

In the opinion of Kutak Rock LLP, Bond Counsel to the Issuer, under existing laws, regulations, rulings and judicial decisions and assuming the accuracy of certain representations and continuing compliance with certain covenants, interest on the 2014 Bonds is excluded from gross income for federal income tax purposes, except for interest on any 2014 Bond for any period during which such 2014 Bond is held by a “substantial user” of the facilities financed or refinanced by the 2014 Bonds, or a “related person” within the meaning of Section 147(a) of the Internal Revenue Code of 1986, as amended. Bond Counsel is further of the opinion that interest on the 2014 Bonds is a specific preference item for purposes of the federal alternative minimum tax. Bond Counsel is also of the opinion that, under existing State of Colorado statutes, the 2014 Bonds and the transfer of and the income from the 2014 Bonds is exempt from all taxation and assessments in the State of Colorado. See “TAX MATTERS” herein.



\$20,360,000
COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE
U.S. 36 and I-25 Managed Lanes
Senior Revenue Bonds Series 2014

Dated: Date of Delivery

Due: January 1, 2044

The Colorado High Performance Transportation Enterprise U.S. 36 and I-25 Managed Lanes Senior Revenue Bonds Series 2014 (the “2014 Bonds”) are being issued by the Colorado High Performance Transportation Enterprise (“HPTE”) and, in the capacity as issuer of the 2014 Bonds, the “Issuer”, a government-owned business within and a division of the Colorado Department of Transportation (“CDOT”) pursuant to a Trust Indenture to be dated the Closing Date (the “Indenture”) between the Issuer and The Bank of New York Mellon Trust Company, N.A., as trustee (the “Bond Trustee”). The proceeds of the 2014 Bonds will be loaned by the Issuer to Plenary Roads Finco LP (“Borrower Finco”) pursuant to a Loan Agreement to be dated the Closing Date (the “Bond Proceeds Loan Agreement”) and will be made available to Plenary Roads Denver LLC (the “Concessionaire”) pursuant to a series of intercompany loan agreements to pay a portion of the costs of the Phase 2 Construction Project described below and to pay a portion of the costs of issuing the 2014 Bonds. *Capitalized terms used and not defined on this cover have the respective meanings assigned to them elsewhere in this Official Statement and in APPENDIX A hereto.*

The “Phase 2 Construction Project” is located in the suburbs of Denver, Colorado and consists generally of: (i) the design and construction of a new managed lane in each direction (the “Phase 2 Managed Lanes”) on an approximately 5.1 mile section of U.S. 36 between 88th Street in Louisville, Colorado and Table Mesa Drive in Boulder, Colorado (the “Phase 2 Corridor”) and the widening and pavement replacement of the general purpose lanes on the Phase 2 Corridor (the “Phase 2 GP Lanes”); (ii) the design and construction of Bus Rapid Transit improvements along the Phase 2 Corridor; (iii) the design and construction of other improvements to the Phase 2 Corridor, including sound and retaining walls, bikeways, dynamic messaging signs and Intelligent System Improvements; and (iv) the installation and commissioning of an electronic toll collection system. The Concessionaire will provide notice to HPTE upon the completion of the Phase 2 Construction Project (the “Full Services Commencement Date”). The Full Services Commencement Date is currently expected to occur by December 31, 2015 (as such date may be changed by HPTE and the Concessionaire in accordance with the Concession Agreement, the “Planned Full Services Commencement Date”).

CDOT and HPTE are currently undertaking a separate project that consists of constructing a new managed lane in each direction (the “Phase 1 Managed Lanes”) on an approximately 10 mile section of U.S. 36 from Pecos Street in Denver to 88th Street in Louisville (the “Phase 1 Project”). The western terminus of the Phase 1 Project connects directly to the eastern terminus of the Phase 2 Construction Project.

