



SUMMARY OF CERTAIN PROVISIONS OF THE CONCESSION AGREEMENT January 24, 2014

The following is a summary of selected provisions of the Concession Agreement and is not a full statement of the terms of that agreement. Accordingly, the following summary is qualified in its entirety by reference to that agreement and is subject to the full text of such agreement. A copy of the Concession Agreement is available, free of charge, upon request from the Concessionaire. Unless otherwise stated, any reference in this Appendix B to any agreement shall mean such agreement and all schedules, exhibits and attachments thereto, as amended, supplemented or otherwise modified and in effect as of the date hereof.

1. General Rights and Obligations of the Concessionaire

1.1 The Concessionaire has agreed, as and when required by the Concession Agreement, to do the following:

(a) The Phase 2 Work, which is comprised of the following:

(i) Phase 2 Construction Work, which 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 Phase 2 Construction Work Requirements set out in Schedule 5 to the Concession Agreement. This includes:

(1) Constructing the Phase 2 Managed Lanes;

(2) Reconstructing the Phase 2 GP Lanes;

(3) The I-25 Initial Work Package, which is a package of work intended to address known deficiencies in the I-25 Bridge Decks with a view to protecting the structures below those decks;

(4) Designing and constructing other improvements to the Phase 2 Corridor, including sound and retaining walls, a bikeway, dynamic messaging signs and intelligent transportation system improvements; and

(ii) Installing and commissioning the Phase 2 ETCS.

The Phase 2 Work includes the BRT elements referred to in the body of this Official Statement.

- (b) The Services, which means the operation, maintenance, and tolling of the Managed Lanes and US 36 GP Lanes, through the creation and implementation of Operations Management Plans, Operations Maintenance Plans, Safety Plans, and Communication and Marketing Plans (all to be approved by HPTE) to ensure that:
 - (i) The Managed Lanes are available as required by the Concession Agreement;
 - (ii) The Concessionaire is maintaining the design intention of the Maintained Elements to achieve their full working life; and
 - (iii) The Maintained Elements are handed back to HPTE on the Expiration Date in a condition complying with the requirements of the Concession Agreement.

- (c) The Snow and Ice Control Services, which 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 GP Lanes as required by the Concession Agreement.

- 1.2 The Concessionaire is solely responsible for obtaining and repaying all financing necessary to fulfill its obligations to HPTE to the extent that those obligations are not funded by the HPTE Capital Payment or the payments for services referred to below. The Concessionaire has the right to collect Tolls in the Managed Lanes as and when permitted by the Concession Agreement.
- 1.3 HPTE has agreed to grant a non-exclusive license to the Concessionaire over, under, upon the Site, the I-25 Managed Lanes, the Phase 1 Managed Lanes, the Phase 2 Managed Lanes, and the US 36 GP Lanes respectively for the purpose of exercising its rights and performing its obligations summarized in Section 1.1 above. In each case the license commences at the times when the Concessionaire can exercise its rights and/or must perform its obligations in relation to the areas of land referred to in the previous sentence (see section 2.1 below). HPTE has also granted to the Concessionaire access to the Node 1 Building and the 70th Avenue Maintenance Facility, for the purpose of exercising its rights and performing its obligations summarized in Section 1.1 above. HPTE is permitted to do this under the HPTE-CDOT Agreement. The Concessionaire is responsible, at its own cost, for acquiring all other real property interests it may need, if any.
- 1.4 If the Concessionaire is able to demonstrate to HPTE's reasonable satisfaction there are protestors or trespassers that are having a material adverse effect on the conduct of the Phase 2 Work, the delivery of the Services or the collection of Toll Revenues that Concessionaire is unable to mitigate, then HPTE will evaluate whether HPTE or CDOT can lawfully provide any assistance in relation to the removal of the protestors or trespassers that is not independently available to Concessionaire and, to the extent that such assistance can be lawfully provided, HPTE shall or shall cause CDOT to provide such assistance to the extent it is, in the discretion of HPTE, reasonable and appropriate in the circumstances to do so.

2. **Term of the Concession Agreement**

- 2.1 Different parts of the Concession Agreement come into effect at three points in time, each such point in time is triggered when certain conditions precedent have been fulfilled:
 - (a) Upon the occurrence of the Commencement Date, Concessionaire will promptly begin the Phase 2 Work so as to achieve Phase 2 Work Completion on or before the Planned Full Services Commencement Date and will commence the delivery of the Services and the Snow and Ice Control Services in relation to the I-25 Managed Lanes and the I-25 Shared Bridge Decks and shall start to receive Toll Revenues in relation to the I-25 Managed Lanes;
 - (b) Upon the occurrence of the Phase 1 Services Commencement Date, the Concessionaire will commence the delivery of the Services and the Snow and Ice Control Services in relation to the Phase 1 Managed Lanes and the Phase 1 GP Lanes and can start to receive Toll Revenues from the Phase 1 Managed Lanes as well as from the I-25 Managed Lanes.
 - (c) Upon the occurrence of the Full Services Commencement Date, the Concessionaire will commence delivery of the Services and the Snow and Ice Control Services in relation to the Managed Lanes and the US 36 GP Lanes as an integrated system and can receive Toll Revenues generated by the Managed Lanes as a whole.

2.2 The Expiration Date of the Project is December 31, 2065, or such other date which may result either from revision to the Planned Full Services Commencement Date, or by reason of earlier termination as provided for in Part 11 of the Concession Agreement.

2.3 Occurrence of the Commencement Date

- (a) Unless waived by HPTE, the Commencement Date may only occur when
 - (i) Financial Close has occurred;
 - (ii) HPTE has received evidence that Required Insurance relevant to this date is in full force and effect (HPTE may not waive this condition);
 - (iii) HPTE has received certified copies of the
 - (1) the Construction Sub-Contract;
 - (2) the Operation Sub-Contract;
 - (3) the HPTE-Sub-Contractor Agreements substantially in the form appearing in Schedule 19 from the Construction Sub-Contractor and the Operation Sub-Contractor;
 - (4) the Performance Security;
 - (5) the Tolling Services Agreement;
 - (iv) All Necessary Consents required for the Concessionaire to commence the Services in relation to the I-25 Managed Lanes have been received;
 - (v) The Concessionaire has delivered to HPTE the schedule of submissions described in the HPTE Phase 2 Construction Work Requirements and at least 20 Business Days have elapsed after the delivery of the last of such submissions;
 - (vi) There exists no temporary restraining order or other form of injunction by a court with jurisdiction that prohibits prosecution of any portion of the Phase 2 Work or the delivery of Services in relation to the I-25 Managed Lanes;
 - (vii) No litigation challenging any Necessary Consent under the National Environmental Protection Act has been filed within the time limit for filing such litigation and remains pending on the Financial Close Deadline Date;
 - (viii) There exists no Concessionaire Default for which the Concessionaire has received notice from HPTE;
 - (ix) The Preliminary Initial Schedule has been delivered and at least twenty (20) Business Days have elapsed after the delivery of that schedule;
 - (x) The Maintenance Management Plan, Operations Management Plan, the Safety Plan and the Transition Management Plan have been accepted by HPTE;

- (xi) The Concessionaire has delivered to HPTE a proposed Established Toll Schedule for the I-25 Managed Lanes and either sixty (60) days have elapsed or HPTE has established that as the Established Toll Schedule;
 - (xii) The Source Code and Source Code Documentation relating to the operation of the I-25 Managed Lanes has been validated and placed in Escrow;
 - (xiii) The Parties have agreed the DRB candidates as required by the Concession Agreement;
 - (xiv) HPTE, RTD, the Concessionaire and its Sub-Contractors have agreed to a mutually acceptable solution in relation to the manner in which the Required Insurances will cover RTD's risks in relation to third party claims, and in relation to a Standard & Poor's rating which can be an acceptable alternative to the A.M. Best rating in relation to proposed insurers presently specified in Schedule 17 of the Concession Agreement;
 - (xv) A certificate has been provided by an Officer of the Concessionaire in relation to whether the source of Subordinated Debt is Plenary Group (Canada) Limited or one of its affiliates, or is some other person (which is relevant to some details of the Cash Flow Sharing machinery); and
 - (xvi) The Financial Plan (defined in the Phase 2 TIFIA Loan Agreement) has been approved by FHWA as required by that agreement.
- (b) Upon the occurrence of the satisfaction (or waiver by HPTE) of the requirements of 2.3(a), HPTE will confirm that the Commence Date has occurred and the Concessionaire will begin the Phase 2 Work so as to achieve Phase 2 Work Completion on or before the Planned Full Services Commencement Date and will commence the delivery of the Services and the Snow and Ice Control Services in relation to the I-25 Managed Lanes and the I-25 Shared Bridge Decks and shall start to receive Toll Revenues in relation to the I-25 Managed Lanes.

2.4 Occurrence of the Phase 1 Services Commencement Date

- (a) Unless waived by HPTE, the Phase 1 Services Commencement Date may only occur when
 - (i) HPTE has received evidence that Required Insurance relevant to this date is in full force and effect;
 - (ii) All Necessary Consents required for the Concessionaire to commence the Services in relation to the Phase 1 Managed Lanes and in relation to the Phase 1 GP Lanes have been received;
 - (iii) There exists no court order which restrains, enjoins, challenges or delays the delivery of the Services in relation to the Phase 1 Managed Lanes or the Phase 1 GP Lanes;
 - (iv) The updated Maintenance Management Plan, Operations Management Plan and Safety Plan have been accepted by HPTE;

- (v) The Source Code and Source Code Documentation relating to the operation of the Phase 1 Managed Lanes together with the I-25 Managed Lanes has been placed in Escrow;
 - (vi) The Concessionaire has delivered to HPTE a proposed Established Toll Schedule for the I-25 Managed Lanes and the Phase 1 Managed Lanes and either sixty (60) days have elapsed or HPTE has established that as the Established Toll Schedule;
 - (vii) There exists no Concessionaire Default for which the Concessionaire has received notice from HPTE; and
 - (viii) A Tolling Services Agreement in forma and substance satisfactory to HPTE and to the Concessionaire which will come into operation on the Phase 1 Services Commencement Date has been executed by the Parties and the Tolling Services Provider[and]
 - (ix) [any CP relating to the Phase 2 Assumption Date – to be determined].
- (b) Upon the occurrence of the satisfaction (or waiver by HPTE) of the requirements of 2.4(a), the Concessionaire will commence the delivery of the Services and the Snow and Ice Control Services in relation to the Phase 1 Managed Lanes and the Phase 1 GP Lanes and shall start to receive Toll Revenues in relation to the Phase 1 Managed Lanes.

2.5 Occurrence of the Full Services Commencement Date

- (a) Unless waived by HPTE, the Full Services Commencement Date may only occur when
 - (i) HPTE has received evidence that Required Insurance relevant to this date is in full force and effect;
 - (ii) All Necessary Consents required for the Concessionaire to commence the Services in relation to the Managed Lanes and in relation to the US 36 GP Lanes have been received;
 - (iii) There exists no court order which restrains, enjoins, challenges or delays the delivery of the Services in relation to the Managed Lanes or the US 36 GP Lanes;
 - (iv) The Notice of Phase 2 Work Completion has been issued by HPTE;
 - (v) The updated Maintenance Management Plan, Operations Management Plan and Safety Plan have been accepted by HPTE in accordance with Section 22.4 of the Contract;
 - (vi) The Source Code and Source Code Documentation relating to the operation of the Managed Lanes as an integrated system has been validated and placed in Escrow;

- (vii) The Concessionaire has delivered to HPTE a proposed Established Toll Schedule for the Managed Lanes and either 60 days have elapsed or HPTE has established that as the Established Toll Schedule; and
 - (viii) There exists no Concessionaire Default for which the Concessionaire has received notice from HPTE.
- (b) Upon the occurrence of the satisfaction (or waiver by HPTE) of the requirements of 2.5(a), the Concessionaire will commence delivery of the Services and the Snow and Ice Control Services in relation to the Managed Lanes and the US 36 GP Lanes as an integrated system and shall start to receive Toll Revenues in relation to the Managed Lanes as a whole.

3. Payments and Financing

3.1 Payments from HPTE

Except for payments for Compensation Events and except for payments which may be made following early termination of the Concession Agreement, HPTE's only obligation for payment to the Concessionaire is to pay the HPTE Capital Payment and to pay the GP Snow and Ice Control Services Fee and the GP Maintenance Fee, at the times and in the manner set out in the Concession Agreement.

3.2 Financial Close Adjustment

- (a) The deadline for achieving financial close is December 20, 2013 but this may be extended if the Concessionaire applies for an extension and HPTE (in its discretion) agrees to the application.
- (b) The financial model submitted with the Concessionaire's Proposal must be adjusted to incorporate the Concessionaire's financial plan and the terms of its funding agreements and submitted to HPTE.
- (c) That financial model is then amended to remove any difference between that model and the model submitted with the Concessionaire's Proposal in relation to the interest rate applicable to subordinated debt, and in relation to the amount and timing of payments in respect of the Phase 2 Work, in respect of the delivery of the Services, in respect of other costs in relation to the Project and in relation to the amount and timing of Toll Revenues expected to be received by the Concessionaire.
- (d) On the day of Financial Close the financial model, amended as described in paragraph 3.2 (b) is used to determine what amount of HPTE Capital Payment is necessary for the Concessionaires equity IRR to equal 13.68%. If that amount of HPTE Capital Payment is greater than \$44,950,000 then the HPTE Capital Payment is increased by 67% of the difference, and if that amount of HPTE Capital Payment is less than \$44,950,000 then the HPTE Capital Payment is decreased by 67% of the difference.
- (e) If the increase in the HPTE Capital Payment would cause it to be greater than \$49,650,000 then within one Business Day after that has been agreed or

determined HPTE may terminate the Concession Agreement unless within the same period of time the Concessionaire accepts that the HPTE Capital Payment will equal 49,650,000. If HPTE exercises its termination right in these circumstances then this is not a Voluntary Termination of the Concession Agreement referred to below.

- (f) Unless the Concession Agreement is terminated, the version of the financial model referred to in paragraph 3.2(c) is then adjusted by including the final amount of the HPTE Capital Payment, and becomes the Base Case Financial Model.

