPTE**"),
- (2) [_____], as security trustee (in such capacity, together with its successors and permitted assigns, the "Security Trustee") for the benefit of the Secured Parties as defined in the Senior Funding Agreements referred to below; and
- (3) Plenary Roads Denver LLC, a Colorado limited liability company (the "**Concessionaire**"), each a "**Party**" and together the "**Parties.**"

WHEREAS:

- (A) Pursuant to an agreement (the "Concession Agreement") appointing the Concessionaire in respect of the US 36 and the I-25 Managed Lanes, dated [***] the Concessionaire [and other agreements specified in Schedule I hereto] (as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the "Assigned Agreements"¹).has agreed with HPTE to perform the Phase 2 Works and deliver the Services and the Snow and Ice Control Services in consideration of (amongst other things) the right to receive Toll Revenues generated by the Managed Lanes (capitalized terms in this paragraph being as defined in the Concession Agreement).
- (B) Pursuant to the [Senior Funding Agreements]² (as the same may be amended, modified or supplemented from time to time, the "Senior Funding Agreements"), dated as of _____, by and among the financing parties from time to time party thereto (the "Secured Parties"), Security Trustee, Concessionaire, _____, as Administrative Agent and the other Agents and Issuing Banks party thereto (each as defined therein), the Secured Parties have agreed to make available certain credit facilities to the Concessionaire.
- (C) As a condition of the financing under the Senior Funding Agreements and under the Security Agreement, dated as of _____, 2013 (as amended and restated, supplemented or otherwise modified from time to time, the "Security Agreement"), by and between Concessionaire and Security Trustee, Concessionaire is required to (among other things) grant to Security Trustee a first-priority security interest in all of Concessionaire's right, title and interest in, to and under the Assigned Agreements as collateral security for satisfaction of all obligations of Concessionaire to Security Trustee and the Secured Parties under the Senior Funding Agreements.
- (D) As security for all obligations of the Concessionaire under the Senior Funding Agreements pursuant to the Security Agreement, Concessionaire has granted to the Security Trustee, for the benefit of the Security Trustee and the Secured Parties, a first-priority security interest in all of Concessionaire's right, title and interest in, to, and under the Concession Agreement (such rights, the "Assigned Rights"); and

¹ At present, the only likely Assigned Agreement is the Concession Agreement. However, the defined term has been retained in case other agreements also need to be captured by this definition.

² This agreement will be amended in the light of the structure of the final financing to ensure that the TIFIA Phase 1 Loan and the TIFIA Phase 2 Loan are covered as necessary.

EXECUTION VERSION

- (E) It is a requirement under the Senior Funding Agreements that HPTE and the other parties hereto shall have executed this Agreement.

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

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless the context otherwise requires:

“**Accrued Rights**” has the meaning given to that term in paragraph 13.1;

“**Accrued Rights Value**” means each of the Construction Accrued Rights Liquidated Damages Value, the Construction Accrued Rights Value, the Operating Accrued Rights Life Cycle Works Value, the Operating Accrued Rights Termination Value and the Operating Accrued Rights Value;

“**Ancillary Documents**” means [***];

“**Appointed Representative**” means a Representative that has assumed the Concessionaire’s rights under the Concession Agreement pursuant to paragraph 5.1;

“**Assignment**” has the meaning given to it by paragraph 2.1;

“**Construction Accrued Rights Liquidated Damages Value**” means the amounts that would count against the Construction Sub-Contractor’s Liquidated Damages Cap upon realization of the Accrued Rights based upon the assessment notified to HPTE under paragraph 13.10, as the same may be adjusted in accordance with paragraph 23 (Dispute Resolution);

“**Construction Accrued Rights Value**” means the amounts that would count against the Construction Sub-Contractor’s Liability Cap upon realization of the Accrued Rights based upon the assessment notified to HPTE under paragraph 13.10, as the same may be adjusted in accordance with paragraph 23 (Dispute Resolution);

“**Construction/Operating Sub-Contract**” means a contract relating to the provision of Phase 2 Work or Services which is the subject of a HPTE-Sub-Contractor Agreement;

“**Construction Sub-Contract**” means the Construction Sub-Contract as defined in the Concession Agreement and/or any novation thereof pursuant to the HPTE-Sub-Contractor Agreement;

[“**Construction Sub-Contractor Default**” has the meaning given to it in the Construction Sub-Contract;]

[“**Construction Sub-Contractor’s Liability Cap**” has the meaning given to it in the Construction Sub-Contract;]

[“**Construction Sub-Contractor’s Liquidated Damages Cap**” has the meaning given to it in the Construction Sub-Contract;]

“**Concession Agreement**” has the meaning given in Recital A;

“**DA Termination Notice**” means a notice given by HPTE to the Security Trustee under Section 4.1;

[“**FA Event of Default**” has the meaning given to such term in Section 2.2

EXECUTION VERSION

["**Final Statement**"] has the meaning given to it in the Construction Sub-Contract;]

"**Final Warning Notice**" has the meaning given to it under Section 51 of the Concession Agreement.

"**HPTE Construction-Contractor Agreement**" means the HPTE-Sub-Contractor Agreement between (1) HPTE, (2) the Concessionaire and (3) the Construction Sub-Contractor;

"**HPTE Construction Liability Cap**" means the Construction Sub-Contractor's Liability Cap less the Construction Accrued Rights Value;

"**HPTE Construction Liquidated Damages Cap**" means the Construction Sub-Contractor's Liquidated Damages Cap less the Construction Accrued Rights Liquidated Damages Value;

"**HPTE Liability Cap**" means each of the HPTE Operating Liability Cap, the HPTE Operating Termination Cap, the Life Cycle Works Cap, or the HPTE Construction Liability Cap, or the HPTE Construction Liquidated Damages Cap;

"**HPTE Liquidated Damages**" means [***].