HPTE currently operates and maintains the I-25 Express Toll Lanes (the “I-25 Managed Lanes”), which consist of two reversible toll lanes on an approximately 7.7 mile section of U.S. 36 and I-25 between Downtown Denver and Pecos Street. The I-25 Managed Lanes, the Phase 1 Managed Lanes and the Phase 2 Managed Lanes are referred to collectively as the “Managed Lanes.”

The Concessionaire will also undertake the “Operations Project,” which consists of (i) the operations and maintenance of the Managed Lanes, the I-25 Shared Bridge Decks, the Phase 1 GP Lanes and the Phase 2 GP Lanes; (ii) the collection of Toll Revenues from the Managed Lanes; and (iii) the operation and maintenance of the electronic toll collection system. The Operations Project will commence in phases as described herein. See “OPERATIONS PROJECT.”

The Phase 2 Construction Project and the Operations Project are being undertaken by the Concessionaire pursuant to a Concession Agreement for U.S. 36 and I-25 Managed Lanes dated June 27, 2013, as previously amended and as expected to be amended and restated prior to the Closing Date (collectively, the “Concession Agreement”) between HPTE and the Concessionaire. Unless terminated earlier in accordance with its terms, the term of the Concession Agreement will end on the 50th anniversary of the Planned Full Services Commencement Date.

In addition to the proceeds of the 2014 Bonds, the Phase 2 Construction Project costs will be financed from funds to be provided by HPTE under the Concession Agreement, from capital contributions to be made by Plenary Group USA Concessions Ltd., a loan (the “Phase 2 TIFIA Loan”) to be made to Borrower Finco by the U.S. Department of Transportation, acting by and through the Federal Highway Administrator (the “TIFIA Lender”) pursuant to a Loan Agreement to be dated prior to the Closing Date (the “Effective Date”), the proceeds of which will be made available to the Concessionaire pursuant to a series of intercompany loan agreements, and a subordinated loan (the “Subordinated Loan”) to be made to Borrower Finco by Northleaf/PRD LenderCo LP (the “Subordinated Lender”) pursuant to a Credit Agreement to be dated the Effective Date, the proceeds of which will be made available to the Concessionaire pursuant to a series of intercompany loan agreements. The Borrower Finco’s obligations to repay the Phase 2 TIFIA Loan will be subordinate to the Borrower Finco’s payment obligations in connection with the 2014 Bonds as described herein, except in the case of a TIFIA Parity Trigger Event (e.g., in circumstances of a bankruptcy, insolvency or liquidation (either voluntary or involuntary) of a Borrower Group Member, and in other circumstances described herein), in which case the lien securing the Phase 2 TIFIA Loan will be on parity with the lien securing the 2014 Bonds and the Phase 1 TIFIA Loan. Borrower Finco’s obligations to repay the Subordinated Loan will be subordinated at all times to its obligations to repay the 2014 Bonds, the Phase 1 TIFIA Loan (after the Phase 1 Assumption Date) and the Phase 2 TIFIA Loan.

A portion of the Phase 1 Project costs were financed with a loan (the “Phase 1 TIFIA Loan”) from the TIFIA Lender to HPTE. Upon the satisfaction of certain conditions precedent described herein, on the Phase 1 Assumption Date, Borrower Finco will assume all of the rights and obligations of HPTE, as borrower under the Phase 1 TIFIA Loan, and thereafter, the Phase 1 TIFIA Loan will be secured as senior debt of Borrower Finco on an equal and ratable basis with the 2014 Bonds. However, if the conditions precedent to the Phase 1 Assumption Date are not met, under certain circumstances, HPTE may terminate the Concession Agreement, which would constitute an Indenture Event of Default. The Termination Compensation paid to the Concessionaire by HPTE as a result of such termination may not be sufficient to pay all outstanding principal and accrued interest due on the 2014 Bonds. See “PLAN OF FINANCE” and “PHASE 1 PROJECT – Assumption of Phase 1 TIFIA Loan.”