4. **Phase 1 Work**

- 4.1 The Phase 1 Construction Work is being undertaken pursuant to a separate agreement: the Phase 1 DB Contract.
- 4.2 The Phase 1 ETCS is being installed pursuant to the Phase 1 ETCS Installation Contract.
- 4.3 Notwithstanding that the above two are separate agreements with separate parties, the Concessionaire has the right to participate in the acceptance process of the Phase 1 Construction Work under the Phase 1 DB Contract and the Phase 1 ETCS under the Phase 1 ETCS Installation Contract. In particular, HPTE is required to give notices to the Concessionaire stating the expected date for acceptance of the Phase 1 Managed Lanes under the Phase 1 DB Contract and the Phase 1 ETCS Installation Contract
 - (a) no later than one year prior to the Planned Phase 1 Services Commencement Date;
 - (b) after that, every two months until four months before the expected date for acceptance of the Phase 1 Managed Lanes under the Phase 1 DB Contract; and
 - (c) after that, every week until the Phase 1 Services Commencement Date.
- 4.4 HPTE agreed (in the case of the Phase 1 DB Contract) to cause CDOT to promptly provide and (in the case of the Phase 1 ETCS Installation Contract) that it will itself promptly provide, to the Concessionaire copies of all material communications and written information which it receives
 - (a) from the Phase 1 DB Contractor under the provisions of the Phase 1 DB Contract dealing with the completion of the Phase 1 Project and the Phase 1 DB Contractor's warranties related to the Phase 1 Project (together, the "Completion and Warranties Provisions") and
 - (b) under the provisions of the Phase 1 ETCS Installation Contract relating to such matters as the acceptance, operational readiness and punch list for the Phase 1 ETCS.
- 4.5 In addition, HPTE agreed to provide to the Concessionaire or cause CDOT to provide to the Concessionaire, as applicable:

- (a) reasonable opportunity to review the results of previous inspections, surveys and/or tests which are relied upon by the parties to the applicable contract to establish that the contractor's work conforms to the Phase 1 DB Contract or the Phase 1 ETCS Installation Contract, as applicable,
- (b) reasonable opportunity to consult with CDOT or HPTE, as the case may be, prior to CDOT or HPTE deciding upon those inspections, surveys and/or tests and/or walkthroughs of which CDOT or HPTE will carry out pursuant to the relevant provisions of the Phase 1 DB Contract or the Phase 1 ETCS Installation Contract, as applicable,
- (c) reasonable opportunity for the Concessionaire to provide its views to HPTE or CDOT (as the case may be) on the outcome of these inspections, surveys, tests and/or walkthroughs and
- (d) reasonable opportunity to propose the matters to be included in any punch list to be issued to the Phase 1 DB Contractor or the E-470 Authority, as applicable.

4.6 If the parties do not agree on any matter in relation to the completion and warranties provisions of the Phase 1 DB Contract or the Phase 1 ETCS Installation Contract, then either party may refer the matter to an Independent Expert, whose decision will be final and binding for all purposes. Each of CDOT and HPTE is required to enforce its rights against the Phase 1 DB Contractor and the E-470 Authority, respectively, and to make sure that those items included on any punch list issued under Phase 1 DB Contract or the Phase 1 ETCS Installation Contract, respectively, are corrected by the respective contractor or, alternatively, correct those items itself. Further, the Concessionaire is required to promptly report to CDOT and HPTE, as applicable, of any failure of work to satisfy the warranties given by Phase 1 DB Contractor and the E-470 Authority and each of CDOT and HPTE is required to use reasonable efforts to enforce its respective rights under the Phase 1 DB Contract and the Phase 1 ETCS Installation Contract to ensure that such failures are corrected.

4.7 If the Concessionaire encounters any latent defect in the Phase 1 Work then that is treated as a Compensation Event.

4.8 Provided that HPTE has kept the Concessionaire informed of the status of construction of the Phase 1 Managed Lanes and the Phase 1 ETCS, HPTE is not liable to the Concessionaire for any delay to the Phase 1 Services Commencement Date after the Planned Phase 1 Services Commencement Date up until June 30, 2015. After such date, a failure by HPTE to achieve acceptance of the Phase 1 Managed Lanes or the Phase 1 ETCS will be treated as a Compensation Event unless such failure was caused by the Concessionaire's breach of the Concession Agreement.

5. **Environmental Requirements**

5.1 During the Term, the Concessionaire is responsible for complying with all environmental requirements contained in the Concession Agreement, including employing a qualified environmental manager and other specialists to coordinate all environmental issues and to use appropriate measures to minimize any pollution during the design, construction, maintenance and operation of the Project. The Concessionaire agreed to indemnify HPTE, CDOT and RTD (in its capacity as a Project participant) from liabilities and costs, including

any injury to or death of persons or damage to or loss of property relating to or resulting from the failure or alleged failure by the Concessionaire or its related parties to comply with any applicable Environmental Laws, including laws relating to the Hazardous Substances, or any spill or release (or a threat thereof) of Hazardous Substances which was generated on the Managed Lanes by the Concessionaire or attributable to its negligence, willful misconduct or breach of the Concession Agreement.

- 5.2 Pursuant to the Concession Agreement, HPTE is responsible (and will ensure that CDOT will be responsible) for any consequences arising out of HPTE Hazardous Substances Circumstances, including the presence of Hazardous Substances in various parts of the Project before the relevant commencement date for such part of the Project regardless of whether HPTE or CDOT was aware of, or directly involved in, the generation or introduction of such Hazardous Substances. Among other things, HPTE agrees to reimburse the Concessionaire for any claims, liabilities, costs and expenses, including attorney's fees, arising out of, or in connection with the existence of HPTE Hazardous Substances Circumstances, including the disposal thereof, bodily injury or death to persons, damage to property, and environmental removal or response costs, in each case to the extent that such amounts cannot be reduced or avoided by the Concessionaire. Further, with respect to the HPTE Hazardous Substances Circumstances, HPTE and/or CDOT will be responsible for disposal of Hazardous Substances in accordance with the Environmental Law.
- 5.3 If the Concessionaire has to remediate any HPTE Hazardous Substances Circumstances, then the Concessionaire is entitled to certain compensation from HPTE for certain costs and expenses incurred by the Concessionaire as a result of such remediation work, to an extension of the Planned Full Services Commencement Date and/or Full Services Commencement Longstop Date as is reasonably necessary to permit such work to be carried out or to other relief from its obligations under the Concession Agreement. In addition, if any such remedial work is necessary during the Phase 2 Construction Project, then the Concessionaire may obtain a Change Order for construction changes in accordance with the Concession Agreement.

6. **Phase 2 Work**

6.1 Obligations and Standards of Completion

- (a) Once the Commencement Date has occurred the Concessionaire is obligated to complete the Phase 2 Work in accordance with the Concession Agreement, HPTE Phase 2 Work Requirements, the Concessionaire's Phase 2 Work Proposals, Good Industry Practice, and all applicable Law to achieve Phase 2 Work Completion by the Planned Full Services Commencement Date (which is December 31, 2015 or such other date agreed or determined to be the Planned Full Services Commencement Date pursuant to the Concession Agreement).
- (b) Although the Concessionaire was provided with the Existing Design, the Concessionaire is fully responsible for the design and execution of the Phase 2 Construction Work.
- (c) All Design Documents must be approved by HPTE pursuant to the approval standards of the Concession Agreement.

6.2 Ground conditions risk

- (a) The Concessionaire is deemed to have carried out a ground, physical and geophysical investigation and to have inspected and examined the Site and its surroundings and, where applicable, any existing structures or works in, on, under, through or over the Site, and further be deemed to be satisfied as to the nature of the conditions of the Site, the adequacy of the means and rights of access to and from the Site, and the precautions and times and methods of working necessary to prevent nuisance or interference with third parties.
- (b) Upon the occurrence of any additional costs and losses caused by changes to the Phase 2 Construction Work arising from Differing Site Conditions, HPTE agrees to compensate the Concessionaire for such additional costs and losses pursuant to the Change Procedure, and extend the Planned Full Services Commencement Date and the Full Services Commencement Longstop Date as the result of such delay. "Differing Site Conditions" in this context means:
 - (i) subsurface or latent conditions found at the exact boring holes in geotechnical reports referred to in a schedule to the Concession Agreement;
 - (ii) physical conditions of an unusual nature, differing materially from those ordinarily encountered in the area; and
 - (iii) the presence of any paleontological, archeological or cultural resources or biological resources (being threatened or endangered species, raptors or eagles)

6.3 Other requirements applicable to the Phase 2 Work

- (a) During the carrying out of the Phase 2 Work the Concessionaire shall or shall ensure that the Construction Sub-Contractor and its sub-contractors and/or consultants shall
 - (i) Ensure that any area where the Phase 2 Work is being undertaken, including the Site, is occupied solely for the carrying out of the Phase 2 Work;
 - (ii) Not use or occupy or permit the Site or any land on which the Phase 2 Work is being undertaken to be used or occupied for any purpose other than the carrying out of the Phase 2 Work;
 - (iii) Not deposit or manufacture or permit to be deposited or manufactured on the Site or any land upon which the Phase 2 Work is being undertaken any materials which are not required for the carrying out of the Phase 2 Work;
 - (iv) At the Concessionaire's sole cost, transport all surplus materials arising from the Phase 2 Work and arrange for the disposal of the same at such places as may lawfully be used for disposal, and the Concessionaire shall comply with its legal obligations in relation to ensuring that such materials will not cause or give rise to pollution of the environment in contravention of any applicable Law;

- (v) Ensure that all vehicles leaving the Site are adequately cleaned to prevent the deposit of waste materials and debris on the Adjoining Property or any highway, road and/or footpath and if any such material or debris is so deposited, the Concessionaire shall forthwith employ such measures as shall be necessary to remove the material and debris and to clean and reinstate the Adjoining Property and/or any highway, road and/or footpath as the case may be;
 - (vi) Not without the written consent of HPTE erect or permit or suffer to be erected on the Site any temporary structure except site accommodation usual in connection with works of a like nature to the Phase 2 Work or as contemplated by the Concessionaire's Proposals; and
 - (vii) Not erect or exhibit or permit or suffer to be erected or exhibited on any part of the Site any signs or trade boards save those previously approved in writing by HPTE (such approval not to be unreasonably withheld).
- (b) The Concessionaire shall at all times ensure that it, the Construction Sub-Contractor and its sub-contractors, after the completion of the Phase 2 Work, reinstates the remainder of the Site, any other Site installation areas and those areas on which equipment, instruments necessary for the implementation of the Phase 2 Work have been located and any other areas used by the Concessionaire previously to their original condition or equivalent or to the form specified in HPTE's Requirements (whichever is the higher standard).
 - (c) HPTE and the Concessionaire do not believe that there is any Necessary Consent which has not been obtained which can only be obtained by an application by CDOT as the owner of the Site and/or the Managed Lanes. However, if there is a need for such a Necessary Consent then HPTE will ensure that CDOT will execute any application for the Necessary Consent prepared by the Concessionaire.

6.4 Utility Work

- (a) The Phase 2 Work will require relocation of certain Utilities which involves confirming the location of the Utilities and relocating them or carrying out other work specified in the relevant technical schedule to the Concession Agreement.
- (b) If any existing Utility (or any portion of such Utility) identified in the Utility Data is not indicated with Reasonable Accuracy therein, or is not indicated at all, then HPTE shall be responsible for, and agrees to issue an HPTE Change Notice relating to a Construction Change, and the Construction Change process shall apply; provided, however, no extension of the Planned Full Services Commencement Date will be allowed on account of such lacking or inaccurate information. Notwithstanding the foregoing, if any one or more of the following applies with respect to any Utility (or any portion thereof), then each shall be a Concessionaire Change and the Concessionaire Change provisions shall apply:
 - (i) A surface inspection of the area would have shown the existence or the likelihood of existence of such Utility (or portion thereof) in the correct

location and/or size, as applicable, by reason of above-ground facilities such as buildings, meters or junction boxes or identifying markers; or

- (ii) Such Utility is a Service Line (or the portions of a Utility that are Service Lines); or
 - (iii) Any costs or delays associated with the performance of Incidental Utility Work by the Concessionaire.
- (c) Inaccuracies decreasing the Phase 2 Work, or partial inaccuracies with Utilities shall be treated as Construction Changes.
- (d) If Utility Owners request Betterments or Requested Relocations as part of the Work, HPTE may permit the same, at the Utility Owner's expense. Such changes shall be treated as Construction Changes. HPTE will approve the addition of a Betterment or Requested Relocation only if: (i) the Utility Owner has agreed to the addition of such Betterment or Requested Relocation to the Work; (ii) such Betterment is compatible with the Project; (iii) the Utility Owner has agreed to reimburse the Concessionaire for all the costs thereof; (iv) the Utility Owner has agreed as to the method (negotiated lump sum amount, or time and materials cost basis) of pricing such Work; and (v) it is feasible to separate the cost/pricing of the Betterment or Requested Relocation work from that for any related Utility Work being furnished or performed by the Concessionaire. The Concessionaire is required to provide HPTE with such information, analyses and certificates as may be requested by HPTE in connection with its approval.
- (e) In designing and constructing the Project, the Concessionaire is obligated to take all reasonable steps to minimize costs to the Utility Owners under the Utility Relocation Agreements, to the extent practicable and otherwise consistent with the Contract Documents. This shall include avoiding multiple relocations of the same Utility.
- (f) The Concessionaire shall be entitled to compensation in relation to Utility Delays if and to the extent that such compensation is recoverable from the Utility Owner by HPTE or CDOT under the Utility Relocation Agreement. If aggregate Utility Delays caused by an individual Utility Owner exceed five (5) days, and the Full Services Commencement Date is affected thereby, that shall be a Relief Event, provided the following requirements have been satisfied:
- (i) The Concessionaire has provided evidence reasonably satisfactory to HPTE that:
 - (1) The Concessionaire has fulfilled its obligation under the applicable Utility Relocation Agreement(s) to coordinate with the Utility Owner to prevent or reduce such delays;
 - (2) The Concessionaire has otherwise made diligent efforts to obtain the timely cooperation of the Utility Owner but has been unable to obtain such timely cooperation;

- (3) If the Concessionaire is responsible for the Relocation, the Concessionaire has provided a reasonable Relocation plan to the Utility Owner and the Concessionaire has obtained, or is in a position to timely obtain, all applicable approvals, authorizations, certifications, consents, exemptions, filings, leases, licenses, permits, registrations, options, and/or rulings required by or with any Governmental Person in order to design and construct such Relocations; and
- (4) No circumstances exist which have delayed or are delaying the affected Relocation, other than those which fit within the definition of a Utility Delay.

6.5 Labor Requirements

- (a) The Concessionaire shall comply with all applicable federal requirements relating to the Phase 2 Work.
- (b) The Concessionaire shall comply with CDOT's DBEs requirements. The Concessionaire shall facilitate and incorporate participation by small businesses throughout the Project, ensuring that DBEs and ESBs, if applicable, shall have an equal opportunity to participate in the performance of contracts financed in whole or in part with federal funds. The Concessionaire shall either meet DBE goal of eleven percent (11%) established for the Project, or shall make a good faith effort to meet the DBE goal.
- (c) Two training goals have been established for the Phase 2 Construction Work. The goals are separated into two categories and are distinct from each other. These goals reflect the minimum amount of hours necessary to meet the goals requirement for the Phase 2 Construction Work. The minimum Phase 2 Construction Work training goals have been set as the greater of 9 percent of the total Phase 2 Construction Work workforce labor hours or 6,500 hours, of which at least 8 percent of these hours must be expended in professional services. The remaining training hours shall be expended in the skilled crafts for construction activities.