"**HPTE Operating Contractor Agreement**" means the HPTE-Sub-Contractor Agreement between (1) HPTE, (2) the Concessionaire and (3) the Operating Sub-Contractor;

"**HPTE Operating Liability Cap**" means the Operating Sub-Contractor Liability Cap for the Relevant Year less the Operating Accrued Rights Value;

"**HPTE Operating Life Cycle Works Cap**" means the Life Cycle Works Cap less the Operating Accrued Rights Life Cycle Works Value;

"**HPTE Operating Termination Cap**" means the Operating Sub-Contractor Termination Cap less the Operating Accrued Rights Termination Value;

"**Interim Payment**" has the means the monthly progress payments made under the Construction Sub-Contract;]

["**Life Cycle Works Cap**"] *[definition to be included or omitted (together with other associated definitions) if the Operating Sub-Contract includes responsibility for carrying out Life Cycle Works with a separate capping arrangement.]*

"**Monthly Operating Payment**" means [***];

"**Operating Accrued Rights Life Cycle Works Value**" means the amount that would count against the Life Cycle Works Cap upon realization of the Accrued Rights based upon the assessment notified to HPTE under paragraph 13.10, as the same may be adjusted in accordance with paragraph 23 (Dispute Resolution);

"**Operating Accrued Rights Termination Value**" means the amounts that would count against the Operating Sub-Contractor's Termination Cap upon realization of the Accrued Rights based upon the assessment notified to HPTE under paragraph 13.10, as the same may be adjusted in accordance with paragraph 0 (Dispute Resolution);

"**Operating Accrued Rights Value**" means the amount that would count against the Operating Sub-Contractor's Liability Cap upon realization of the Accrued Rights based upon the assessment notified to HPTE under paragraph 13.10, as the same may be adjusted in accordance with paragraph 0 (Dispute Resolution);

EXECUTION VERSION

“Operating Sub-Contract” means the Operating Sub-Contract as defined in the Concession Agreement and/or any novation thereof pursuant to the HPTE Operating Contractor Agreement;

“Operating Sub-Contractor Default” has the meaning given to it in the Operating Sub-Contract;

[**“Operating Sub-Contractor Liability Cap”** has the meaning given to it in the Operating Sub-Contract;]

[**“Operating Sub-Contractor Termination Cap”** has the meaning given to it in the Operating Sub-Contract;]

“Performance Security” means [*the bond or letter of credit provided by the Construction Sub-Contractor as security for performance of its obligations under the Construction Sub-Contract*];

“Relevant Incident” has the meaning given in Section 38.3 of the Concession Agreement.

“Relevant Payment” has the meaning given in Section 39.4 of the Concession Agreement.

“Relevant Required Insurances” means the Required Insurances described in Parts 1 and 2 of Schedule 17 (Required Insurances) of the Concession Agreement;

“Relevant Sub-Contractor” means a sub-contracting party to a Construction/Operating Sub-Contract;

“Relevant Year” means the Year in which the Termination Date occurs;

“Representative” means:

- (a) The Security Trustee, the Administrative Agent, any Secured Finance Party and/or any of their Affiliates;
- (b) Any person or entity appointed as administrator or receiver of the Concessionaire under the Security Documents with respect to any realization under the Security Agreement, any bankruptcy, insolvency, reorganization or similar proceeding;
- (c) A person or entity directly or indirectly owned or controlled by the Security Trustee and/or any Secured Finance Party;
- (d) Any person or entity designated by the Security Trustee and reasonably experienced in the management of projects similar to the Project (or who has contracted with a person or entity with such experience); or
- (e) Any other person or entity approved by HPTE (such approval not to be unreasonably withheld or delayed);

“Required Period” means the period starting on the later of the date of a DA Termination Notice and the date on which (apart from this Agreement) HPTE could give notice terminating the Concession Agreement pursuant to Section 50.3 of the Concession Agreement and ending:

- (a) One hundred and twenty (120) days after the start of the period when that period starts prior to or on the Full Services Commencement Date,;
- (b) Ninety (90) days after the start of the period when that period starts on or after the Full Services Commencement Date; or

EXECUTION VERSION

- (c) In either case, on such earlier date as the Security Trustee may specify by written notice to HPTE;

provided, however, that (i) if possession of the Project is necessary to cure such the grounds for termination stated in a DA Termination Notice and the Security Trustee has commenced foreclosure proceedings or the exercise of other remedies to obtain such possession and affect such cure, the Required Period will be extended to the extent necessary to allow Security Trustee a reasonable time to obtain such possession and affect such cure, and (ii) if the Security Trustee is prohibited from curing any such ground for termination by any process, stay or injunction issued by any governmental authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving the Concessionaire, then the Required Period shall be extended for the period of such prohibition and a reasonable time thereafter to permit the exercise by the Security Trustee of its rights.

“Secured Obligations” means, collectively: all respective obligations and liabilities of Concessionaire, and any guarantor of the Senior Funding Agreements with respect to: (a) the principal of and interest under the Senior Funding Agreements; (b) all fees and other amounts due and to become due to the Security Trustee, the Secured Parties, or any other financing parties, whether those amounts are due or to become due under the Senior Funding Agreements or any other document contemplated thereby, including, without limitation, the expenses, indemnities, and interest that would accrue on any of the foregoing; and (c) the performance and observance of all of the covenants and agreements made by Concessionaire, and any guarantor under or in connection with the Senior Funding Agreements.

“Senior Debt Discharge Date” means the date on which all amounts which may be or become owing by the Concessionaire to each Secured Party under the Senior Funding Agreements have been irrevocably paid in full and all commitments of each Secured Party have expired or irrevocably terminated;

“Step-In Date” means the date on which the Security Trustee takes any action under paragraph 5.1;

“Step-In Period” means the period from the Step-In Date up to and including the earlier of:

- (a) the date specified in a notice issued pursuant to paragraph 7.1;
- (b) the date of any transfer under paragraph 8;
- (c) the date of any termination for breach under paragraph 6;
- (d) if the Step-In Date occurs prior to or on the Full Services Commencement Date, six (6) months after the date on which HPTE would have been entitled to terminate the Concession Agreement for failure to achieve Full Service Commencement Date by the Full Service Commencement Long Stop Date;
- (e) if the Step-In Date occurs after the Full Services Commencement Date, the second anniversary of the Step-In Date; or
- (f) the date of expiry of the Contract Period;

“Step-Out Date” has the meaning given to it in paragraph 7.1;

“Unrestricted Assets” means those Assets (or part thereof), excluding any revenues or cash balances accrued or the value of any Assets secured under the Security Agreement including the value of any Performance Security as at the Expiration Date, or if earlier, the Termination Date, under or pursuant to or in connection with any of the Relevant Required Insurances, any

EXECUTION VERSION

Construction/Operating Sub-Contract or any Ancillary Document, which are required by HPTE or its nominee or any replacement of the Concessionaire for the purposes of the construction, operation or maintenance of the Project following expiration or termination of the Concession Agreement assuming such construction, operation or maintenance is carried out on terms substantially the same as the terms of the Concession Agreement;

“Warning Notice” means a formal warning notice served by HPTE under Section 51 of the Concession Agreement;

1.1 The following terms have the meaning given to them in the Concession Agreement and Schedules (as appropriate):

“Adjusted Estimated Fair Value of the Contract”