The 2014 Bonds and any Additional Senior Bonds will be payable solely from the Trust Estate established under the Indenture and secured by a lien on the Trust Estate, which will include, among other things, loan payments to be made by Borrower Finco under the Bond Proceeds Loan Agreement, and certain collateral held by The Bank of New York Mellon, as Security Trustee (the “Security Trustee”), pursuant to a Master Security Agreement, to be dated the Effective Date (the “MSA”), among the Issuer, the Concessionaire, Borrower Finco, Plenary Roads Finco ULC (“Finco 1”), Plenary Denver Finco, LLC (“Finco 2”) and, together with Borrower Finco and Finco 1, the “Intercompany Loan Subsidiaries”), the Bond Trustee, the TIFIA Lender, the Subordinated Lender, the Subordinated Agent, the Security Trustee, The Bank of New York Mellon, as Intercreditor Agent and such other parties as accede thereto from time to time as Secured Parties in accordance with the terms thereof. The Concessionaire and each of the Intercompany Loan Subsidiaries will pledge and grant to the Security Trustee a security interest in and lien on the collateral, which is comprised of (i) all of the Concessionaire’s and each Intercompany Loan Subsidiary’s personal property, including all Toll Revenues and other revenues generated from the Project, the Concessionaire’s rights under the Concession Agreement, the Concessionaire’s and each Intercompany Loan Subsidiary’s rights under any agreements and contracts to which the Concessionaire or an Intercompany Loan Subsidiary is a party or of which it is a beneficiary, and each Intercompany Loan Subsidiary’s rights to receive distributions, all subject to the MSA; (ii) all moneys held by the Security Trustee in certain accounts created under the MSA; (iii) a pledge by each Intercompany Loan Subsidiary of its membership interests in another Intercompany Loan Subsidiary; and (iv) all receivables owed to either the Concessionaire or an Intercompany Loan Subsidiary. See “SECURITY AND SOURCES OF PAYMENT FOR 2014 BONDS.”

The 2014 Bonds are being issued in book-entry-only form and will be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York (“DTC”). The payment of the principal of, interest on or premium, if any, on the 2014 Bonds will be made by the Bond Trustee directly to Cede & Co., as nominee for DTC, as the registered owner of the 2014 Bonds, to be subsequently disbursed to Direct Participants and thereafter to Beneficial Owners of the 2014 Bonds, as described herein. Purchasers of the 2014 Bonds will not receive physical delivery of certificates representing their ownership interests in the 2014 Bonds. See APPENDIX K.

The 2014 Bonds are being issued as fully registered bonds in denominations of \$5,000 and integral multiples thereof. The 2014 Bonds mature and bear interest at the fixed rate as shown on the inside front cover, payable semi-annually on January 1 and July 1 of each year, commencing July 1, 2014. The 2014 Bonds are subject to optional redemption (or purchase in lieu thereof), mandatory sinking fund redemption and extraordinary mandatory redemption prior to their applicable final maturity, as described herein. See “DESCRIPTION OF THE 2014 BONDS.”

The 2014 Bonds are special, limited obligations of the Issuer, payable solely from and secured by the Trust Estate. The 2014 Bonds do not constitute an obligation, moral or otherwise, of CDOT or the State of Colorado (the “State”), any other agency, instrumentality or political subdivision of the State, or any official, board member, director, officer, employee, agent or representative of any of the foregoing, and neither the full faith and credit of the Issuer, CDOT or the State nor the taxing power of the State or any other agency, instrumentality or political subdivision of the State is pledged to the payment of the principal of and interest or premium, if any, on the 2014 Bonds. The Owners of the 2014 Bonds may not look to any revenues of the Issuer, CDOT or the State for repayment of the 2014 Bonds and the only source of repayment of the 2014 Bonds is the Trust Estate. The payment of the 2014 Bonds shall not be secured by any encumbrance, mortgage, or other pledge of property of the Issuer, CDOT or the State, other than the Trust Estate. The Issuer has no taxing powers.