6.6 Monitoring and inspection by HPTE

- (a) The Concessionaire is required to ensure that HPTE or its representatives have a right to enter the Site to inspect the state and progress of the Phase 2 Work and monitor compliance with the Concession Agreement.
- (b) Subject to giving prior notice and using reasonable endeavors to minimize disruption HPTE is entitled to open up and inspect any part of the Phase 2 Construction Work where HPTE's representative reasonably believes that there has been non-compliance with the Concession Agreement.
- (c) If non-compliance is not found then the exercise of this right is treated as a Compensation Event. If non-compliance is found then the Concessionaire must rectify the non-compliance at its own cost and risk. Any disagreements are to be resolved by the dispute resolution procedure.

- (d) The Concessionaire must supply information as may reasonably be required when HPTE visits the site and must ensure that reasonable facilities are made available to HPTE, subject to the Concessionaire's and the Construction Sub-Contractor's construction obligations not being adversely affect or interfered with and to HPTE reimbursing the Concessionaire for any reasonable costs or expenses incurred by the Concessionaire as a result of exercise of inspection rights or exercise of the right to open up the work..
- (e) If it is discovered that there are material defects in the Phase 2 Construction Work, or material failure by the Concessionaire to comply with the technical requirements applicable to the Phase 2 Work then HPTE may by notice to the Concessionaire, increase the level of its monitoring until the Concessionaire has demonstrated to HPTE's reasonable satisfaction that it is capable of performing and will perform its obligations. If HPTE issues such a notice then the Concessionaire must bear its own costs and pay HPTE on demand all reasonable costs and expenses of the increased level of monitoring.

6.7 Coordination with Phase 1 Construction Work

- (a) The Concessionaire is obligated to act reasonably to coordinate its work with the work of the Phase 1 DB Contractor.
- (b) Specific provisions for construction phasing are contemplated under the Concession Agreement, particularly in relation to a crossover contemplated to be in place in early 2014.

6.8 Warranties

- (a) The Concessionaire provides warranties that
 - (i) All design work furnished pursuant to the Concession Agreement has been carried out in accordance with the requirements of the Concession Agreement;
 - (ii) The Phase 2 GP Lanes have been completed in accordance with the requirements of the Concession Agreement;
 - (iii) Materials and equipment furnished under this Contract have been be in accordance with the requirements of the Concession Agreement; and
 - (iv) The specifications and/or drawings selected or prepared for use during construction have been in accordance with the requirements of the Concession Agreement.
- (b) The Concessionaire also provides certain warranties from its sub-contractors, and for work relating to the bikeways and Intelligent Transportation Systems.

6.9 HPTE Capital Payments

- (a) Whenever a payment under the Construction Sub-Contract Price is due the Concessionaire may also apply for an Interim Capital Payment in accordance with

the Concession Agreement. The maximum amount of the Interim Capital Payment which may be applied for shall be an amount up to the full amount of the Construction Sub-Contract Price Payment which is due so long as the aggregate value of the Interim Capital Payments made at the date when the Interim Capital Payment shall be paid does not exceed the Interim Capital Payment Cap the relevant period which is set out in the table in below.

Month	Annual aggregate amount available of Minimum HPTE Capital Payment	Annual aggregate amount subject to adjustment by the Financial Close Adjustment	Interim Capital Payment Cap Subject to Cumulative Maximum	Cumulative Maximum Interim Capital Payment Request
From the Commencement Date	\$ 6,190,829	9,267,000	\$ 15,457,829	\$ 15,457,829
Jan-14	\$ 2,990,829	7,400,000	\$ 10,390,829	\$ 25,848,658
Jan-15	\$ 5,467,342	13,634,000	\$ 19,101,342	\$ 44,950,000

- (b) Applications for an Interim Capital Payment may not be made more than once every calendar month. When making an application for an Interim Capital Payment, the Concessionaire has to submit to HPTE all the supporting documentation required to be submitted under the Phase 2 TIFIA Loan and/or to the Senior Lenders when applying to draw funds under those facilities (whether or not a drawing is actually being made under those facilities).
- (c) HPTE will make payment of the Interim Capital Payment within fifteen Business Days after the day when:
 - (i) HPTE has received an invoice, supported by the required documentation; and
 - (ii) The Concessionaire has complied with its obligations to provide the reports and schedules required by Schedule 5 to the Concession Agreement.
- (d) The aggregate value of all Interim Capital Payments shall not exceed the HPTE Capital Payment.

6.10 Failure to achieve the Phase 2 Construction Work by the Planned Full Services Commencement Date.

- (a) HPTE may require payment of daily liquidated damages by the Concessionaire and receive a share of Toll Revenues from the Concessionaire for failure by the Concessionaire to achieve the completion of the Phase 2 Construction Work by the Planned Full Services Commencement Date, as it may be extended.

- (b) The liquidated damages are equal to \$3,000 per day (or portion of a day) for each day from the Planned Full Services Commencement Date until the date the Phase 2 Construction Work is completed, up to a maximum amount of \$1,095,000.
- (c) HPTE's share of Toll Revenues from the I-25 Managed Lanes and the Phase 1 Managed Lanes is equal to \$15,000 per day (or portion of a day) for each day from the Planned Full Services Commencement Date until the date the Phase 2 Construction Work is completed, up to a maximum amount of \$5,475,000.

7. The Services

7.1 The Concessionaire has to make the Managed Lanes available for use by vehicles (subject to the Concessionaire's right to receive tolls described below) and shall provide the Services and the Snow and Ice Control Services:

- (a) from the Commencement Date and thereafter throughout the Contract Period in relation to the I-25 Managed Lanes and the I-25 Shared Bridge Decks;
- (b) from the Phase 1 Services Commencement Date and thereafter throughout the Contract Period in relation to the Phase 1 Managed Lanes and the Phase 1 GP Lanes; and
- (c) from the Full Services Commencement Date and thereafter throughout the Services Period in relation to the Managed Lanes and the US 36 GP Lanes as an integrated system.

7.2 The Concessionaire must do this, in each case:

- (a) in accordance with the Concession Agreement;
- (b) In the case of the Services, in accordance with the HPTE Service Requirements; and the Concessionaire's Service Proposals;
- (c) In the case of the Snow and Ice Control Services in accordance with the HPTE Snow and Ice Control Service Requirements and the Concessionaire's Snow and Ice Control Service Proposals;
- (d) in accordance with Good Industry Practice;
- (e) in accordance with all applicable Law;
- (f) in accordance with the terms and requirements of any Necessary Consents relating to the same;
- (g) so as to minimize inconvenience and disruption to the extent reasonably practicable to HPTE and users of the Managed Lanes; and
- (h) so as to minimize inconvenience to the extent reasonably practicable.

7.3 The Concessionaire shall ensure on a continuing basis that at all times its maintenance and operating procedures are compliant with Schedule 6 (HPTE Service Requirements) and in any event are sufficient to ensure that:

- (a) the Managed Lanes are available as required by this Contract and HPTE's Service Requirements;
 - (b) it can maintain the design intention of the Maintained Elements to achieve their full working life; and
 - (c) the Maintained Elements are handed back to HPTE on the Expiration Date in a condition complying with the Handback Requirements.
- 7.4 The Concessionaire has to submit a Maintenance Management Plan, an Operations Management Plan, a Transition Management Plan, a Safety Plan and a Communications and Marketing Plan to HPTE for Acceptance before it starts to deliver the Services at the Commencement Date, the Phase 1 Services Commencement Date and the Full Services Commencement date respectively. It must also make such a submission of these plans no less than annually or, if the Concessionaire wishes to change any matter within any plan, more frequently. HPTE will review the plans and within twenty (20) Business Days it will either Accept the plans or give reasons why it will not Accept the plans in accordance with the Concession Agreement. In addition to its other obligations in relation to the performance of the Services, the Concessionaire shall perform the Services in accordance with the Accepted plans.
- 7.5 Once in every year, and at additional times if HPTE reasonably believes that the Concessionaire is in breach of its obligations under this Contract, HPTE may carry out or ensure the carrying out of each of a survey of the Managed Lanes and an audit of the Concessionaire's records and operations. When carrying out any survey or audit, HPTE shall use reasonable endeavors to minimize any disruption caused to the provision of the Services or the collection of Tolls by the Concessionaire. The cost of the survey or audit, except if the survey or audit reveals a deficiency which is in excess of the cost of the survey or audit, in which case the Concessionaire shall reimburse such cost to HPTE.
- 7.6 The Concessionaire shall carry out such rectification and/or maintenance work, or modify its practices or procedures as is necessary to correct, or prevent recurrence of, deficiencies found as a consequence of a survey or audit within the period reasonably specified by HPTE and any costs it incurs in carrying out such rectification and/or maintenance work and/or modification of practices or procedures shall be at the Concessionaire's own expense.
- 7.7 The Concession Agreement contains requirements that any person employed in connection with the performance of the Services who works directly on the maintenance of highways shall have a rate of pay no less than the lower of the rate paid to a comparable to a specified class of CDOT transportation maintenance employee, and the indexed value of the rate currently paid to such employees. The dollar value of the employer's contribution to the cost of healthcare and dental plans offered to such persons is also linked to the contributions paid to the same comparable specified class of CDOT transportation maintenance employees.
- 8. Snow and Ice Control Services**
- 8.1 Snow and Ice Control Services in the Managed Lanes
- (a) The Concessionaire is obligated to provide the Snow and Ice Control Services in the Managed Lanes as follows:

- (i) from the Commencement Date, in respect of the I-25 Managed Lanes;
 - (ii) from the Phase 1 Services Commencement Date the obligation is extended to the Phase 1 Managed Lanes; and
 - (iii) from the Full Services Commencement Date the obligation is extended to the Phase 2 Managed Lanes, (so that the obligation then applies to all of the Managed Lanes).
- (b) Concessionaire shall not receive any additional funds from CDOT or HPTE to provide the Snow and Ice Control Services in the Managed Lanes.

8.2 Snow and Ice Control Services in the US 36 GP Lanes

- (a) The Concessionaire is obligated to provide the Snow and Ice Control Services in the US 36 GP Lanes starting with the Phase 1 GP Lanes from the Phase 1 Services Commencement Date and extending to the whole of the US 36 GP Lanes on the Full Services Commencement Date.
- (b) HPTE is obligated to pay to Concessionaire a GP Snow and Ice Control Services Fee in the amount of \$352,470.00 per year (indexed) for Phase 1 rising to \$458,348.00 per year (Indexed) for the Snow and Ice Control Services in the US 36 GP Lanes.

8.3 Self-help remedies

The Concession Agreement permits HPTE to exercise self-help rights in connection with the Services in certain circumstances, such as if HPTE reasonably believes that a series risk exists to the health or safety of persons or property or to the environment.

9. Other specific provisions in relation to maintenance

9.1 Life Cycle Work

- (a) No later than ninety (90) days before the beginning of each calendar year after the Full Services Commencement Date, the Concessionaire will annually prepare and deliver to HPTE for its review a full five-year Life Cycle Maintenance Plan in accordance with HPTE's Service Requirements and including
 - (i) All Life Cycle Maintenance which in the view of the Concessionaire should be carried out in relation to the Managed Lanes;
 - (ii) Identifying all Non-Separable Tasks.
- (b) The Dispute Resolution Process applies if there is a dispute in relation to the Life Cycle Maintenance Plan.
- (c) If the Concessionaire fails to implement a Non-Separable Task, HPTE has a self-help right, subject to the process described in the Concession Agreement.
- (d) Non-Separable Tasks are to be completed by the Concessionaire, after consultation and approval by HPTE using the contracting process set out in the Concession

Agreement. HPTE must pay the Concessionaire its pre-defined Non-Separable Price Percentage of the cost paid to the contractor for the Non-Separable Task. HPTE may elect to not proceed with a Non-Separable Task, and in such event, then absent other agreement such deferral becomes a Compensation Event.

9.2 I-25 Work (Excluding I-25 Initial Works Package)

(a) HPTE/CDOT Obligations

- (i) HPTE shall ensure that CDOT will maintain and repair the sub-grade supporting the pavement for the I-25 Managed Lanes and structures within that sub-grade (save in relation to Routine Maintenance activities to be performed by the Concessionaire) in accordance with Good Industry Practice.
- (ii) HPTE through CDOT shall carry out the routine and lifecycle maintenance of the I-25 Bridge Substructures. HPTE through CDOT shall respond to and repair any damage caused to the I-25 Bridge Substructures through accidents or those matters specified in paragraph (a) of the definition of Relief Events. HPTE shall ensure that CDOT shall carry out its obligations in accordance with Good Industry Practice.

(b) The Concessionaire Obligations

- (i) The Concessionaire shall carry out Routine Maintenance and Life Cycle Maintenance (to avoid doubt, including the I-25 Preventative Maintenance Program) on the I-25 Bridge Deck Superstructure.
 - (ii) The Concessionaire shall carry out the I-25 Preventative Maintenance Program on the I-25 Bridge Deck Superstructure.
- (c) If it is necessary to close the I-25 Managed Lanes or a portion thereof for CDOT to perform maintenance on the I-25 Shared Bridge Deck Substructures then unless that is caused by a breach by the Concessionaire of the Concession Agreement that is treated as a Compensation Event and the compensation payable is measured as if the closure had been ordered by HPTE (see paragraph 6.3(b) above).

9.3 US 36 GP Lanes Maintenance

- (a) The Concessionaire is obligated to provide GP Routine Maintenance Services in the US 36 GP Lanes starting with the Phase 1 GP Lanes from the Phase 1 Services Commencement Date and extending to the whole of the US 36 GP Lanes on the Full Services Commencement Date.
- (b) HPTE is obligated to pay to Concessionaire a GP Routine Maintenance Services Fee in the amount of \$675,000.00 per year (Indexed) for the Routine Maintenance Services in the US 36 GP Lanes at the time and in the manner set out in the Concession Agreement. Approximately 77% of such fee is payable for the Phase 1 GP Lanes prior to the Full Services Commencement Date.