“Affiliate”

“Assets”

“Business Day”

“HPTE-Sub-Contractor Agreement”

“Construction Sub-Contractor”

“Distribution”

“Expiration Date”

“Full Services Commencement Date”

“Funding Agreements”

“Joint Insurance Account”

“Operation Sub-Contractor”

“Phase 2 Work”

“Physical Damage Policies”

“Project”

“Required Insurances”

“Senior Debt”

“Senior Lenders”

“Services”

“Services Period”

“Suitable Substitute Concessionaire”

“Termination Date”

“Termination Sum”

1.2 The following terms have the meaning given to them in the Senior Funding Agreements:

[“Lender Consent and Agreement”]

[“Senior Lender”]

[“Secured Finance Party”]

[“Security Document”]

1.3 In this Agreement except where the context otherwise requires:

- (a) The masculine includes the feminine and vice-versa;
- (b) The singular includes the plural and vice-versa;
- (c) A reference to any Section, sub-Section, paragraph, Schedule, recital or annex:
 - (i) Within this Agreement is a reference to such Section, sub-Section, paragraph, Schedule, recital or annex of and to this Agreement; and
 - (ii) Within a Schedule or annex is a reference to a Section, sub-Section, paragraph, or annex to that Schedule,in each case except where expressly stated to the contrary;
- (d) Save where otherwise provided in this Agreement, any reference to this Agreement or to any other document shall include any permitted variation, amendment or supplement to this Agreement and/or such other document;
- (e) Any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended, replaced, consolidated or re-enacted;
- (f) A reference to a Person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;
- (g) Headings are for convenience of reference only;
- (h) Words preceding “include,” “includes,” “including” and “included” shall be construed without limitation by the words which follow those words;
- (i) A reference to a matter having been “agreed or determined” shall mean that the Parties have agreed the matter in writing or that the matter has been determined pursuant to paragraph 22;
- (j) Words not otherwise defined that have well-known technical or construction industry meanings are used in accordance with such recognized meanings; and
- (k) All parties further acknowledge and agrees that they have independently reviewed this Agreement with legal counsel, and have the requisite experience and

EXECUTION VERSION

sophistication to understand, interpret and agree to the particular language of this Agreement. Accordingly, in the event of any ambiguity in or dispute regarding the interpretation of the provisions of this Agreement, the terms of this Agreement shall not be construed against the Person that prepared them.

2. Consent to Security

- 2.1 HPTE hereby acknowledges notice of, and consents to, the assignment (pursuant to the Security Agreement) by Concessionaire to the Security Trustee for the benefit of the Secured Parties of the Assigned Rights as collateral security for the performance of the Secured Obligations (the "Assignment"), and agrees that the Security Trustee (and the other Secured Parties) is not, and does not become, liable for the performance or observance of any of the obligations or duties of Concessionaire under the Assigned Agreements, and that the Security Trustee (nor the other Secured Parties) is not, and does not become, liable to perform or observe any obligations or duties owing to HPTE, in either case solely by reason of the Assignment, except as otherwise expressly provided in this Agreement;
- 2.2 Each of Concessionaire and HPTE hereby agrees that, upon HPTE's receipt of a notice from the Security Trustee of an unremedied event of default under the Senior Funding Agreements (a "**FA Event of Default**"), the Security Trustee has the right to make all demands that Concessionaire is entitled to make, give all notices that Concessionaire is entitled to give, take all actions that Concessionaire is entitled to take, and exercise all other rights of Concessionaire under the Assigned Agreements; and
- 2.3 HPTE acknowledges and agrees that it shall not consent to any further assignment, transfer, pledge or hypothecation of the Assigned Rights by Concessionaire without the prior written consent of the Security Trustee.
- 2.4 HPTE confirms that it has not received notice of any other security interest granted over the Concessionaire's rights under the Assigned Agreements.

3. REPRESENTATIONS AND WARRANTIES.

- (a) Concessionaire hereby represents and warrants to HPTE that as at the date of this Agreement:
- (i) The Concessionaire is duly incorporated and is an existing limited liability company in accordance with the laws of the State of Colorado, and is authorized to transact business in the State of Colorado, and further that as at the date of this Agreement it has acquired any and all Necessary Consents to perform its obligations under this Agreement which fall due for performance immediately upon the date of this Agreement;
 - (ii) Each person executing this Agreement (and any other Project Document which has been executed on or before the date of this Agreement) on behalf of the Concessionaire has been duly authorized to execute each such document on behalf of the Concessionaire;
 - (iii) Any undertakings of the Concessionaire arising from a Project Document which has been executed on or before the date of this Agreement represent valid and enforceable undertakings of the Concessionaire;
 - (iv) The execution and performance by the Concessionaire of this Agreement does not contravene:

EXECUTION VERSION

- (1) Any Law;
 - (2) Any organizational documents of the Concessionaire or the Sub-Contractors; or
 - (3) Any obligation which is binding on the Concessionaire;
- (v) There is no Concessionaire Default, and no fact or event exists that with the passage of time would constitute a Concessionaire Default;
- (vi) No litigation, arbitration or other dispute resolution proceedings involving the Concessionaire or, to the best of the Concessionaire's knowledge and belief (the Concessionaire having made reasonable enquiries with a view to obtaining such knowledge and belief) any Concessionaire Related Party, is pending and the Concessionaire is not aware of any threatened dispute, in each case that could materially and adversely affect the ability of the Concessionaire to perform its obligations under this Agreement or the Senior Funding Agreements;
- (vii) The copies of the Senior Funding Agreements provided to HPTE are true and complete copies of these documents, and, as at the date of this Agreement, there have been no amendments to these documents and there are no other documents which have not been provided, but which have (or may have) a material effect on the interpretation or application of any of the Senior Funding Agreements; and
- (viii) There is no failure by the Concessionaire to comply with all Laws and Necessary Consents applicable to its obligations in connection with the Project Documents which will have a material adverse effect on the Concessionaire or on the Project; and
- (ix) Prior to the execution of this Agreement, the Concessionaire, and, to the best of the Concessionaire's knowledge and belief (the Concessionaire having made reasonable enquiries with a view to obtaining such knowledge and belief) each shareholder of the Concessionaire and each Concessionaire Related Party, has not committed any Prohibited Acts.
- (b) HPTE hereby represents and warrants to the Security Trustee, for the benefit of the Secured Parties, and the Concessionaire that, as at the date of this Agreement:
- (i) HPTE has full power, right and authority to execute, deliver and perform its obligations under, in accordance with, and subject to the terms and conditions of this Agreement;
 - (ii) The person executing this Agreement has been duly authorized to execute such documents;
 - (iii) This Agreement has been validly executed by HPTE and the execution and performance by HPTE of the Contract does not contravene:
 - (1) Any Law; or
 - (2) Any obligation which is binding on HPTE;