Investing in the 2014 Bonds is subject to numerous risks, including those described in “CERTAIN RISK FACTORS” and may not be suitable for all investors.

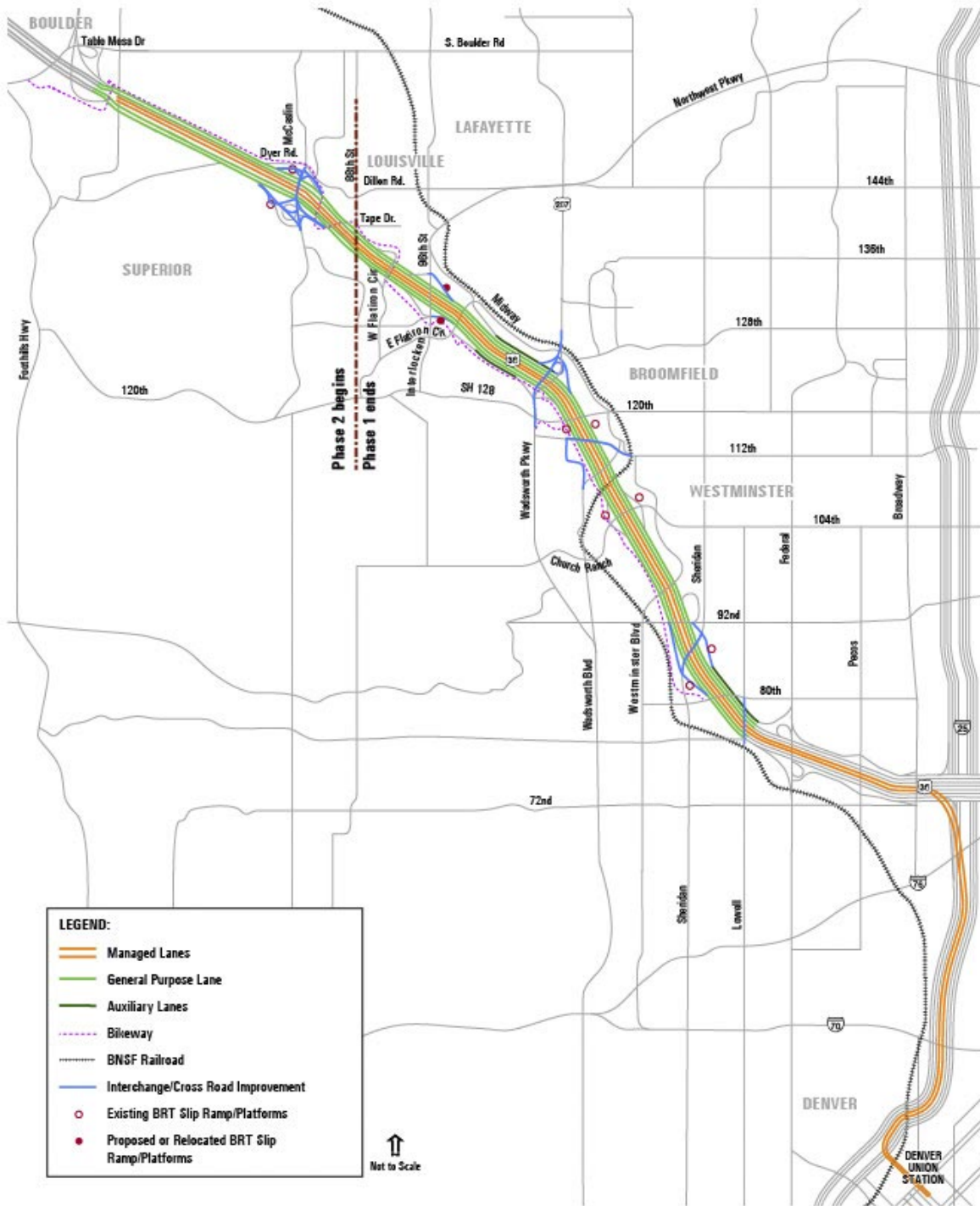
The 2014 Bonds are offered, when, as and if issued by the Issuer and accepted by the Underwriter and subject to approval of legality and certain other matters by Kutak Rock LLP, Denver, Colorado, as Bond Counsel to the Issuer. Certain legal matters will be passed upon for the Concessionaire and the Intercompany Loan Subsidiaries by their counsel, Fasken Martineau DuMoulin LLP, Toronto, Canada, Thompson Coburn LLP, Los Angeles, California, Spencer Fane Britt & Browne LLP, Denver, Colorado, Mayer Brown LLP, Chicago, Illinois, and Gowling Lafleur Henderson LLP, Vancouver, Canada, for the Underwriter by its counsel, Ballard Spahr LLP, Denver, Colorado, and for the Issuer and HPTE by Hogan Lovells US LLP, Denver, Colorado and the Colorado State Attorney General’s office. It is expected that the 2014 Bonds will be available for delivery through the facilities of DTC on or about February 26, 2014.