10. **Monitoring of Performance of Services; Noncompliance Points**

- 10.1 The Concessionaire is required to monitor the provision of Services in accordance with the Concession Agreement and to compile monthly maintenance reports which identify all of the activities associated with Maintained Elements for the month, the actual maintenance performed for the period and other required information relating to the maintenance of the Project. The Concessionaire is also required to prepare annual performance report containing information regarding an overall summary of the Managed Lanes traffic and performance for the year including quality, safety and environmental performance, a summary of maintenance and operations activities performed and completed for the year (along with the results) as well as a summary of the planned maintenance and operations activities for the upcoming year, monthly toll system performance reports and certain other information specified in the Concession Agreement.
- 10.2 The Concession Agreement contains a regime pursuant to which “Noncompliance Points” are allocated to the Concessionaire beginning on the Commencement Date. The Noncompliance Points system is used by HPTE to measure the Concessionaire’s performance levels by identifying certain Concessionaire’s acts, omissions, breaches or failure to perform under the Concession Agreement (each such omission, breach or failure, a “noncompliance event”). The Concessionaire has the benefit of certain cure periods depending on the classification of the noncompliance event. Noncompliance Points (up to a specified maximum amount) may be allocated to each noncompliance event as shown in the table below. The Concessionaire may object to the allocation of Noncompliance Points by delivering to HPTE written notice of its objection (describing the grounds for the Concessionaire’s objections) within ten days of receipt of HPTE written determination allocating the Noncompliance Points. Failure to deliver such objection within the prescribed period of time constitutes a waiver by the Concessionaire of its right to challenge HPTE’s allocation of Noncompliance Points. Within 30 days from the objection notice, HPTE and the Concessionaire are required to meet and discuss the matter and if, at the conclusion of that period, the Concessionaire still objects to HPTE’s decision, it may refer the matter to the Dispute Resolution Procedures set forth in the Concession Agreement.
- 10.3 Annually for the first five years and thereafter on every five-year anniversary of the Phase 1 Services Commencement Date, either the Concessionaire or HPTE may request a review of the Noncompliance Points system by notice to the other party and upon receipt of such notice, the parties must review the existing system and may modify it.
- 10.4 Within five Business Days after the end of each month, HPTE may deliver a statement to the Concessionaire for the aggregate value of the Noncompliance Points allocated to the Concessionaire during that month. Within ten Business Days after the end of each month, the Concessionaire is required to pay to HPTE a share of Toll Revenues earned from the Managed Lanes in the amount of \$5,000 (as adjusted for inflation) for each allocated Noncompliance Point.
- 10.5 A Noncompliance Point is treated as uncured from the time when it can be allocated in accordance with the Concession Agreement until the time when the noncompliance event in relation to which it has been allocated has been verified as cured by HPTE. A Noncompliance Point is treated as unexpired from the time when it can be allocated in accordance with the Concession Agreement until 365 days (for the purposes of the column B

in the table below) or 1,095 days (for the purpose of the column C in the table below) after the noncompliance event has been cured.

- 10.6 If the level of unexpired or uncured Noncompliance Points allocated to the Concessionaire exceeds the amounts set forth in Row #1 in the table below, HPTE may increase the level of monitoring of the Project and the Concessionaire is required to reimburse HPTE for its direct costs related to increase monitoring plus an additional 10% in relation to HPTE's increased overhead expenses. In addition, the Concession Agreement provides that if the level of unexpired or uncured Noncompliance Points allocated to the Concessionaire exceeds the amounts set forth in Row #2 of the table below, then, in addition to increased monitoring, HPTE may require the Concessionaire to prepare and submit to HPTE within 45 days from HPTE's request a remedial plan (including a schedule and description of specific actions the Concessionaire will undertake to improve its performance) for HPTE's approval. The Concessionaire is required to comply with the course of action set forth in the approved remedial plan and if, after 180 days following the implementation of the remedial plan, the Concessionaire can demonstrate that the plan has reduced the number and frequency of Noncompliance Points compared to the period prior to such implementation, the Concessionaire is complying in all material respects with the course of action described in the plan and the Concessionaire has no uncured Noncompliance Points, then 30% of the total number of Noncompliance Points allocated over the course of the 180 day period are required to be treated as having expired.
- 10.7 If the Concessionaire (i) fails to deliver to HPTE the remedial plan within 45 days from HPTE's request or fails to comply with the course of action described in the plan in any material respect or (ii) the Concessionaire has more uncured or unexpired Noncompliance Points than the number applicable to the relevant period in the row numbered 3 in the table below, then the Concessionaire is deemed to be in default under the Concession Agreement

Period I – From the Commencement Date until the day before the Phase 1 Services Commencement Date

Period II – From the Phase 1 Services Commencement Date until the day before the start of Period III

Period III – From the Full Services Commencement Date or the first anniversary of the Phase 1 Services Commencement Date (whichever is later) onwards

Row No.	A			B			C			Remedy available to HPTE
	Uncured Noncompliance Points			Cumulative Unexpired Noncompliance Points (Cured or Uncured) over 365 Day Period			Cumulative Unexpired Noncompliance Points (Cured or Uncured) over 1,095 Day Period			
	Period I	Period II	Period III	Period I	Period II	Period III	Period I	Period II	Period III	
1	30	40	30	40	60	50	90	110	100	Increased monitoring by HPTE
2	35	50	40	60	90	75	135	165	150	Remedial plan to be submitted to HPTE
3	40	70	50	80	140	100	180	225	200	Concessionaire Default

11. Tolling

- 11.1 Except for its specific obligations to the Concessionaire under the terms and conditions of the Concession Agreement, HPTE does not have any risk or liability related to actual traffic volume and revenue, including but not limited to the risk that actual traffic volume is less than the traffic volume projected in the Base Case Financial Model.
- 11.2 Toll collection on the Managed Lanes will be through a 100% barrier-free open road electronic toll collection system requiring no reduction in speed. Non-Tolled Vehicles will be able to travel the Managed Lanes toll free, provided that a multi-position transponder in toll-free mode is used. Other vehicles will pay tolls either through the use of a multi-position transponder in toll-paying mode or through capturing an image of the vehicle's license plate so that the owner of the vehicle may be invoiced for the Toll.
- 11.3 HPTE establishes Tolls and Civil Penalties after a Proposed Toll and Penalty Schedules is submitted to HPTE by the Concessionaire. Every Proposed Toll and Penalty Schedule submitted to HPTE to modify Tolls must 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 Tolled 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 Tolled 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.
 - (v) 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;
 - (vi) A statement providing the highest and lowest Tolls that are proposed to be charged;
 - (b) If any of the proposed Tolls 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;

- (c) 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
 - (d) 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.
- (a) Every Proposed Toll and Penalty Schedule that proposes to establish or modify Civil Penalties shall include:
- (i) The proposed revision to the Civil Penalties;
 - (ii) 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
 - (iii) 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.

11.4 For changes meant to correct Bus Delay Events, an error, or some other unintended consequence, HPTE is required to approve or reject the Proposed Toll and Penalty Schedule within three Business Days. For all other changes, HPTE has thirty calendar days to make such determinations.

11.5 If HPTE believes, in its reasonable opinion, that

- (a) The contents of the Proposed Toll and Penalty Schedule are not in compliance with the Concession Agreement;
- (b) The safety of users of the Managed Lanes or of the US 36 GP Lanes would be adversely affected;
- (c) The Maximum Toll is exceeded in relation to Tolls charged for Tolloed Vehicles unless it is reasonably required to charge a Toll in excess of the Maximum Toll in order to achieve any of the other requirements summarized in this section 11;
- (d) An amendment, revision, or other modification of the HPTE Toll Violation Enforcement Rules is required as a consequence of the Proposed Toll and Penalty Schedule;
- (e) The travel times for the I-25 North Managed Lanes will be materially impaired; or
- (f) The Managed Lanes Goals (described in paragraph 11.6) will not be satisfied.

Then HPTE may reject the Proposed Toll and Penalty Schedule, unless the request is meant to correct Bus Delay Events, an error, or some other unintended consequence. If none of the above do apply but HPTE nevertheless rejects the Proposed Toll and Penalty Schedule,

then 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.

11.6 The Toll and Penalty Schedules are meant to ensure that Motor Vehicle speeds during Peak Periods

- (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.

11.7 The following categories of Motor Vehicles are "Non-Tolled 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.

11.8 The Maximum Toll for the Managed Lanes for Tolled Vehicles from and after the first year after the Full Services Commencement Date will be \$13.91 (Indexed).

11.9 Minimum Tolls will be charged during Peak Periods based on RTD fares between Downtown Denver and Boulder as follows:

EASTBOUND TRAVEL		WESTBOUND TRAVEL	
Point where Tolled Vehicle enters Managed Lanes	Minimum Toll fare which sets minimum Toll	Point where Tolled Vehicle enters Managed Lanes	Minimum Toll fare which sets minimum Toll
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
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

11.10 Tolling enforcement in the Managed Lanes shall be separate from HOV enforcement.

11.11 The Concessionaire is responsible for all toll transaction account management services provided to users of the Managed Lanes. The Concessionaire, HPTE and the E-470 Authority will enter into a Tolling Services Agreement pursuant to which the E-470 Authority will provide the Tolling Back Office Control Services.

11.12 The Concessionaire is required to provide to HPTE and RTD quarterly reports describing, among other things, the number and types of transactions in all Tolling Segments, vehicle speeds between the Tolling Segments, travel time for RTD buses between all Tolling Segments, accidents in the Managed Lanes to the extent that vehicle travel times were disrupted in any material manner, the number of Non-Tolled Vehicles and the number of Tolled Vehicles.

11.13 HOV Obligations

(a) Upon the earliest to occur of any of the following:

(i) 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;

- (ii) 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;
- (iii) 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;
- (iv) 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
- (v) 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+ Vehicles¹;

Then subject to the Force Majeure Events and Relief Events described in the Concession Agreement, HOV +2 Vehicles shall no longer be considered Non-Tolled Vehicles.

- (b) HOV enforcement in the Managed Lanes shall be separate from Tolling enforcement.

11.14 Emergency Procedures

- (a) If Toll collection on the Managed Lanes or a portion of the Managed Lanes is temporarily suspended pursuant to applicable Law, HPTE will have no liability to the Concessionaire for the loss of Toll Revenues or the increase in costs or expenses attributable to suspensions of up to an aggregate of twelve hours in each year. However, any loss in Toll Revenue or increases in costs or expenses attributable to suspensions over an aggregate of twelve hours in each year will be treated as a Compensation Event.
- (b) HPTE may also suspend Toll collection on, or require closure of, the Managed Lanes or a portion of the Managed Lanes by providing notice to the Concessionaire. The Concessionaire is required to immediately cease Toll collection or close the Managed Lanes for the period specified in the notice or until HPTE gives notice that toll collection may be resumed. HPTE may or may not be required to make payments the Concessionaire under the following circumstances:
 - (i) If the closure or suspension is less than three hours and the number of closures or suspensions of less than three hours which have been required (including the suspension in question) is less than four in any rolling period of twelve months, HPTE will have no liability to the Concessionaire for the loss of Toll Revenues attributable to the closure or suspension.

¹ A resolution establishing January 1, 2017 as the relevant date for this purpose was passed by the Transportation Commission at its meeting on February 21, 2013.

- (ii) If the number of closures or suspensions of less than 24 hours which have been required (including the suspension in question) is less than two in any rolling period of twelve months, HPTE will have no liability to the Concessionaire for the loss of Toll Revenues attributable to the closure or suspension.
- (iii) In the case of any closure or suspension of more than three hours but less than three days to which the provisions described in the preceding sentence do not apply, HPTE is required to pay the Concessionaire the average Toll Revenues actually collected during the same time of day on the same days of the week during the period of two weeks prior to the closure or suspension and two weeks after the closure or suspension.
- (iv) In the case of a closure or suspension of more than three days but less than 15 days, HPTE will pay the Concessionaire the average Toll Revenues actually collected during the same time of day on the same days of the week during the period of three months prior to the closure or suspension and three months after the closure or suspension;
- (v) In the case of a closure or suspension of more than 15 days, HPTE will pay to the Concessionaire an amount which will place the Concessionaire in a position which is no better and no worse than it would have been if the closure or suspension had not occurred.

12. Indemnities

12.1 The Concessionaire releases, defends, indemnifies and holds harmless HPTE, and CDOT, and for RTD in its capacity as a Project participant, and each of their respective agents and consultants, respective successors and assigns and respective shareholders, officers, directors, agents and employees (each an "Indemnified Party" and collectively referred to as the "Indemnified Parties") from and against any and all claims, causes of action, suits, judgments, disputes, demands, investigations, legal or administrative proceedings, penalties, fines, damages, losses, liabilities, costs and expenses, including any injury to or death of persons or damage to or loss of property (including damage to utility facilities) (in each case, each such action or assertion of liability or responsibility in relation to an Indemnified Party by a Person who is not a party to the Contract or an Affiliate of a party is referred to as a "Claim"), and including all expenses and attorneys', accountants' and expert witness fees and costs, arising out of, relating to or resulting from any Claim asserted against an Indemnified Party by any Person who is not a party to the Contract or an Affiliate that is based on:

- (a) The breach or alleged breach of this Contract by the Concessionaire;
- (b) The failure or alleged failure by any Concessionaire Related Party to comply with any applicable Environmental Laws or other Laws or legal requirements (including legal requirements regarding handling, generation, treatment, storage, transportation and disposal of Hazardous Substances and legal requirements to pay any taxes or similar charges to any governmental or taxing authority on any basis whatsoever) or Necessary Consents in performing its obligations under this Contract;

- (c) Any actual or alleged patent or copyright infringement or other allegedly or actual improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions in the performance of the Concessionaire's obligations under this Contract, or arising out of any use in connection with the Phase 2 GP Lanes or the Project of methods, processes, designs, information or other items furnished or communicated by the Concessionaire to HPTE or another Indemnified Party pursuant to this Contract; provided that this indemnity shall not apply to any infringement resulting from the applicable Indemnified Party's failure to comply with specific written instructions regarding use provided to such Indemnified Party by the Concessionaire;
- (d) Any actual or alleged negligent act or omission or willful misconduct of any Concessionaire Related Party;
- (e) Any and all claims for recovery of any non-payment which are filed by sub-contractors of the Concessionaire (of any tier) with an Indemnified Party in connection with the Phase 2 Work or the Services, including all expenses and attorneys', accountants' and expert witness fees and costs incurred in discharging any claim, unless HPTE is in default in payments owing to Concessionaire and such payment default has caused the non-payment to the sub-contractor; and
- (f) Any spill or release or threatened spill or release of Hazardous Substances:
 - (i) attributable to the negligence, willful misconduct or breach of contract by the Concessionaire, including the exacerbation of any existing Hazardous Substances; or
 - (ii) which was brought onto or generated on the Managed Lanes by the Concessionaire.

12.2 The Concession Agreement contains provisions for the Concessionaire to appoint counsel for the conduct of the defense of claims which are the subject of indemnity claims, subject to certain limitations.

13. Insurance Requirements

13.1 The Concessionaire, at its cost and expense, is to obtain insurance policies required by the Concession Agreement as well as policies required by law prior to the carrying out of any building or demolition work on the Managed Lanes and prior to

- (a) the Commencement Date (for Services to be provided with respect to the I-25 Managed Lanes),
- (b) the Phase 1 Services Commencement Date (for Services to be provided with respect to the Phase 1 Lanes) and
- (c) the Full Services Commencement Date (with respect to the remainder of the Services).

All insurance providers must be approved by HPTE, such approval not unreasonably withheld and such approval not to be withheld for any insurer with both an A.M. Best

Financial Strength Rating of A- or better and an A.M. Best Financial Size Category of Class X or better or, in relation to the insurance for the Services, with a Standard & Poor's Rating of AA-/stable.