EXECUTION VERSION

- (iv) No litigation, arbitration or other dispute resolution proceedings involving HPTE or to the best of HPTE's knowledge and belief (HPTE having made reasonable enquiries with a view to obtaining such knowledge and belief) is pending and HPTE is not aware of any threatened dispute, in each case that could materially adversely affect the ability of HPTE to perform its obligations under this Agreement;
 - (v) As of the date of this Agreement, apart from in relation to the Phase 1 TIFIA Loan, no agreement, contract, option, commitment or other right exists which binds, or which in the future may become binding on, HPTE to sell, transfer, convey, dispose of or encumber all or any part of the Project. Save in relation to the Phase 1 TIFIA Loan, HPTE has not granted or assigned any interest in Toll Revenues to any other party other than the Concessionaire pursuant to this Agreement;
 - (vi) This Agreement and any other Project Document to which HPTE is a party has been duly authorized, executed and delivered by HPTE and the obligations undertaken in such documents constitute valid and legally binding obligations of HPTE, enforceable against it in accordance with the terms of those documents, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity;
 - (vii) There is no failure by HPTE to comply with all Laws and Necessary Consents applicable to its obligations in connection with this Agreement and any Project Document to which it is a party as at the date of this Agreement which will have a material adverse effect on HPTE or on the Project;
 - (viii) There is no HPTE Default, and no fact or event exists that with the passage of time would constitute an HPTE Default; and
- (c) HPTE further represents and warrants to the Security Trustee, for the benefit of the Secured Parties that:
- (i) Each of the Assigned Agreements is unmodified and is in full force and effect and neither a default by HPTE nor, to its knowledge, a default or breach of a representation or warranty by Concessionaire, exists and is continuing under the Assigned Agreements;
 - (ii) To its knowledge after giving effect to the consent by HPTE contained herein to the Assignment, and recognizing that Concessionaire has continuing and additional obligations to perform after the date of this Agreement, and except as described in Section 2 of the Concession Agreement, there exists no present event or condition that would enable either HPTE or Concessionaire to terminate or suspend its obligations under the Assigned Agreements;
 - (iii) Except for the Assignment, HPTE has no notice of any assignment relative to any right, title, and interest of Concessionaire in, to and under the Assigned Agreements;
 - (iv) Each of the Assigned Agreements and the instruments and documents referred to therein constitute the only agreements between HPTE and Concessionaire with respect to the matters and interests described therein; and

- (v) As of the date of this Agreement all amounts due and owing to HPTE by Concessionaire, if any, under the Assigned Agreements have been paid in full when due by Concessionaire.

4. NOTICE OF TERMINATION AND EXISTING LIABILITIES

4.1 HPTE shall not terminate or give notice terminating the Concession Agreement pursuant to Section 50 of the same without giving to the Security Trustee a DA Termination Notice giving at least the Required Period of written notice prior to exercising such right under the Concession Agreement stating:

- (a) the proposed Termination Date; and
- (b) the grounds for termination in reasonable detail.

4.2 Not later than the date falling twenty (20) Business Days after the date of a DA Termination Notice or (if earlier) the date falling twenty (20) Business Days after the date on which the Security Trustee informs the HPTE that an FA Event of Default has occurred, HPTE shall give the Security Trustee a notice containing details of any amount owed by the Concessionaire to the HPTE and any other existing liabilities or unperformed obligations under the Concession Agreement of which HPTE is aware (having made reasonable inquiry):

- (a) at the time of the DA Termination Notice or the notification of an FA Event of Default; and
- (b) (if relevant) which will fall due on or prior to the end of the Required Period.

4.3 HPTE shall notify the Security Trustee in writing as soon as reasonably practicable of:

- (a) any change in the amounts, liabilities or obligations referred to in paragraph 4.2; and
- (b) any further amounts, liabilities or obligations falling due and payable to the HPTE but unpaid or falling due for performance or discharge by the Concessionaire and unperformed or not discharged (as the case may be),

in each case, of which HPTE is or becomes aware before the earlier of the Step-In Date and (if relevant) the expiry of the Required Period but after the date of a notice given under paragraph 4.2 and, if such details are provided within the last ten (10) Business Days of the Required Period, then the Required Period shall be extended by ten (10) Business Days.

5. APPOINTMENT OF REPRESENTATIVE TO EFFECT CURE DURING STEP-IN PERIOD

5.1 Without prejudice to the rights of the Security Trustee under the Security Documents, at any time

- (a) during which an FA Event of Default is continuing (whether or not a DA Termination Notice has been served) or
- (b) during the Required Period,

the Security Trustee may assume or designate a Representative to assume, jointly and severally with the Concessionaire, all of the Concessionaire's rights and obligations under the Assigned Agreements by providing HPTE five (5) Business Days prior written notice of any such action, so that the Step-In Period and the assumption by the Representative of such rights and obligations shall commence upon expiry of such notice.

6. STEP-IN PERIOD: OPPORTUNITY TO CURE OR TO TRANSFER

- 6.1 HPTE shall deal with the Appointed Representative and not the Concessionaire during the Step-In Period.
- 6.2 Notwithstanding any other provision of this Agreement and the Concession Agreement, HPTE shall not be entitled to terminate the Concession Agreement during the Step-In Period, except by written notice to the Concessionaire and the Appointed Representative under the following circumstances:
- (a) Either HPTE has grounds for termination of the Concession Agreement which existed at the Step-In Date:
 - (i) that arose prior to the Full Services Commencement Date and the Full Services Commencement Date is not achieved on or before the date falling six (6) months after the date on which HPTE would have been entitled to terminate the Concession Agreement for failure to achieve Full Service Commencement Date by the Full Service Commencement Long Stop Date; or
 - (ii) that arose after the Full Services Commencement Date and neither the Appointed Representative nor the Concessionaire is using commercially reasonable efforts (including implementation of any remedial program) to remedy any breach of the Concession Agreement that:
 - (1) arose prior to the Step-In Date;
 - (2) is continuing (and capable of remedy); and
 - (3) but for this Agreement, would have entitled HPTE to terminate the Concession Agreement;
 - (b) If any monetary default of the Concessionaire has not been cured on or before the Step-In Date;
 - (c) If amounts, of which HPTE was not aware (having made reasonable inquiry) at the time of the DA Termination Notice or the FA Event of Default, subsequently become payable and are not discharged on or before the earlier of:
 - (i) The date falling thirty (30) Business Days after the date on which the liability for these amounts is notified to the Security Trustee;
 - (ii) The date falling twenty (20) Business Days after the date on which the liability for these amounts falls due; and
 - (iii) The last day of the Required Period; or
 - (d) On grounds for termination arising after the Step-In Date in accordance with the terms of the Concession Agreement provided that, subject to paragraph 7, for the purposes only of termination under the Concession Agreement (and without prejudice to the rights of HPTE to receive the Noncompliance Revenue Share), Warning Notices and Final Warning Notices that arose prior to the Step-In Date shall not be taken into account during the Step-In Period but shall be taken into account after the Step-Out Date if no Suitable Substitute Concessionaire has been appointed.