Goldman, Sachs & Co.

\$20,360,000
Colorado High Performance Transportation Enterprise
U.S. 36 and I-25 Managed Lanes
Senior Revenue Bonds Series 2014

| <u>Maturity Date</u> <u>(January 1)</u> | <u>Principal</u> <u>Amount</u> | <u>Interest</u> <u>Rate</u> | <u>Yield</u> | <u>CUSIP*</u> |
|--|-----------------------------------|--------------------------------|--------------|---------------|
| 2044 | \$20,360,000 | 5.750% | 5.875% | 19648DAA7 |

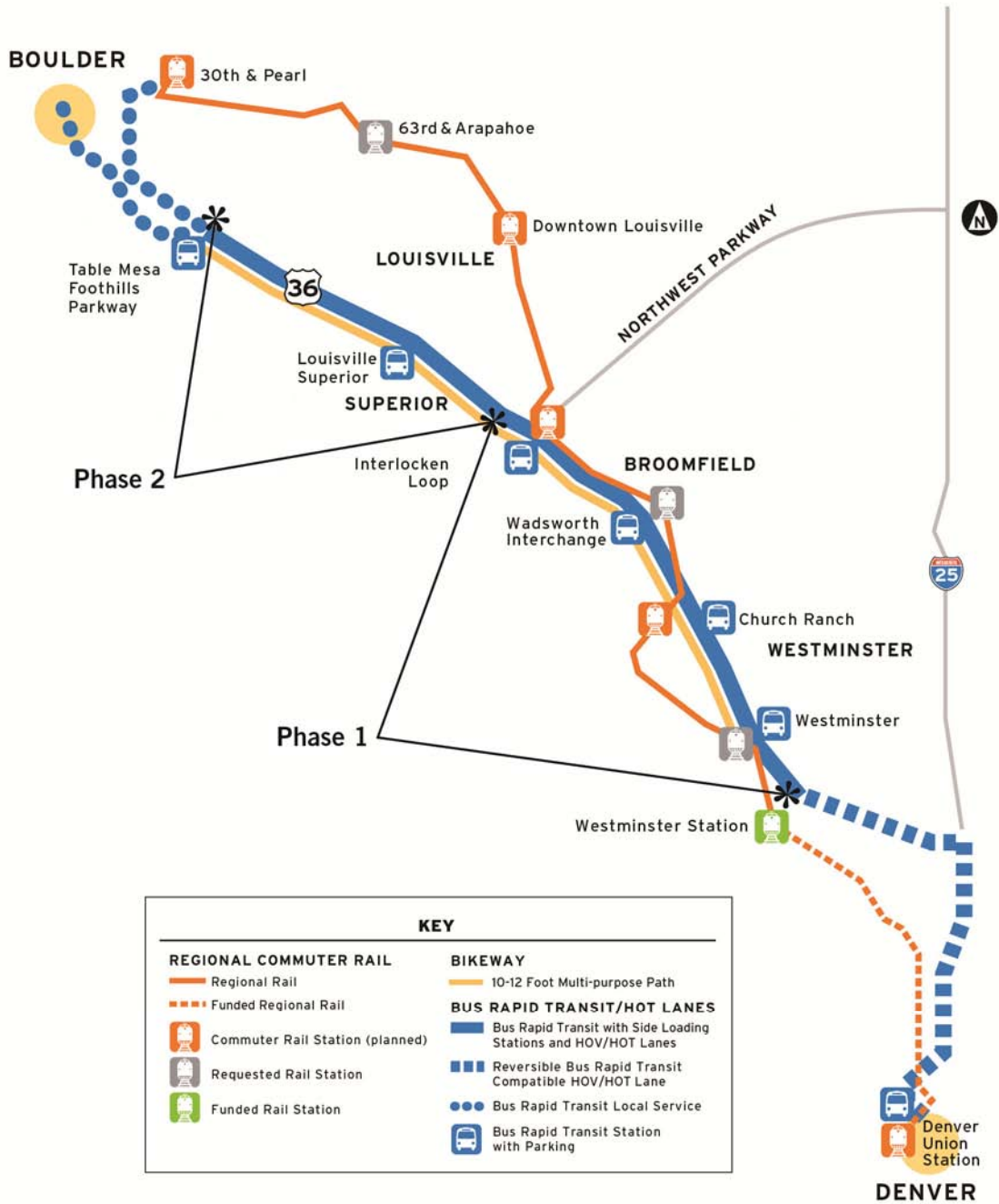
* Copyright 2013, American Bankers Association. CUSIP data herein are provided by Standard & Poor's, CUSIP Service Bureau, a division of the McGraw-Hill Companies, Inc. The CUSIP numbers listed above are being provided solely for the convenience of owners of the 2014 Bonds only, and neither HPTE nor the Underwriter make any representation with respect to such numbers or undertake any responsibility for their accuracy. The CUSIP numbers are subject to being changed after the issuance of the 2014 Bonds as a result of various subsequent actions including, but not limited to, a refunding in whole or in part of the 2014 Bonds.