- 13.2 The following insurance policies are required to be obtained by the Concessionaire:
- (a) worker's compensation and employer's liability insurance covering the Phase 2 Construction Work with statutory limits for the worker's compensation insurance and a minimum \$1 million limit (for each employee or any one accident) for the employer's liability insurance;
 - (b) commercial general liability covering operations with a minimum \$1 million limit (combined for bodily injury and property damage per occurrence), a minimum \$2 million limit in the aggregate and a minimum \$2 million limit in the aggregate for products and completed operations;
 - (c) commercial automobile liability insurance with a minimum \$1 million combined single limit for bodily injury and property damage;
 - (d) umbrella/excess liability insurance covering operations with a minimum \$5 million limit for each occurrence and in the aggregate; and
 - (e) professional liability insurance with minimum limits of \$10 million for each claim and in the aggregate if the Concessionaire provides design services in-house or by professional engineering firm or \$2 million for each claim and in the aggregate if the design services are carried out by a contractor or a sub-contractor.
- 13.3 In addition, the Concession Agreement requires each Concessionaire's contractors and subcontractors to provide at their own expense worker's compensation and employer's liability insurance, commercial general liability insurance, commercial automobile liability insurance, umbrella/excess liability insurance, and certain other insurance, each with the scope of coverage and the limits specified in the Concession Agreement.
- 13.4 Except for the insurance required by law, all insurance policies must name the Concessionaire as a named insured, name HPTE, CDOT and RTD as named insureds or additional insureds, include a provision that HPTE will receive a 30-day advance notice of any cancellation (ten days for non-payment) and include certain other required provisions set forth in the Concession Agreement.
- 13.5 The Concessionaire is required to provide to HPTE copies of all insurance policies (upon request) and evidence that the premiums payable under all insurance policies have been paid and that the policies are in full force and effect in accordance with the requirements of the Concession Agreement.
- 13.6 The Concessionaire is required to give HPTE a notice within 20 Business Days after any claim in excess of \$500,000 (indexed) on any of the insurance policies setting forth full details on the incident giving rise to the claim. The Concessionaire is required to make claims against the insurance policies to the extent available to reduce the amount of any claim of the Concessionaire against HPTE pursuant to the Concession Agreement, such as for claims due to the occurrence of a Compensation Event, Relief Event or a Force Majeure

Event. The amount of any such claim by the Concessionaire against HPTE is to be reduced by the amount recovered under the insurance policies or, if the Concessionaire does not make such claim against the insurance policies or fails to maintain the insurance policies in accordance with the Concession Agreement, the amount which the Concessionaire should have recovered had it made appropriate claims against the insurance policies and/or maintained the Required Insurance.

13.7 If the Concessionaire is in breach of the insurance requirements stated in the Concession Agreement, HPTE is required to give notice thereof to the Concessionaire and if such breach is not cured within a specified period, HPTE may either pay any premiums, fees and other costs required to keep such insurance in force or itself procure such insurance and pay the premiums, broker's costs or other expenses for that insurance and the Concessionaire is required to reimburse HPTE for such amounts.

13.8 Reinstatement

- (a) All insurance proceeds received under any insurance policies covering physical damage must be applied to repair, reinstate and replace each part of the Managed Lanes and the Assets in respect to which such proceeds were received. All insurance proceeds paid under such policy in respect of a single event (or a series of related events) in an amount in excess of \$500,000 (as adjusted for inflation) is required to be paid into a joint bank account in the names of HPTE and the Concessionaire (the "Joint Insurance Account"). Any proceeds of insurance received or are receivable under any physical damage policy in respect of a single event (or a series of related events) (the "Relevant Incident") in an amount in excess of \$250,000 (as adjusted for inflation), the Concessionaire is required to promptly carry out the work necessary to repair, reinstate or replace (the "Reinstatement Work") and is subject to specific requirements to keep HPTE informed of the progress of that work. Below this financial threshold there is no specific financial threshold, although the general requirements in relation to the Services (described above) would continue to apply.
- (b) If the insured event also caused physical damage to the U.S. 36 GP Lanes and it is not possible to separate the Reinstatement Work with respect to the U.S. 36 GP Lanes from the Managed Lanes or other Assets, the Concessionaire can perform the repair and reinstatement work for such non-separable elements and HPTE will be responsible for its proportionate share of the costs incurred by the Concessionaire for the Reinstatement Work with respect to elements attributable to the U.S. 36 GP Lanes. If HPTE does not wish to incur such costs and the parties cannot reach an agreement on the subsequent reimbursement of the Concessionaire's costs by HPTE (with interest at an agreed upon rate not to exceed LIBOR plus 2%), then the Concessionaire is not obligated to perform the repair or replacement work with respect to such non-separable work in relation to the U.S. 36 GP Lanes and such failure by HPTE and any additional costs incurred by the Concessionaire in addressing the non-separable work in relation to the Managed Lanes alone will be treated as a Compensation Event under the Concession Agreement.

- (c) If the Concessionaire undertakes the Reinstatement Work in relation to non-separable elements, then during the Term the Concessionaire may apply amounts on deposit in the Joint Insurance Account to fund such Reinstatement Work. After the Concession Agreement is terminated, HPTE may use any amounts on deposit in the Joint Insurance Account to fund any Reinstatement Work.
- (d) HPTE agreed not to terminate the Concession Agreement due to the occurrence of an event which gave rise to the insurance claim as long as the Concessionaire carries out the related Reinstatement Work in accordance with the terms of the Concession Agreement. After the Reinstatement Work is completed to the reasonable satisfaction of HPTE, the Concessionaire is permitted to withdraw any unused insurance proceeds relating to the event which gave rise to the related insurance claim. If insurance proceeds are not sufficient to pay the costs of repair or replacement of the Managed Lanes, the Concessionaire is solely responsible for the payment of any such deficiency.

14. Uninsurability and Unavailable Terms and Conditions

14.1 Uninsurable Risks

- (a) If a risk is Uninsurable then the Concessionaire is not in breach of the Concession Agreement if it does not take out insurance in relation to that risk.
- (b) If a risk usually covered by builders' all risks insurance, property damage insurance, or general liability insurance becomes Uninsurable then the parties are to meet and discuss how the risk should be managed or shared. If they cannot reach agreement then in respect of general commercial liability insurance HPTE may elect to terminate the Concession Agreement and pay the Concessionaire as if the termination had arisen as a consequence of Force Majeure or to continue the Concession Agreement on the terms summarized below.
- (c) If the Concession Agreement is not terminated, and in the case of other Uninsurable risks referred to above, then the Concession Agreement continues on the basis that if the risk comes about then HPTE may either make a payment to the Concessionaire of the amount which would have been paid under the relevant insurance or terminate the Concession Agreement and make a payment as if the termination had arisen as a consequence of Force Majeure. In the case of termination following an event which would have been covered by commercial general insurance HPTE will also pay the amount which would have been paid out under such a policy.

14.2 Unavailable Terms and Conditions

If a required Insurance Term is not available in the worldwide insurance market or the cost of obtaining such a term is so great that it is not generally being obtained by contractors in the United States then the requirement to obtain that term is waived. If a reasonable alternative to address the issue or partially address the issue covered by the Unavailable Term then that must be obtained by the Concessionaire.

15. Compensation Events, Relief Events, Force Majeure and Qualifying Change in Law

- 15.1 The Concession Agreement sets forth certain events, upon the occurrence of which the Concessionaire is entitled to claim relief from certain of its obligations, such as extension of the Planned Full Services Commencement Date and/or Full Services Commencement Longstop Date, relief from the allocation of Noncompliance Points and/or from any right which HPTE would otherwise have to assert that circumstances amounted to a Concessionaire Default. In some cases financial relief may also be available. Such events include a Compensation Event, a Relief Event, a Force Majeure Event and a Qualifying Change in Law Event. In particular, if any such event affects the performance of the Phase 2 Construction Work, then (subject to compliance with the terms of the Concession Agreement) the Concessionaire is entitled to obtain an extension to the Planned Full Services Commencement Date and/or Full Services Commencement Longstop Date in accordance with the same process which applies to Change Orders for the Phase 2 Construction Work.
- 15.2 If the Concessionaire and HPTE are unable to agree on the extent of any relief under the Concession Agreement or HPTE disagrees that any of the above events has occurred (or as to its consequences), or that the Concessionaire is entitled to any relief under the Concession Agreement, the parties agreed to resolve the matter in accordance with the Dispute Resolution Procedures set forth in the Concession Agreement.
- 15.3 Compensation Events.
- (a) Compensation Events mean:
- (i) A breach by HPTE of any provision of the Concession Agreement;
 - (ii) The existence of any Encumbrance affecting the Site or the Managed Lanes apart from :
 - (1) those Encumbrances held by third parties as disclosed in the Disclosed Data;
 - (2) the Permitted Encumbrances; and
 - (3) rights of third parties as required by Law;
 - (iii) the lack of availability of the Site in certain circumstances described in the Concession Agreement;
 - (iv) the exercise by HPTE of a right to open up work which does not reveal defective work;
 - (v) subject to the provisions of the Concession Agreement, a delay in acceptance of the Phase 1 DB Contract and the Phase 1 ETCS beyond 30 June 2015;
 - (vi) A Phase 1 Latent Defect;
 - (vii) The deferral of a non-separable task;
 - (viii) the deferral of non-separable reinstatement work;

- (ix) 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);
 - (x) 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 a specified level of internal rate of return;
 - (xi) The construction and operation of an Unplanned Revenue Impacting Facility;
 - (xii) 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 GP Lanes by such construction;
 - (xiii) An order 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;
 - (xiv) 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
 - (xv) Any other matter which the Concession Agreement refers to as or deems to be a Compensation Event, or which is to be treated as if it were a Compensation Event.
- (b) If there is a Compensation Event as a result of which the Concessionaire is unable to commence Services by the required date or is unable to comply with any of its obligations under the Concession Agreement or incurs costs or loses revenue,

then the Concession Agreement provides that, subject to the notice requirements, submission of the necessary documentation and other requirements set forth therein, the Concessionaire is entitled to apply for relief from its obligations under the Concession Agreement, relief from the allocation of Noncompliance Points and/or from any right which HPTE would otherwise have to assert that circumstances amounted to a Concessionaire Default and/or claim certain compensation from HPTE. The Concessionaire is not entitled to financial or non-financial remedies to the extent that it or its sub-contractors could have mitigated or avoided the Compensation Event or its consequences.

- (c) Pursuant to the Concession Agreement, subject to the satisfaction of the requirements described above,
 - (i) HPTE is required to compensate the Concessionaire for the actual costs or losses incurred down to the date of the claim within 20 Business Days of HPTE's receipt of the claim;
 - (ii) in the case of the costs or losses anticipated to be incurred after the date of the claim, HPTE is required to compensate the Concessionaire by making Revenue Compensation Payments, and/or
 - (iii) HPTE is required to give the Concessionaire non-financial remedies specified in the Concession Agreement, such as extension of Planned Full Services Commencement Date and/or Full Services Commencement Longstop Date.

15.4 Relief Events.

- (a) Relief Events mean:
 - (i) 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;
 - (ii) A Utility Delay to the extent permitted by Schedule 22, Part 1;
 - (iii) Any unforeseeable accidental loss or damage to the Phase 2 Work, the Managed Lanes or the US 36 GP Lanes;
 - (iv) Any failure or shortage of power, fuel or transport in the Denver metropolitan area;
 - (v) Any blockade or embargo which directly impacts the Project but which does not constitute a Force Majeure Event;
 - (vi) Certain categories of labor disputes or a temporary restraining order or injunction by a court prohibiting the construction of the Project generally affecting the road construction industry in the Denver metropolitan area or a significant sector of it;

- (vii) 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;
- (viii) 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;
- (ix) 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
- (x) 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 arises as a result of any willful default, willful act, negligence or breach of this Contract of the Concessionaire or any Concessionaire Related Party.

- (b) If there is a Relief Event as a result of which the Concessionaire is unable to achieve the Planned Full Services Commencement Date or which adversely affects the ability of the Concessionaire to perform any of its obligations under the Concession Agreement, then the Concession Agreement provides that, subject to the notice requirements, submission of the necessary documentation and other requirements set forth therein, the Concessionaire is entitled to apply for relief from its obligations under the Concession Agreement, relief from the allocation of Noncompliance Points and/or from any right which HPTE would otherwise have to assert that circumstances amounted to a Concessionaire Default. The Concessionaire is not entitled to remedies to the extent that it or its sub-contractors could have mitigated or avoided the Relief Event or its consequences or recovered those consequences upon becoming aware of the Relief Event.
- (c) In addition, to the extent that a Relief Event prevents or diminishes the performance of the Snow and Ice Services and/or the GP Routine Maintenance Services, then HPTE is entitled to a fair and reasonable reduction in fee which it pays to the Concessionaire for the performance of such Services in the amount as may be agreed to by HPTE and the Concessionaire or determined under the Dispute Resolution Procedure.

15.5 Force Majeure Events.

- (a) Force Majeure Events means the occurrence of an event or circumstance arising after the date of the Concession Agreement beyond either parties' reasonable control that materially prevents or delays either Party (the "Affected Party") from performing any of its obligations pursuant to the Concession Agreement 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. An event is not a Force Majeure Event if such event is otherwise specifically dealt with in the Concession Agreement or is, or arises by reason of:
- (i) A Compensation Event;
 - (ii) A Relief Event;
 - (iii) A lack of or insufficiency of funds or failure to make payment of monies or to provide security required by this Contract;
 - (iv) Any labor dispute;
 - (v) Any market conditions or economic conditions affecting the availability, supply, or cost of any of labor, equipment, materials, supplies or commodities.
- (b) If either HPTE or the Concessionaire is unable to perform its obligations under the Concession Agreement as a result of the occurrence of a Force Majeure Event, neither of them may claim a breach by the other or incur any liability to the other party for any losses incurred by that other party, provided that a Force Majeure Event does not excuse HPTE's obligation to make a payment which it is required to make under the Concession Agreement. To the extent that a Force Majeure Event prevents or diminishes the performance of the Snow and Ice Services and/or the GP Routine Maintenance Services, then HPTE is entitled to a fair and reasonable reduction in fee which it pays to the Concessionaire for the performance of such Services.
- (c) The Concession Agreement requires the parties to consult with each other and use reasonable efforts to agree on appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of the Concession Agreement. If no such terms are agreed to on or before eighty (80) Business Days after the date of commencement of the Force Majeure Event and such Force Majeure Event is continuing or its consequence remains such that the party affected by such event is unable to comply with its obligations under the Concession Agreement for a period of more than 120 Business Days, then either party may terminate the Concession Agreement upon prior written notice to the other party. If the Concessionaire gives such termination notice to HPTE, HPTE has the option either to accept such notice or to respond in writing on or before the date falling ten Business days after the date of its receipt stating that it requires the Concession Agreement to continue. If HPTE gives the Concessionaire such notice, then

- (i) HPTE is required to pay to the Concessionaire the estimated Toll Revenues projected to be received in accordance with the Base Case Financial Model and the Concessionaire is required to pay all Toll Revenue which it receives to HPTE from the day after the date on which the Concession Agreement would have terminated pursuant to the preceding sentence as if the Services were being fully provided and
 - (ii) the Concession Agreement will not terminate until written notice from HPTE to the Concessionaire that it wishes to terminate the Concession Agreement.
- (d) If the Concession Agreement is terminated pursuant to these provisions, then (i) HPTE is required to pay to the Concessionaire the Force Majeure Termination Sum (with interest thereon), subject to certain adjustments related to the Concessionaire's bad faith.