7. STEP-OUT

- 7.1 The Appointed Representative will, on the earlier of:
- (a) The date specified in a written notice from the Security Trustee or the Appointed Representative to HPTE (which date shall be at least twenty (20) Business Days after such notice is received by HPTE); and
 - (b) The expiration of the Step-In Period;

(such date being the “**Step Out Date**”), be released from all of its obligations and liabilities to HPTE under the Concession Agreement and the Ancillary Documents arising prior to the Step Out Date and the rights of the Appointed Representative against HPTE shall be cancelled.

- 7.2 The Concessionaire shall continue to be bound by the terms of the Concession Agreement and the Ancillary Documents, notwithstanding the occurrence of the Step-Out Date.

8. ASSUMPTION BY SUITABLE SUBSTITUTE CONCESSIONAIRE.

- 8.1 Subject to paragraph 8.2, at any time:

- (a) during which an FA Event of Default is continuing; or
- (b) during the Step-In Period,

on at least twenty (20) Business Days prior written notice to HPTE, the Security Trustee may (but shall not be obligated to) assume, or cause any purchaser at any foreclosure sale or any assignee or transferee under any instrument of assignment or transfer in lieu of foreclosure to assume, all of the interests, rights and obligations of the Concessionaire thereafter arising under the Assigned Agreements so long as such assignee or transferee is a Suitable Substitute Concessionaire.

- 8.2 HPTE shall notify the Security Trustee as to whether any person to whom the Security Trustee proposes to transfer the Concessionaire’s rights and liabilities under the Concession Agreement and the Ancillary Documents is a Suitable Substitute Concessionaire, on or before the date falling twenty (20) Business Days after the date of receipt of all information reasonably required by the HPTE to decide whether the proposed transferee is a Suitable Substitute Concessionaire.

- 8.3 HPTE shall not unreasonably withhold, condition or delay its decision on whether the proposed transferee is a Suitable Substitute Concessionaire.

- 8.4 On any transfer referred to in paragraph 8.1 becoming effective:

- (a) the Concessionaire and the Appointed Representative shall be released from any obligations arising under or in connection with the Concession Agreement;
- (b) the assuming party shall agree in writing to be bound by and to assume the terms and conditions of the Assigned Agreements and any and all obligations to HPTE arising or accruing thereunder from and after the date of such assumption, and HPTE shall continue to perform its obligations under the Assigned Agreements in favor of the assuming party as if such party had thereafter been named as the Concessionaire under the Assigned Agreements; provided that if the Security Trustee or its designee (or any entity acting on behalf of the Security Trustee, the Security Trustee’s designee or any of the other Secured Parties) assumes the Assigned Agreements as provided

EXECUTION VERSION

above, it shall not be personally liable for the performance of the obligations thereunder except to the extent of all of its right, title and interest in and to the Project;

- (c) any Warning Notices or Final Warning Notices incurred shall, for the purposes of termination of the Concession Agreement only, be cancelled or disregarded;
- (d) any then subsisting ground for termination of the Concession Agreement by the HPTE shall be deemed to have no effect and any existing DA Termination Notice shall be automatically revoked; and
- (e) HPTE shall enter into an agreement with the collateral agent of the finance parties providing senior debt financing to the new Concessionaire on substantially the same terms as this Agreement.

9. SECURITY TRUSTEE'S LIABILITY

No payment or performance by the Security Trustee or any other Secured Party of any obligation of the Concessionaire shall be construed as an assumption by the Security Trustee or any such Secured Party of any covenants, agreements or obligations of the Concessionaire under or in respect of the Assigned Agreements unless:

- (a) the Security Trustee or any such Secured Party has become the Appointed Representative; or
- (b) the Security Trustee or any such Secured Party has been appointed as the Suitable Substitute Concessionaire.

10. PAYMENTS.

- 10.1 HPTE shall make all payments due to the Concessionaire under the Assigned Agreements directly into the account specified on Schedule II hereto, or to such other Person or account as shall be specified from time to time by the Security Trustee to HPTE in writing. All parties hereto agree that each payment by HPTE as specified in the preceding sentence of amounts due to the Concessionaire from HPTE under the Assigned Agreements shall satisfy HPTE's corresponding payment obligation under the Assigned Agreements.

11. INSURANCE PROCEEDS

Notwithstanding the other provisions of this Agreement and the terms and conditions of the Senior Funding Agreements, the Security Trustee shall only permit amounts to be released from the Joint Insurance Account in accordance with the requirements of Section 38 (Reinstatement) of the Concession Agreement, and the Security Trustee agrees for itself and on behalf of the Secured Parties that it shall not exercise any rights under the Senior Funding Agreements or take any other steps to prevent amounts being released from the Joint Insurance Account in accordance with Section 38 of the Concession Agreement.

12. REPLACEMENT AGREEMENTS

Notwithstanding any provision in each of the Assigned Agreements to the contrary, in the event one or more any of the Assigned Agreements is rejected or otherwise terminated as a result of any bankruptcy, insolvency, reorganization or similar proceedings affecting the Concessionaire, at the Security Trustee's request, HPTE will enter into a new agreement with the Security Trustee or the Security Trustee's designee, for the remainder of the originally scheduled term of each of such Assigned Agreements, effective as of the date of such

rejection, with the same covenants, agreements, terms, provisions and limitations as are contained in such Assigned Agreements.