LEGEND:

- Managed Lanes
- General Purpose Lane
- Auxiliary Lanes
- - - Bikeway
- ⋯ BNSF Railroad
- Interchange/Cross Road Improvement
- Existing BRT Slip Ramp/Platforms
- Proposed or Relocated BRT Slip Ramp/Platforms

↑
Not to Scale



Bond Trustee

The Bank of New York Mellon Trust Company, N.A.

Security Trustee and Intercreditor Agent

The Bank of New York Mellon

Counsel to Borrower Group

Fasken Martineau DuMoulin LLP

New York Counsel to Borrower Group

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Colorado Counsel to Borrower Group

Spencer Fane Britt & Browne LLP

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Mayer Brown LLP

British Columbia Counsel to Borrower Group

Gowling Lafleur Henderson LLP

Counsel to the Issuer and HPTE

Hogan Lovells US LLP

Colorado State Attorney General's Office

Bond Counsel to the Issuer

Kutak Rock LLP

Counsel to Underwriter

Ballard Spahr LLP

Traffic and Revenue Advisor

Buro Happold Limited

Lenders' Technical Advisor

BTY Group

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IN CONNECTION WITH THIS OFFERING, THE UNDERWRITER MAY OVERALLOT OR EFFECT TRANSACTIONS THAT STABILIZE OR MAINTAIN THE MARKET PRICES OF THE 2014 BONDS AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME WITHOUT PRIOR NOTICE.