15.6 Qualifying Change in Law

- (a) If a Qualifying Change in Law occurs or is shortly to occur, then HPTE or the Concessionaire notify each other of its likely effects and provide detail of its effects, such as any necessary change in the Phase 2 Construction Work and/or the Services, any changes to the Concession Agreement, any relief from compliance with that party's obligations under the Concession Agreement, any loss of revenue or increased costs or capital expenditure that will result from such Qualifying Change in Law.
- (b) If HPTE and the Concessionaire agree that Concessionaire is required to incur additional capital expenditure, then the Concessionaire is required to use its reasonable efforts to obtain funding therefor and if the Concessionaire is unable to obtain such funding within 40 Business Days from the date when the parties agreed that such funding is needed, then HPTE is required to pay to the Concessionaire an amount equal to that capital expenditure on or before the date falling 20 Business Days after the capital expenditure has been incurred.
- (c) If HPTE and the Concessionaire agree that a Qualifying Change in Law event would result in a loss of Toll Revenues, then the parties agreed that any financial consequences of such loss will be addressed through a regular payment from HPTE to the Concessionaire, or otherwise will be facilitated by a revision to the Base Case Financial Model.

16. Change Procedures

- 16.1 HPTE is entitled to require HPTE Changes which affect the Phase 2 Work or the Services (including the Snow and Ice Control Services). Different provisions apply in relation to the Phase 2 Work and the Services respectively.

HPTE Changes and Relevant Events in relation to the Phase 2 Work

- 16.2 In respect of HPTE Changes to the Phase 2 Work there is a procedure which, unless HPTE decides not to proceed with the HPTE Change, will lead to the agreement or determination of a Change Order. HPTE may also be required to issue a Change Order in relation to the

matters summarized in paragraph 16.3. A Change Order may do any combination of the following things:

- (a) modify the Phase 2 Work.
- (b) revise the Planned Full Services Commencement Date and/or the Full Services Commencement Longstop Date.
- (c) provide for Changes in Costs arising out of Relevant Events by the payment by HPTE of Capital Expenditure, or of a Revenue Compensation Payment or by an obligation on the Concessionaire to make a payment to HPTE.
- (d) revise other terms and conditions of the Contract to the extent necessary as a consequence of modification of the Phase 2 Work.

If HPTE and the Concessionaire agree that a change in the requirements relating to the Phase 2 Work has occurred but disagree as to whether the change justifies additional compensation or time or disagree as to the amount of any Change in Costs or the Planned Full Services Commencement Date and/or the Full Services Commencement Longstop Date, HPTE may, in its sole discretion, order the Concessionaire to proceed with the performance of the Phase 2 Work in question while these matters are resolved.

16.3 The Concessionaire may request Change Orders:

- (a) to obtain payment of Changes in Costs, subject to certain limitations with respect to delay and disruption damages as specified in paragraph 5, caused by the following matters:
 - (i) HPTE-Directed Changes.
 - (ii) Compensation Events.
 - (iii) Differing Site Conditions, as summarized above.
 - (iv) the cost of Remediation Work and the reimbursement of any Changes in Costs relating to HTPE Hazardous Substances Circumstances as summarized above.
 - (v) Whenever additional costs are recoverable in relation to Utilities as summarized above; and
 - (vi) a Qualifying Change in Law.
- (b) to extend the Planned Full Services Commencement Date and/or the Full Services Commencement Longstop Date only for the delays in the Critical Path caused by the following matters:
 - (i) any matter referred to in paragraph 16.3(b).
 - (ii) a Force Majeure Event.
 - (iii) a Relief Event.

Upon the Concessionaire's fulfillment of all applicable requirements of the procedure (which relate to the submission of notices and the provision of evidence other similar procedural matters, and subject to the limitations contained in the procedure (which include matters such as, for example, specifying particular rates for reimbursement of construction-related costs) HPTE shall issue Change Orders to provide for payment of the Change in Costs (in relation to the matters referred to in paragraph (a)) and to provide for the extension of the dates (in relation to the matters referred to in paragraph (b)).

- 16.4 The provisions summarized below in relation to funding, due diligence, and payment apply in relation to the matters which are the subject of the Change Order process.

HPTE Changes affecting the Services

- 16.5 Requested changes for Services and Snow and Ice Control Services, requested changes are broken down into values – Low, Medium, and High.

(a) Low Value Changes apply when

- (i) Works (or a series of related works) of a minor nature, or the provision of plant and equipment, having a cost, not exceeding \$20,000 (indexed); or
- (ii) Any change or amendment (or series of related changes or amendments) (whether temporary or permanent) of the Services or any of them where the cost of each change or amendment (or series of related changes or amendments), in the reasonable opinion of HPTE, does not exceed \$20,000 (indexed) and does not require payment or adjustment of a Revenue Compensation Payment and which does not affect achievement of the Planned Full Services Commencement Date;

(b) Medium Value Changes occur when there is a change that is not a Low Value Change, and which in the reasonable opinion of HPTE is likely either

- (i) To cost less than \$350,000 (indexed) to implement, or
- (ii) Require payment of, or an adjustment to a Revenue Compensation Payment that is less than 2% of the maximum Toll Revenues in the relevant Year (as shown in the Base Case Financial Model) (as the case may be);

(c) High Value Changes occur when there is a change that is not a Low Value Change or Medium Value Change, and which is likely either

- (i) To cost more than \$350,000 (indexed) to implement, or
- (ii) To require an annual amount of Revenue Compensation Payment (or an adjustment to any existing Revenue Compensation Payment) that is greater than 2% of the projected Toll Revenues during the Year when the first payment of such Revenue Compensation Payment will be made (as set out in the Base Case Financial Model) (as the case may be).

- 16.6 The procedures in relation to Low Value Changes, Medium Value Changes and High Value Changes, respectively have increasing levels of detail and complexity but the following overarching matters also apply:

- (a) There are limits on the changes which can be proposed or implemented which prevent changes which infringe Law or Good Industry Practice, which would cause Necessary Consents to be revoked or to become unobtainable, which would materially and adversely affect the Concessionaire's ability to deliver the Services, which would have a material and adverse effect on health and safety, which would require implementation of the Change in an unreasonable period of time, which would materially and adversely change the nature of the Project or which HPTE does not have the legal power or capacity to require.
- (b) There is a process for managing obtaining Necessary Consents required in relation to the Change and dealing with other consequences such as the time to obtain such consents.
- (c) There are provisions which allow HPTE to request the Concessionaire to use its reasonable endeavors to obtain funding in respect of Construction Changes, Medium Value Changes and High Value Changes. If the Concessionaire is unable to do so within 40 Business Days then the HPTE Changes is deemed with drawn unless HPTE confirms that it wishes to proceed with the change.
- (d) If senior lenders have a right under the Funding Agreements to object to the implementation of a Change then they may carry out certain due diligence (in the case of Low Value Changes and Medium Value Changes, when the cost of the change or the number of changes exceeds certain thresholds) on the basis that the cost of the due diligence will become part of the Change in Costs and shall be carried out pursuant to a budget with a capped cost not to exceed 2% of the overall value of the HPTE Change.

Payment for all Changes

- 16.7 Once the Change in Costs has been agreed or determined in relation to an HPTE Change, or a Change Order has been agreed or determined in relation to the Phase 2 Work, HPTE must pay the relevant cost:
- (a) within 20 Business Days of a receipt of an invoice for the agreed amount and/or
 - (b) except in the case of Low Value Changes, through a Revenue Compensation Payment (referred to in section 17 of this summary).

Where HPTE pays otherwise than through a Revenue Compensation Payment HPTE and the Concessionaire must agree a payment schedule reflecting the amount and timing of the costs to be incurred by the Concessionaire to the extent borne by HPTE, so that there may be periodic payments of the amounts which may be due from HPTE.

- 16.8 If a Change in Costs arising from an HPTE Change or a Qualifying Change in Law is negative then the saving is to be passed to HPTE.

Concessionaire-requested Changes

- 16.9 There is a separate process for Concessionaire-requested Changes, which can include any of Low Value Change, Medium Value Changes, or High Value Changes. HPTE has discretion, acting in good faith, to accept or reject any Concessionaire Change unless the

change is required as a result of a Change in Law. In any event, the Concessionaire is required to bear the costs of any Concessionaire Change, unless such change is the result of a Qualifying Change of Law. Cost savings of a Concessionaire Change are to be shared between HPTE and the Concessionaire on a 50/50 basis.

17. Base Case Financial Model and Revenue Compensation Payments

- 17.1 After the Base Case Financial Model is finalized to take into account the adjustment to the HPTE Capital Payment described above the Concession agreement provides for it to be updated and revised. The Base Case Financial Model is updated annually to reflect the audited historical cash flows for the most recently audited year. This annual update does not include changes in forecast cash flows. The Base Case Financial Model must also be revised to reflect any refinancing.
- 17.2 The Base Case Financial Model is used to agree the financial consequences of a Relevant Event in order to determine whether a Revenue Compensation Payment should be made with the intent that the Revenue Compensation Payment (or payments which may be made to HPTE if an HPTE Change of a Qualifying Change in Law results in a cost saving by the Concessionaire or its sub-contractors) shall have the result that the Concessionaire is in no better and no worse a position as a consequence of the Relevant Event.
- 17.3 The concept of the Concessionaire being in a “no better and no worse position” means that on comparing the output of the Base Case Financial Model before and after the effect of the Relevant Event is taken into account the Concessionaire’s real post-tax actual equity IRR, the minimum and average debt service coverage ratio and the average loan life cover ratio are unchanged, and the ability of the Concessionaire to comply with the Concession Agreement is not adversely affected or improved as a consequence of the Relevant Event.
- 17.4 The Concessionaire and HPTE may agree to make payments to deal with the consequences of a Relevant Event without updating or revising the Base Case Financial Model if they so choose.

18. Cash Flow Sharing

- 18.1 The Concession Agreement contains provisions to allow HPTE to review the Concessionaire’s actual equity IRR and if that IRR exceeds thresholds then a cash flow sharing amount is to be calculated and paid by the Concessionaire to HPTE. The first threshold is when the Concessionaire has earned an actual IRR which equals the Concessionaire’s initial base case IRR, and there are two other thresholds which are 200 basis points and 400 basis points (respective) above that first threshold.

19. Handback

- 19.1 The Concessionaire is required to ensure that the Maintained Elements meet the Residual Life Requirements on the Expiration Date. No later than the first day of the fifth full calendar year before the Expiration Date, the Concessionaire is required to submit a Handback Plan that contains the methodologies and activities to be undertaken or employed to meet the Handback Requirements and a Residual Life Methodology Plan.

19.2 The Concessionaire is also required to engage a Residual Life Expert who will perform inspections and testing of the Maintained Elements. The Residual Life Expert will perform an initial inspection between 60 and 65 months prior to the Expiration Date, an intermediate inspection between 18 and 21 months prior to the Expiration Date and a final inspection between 60 and 120 days prior to the Expiration Date. The Residual Life Expert inspection reports will be submitted to HPTE by the Concessionaire as part of the handback process. After completion of the initial inspection, the Concessionaire will provide to HPTE a report on the condition of the Maintained Elements and a notice setting out a proposal as to the all of the work necessary to ensure that the Maintained Elements will comply with the Handback Requirements on the Expiration Date (the "Renewal Works"), timing for the performance of the Renewal Works and the estimated cost of the Renewal Works (the "Renewal Amount").

19.3 Within six months after agreement or determination of the Renewal Amount, the Concessionaire is required to immediately either pay 20% of the Renewal Amount into an interest bearing account opened by HPTE or provide an irrevocable letter of credit, in form and substance reasonably satisfactory to HPTE for the same amount. The amount in such fund will be reviewed after the intermediate inspection and adjusted, up or down, to take into account any change in the value of the Renewal Amount. If at the Expiration Date, further work is necessary for the Maintained Elements to meet the Handback Requirements then HPTE will give notice to the Concessionaire and, if the Concessionaire does not complete such further work within a period of 45 business days following such notice, HPTE will have the right to draw upon the fund or letter of credit in the amount required to address such failures up to the full amount of the security available.

20. **Termination of the Concession Agreement before the Expiration Date and the financial consequences of early termination**

20.1 Early termination may come about as a consequence of HPTE Voluntary Termination or HPTE Default, Concessionaire Default, Persistent Breach by the Concessionaire, a Prohibited Act or by a Force Majeure Event which has a prolonged effect.

20.2 Voluntary Termination by HPTE.

(a) HPTE may terminate the Concession Agreement at any time on or before the Expiration Date by

(i) a written notice to the Concessionaire stating that the Concession Agreement will terminate on the date which is 40 Business Days after the notice is received; and

(ii) providing to the Concessionaire evidence of its ability to fund the HPTE Default Termination Sum, as such amount may be reduced for certain willful or grossly negligent acts of the Concessionaire to provide accurate information to HPTE which leads HPTE to reasonably believe that it would be required to pay a lesser sum at the Termination Date than it actually is required to pay under the terms of the Concession Agreement, provided that

(b) the amount of HPTE Default Termination Sum can never be less than the Base Senior Debt Termination Amount.

20.3 Termination for HPTE Default.

- (a) The Concessionaire may terminate the Concession Agreement for the following defaults
 - (i) 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;
 - (ii) HPTE fails to pay an undisputed amount in excess of \$375,000 (as adjusted for inflation) within 30 Business Days of service of a formal written demand by the Concessionaire;
 - (iii) a breach or breaches by HPTE of its obligations under the Concession Agreement 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 the Concession Agreement in each case for a continuous period of two months;
 - (iv) a transfer and assignment of HPTE's interests in the Concession Agreement or the Project other than one permitted by the Concession Agreement;
 - (v) a failure to complete the Phase 1 Managed Lanes or the installation of the Phase 1 ETCS by December 31, 2015; or
 - (vi) if the construction of the Phase 1 Managed Lanes or the installation of the Phase 1 ETCS is abandoned by CDOT(each of the foregoing events, an "HPTE Default").
- (b) If an HPTE Default has occurred and the Concessionaire wishes to terminate the Concession Agreement, the Concessionaire must serve a termination notice to HPTE within 30 Business Days of becoming aware of such HPTE Default specifying the type of HPTE Default. The Concession Agreement will terminate 30 Business Days after the date HPTE receives the foregoing termination notice, unless HPTE rectifies the HPTE Default within 30 Business Days of receipt of the termination notice.
- (c) If the Concession Agreement is terminated due to an HPTE Default, HPTE is required to pay to the Concessionaire the HPTE Default Termination Sum, as such amount may be reduced for certain willful or grossly negligent acts of the Concessionaire to provide accurate information to HPTE which lead HPTE to reasonably believe that it would be required to pay a lesser sum at the Termination Date than it actually is required to pay under the terms of the Concession Agreement, provided that the amount of HPTE Default Termination Sum can never be less than the Base Senior Debt Termination Amount.
- (d) The Base Senior Debt Termination Amount means all amounts outstanding at the date of termination of the Concession Agreement in respect of senior debt advanced by senior lenders under the agreements in place at financial close, less

credit balances on bank accounts which are pledged as security for the debt, amounts lawfully recoverable in respect of equity and subordinated debt which has not yet been contributed, and all amounts actually received by the senior lenders on or after the date of termination but before the date on which compensation is paid by HPTE as senior lenders enforcing their rights. The Phase 2 TIFIA Debt Termination Amount has the corresponding meaning in respect of the Phase 2 TIFIA Loan, but deductions taken into account in calculating the Base Senior Debt Termination Amount are not counted as deductions when calculating the Phase 2 TIFAI Debt Termination Amount.