13. **SENIOR FUNDER RIGHTS AND HPTE RIGHTS UNDER HPTE-SUB-CONTRACTOR AGREEMENTS**

Accrued Rights

- 13.1 Notwithstanding the terms of the HPTE-Sub-Contractor Agreements or any other provisions of this paragraph 13, each of the Relevant Sub-Contractors, together with any guarantors thereof, shall remain responsible, and be liable, to the Concessionaire and the Secured Parties in respect of all costs, claims, damages, losses and liabilities which have arisen out of or in connection with the Construction/Operating Sub-Contracts, or the Security Documents and [Lender Consent and Agreements]³ relating thereto, in respect of the period prior to and including the Termination Date and the Concessionaire and the Secured Parties (and the Security Trustee and/or the Security Trustee acting on behalf of the Concessionaire and/or the Secured Parties) shall retain the benefit of all their respective rights to all such costs, claims, damages, losses and liabilities (the “**Accrued Rights**”).

HPTE not to exercise certain rights

- 13.2 Notwithstanding any provision in the HPTE-Sub-Contractor Agreements to the contrary, HPTE agrees that, save for those rights which it may exercise in accordance with paragraphs 13.5, 13.6, 13.7 and 13.9, it will not exercise or seek to exercise any of the rights referred to in paragraph 13.3 until the earlier of:
- (a) The Senior Debt Discharge Date; and
 - (b) The date on which the Security Trustee has given its written consent to such exercise following a request from HPTE or otherwise.

On and after the earlier of these dates HPTE shall be entitled to exercise its rights under the HPTE-Sub-Contractor Agreements in connection with the Construction Sub-Contract or the Operating Sub-Contract in accordance with the HPTE-Sub-Contractor Agreements without restriction.

- 13.3 HPTE's rights referred to in paragraph 13.2 are:
- (a) HPTE's step-in rights or other rights under or in respect of any HPTE-Sub-Contractor Agreement prior to the Termination Date;
 - (b) Any right of HPTE to enforce the performance bond provided as part of the Performance Security;
 - (c) The exercise of any rights it may have pursuant to the HPTE-Sub-Contractor Agreements or the Construction/Operating Sub-Contracts following the Termination Date (including any act which gives rise to any cross claim, counterclaim, set off, variation or waiver) that would have a material adverse effect on any of the Accrued Rights relating to the Construction/Operating Sub-Contracts;

³ The reference here is to any direct agreement between the Secured Parties and the relevant Sub-Contractor. To be conformed to definitions of Senior Funding Agreements.

EXECUTION VERSION

- (d) Any right to claim, recover, retain or receive (or seek to claim, recover, retain or receive) any amounts (including any costs, claims, damages, losses and liabilities) to which the Accrued Rights relate under, pursuant to or in connection with the HPTE-Sub-Contractor Agreements and/or the Construction/Operating Sub-Contracts;
- (e) Any right to take any action to file an application for (or otherwise initiate) the bankruptcy, insolvency, reorganization or similar proceedings of the Concessionaire, consent to a legal protection proceedings actions plan, or consent to an administrator or receiver in out-of-court legal protection proceedings or take any action to wind-up, dissolve, appoint an administrator or similar officer in relation to the Concessionaire or take any other similar or analogous step relating to the bankruptcy, insolvency, reorganization or similar of the Concessionaire;
- (f) Any right to take any action to wind-up, dissolve, appoint an administrator or receiver similar officer, or consent to legal protection proceedings (or similar) in relation to any Relevant Sub-Contractor or any of their respective guarantors or take any other similar or analogous step relating to the insolvency or bankruptcy of any such Person in each case on grounds (whether in whole or in part) relating to the Project;
- (g) Any right which would compete with the rights of the Secured Parties on grounds (whether in whole or in part) relating to the Project (by virtue of a claim under any of the HPTE-Sub-Contractor Agreements, the Concession Agreement or any other Ancillary Documents or otherwise) on any formal or bankruptcy, insolvency or reorganization of the Concessionaire, any Relevant Sub-Contractor or any of their respective guarantors, nor claim to be subrogated to any rights of any of the Secured Parties.

HPTE to turn over certain recoveries to the Security Trustee

13.4 HPTE agrees and undertakes that if it claims, recovers, retains or receives any amount:

- (a) In contravention of the provisions of paragraphs 13.2; or
- (b) Pursuant to paragraph 13.6(e)(ii) or 13.7(e)(ii) which the final determination of any Accrued Rights Value demonstrates is in excess of the relevant HPTE Liability Cap,

it will promptly turn the same over to the Security Trustee and pending such payment, hold the same in trust for the Security Trustee and the Secured Parties.

HPTE Rights which may be exercised both before and after the Termination Date

13.5 Where following service of a DA Termination Notice but before expiration of the Required Period a Relevant Sub-Contractor has served a notice of termination, discontinuance or suspension on the Concessionaire in accordance with the terms of the relevant Construction/Operating Sub-Contract, HPTE may pay directly, or undertake to make a payment directly, to the Relevant Sub-Contractor, amounts properly due, payable and undisputed (whether as a result of a counterclaim, set-off or otherwise) under or pursuant to the relevant Construction/Operating Sub-Contract and may set off such sums after they have been paid against any amounts payable by HPTE to the Concessionaire under the Concession Agreement, so as to satisfy them to the extent of the payment to the Relevant Sub-Contractor. However HPTE shall not be able to exercise its rights pursuant to this paragraph 13.5 in circumstances where the Secured Parties:

- (a) Have stepped-in to, or otherwise, directly or indirectly, taken control over the relevant Construction/Operating Sub-Contract and not stepped out of it or otherwise relinquished control; or
- (b) Are seeking to preserve continuity of the service or build obligation (as relevant) under the relevant Construction/Operating Sub-Contract or otherwise with reasonable diligence.

HPTE right to exercise rights in respect of the Construction Contractor following the Termination Date

13.6 If the Concession Agreement has been terminated and the matters giving rise to the termination of the Concession Agreement were not caused or contributed to by an event of Construction Sub-Contractor Default then HPTE shall be entitled to exercise its rights under or in respect of the HPTE Construction-Contractor Agreement subject to the remainder of this paragraph 13.6.