No dealer, broker, salesperson or other person has been authorized by the Issuer, the Concessionaire or Goldman, Sachs & Co. (the “**Underwriter**”), as underwriter for the 2014 Bonds offered to the public as indicated on the inside front cover, to give any information or to make any representations with respect to the 2014 Bonds, other than those in this Official Statement, and if given or made, such other information or representations must not be relied upon as having been authorized by any of the foregoing. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy, and there shall not be a sale of the 2014 Bonds by any person in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale. The Underwriter has provided the following sentence for inclusion in this Official Statement. The Underwriter has reviewed the information in this Official Statement in accordance with, and as part of, its responsibilities to investors under federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriter does not guarantee the accuracy or completeness of such information, and such information is not to be construed as the promise or guarantee of the Underwriter.

The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sales made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the Issuer, the Concessionaire, Plenary Group USA, HPTE, CDOT, the Design-Build Contractor, the Intercompany Loan Subsidiaries, the Operating Contractor, the TIFIA Lender or DTC since the date hereof. This Official Statement speaks only as of its date.

The Issuer has not prepared or assisted in the preparation of this Official Statement except the statements made under “SUMMARY – General – Issuer,” “PROJECT PARTICIPANTS – HPTE; – CDOT,” “CONCESSION AGREEMENT,” “OTHER PROJECT AGREEMENTS – Intergovernmental Agreements,” “NO LITIGATION – Issuer,” “NO LITIGATION – HPTE,” and APPENDIX B – “Summary of Certain Provisions of the Concession Agreement” herein and except as aforesaid, the Issuer is not responsible for any statements made in this Official Statement. Except for the execution and delivery of documents required to effect the issuance of the 2014 Bonds, the Issuer has not otherwise assisted in the public offer, sale or distribution of the 2014 Bonds. Accordingly, except as aforesaid, the Issuer disclaims responsibility for the disclosures set forth in the Official Statement or otherwise made in connection with the offer, sale and distribution of the 2014 Bonds.

This Official Statement contains statements relating to future results and events that are “forward looking statements.” When used in this Official Statement, the words “estimate,” “anticipate,” “intend,” “expect” and similar expressions identify forward looking statements. Such statements are subject to risks and uncertainties that could cause actual results to differ materially from those contemplated in such statements. Inevitably, some assumptions used to develop the forecasts will not be realized and unanticipated events and circumstances may occur. Therefore, there are likely to be differences between forecasts and actual results and those differences may be material. For a description of certain of such risks associated with an investment in the 2014 Bonds and possible variations in results, see “CERTAIN RISK FACTORS.” The Concessionaire does not plan to issue any updates or revisions to those forward looking statements if or when changes in its expectations, or events, conditions or circumstances on which such statements are based occur. Historical operating statistics and financial results presented in this Official Statement may not be indicative of future performance.

The order and placement of materials in this Official Statement, including the Appendices, are not to be deemed a determination of relevance, materiality or importance, and this Official Statement, including the Appendices, must be considered in its entirety. The captions and headings in this Official Statement are for convenience only and in no way define, limit or describe the scope or intent, or affect the meaning or construction, of any provisions or sections in this Official Statement. The offering of the 2014 Bonds is made only by means of this entire Official Statement.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved the 2014 Bonds or passed upon the adequacy or accuracy of this Official Statement. Any representation to the contrary is a criminal offense.

THE 2014 BONDS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 NOR HAS THE INDENTURE BEEN QUALIFIED UNDER THE TRUST INDENTURE ACT OF 1939, IN RELIANCE UPON EXEMPTIONS CONTAINED IN SUCH ACTS. THE REGISTRATION OR QUALIFICATION OF THE 2014 BONDS IN ACCORDANCE WITH APPLICABLE PROVISIONS OF SECURITIES LAWS OF THE STATES IN WHICH THE 2014 BONDS HAVE BEEN REGISTERED OR QUALIFIED AND THE EXEMPTION FROM REGISTRATION OR QUALIFICATION IN THE OTHER STATES CANNOT BE REGARDED AS A RECOMMENDATION THEREOF. NEITHER THE SEC NOR THESE STATES OR ANY OF THEIR AGENCIES HAVE PASSED UPON THE MERITS OF THE 2014 BONDS OR THE ACCURACY OR COMPLETENESS OF THIS OFFICIAL STATEMENT.