20.4 Concessionaire Default.

- (a) The Concession Agreement provides for a number of defaults by the Concessionaire, subject, in certain cases, to cure periods and limitations specified therein. Such defaults include
 - (i) a breach by the Concessionaire of any of its obligations under the Concession Agreement which materially and adversely affects the performance of the Phase 2 Construction Work and/or the Services;
 - (ii) insolvency of the Concessionaire;
 - (iii) the Concessionaire assigns or otherwise transfers the Concession Agreement in whole or in part without HPTE's prior written consent except for permitted assignments to the Senior Lenders,
 - (iv) the Concessionaire violates change of control provisions of the Concession Agreement with respect to the legal and beneficial ownership of the Concessionaire;
 - (v) abandonment of the Phase 2 Construction Work by the Concessionaire;
 - (vi) violation of certain insurance requirements;
 - (vii) the Concessionaire fails to pay an undisputed amount in excess of \$500,000 (as adjusted for inflation) for a period of 30 Business Days following delivery of a written demand of HPTE;
 - (viii) failure by the Concessionaire to achieve the Full Services Commencement Date by the Full Services Commencement Longstop Date; and
 - (ix) accumulation of uncured or unexpired Noncompliance Points above certain limits.
- (b) If a Concessionaire Default has occurred and HPTE wishes to terminate the Concession Agreement, HPTE must serve a termination notice on the Concessionaire which specifies the type of the Concessionaire Default and the Termination Date which, depending on the type of a Concessionaire Default, ranges from 40 to 20 Business Days after the date the Concessionaire receives the termination notice, provided that Concessionaire Defaults described in clauses

- (i), (iii), (iv), (v) and (vi) above are subject to a cure period and in some cases, the Concessionaire has the right to propose the implementation of a rectification plan.
- (c) If HPTE terminates the Concession Agreement due to a Concessionaire Default, it is required to pay to the Concessionaire a termination compensation amount which is the lower of:
- (i) the Adjusted Estimated Fair Value of the Contract; and
 - (ii) the sum of:
 - 80% of the Phase 2 TIFIA Debt Termination Amount; and
 - 80% of the Base Senior debt Termination Amount attributable to all senior lenders apart from the TIFIA Lender in respect of the Phase 1 TIFIA Loan; and
 - from the time when the Concessionaire is substituted for HPTE as the borrower under the Phase 1 TIFIA Loan, the part of the Base Senior Debt Termination Amount attributable to the TIFIA Lender in respect of the Phase 1 TIFIA Loan.
- (d) The process to determine the Adjusted Estimated Fair Value of the Contract is that
- (i) an independent third-party appraiser is jointly appointed by HPTE and the Concessionaire. Such appraiser is required to determine the Estimated Fair Value of the Contract by written appraisal. If either HPTE or the Concessionaire disagrees with the Estimated Fair Value of the Contract, either party may refer the resolution of the matter under the Dispute Resolution Procedures.
 - (ii) The Estimated Fair Value of the Contract becomes the Adjusted Estimated Fair Value of the Contract after it is reduced by
 - (1) amounts which HPTE is entitled to set off or deduct under the Concession Agreement
 - (2) costs incurred or anticipated to be incurred by HPTE in carrying out the tender process which would be required to realize the Estimated Fair Value of the Contract, and
 - (3) certain credit balances in any bank account held by the Concessionaire and insurance proceeds owing to the Concessionaire (unless the insurance proceeds have been received by HPTE or are in the Joint Insurance Account).

20.5 Termination for Significant Force Majeure Event.

- (a) As soon as practicable following the notification by one Party to the other that it is affected by a Force Majeure Event the Parties shall consult with each other in

good faith and use reasonable endeavors to agree to appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Contract. If no such terms are agreed by 80 Business Days after the date of the commencement of the Force Majeure Event and such Force Majeure Event is continuing or affected Party is unable to comply with its obligations under this Contract for a period of more than one hundred and twenty Business Days, then, subject to HPTE's option to make payments of the project Toll Revenue referred to below, either Party may terminate this Contract by giving twenty (20) Business Days written notice to the other Party.

- (b) If the Concessionaire gives notice to HPTE that it wishes to terminate the Concession Agreement as a consequence of the prolonged Force Majeure Event, then HPTE has the option either to accept such notice or to respond within ten Business Days after the date of its receipt stating that it requires the Concession Agreement to continue. If HPTE requires the Concession Agreement to continue then HPTE must pay to the Concessionaire the estimated Toll Revenues in accordance with the Base Case Financial Model and the Concessionaire must pay all Toll Revenue which it receives to HPTE from the day after the date on which this Contract would have terminated. The Concession Agreement then does not terminate until expiration of written notice of at least twenty Business Days from HPTE to the Concessionaire that it wishes this Contract to terminate.
- (c) If there is a termination for a prolonged Force Majeure Event, or following uninsurability (referred to above) then the Force Majeure termination Sum is payable by as such amount may be reduced for certain willful or grossly negligent acts of the Concessionaire to provide accurate information to HPTE which lead HPTE to reasonably believe that it would be required to pay a lesser sum at the Termination Date than it actually is required to pay under the terms of the Concession Agreement, provided that the amount of HPTE Default Termination Sum can never be less than the Base Senior Debt Termination Amount and the Phase 2 TIFIA Debt Termination Amount.

20.6 Termination for Persistent Breach.

- (a) The Concession Agreement permits termination of the Concession Agreement for persistent breach by the Concessionaire. In particular, if the Concessionaire is in breach of the Concession Agreement (other than any breach for which Noncompliance Points could have been allocated in accordance with the Concession Agreement) for a period of more than 14 days or if the Concessionaire's breach occurred more than three times in any six month period, then HPTE may serve a warning notice to the Concessionaire giving reasonable details of the breach and stating that if it recurs frequently or continues, the breach may result in a termination of the Concession Agreement. If following service of a warning notice the breach continues beyond 30 days or recurred two or more times in the six-month period after the date the warning notice was served, then HPTE may serve a final warning notice to the Concessionaire stating, among other required things, that if the breach continues or recurs for more than 14 days or recurs two or more times within the six-month period after the date of service of such notice, the Concession Agreement may terminate. If the circumstances

described in the final warning notice occur, the Concession Agreement will terminate on the date falling ten Business Days after the date of notification of the Concessionaire of such failure to comply.

- (b) If the Concession Agreement is terminated by HPTE for Persistent Default by the Concessionaire, the Concessionaire will be entitled to compensation pursuant to the same provisions which apply in the event of termination for Concessionaire's Default.

20.7 Termination for Commission of Prohibited Act.

- (a) HPTE may terminate the Concession Agreement upon notice if the Concessionaire or its employee or a sub-contractor or its employee (whether or not acting independently of the Concessionaire) commit a Prohibited Act by giving notice to the Concessionaire of termination and the Concession Agreement will terminate (and designating the termination date) unless within 20 Business Days of receipt of such notice the Concessionaire terminates the employee's employment or the Project Agreement, as applicable and (if necessary) the Concessionaire or the sub-contractor, as applicable, thereafter procures the performance of such part of the Phase 2 Construction Work and/or Services by another person.
- (b) Upon termination of the Concession Agreement for such reasons, HPTE is required to pay to the Concessionaire an amount equal to the sum of the Base Senior Debt Termination Amount and the Phase 2 TIFIA Debt Termination Amount (in each case with interest) which amount is payable on the date falling on 40 Business Days after the later of the Termination Date or the date when the adjusted Estimated Fair Value of the Contract is agreed between the parties.

20.8 HPTE is required to pay the Termination Sum (together with interest) on the date falling 40 Business Days after the date on which the Adjusted Estimated Fair Value of the Contract has been determined in accordance with the Concession Agreement, provided that (except in the case of HPTE Default and HPTE voluntary termination) HPTE may defer payment of all or part of the Termination Sum for an additional 270 days if it, in consultation with CDOT, reasonably determines that such additional period is necessary in order to obtain funds to pay such amount.

21. **Governing Law**

The law of the State of Colorado is applied to the Contract, and the venue for any arbitration proceeding shall be Denver, Colorado and the venue for any legal action shall lie in the District Court in and for the City and County of Denver.

22. **Dispute Resolution**

22.1 Disputes arising out of or connected with the performance of the Phase 2 Work is subject to a dispute resolution process based on CDOT's standard procedures, which involves extensive structured discussions of the dispute, and (depending on the size of the dispute) may involve reference to a "dispute review board" for a recommendation before the dispute, if it is still not resolved, may be submitted to merit binding arbitration.

- 22.2 Disputes which are not connected with the performance of the Phase 2 Work are to be resolved by a process which involves:
- (a) a meeting of senior management of the Concessionaire and HPTE;
 - (b) a reference to an Independent Expert, whose decision is binding on the Parties unless they refer it to merit binding arbitration;
 - (c) a reference to merit binding arbitration which may be made by either party within ninety days after receipt of the Independent Expert's decision.
- 22.3 Any merit binding arbitration is to be carried out in accordance with a modified version of the American Arbitration Association's Construction Industry Arbitration Rules.

**LIST OF DEFINED TERMS CONTAINED IN
“SUMMARY OF CERTAIN PROVISIONS OF THE CONCESSION AGREEMENT”**

“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.

“Accept,” “Acceptance” and **“Accepted”** shall be construed in accordance with the Concession Agreement.

“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.

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

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

“Affiliate” means in relation to any Person:

Any other having Control of that Person; or

Any other over whom that Person has Control; and/or

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 the Concession Agreement.

“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:

Any land or buildings;

Any plant, machinery or equipment;

Any books and records (including operating and maintenance manuals, health and safety manuals, as built drawings and other know how);

Any spare parts, tools and other assets (together with any warranties in respect of assets being transferred);

Any revenues and any other contractual rights apart from Toll Revenues which are not within this definition of Assets;

Node 2 Building, the 70th Avenue Maintenance Facility Sand Dome, and the Magnesium Chloride Storage;

Any Intellectual Property; and

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 the Concession Agreement.

“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 Schedule 25 to the Concession Agreement.

“Bus Delay Event” means a failure by RTD Buses to meet certain performance goals set for them during Peak Period.

“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.

“CDOT” means the Colorado Department of Transportation.

“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:

The costs of continued employment of, or making redundant, staff who are no longer required;

The costs of employing additional staff;

Reasonable professional fees;

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;

The effects on implementation of any insurance reinstatement in accordance with the Concession Agreement, including any adverse effect on the insurance proceeds payable to the Concessionaire and any extension of the period required for implementation;

Operating costs, life cycle, maintenance or replacement costs;

Capital Expenditure;

The costs required to ensure continued compliance with the Funding Agreements;

Any deductible or increase in the level of deductible, or any increase in premium under or in respect of any insurance policy;

Losses, including reasonable legal expenses; and

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 the special condition provision in the Concession Agreement, 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:
- (x) **Profit in excess of that provided in A above;**
 - (xi) **Loss of profit;**

- (xii) **Additional cost of labor inefficiencies in excess of that provided in A above;**
- (xiii) **Home office overhead in excess of that provided in A above;**
- (xiv) **Consequential damages, including but not limited to loss of bonding capacity, loss of bidding opportunities, and Insolvency; and**
- (xv) **costs or expenses of any nature in excess of that provided in A above.**

“Change in Law” means the coming into effect of:

- (I) **Any Law enacted after the Contract Date;**

Change after the Contract Date in the judicial interpretation of any Law; or

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 Procedure” means the protocol for changes set out in the Concession Agreement.

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

“Collateral Agent” 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 and the TIFIA Lender.

“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 the Concession Agreement 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 breach by HPTE of any provision of the Concession Agreement;

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;**

the lack of availability of the Site in certain circumstances described in the Concession Agreement;

the exercise by HPTE of a right to open up work which does not reveal defective work;

subject to the provisions of the Concession Agreement, a delay in acceptance of the Phase 1 Design-Build Contract and the Phase 1 ETCS beyond June 30, 2015;

a Phase 1 Latent Defect;

the deferral of a non-separable task;

the deferral of non-separable reinstatement work;

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);

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 a specified level of internal rate of return;

the construction and operation of an Unplanned Revenue Impacting Facility;

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;

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;

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

any other matter which the Concession Agreement 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” means the US 36 Concession Agreement dated June 27, 2013 and executed by HPTE, the Concessionaire and the State Controller.

“Concessionaire” means Plenary Roads Denver LLC, a Colorado limited liability company.

“Concessionaire Change” means a change proposed by the Concessionaire by submitting a notice to HPTE.

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

a breach by the Concessionaire of any of its obligations under the Concession Agreement which materially and adversely affects the performance of the Phase 2 Work and/or the Services;

Insolvency of the Concessionaire;

the Concessionaire assigns or otherwise transfers the Concession Agreement in whole or in part without HPTE’s prior written consent except for permitted assignments to the Senior Lenders;

the Concessionaire violates change of control provisions of the Concession Agreement with respect to the legal and beneficial ownership of the Concessionaire;

abandonment of the Phase 2 Work by the Concessionaire;

violation of certain insurance requirements;

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;

failure by the Concessionaire to achieve the Full Services Commencement Date by the Full Services Commencement Longstop Date; and

accumulation of uncured or unexpired Noncompliance Points above certain limits.

“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's Phase 2 Construction Work Proposals" means the Concessionaire's proposals to satisfy the HPTE Phase 2 Construction Work Requirements, as set out in the Concession Agreement.

"Concessionaire's Phase 2 ETCS Proposals" means the Concessionaire's Proposals to satisfy the HPTE Phase 2 ETCS Requirements, as set out in the Concession Agreement.

"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 Service Proposals" means the Concessionaire's proposals to satisfy HPTE's Service Requirements, as set out in the Concession Agreement.

"Concessionaire's Snow and Ice Control Services Proposals" means the proposals of the Concessionaire, as set out in the Concession Agreement.

"Conditions Precedent to the Commencement Date" means those conditions set out in the Concession Agreement.

"Conditions Precedent to the Full Services Commencement Date" means those conditions set out in the schedule to the Concession Agreement related to Snow and Ice Control Service Requirements.

"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 the Concession Agreement.

"Construction Sub-Contract Price Payment" means a payment by the Concessionaire of a part of the Contract Price, 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 the Concession Agreement 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 the Concession Agreement.

"Contract" means the Concession Agreement.

"Contract Date" means June 27, 2013.

“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.

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

Holds the majority of voting rights in the person;

Has the right to appoint the majority of the board of directors (or equivalent) of that person; or

Exercises direct or indirect control over that person’s affairs.

“DBE” means CDOT’s Design-Build Disadvantaged Business Enterprise.

“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” means the drawings necessary for the carrying out and completion of the Phase 2 Construction Work, such drawings to comply with the requirements of HPTE and the Necessary Consents.