- (a) HPTE may not claim, recover, retain or receive (or seek to claim recover, retain or receive) an amount under, pursuant to or in connection with the HPTE Construction-Contractor Agreement and/or the Construction Sub-Contract other than the making of deductions or withholdings against (and only up to the amount of) each [Interim Payment and/or Final Statement] under and in accordance with paragraphs [***] and [***] of the Construction Sub-Contract in respect of works carried out following the Termination Date;
- (b) [If and to the extent that realization of the Accrued Rights would count against the Construction Sub-Contractor's Liability Cap, HPTE shall only be entitled to make deductions or withholdings pursuant to paragraph 13.6(a) to the extent that such deductions or withholdings, when aggregated with any termination compensation claimed pursuant to paragraph 13.6(c), do not exceed HPTE Construction Liability Cap;]⁴
- (c) [If and to the extent that realization of the Accrued Rights would count against the Construction Sub-Contractor's Liability Cap, HPTE shall only be entitled to exercise its rights to terminate the Construction Sub-Contract and to claim termination compensation, to the extent that such compensation, when aggregated with any deductions or withholdings pursuant to paragraph, does not exceed HPTE Construction Liability Cap;]
- (d) [If and to the extent that realization of the Accrued Rights would count against the Construction Sub-Contractor's Liquidated Damages Cap, HPTE shall only be entitled to make deductions or withholdings pursuant to paragraph 13.6(a) which relate to the Construction Sub-Contractor's Liquidated Damages Cap to the extent that such deductions or withholdings do not exceed HPTE Construction Liquidated Damages Cap;]
- (e) If HPTE and the Security Trustee do not agree regarding the Construction Accrued Rights Value:
 - (i) Either of HPTE or the Security Trustee may refer the dispute for resolution in accordance with paragraph 23 (Dispute Resolution); and

⁴ Drafting in square brackets in this paragraph 13.6 and in paragraph 13.7 to be conformed to the Construction Sub-Contract of the Preferred Proposer prior to execution of the Concession Agreement.

- (ii) Pending agreement or determination of the Construction Accrued Rights Value, HPTE shall be entitled to exercise its rights under the HPTE Construction-Contractor Agreement subject always to paragraph 13.4.

HPTE right to exercise rights in respect of the Operating Contractor following the Termination Date

- 13.7 If the Concession Agreement has been terminated and the matters giving rise to the termination of the Concession Agreement were not caused or contributed to by an event of Operating Sub-Contractor Default then HPTE shall be entitled to exercise any of its step-in rights or other rights under or in respect of the HPTE Operating Contractor Agreement subject to with the remainder of this paragraph 13.7.
- (a) HPTE may not claim, recover, retain or receive (or seek to claim, recover, retain or receive) an amount under, pursuant to or in connection with the HPTE Operating Contractor Agreement and/or the Operating Sub-Contract other than the making of deductions, retention, or set-off against (and only up to the amount of) each Monthly Operating Payment under and in accordance with clause [•] and schedule [•] of the Operating Sub-Contract in respect of services provided following the Termination Date;
 - (b) [If and to the extent that realization of the Accrued Rights would count against the Operating Sub-Contractor Liability Cap in the Relevant Year, HPTE shall only be entitled to make deductions, retention or set-off in the Relevant Year pursuant to paragraph 13.7 to the extent such deductions, retention or set-off do not exceed HPTE Operating Liability Cap;]
 - (c) [If and to the extent that realization of the Accrued Rights would count against the Operating Sub-Contractor Termination Cap, HPTE shall only be entitled to exercise its rights to terminate the Operating Sub-Contract and to claim termination compensation to the extent that such compensation does not exceed HPTE Operating Termination Cap;]
 - (d) [If and to the extent that realization of the Accrued Rights would count against the Life Cycle Works Cap, HPTE shall only be entitled to claim any termination compensation which relates to the Life Cycle Works Cap to the extent that it does not exceed the HPTE Operating Life Cycle Works Cap, subject always to the maximum limit referred to in paragraph 13.7(c);] and
 - (e) If HPTE and the Security Trustee do not agree regarding the Operating Accrued Rights Value:
 - (i) Either of HPTE or the Security Trustee may refer the dispute for resolution in accordance with paragraph 23 (Dispute Resolution); and
 - (ii) Pending agreement or determination of the Operating Accrued Rights Value, HPTE shall be entitled to exercise its rights under the HPTE Operating Contractor Agreement subject always to paragraph 13.4.

HPTE right to set-off payments to Sub-Contractors against Concession Agreement payments

- 13.8 On early termination of the Concession Agreement for any reason, HPTE shall be entitled to set-off any payments made to the sub-contractors under paragraph 13.5 (to the extent not

previously set-off in accordance with that paragraph) against any payments made under the Concession Agreement.

HPTE to exercise rights without restrictions in certain circumstances

13.9 If following the Termination Date:

- (a) The Secured Parties do not have any Accrued Rights in respect of the Relevant Sub-Contractor;
- (b) All claims which may arise from any Accrued Rights in respect of the Relevant Sub-Contractor have been settled or written off by the Secured Parties or become exhausted; or
- (c) The Security Trustee fails to comply with paragraph 13.10,

then HPTE may exercise its rights under the relevant HPTE-Sub-Contractor Agreement without restriction. The Security Trustee shall notify HPTE as soon reasonably practicable but in any event within 10 Business Days after as claims arising from the Accrued Rights are settled or written off by the Secured Parties, or become exhausted.

Security Trustee to provide details of Accrued Rights to HPTE

13.10 Following termination of the Concession Agreement, the Security Trustee shall within ten (10) Business Days provide to HPTE written details of all Accrued Rights of which it is aware, having made inquiry of the Concessionaire and the Secured Parties:

- (a) That the Concessionaire may claim against the Relevant Sub-Contractor; and
- (b) That any Secured Party may claim against the Relevant Sub-Contractor,

together with an indicative non-binding assessment of each element of the Accrued Rights Value.

HPTE to have no restrictions on Unrestricted Assets

13.11 Notwithstanding the terms of the Concession Agreement and Security Documents, the Security Trustee agrees that HPTE may exercise its rights to have transferred any Unrestricted Assets to HPTE or its nominee following the Expiration Date or Termination Date (as the case may be) and the Security Trustee shall exercise or seek to exercise any enforcement rights and shall, on or before the date any Unrestricted Assets are transferred to HPTE or its nominee, as the case may be, release its security over them.

HPTE not to seek transfer of certain Assets unless agreed with Security Trustee

13.12 Notwithstanding the terms of the Concession Agreement:

- (a) Subject to paragraph 13.12(b), HPTE agrees that it will not exercise or seek to exercise any of its rights to require a transfer of any revenues or cash balances or rights accrued as at the Termination Date under or pursuant to or in connection with any of the Relevant Required Insurances, any Construction/Operating Sub-Contract or any Ancillary Document comprised in the Assets to HPTE or its nominee on or following the Termination Date until the Senior Debt Discharge Date.

EXECUTION VERSION

- (b) If HPTE has first agreed the value of any such revenues, cash balances, rights with the Security Trustee and if HPTE has paid the such value to the Security Trustee, then HPTE may require a transfer of any revenues or cash balances or rights accrued as at the Termination Date under or pursuant to or in connection with any Construction/Operating Sub-Contract to HPTE or its nominee on or following the Termination Date.