“Differing Site Conditions” shall mean:

Subsurface or latent conditions encountered at the exact boring holes identified in the geotechnical reports included in list of reference documents in the Concession Agreement which differ materially from those conditions indicated in the geotechnical reports for such boring holes;

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

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:

Utility facilities;

Hazardous Substances; and

Any conditions which constitute or are caused by a Force Majeure Event or a Relief Event.

“Disclosed Data” means the materials, documents and data related to the Project and the Site and the Managed Lanes, including, without limitation, the Reference Documents, and other documents

which were placed on an intranet site during the procurement process and have been either copied onto a CD initialed by the Parties, or certified as received by the Parties.

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

the Project and not to similar projects;

the Concessionaire and not to other persons; and/or

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 the Concession Agreement.

“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 the schedule to the Concession Agreement relating to tolling and civil penalty provisions.

“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.

“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.

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

“ESB” means an Emerging Small Business.

“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” means a Proposed Toll and Penalty Schedule which is established by HPTE in accordance with the schedule to the Concession Agreement relating to tolling and civil penalty provisions.

“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.

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

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

“Financial Close” means the event when all of the conditions set out in the schedule to the Concession Agreement outlining the conditions for financial close have been fulfilled.

“Financial Close Deadline Date” means December 20, 2013 or such other date as may be fixed by HPTE in accordance with the Concession Agreement.

“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).

“First Notice to Proceed” means a written notice issued by HPTE permitting the Concessionaire to commence certain activities in accordance with the Concession Agreement.

“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 the Concession Agreement 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. An event is not a Force Majeure Event if such event is otherwise specifically dealt with in the Concession Agreement or is, or arises by reason of:

A Compensation Event;

A Relief Event;

A lack of or insufficiency of funds or failure to make payment of monies or to provide security required by the Concession Agreement;

Any:

- (i) Official or unofficial strike;**
- (ii) Lockout;**
- (iii) Go-slow;**
- (iv) Other labor dispute;**

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” shall be \$675,000.00.

“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, as set out in the schedule to the Concession Agreement relating to HPTE service requirements.

“GP Snow and Ice Control Services Fee” means \$458,348.00 per year for the performance of the Snow and Ice Control Services solely with respect to the US 36 General Purpose Lanes as specified in the Concession Agreement.

“Handback Plan” means the Concessionaire’s plan containing the methodologies and activities to be undertaken or employed to meet the Handback Requirements and obtain Acceptance from HPTE in accordance with the Concession Agreement.

“Handback Requirements” means those requirements, as set out in the handback requirements schedule to the Concession Agreement.

“Hazardous Substances” means any of the following:

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;

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;

Petroleum or crude oil excluding de minimis amounts and excluding petroleum and petroleum products contained within regularly operated motor vehicles; and

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).

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

“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.

“HOV Change Event” means the earlier 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;
- (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.

"HPTE" means Colorado High Performance Transportation Enterprise, a government owned business and a division of CDOT.

"HPTE Capital Payment" means the amount of \$44,650,000.00.

"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 the Concession Agreement.

"HPTE Default" means one of the following events:

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 the Concession Agreement;

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 the Concession Agreement 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

a breach or breaches by HPTE of its obligations under the Concession Agreement 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 the Concession Agreement in each case for a continuous period of two (2) Months;

a transfer and assignment of HPTE's interests in the Concession Agreement or the Project other than a transfer or assignment to any other public agency or public entity of the State as required by Law, including any successor entity or organization created by Law, including by operation of law provided that:

- (i) the successor or assignee has assumed all of HPTE's, duties and liabilities pursuant to the Concession Agreement; and**
- (ii) the successor or assignee has provided the Concessionaire with an unqualified legal opinion setting forth the unconditional legal authority of such entity to assume and perform all of HPTE's obligations as set**

forth in the Concession Agreement and with evidence of such entity's sufficient financial resources to honor and perform the same.

a failure to complete the Phase 1 Managed Lanes or the installation of the Phase 1 ETCS by December 31 2015; and

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:

On the Site before the Commencement Date;

On the I-25 Managed Lanes before the Commencement Date;

On the Phase 1 Managed Lanes before the Phase 1 Services Commencement Date; or

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;

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

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 the Concession Agreement.

"HPTE Phase 2 ETCS Requirements" means the requirements of HPTE set out in the Concession Agreement.

"HPTE Phase 2 Work Requirements" means HPTE Phase 2 Construction Work Requirements and HPTE Phase 2 ETCS Requirements.

"HPTE Related Party" means any of the following:

CDOT;

The State;

An officer, employee or agent of HPTE, or of CDOT or of the State acting in that capacity; or

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 the Concession Agreement.

“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 the Concession Agreement.

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

“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 Schedule 5 to the Concession Agreement.

“I-25 Managed Lanes” means:

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:

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;

the I-25 Bridge Substructures,

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 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 Preventative Maintenance Program" means that program of activities in relation to the I-25 Bridge Deck Superstructure, as specified in the Concession Agreement;

"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" means HPTE, and CDOT, and for RTD in its capacity as a Project participant, but not consequent to RTD's normal course of transit operations, and each of their respective agents and consultants, respective successors and assigns and respective shareholders, officers, directors, agents and employees.

"Independent Expert" means the independent expert appointed to resolve Services Disputes in accordance with the provisions related to services disputes in the Concession Agreement.

"Insolvency" means:

The Concessionaire

admits, in writing, that it is unable to pay its debts as such become due,

makes an assignment for the benefit of creditors,

files a voluntary petition under Title 11 of the United States Code,

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,

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

takes any corporate action in furtherance of any action described in this paragraph (a);

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;

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;

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

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 the insurance requirements provided in the Concession Agreement.

"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.

"Interim Capital Payment" means a payment on account of the HPTE Capital Payment to be made to the Concessionaire by HPTE pursuant to the Concession Agreement.

"Interim Capital Payment Cap" means the amount defined to be the Interim Capital Payment Cap from time to time in accordance with the Concession Agreement.

"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.

"Law" means:

Any laws, regulations, or any other regulatory or legal requirement which is valid and generally binding in Colorado;

Relevant internal rules or regulations, guidelines, methodologies or other regulations that are binding on HPTE or the Concessionaire;

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.

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:

Any Element, or an individual structure or Asset; or

In relation to the road pavement and sub-structure, where a part of:

The pavement; or

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.

“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 the schedule to the Concession Agreement related to HPTE service requirements.

“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.

“Major Maintenance Reserve Account” the Account of Concessionaire created pursuant to and designated as such in the MSA.

“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 the Concession Agreement.

“Managed Lanes Goals” means the set of objectives relating to Motor Vehicle speeds during Peak Periods only, the achievement of which is aided by the design of the Established Toll and Penalty Schedules.

“Maximum Toll” means the amount specified in the schedule to the Concession Agreement related to tolling and civil penalty provisions, as the maximum Toll which may be charged to Tolloed Vehicles pursuant to the Concession Agreement subject to the right to exceed that amount in order to comply with the other requirements of the tolling and civil penalty provisions of the Concession Agreement.

“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 the Concession Agreement.

“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.

“Noncompliance Points” means the points of that description which may be allocated in accordance with noncompliance points system schedule to the Concession Agreement.

“Non-Separable Price Percentage” means:

In respect of Non-Separable Tasks in relation to the US 36 Managed Lanes and the US 36 General Purpose Lanes 64.7 %;

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 Task” means a task comprising Life Cycle Maintenance

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

which is within the I-25 Preventative Maintenance Program.

“Non-Tolled Vehicles” means those Motor Vehicles described in the tolling and civil penalty provisions in the Concession Agreement.

“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 following a final inspection by HPTE within 5 Business Days after HPTE’s receipt of the Affidavit of Phase 2 Work Completion.

“NTP1” means the First Notice to Proceed.

“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 the Concession Agreement.

“Operation 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.

“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 the Concession Agreement and the **“owner”** referred to in that definition is HPTE and/or CDOT;

“Parties” means HPTE and the Concessionaire.

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

**Buses, trucks, and other heavy Motor Vehicles (other than recreational vehicles): 3.0
Passenger Car Equivalents;**

Recreational Motor Vehicles: 2.0 Passenger Car Equivalents;

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:

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;

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;

“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 Construction Work” means the work completed pursuant to the Phase 1 Design-Build 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 the Concession Agreement.

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

“Phase 1 GP Lanes” means:

For the purpose of the work being carried out under the Phase 1 Design-Build Contract the general purpose lanes to be constructed under the Phase 1 Design-Build Contract;

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;

For the purpose of the performance of the Snow and Ice Control Services means the general purpose lanes and the BOS Corridors 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 Design-Build Contract and the Phase 1 ETCS under the Phase 1 ETCS Installation Contract pursuant to Section 23.

“Phase 1 Managed Lanes” means:

For the purpose of the work being carried out under the Phase 1 Design-Build Contract, means the managed lanes to be constructed under the Phase 1 Design-Build Contract;

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

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 Services Commencement Date” means the later of the date of Final Acceptance under the Phase 1 Design-Build 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 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 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 the Concession Agreement.

“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

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;

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

For the purpose of the performance of the Snow and Ice Control Services means the general purpose lanes and the BOS Corridors on US 36 described at Section 2 of the HPTE Snow and Ice Control Services Requirements,

“Phase 2 Managed Lanes” means

For the purpose of all matters pertaining to the Phase 2 Work the Managed Lanes within the scope of the Phase 2 Construction Work;

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

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.

“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:

making a false, fictitious, or fraudulent claim, statement, submission, or certification;

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:

for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of the Concession Agreement or any other contract with HPTE, the Federal Government, the State, or any division, subdivision or agency of the either of them; or

for showing or not showing favor or disfavor to any Person in relation to the Concession Agreement or any other contract with HPTE, the Federal Government or the State or any division, subdivision or agency of either of them;

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 the Concession Agreement by the Concessionaire which was not disclosed to HPTE before the Contract Date;

entering into the Concession Agreement 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 the Concession Agreement 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

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 the Concession Agreement.

“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” means a toll and penalty schedule for the Managed Lanes initially proposed by the Concessionaire and submitted to HPTE and from time to time thereafter amendments to the Established Proposed Toll and Penalty Schedule which are submitted to HPTE by the Concessionaire.

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

“Qualifying Change in Law” means:

A Discriminatory Change in Law; and/or

A Specific Change in Law;

provided, however, that any assignment by HPTE in accordance with the Concession Agreement shall not be considered a Qualifying Change in Law.

“Reference Documents” means those documents listed in the list of reference documents in the Concession Agreement.

“Reinstatement Work” means those works to be carried out on the part of the Concessionaire which are necessary to repair, reinstate or replace the assets which are the subject of a relevant claim or claims.

“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 the Concession Agreement.

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

“Relevant Incident” means a single event (or a series of related events) pursuant to which a claim is made or proceeds of insurance are received or are receivable under a policy for physical damage.

“Relief Event” means:

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;

A Utility Delay to the extent permitted by the Concession Agreement;

Any unforeseeable accidental loss or damage to the Phase 2 Work, the Managed Lanes or the US 36 General Purpose Lanes;

Any failure or shortage of power, fuel or transport in the Denver metropolitan area;

Any blockade or embargo which directly impacts the Project but which does not constitute a Force Majeure Event;

Any:

Official or unofficial strike;

Lockout;

Go-slow; or

Other labor dispute;

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

Any temporary restraining order or injunction by the court prohibiting the construction of the Project;

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;

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;

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

in relation to the Phase 2 Work, but not in relation to the Services, if a Utility is not indicated with Reasonable Accuracy, where Reasonable Accuracy means”

The Utility’s actual centerline location is within 10 feet of the horizontal centerline location indicated in the Utility Data (with no limitation on vertical location); and

The Utility’s actual size is within 12 inches of the size indicated in the Utility Data;

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 the Concession Agreement 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.

“Requested Relocations” means a relocation of a Utility pursuant to the schedule to the Concession Agreement related to utilities and access requested by the Utility Owner.

“Required Insurances” means the insurances specified in the schedule to the Concession Agreement related to utilities and access.

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

“Residual Life Expert” means an independent expert (not being an employee of the Concessionaire) who is suitably qualified to perform Residual Life inspections and testing with appropriate coverage such that the results are representative of all the Maintained Elements.

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

“Residual Life Requirements” means the required duration of the Residual Life of Maintained Elements specified in the schedule to the Concession Agreement related to Handback Requirements.

“Revenue Compensation Payment” means a payment of to be made by HPTE to the Concessionaire to compensate the Concessionaire for lost Toll Revenue and/or expenses following a Relevant Event pursuant to the schedule to the Concession Agreement related to base case financial model.

“RFP” means the Request for Proposals for the Project issued by HPTE, dated December 14, 2012, as modified by the Concession Agreement.

“Routine Maintenance” means:

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;

drainage clearance of the drains associated with the I-25 Managed Lanes;

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 the Concession Agreement.

“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.

“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 the Concession Agreement which are necessary to comply with the HPTE Service Requirements and the other provisions of the Concession Agreement, 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 the Concession Agreement 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 the Concession Agreement.

“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” means one or more escrows to be established by HPTE and the Concessionaire on terms and conditions reasonably acceptable to HPTE and to the Concessionaire into which the Source Code and Source Code Documentation in relation to the operation and maintenance of the I-25 Managed Lanes, the Phase 1 Managed Lanes and the Managed Lanes as an integrated system (as the case may be) will be escrowed.

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

The provision of any services the same as or similar to any of the services to be provided under the Concession Agreement; or

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 the Concession Agreement; or

To the holding of shares in companies whose main business is

Providing services the same as or similar to the any of the services to be provided under the Concession Agreement;

The construction operation and maintenance of highways; or

Charging tolls for the use of highways.

“State” means the State of Colorado.

“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 the Concession Agreement 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 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.

“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.

“Termination Date” means any date of early termination of the Concession Agreement in accordance with Part 11 of the Concession Agreement.

“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 the Concession Agreement for the use of the Managed Lanes.

“Tolled Vehicles” means Motor Vehicles that are not expressly described as **“Non-Tolled Vehicles”** in the Concession Agreement.

“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 the Concession Agreement, 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.

“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.

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

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

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:

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;

All elements of the Combined Alternative Package (Preferred Alternative) described in the October 2009 US 36 Final Environmental Impact Study;

All work and improvements necessary for improved safety, maintenance or operational purposes;

Work, on any highway project required by environmental regulatory agencies;

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;

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;

The introduction of tolled managed lanes on I-25 north of its junction with US 36;

The introduction of tolled managed lanes on I-270; and

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.

“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 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 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 Work” means the work to be performed by the Concessionaire pursuant to the Concession Agreement.

“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 the Concession Agreement.

“Vehicle Recognition System” means an electronic, automated system enabling the ETCS to recognize the Motor Vehicle by means other than imagery, including Transponders.

“Year” means a period of twelve months commencing on July 1, provided that:

The first Year shall be the period commencing on the Commencement Date and ending on the immediately following June 30; and

The final Year shall be the period commencing on July 1 immediately preceding the last day of the Contract Period and ending on that last day of the Contract Period.