14. MISCELLANEOUS

- 14.1 HPTE shall, at the Concessionaire's expense, take whatever action the Security Trustee, an Appointed Representative or a Representative taking a transfer in accordance with paragraph 13 may reasonably require for perfecting any transfer or release under paragraphs 13 and 7 including the execution of any transfer or assignment, and the giving of any notice, order or direction and the making of any registration which, in each case, the Security Trustee Appointed Representative reasonably requires.

- 14.2 Subject to the continuing obligations of the Parties under paragraph 4, paragraph 8, and paragraphs 13 to 23, this Agreement shall remain in effect until the date on which all amounts which may be or become owing by HPTE to the Concessionaire under Schedule 23 (Compensation on Termination) of the Concession Agreement have been irrevocably paid in full.

Upon such date the Security Trustee agrees on behalf of itself and the Secured Parties to release any security granted in their favor over the Unrestricted Assets.

- 14.3 On the Expiration Date, the Security Trustee, acting on behalf of itself and the Secured Parties, shall release any security granted in its favor over any Unrestricted Assets which have not previously been assigned or otherwise transferred to HPTE.

- 14.4 On the Senior Debt Discharge Date, the Security Trustee, acting on behalf of itself and the Secured Parties, shall release any security granted in its favor over any Assets which have not previously been assigned or otherwise transferred to HPTE and this Agreement shall terminate in full.

- 14.5 The Security Trustee shall notify HPTE of:

- (a) Any decisions to accelerate the maturity of any amounts owing by the Concessionaire to the Secured Parties under the Senior Funding Agreements and/or demand repayment within 2 Business Days of any such decision; and
- (b) The Senior Debt Discharge Date on or before the date falling twenty (20) Business Days after its occurrence.

- 14.6 The Concessionaire joins in this Agreement, inter alia, to acknowledge and consent to the arrangements set out and agrees not to do or omit to do anything that may prevent any Party from enforcing its rights under this Agreement.

- 14.7 For the avoidance of doubt, if there is any conflict or inconsistency between the provisions of this Agreement and the Concession Agreement, the provisions of this Agreement shall prevail.

15. ASSIGNMENT

- 15.1 No Party to this Agreement may assign or transfer any part of its rights or obligations under this Agreement, save as provided in paragraphs 15.2 to 15.4 (inclusive) below.

EXECUTION VERSION

- 15.2 The Security Trustee may assign or transfer its rights and obligations under this Agreement to a successor Security Trustee in accordance with the Senior Funding Agreements without the consent of HPTE.
- 15.3 Any Secured Party may assign or transfer its rights under the Senior Funding Agreements in accordance with the terms of the Senior Funding Agreements.
- 15.4 HPTE shall assign, novate or otherwise transfer its rights and/or obligations under this Agreement to any public body to which HPTE assigns, novates or otherwise transfers its rights and/or obligations under the Concession Agreement in accordance with Section 60 (Assignment by HPTE) of the Concession Agreement.
- 15.5 If paragraph 15.2 applies then HPTE shall enter into a new agreement with the new collateral agent on substantially the same terms as this Agreement.

16. **THIRD PARTY RIGHTS**

A Person who is not a Party to this Agreement shall have no rights to enforce any term of this Agreement.

17. **ENTIRE AGREEMENT**

This Agreement [and the other contracts referred to in this Agreement constitutes the entire agreement between HPTE, the Concessionaire and the Security Trustee concerning the subject matter hereof and supersedes all prior negotiations, representations, and agreements about them, either oral or written. Each of the Parties acknowledges that except as expressly set out in this Agreement, each Party does not enter into this Agreement on the basis of and does not rely, and has not relied, upon any statement, representation, warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any Person (whether a party to this Agreement or not) except those expressly repeated or referred to in this Contract and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be any remedy available under this Contract; provided, however, that this paragraph shall not apply to any statement, representation or warranty made fraudulently, or to any provisions of this Contract which were induced by fraud, for which the remedies available shall be all those available under the law governing this Agreement.

18. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

19. **VARIATIONS**

No variation, alteration or waiver of any of the provisions of this Agreement, except as otherwise provided in this Agreement, shall be effective unless it is in writing [signed] by the Party against the enforcement of such variation, alteration or waiver is sought.

20. **WAIVER**

- 20.1 Any waiver of, or consent to depart from, the requirements of any provision of this Agreement shall be effective only if it is in writing and signed by the Party giving it, and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of any Party to exercise, and no delay in exercising, any right under this Agreement shall

EXECUTION VERSION

operate as a waiver of such right. No single or partial exercise of any such right shall preclude any other or further exercise of such right or the exercise of any other right.

21. SEVERABILITY

If any one or more term, condition or provision of this Contract shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such term, condition or provision shall not affect the validity, legality and enforceability of any other provision of or any other documents referred to in this Contract, and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

22. NOTICES

Notice to any party hereto shall be in writing and shall be deemed to be delivered on the earlier of (a) the date of personal delivery, (b) if deposited in a United States Postal Service depository, postage prepaid, registered or certified mail, return receipt requested, or sent by express courier, in each case addressed to such party at the address indicated below (or at such other address as such party may have theretofore specified by written notice delivered in accordance herewith), upon delivery or refusal to accept delivery, or (c) if transmitted by facsimile, the date when sent and facsimile confirmation is received; provided that any facsimile communication shall be followed promptly by a hard copy original thereof by express courier:

HPTE

Security Trustee

Concessionaire

22.1 A Party to this Agreement may change its designated address by prior notice to the other Parties.

22.2 Notices given by mail shall be effective upon the earlier of actual receipt and five (5) Business Days after mailing. Notices delivered by hand shall be effective upon delivery.

23. DISPUTE RESOLUTION

[To come]

24. SPECIAL PROVISIONS

No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 USC §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

25. GOVERNING LAW

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

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

[ADD SIGNATURE PAGE]

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 REQUIRES THE STATE CONTROLLER TO APPROVE ALL STATE CONTRACTS. THIS CONTRACT IS NOT VALID UNTIL SIGNED AND DATED BELOW BY THE STATE CONTROLLER OR DELEGATE. CONTRACTOR IS NOT AUTHORIZED TO BEGIN PERFORMANCE UNTIL SUCH TIME. IF CONTRACTOR BEGINS PERFORMING PRIOR THERETO, THE STATE OF COLORADO IS NOT OBLIGATED TO PAY CONTRACTOR FOR SUCH PERFORMANCE OR FOR ANY GOODS AND/OR SERVICES PROVIDED HEREUNDER.

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: _____

Date: _____

SCHEDULE I

Assigned Agreements

SCHEDULE II