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SUMMARY

This Summary is not complete and does not contain all of the information that investors should consider before making any investment decision with respect to the 2014 Bonds. Investors should read the more detailed information appearing in this Official Statement and the documents summarized or described herein in their entirety for a more complete understanding of the Project, the offering and the 2014 Bonds. Capitalized terms used and not otherwise defined herein shall have the respective meanings assigned thereto in APPENDIX A.

GENERAL

Changes from the Preliminary Official Statement.....

This Official Statement includes certain information which was either not available or differs from that contained in the Preliminary Official Statement dated February 12, 2014, as supplemented by the Supplement to Preliminary Official Statement dated February 19, 2014. In addition to the principal amount, purchase price, interest rate, yield, CUSIP number and mandatory sinking fund payments, information under “RISK FACTORS – Political, Litigation and Community Risks,” “NO LITIGATION – HPTE” and “LEGISLATIVE REQUEST” has been updated to reflect developments in certain threatened litigation related to the Project. Further, information in sections “PROJECT ACCOUNTS AND FLOW OF FUNDS – Project Proceeds Account – *Equity Subaccount; – Supplemental Contribution Amount*” and “OTHER PROJECT AGREEMENTS – Management Services Agreement; Finance Services Agreement” was updated to reflect a correction in the MSA and the Management Services Agreement which now provide that on the Phase 2 Completion Date and after all Reserve Accounts have been fully funded, amounts remaining in all subaccounts of the Project Proceeds Account (as opposed to just the amounts remaining in the Equity Subaccount) may be transferred to the Concessionaire. However the amount transferred to the Concessionaire may not exceed the Supplemental Contribution Amount (currently estimated to be approximately \$1,500,000).

Other changes were made to reflect changes to the cost of completing the Phase 2 Construction Project, the Equity Contribution Commitment, the not to exceed principal amount available to be drawn under the Subordinated Loan, the estimated sources and uses of funds as described under “ESTIMATED SOURCES AND USES OF FUNDS,” the debt service table under “ANNUAL SENIOR DEBT SERVICE REQUIREMENTS,” the information in the tables under “PROJECTED FINANCIAL INFORMATION,” the Maximum Debt to Equity Ratio as reflected under “FINANCING AGREEMENTS – TIFIA Loan Agreements – Covenants,” to the Concession Agreement as reflected in “PLAN OF FINANCE – HPTE Capital Payment” and in “CONCESSION AGREEMENT – Termination Events – Termination Following Non-Assumption of the Phase 1 TIFIA Loan – *Certificate Confirming that Certain Representations Remain True,*” to the description of the MSA in clause twenty-three under “PROJECT ACCOUNTS AND FLOW OF FUNDS – Project Proceeds Account – Monthly Transfers from Project Proceeds Account,” the description of the MSA under “FINANCING AGREEMENTS – MSA – Events of Default;

MSA – Exercise of Remedies,” to the description of the TIFIA Loan Agreements as reflected in “FINANCING AGREEMENTS – TIFIA Loan Agreements – Covenants – Management and Finance Services Agreements,” and the description of the Subordinated Loan Agreements and the Subordination Agreement under “FINANCING AGREEMENTS – Subordinated Loan Agreements” and “INTERCREDITOR ARRANGEMENTS – Subordination Agreement,” respectively. Certain conforming changes were also made in Appendices A and B, including, without limitation the definition of “Force Majeure” as defined in the Concession Agreement. **Purchasers of the 2014 Bonds should read this Official Statement in its entirety.**

2014 Bonds..... The Colorado High Performance Transportation Enterprise U.S. 36 and I-25 Managed Lanes Senior Revenue Bonds Series 2014 (the “**2014 Bonds**”) in the aggregate principal amount of \$20,360,000 are being issued as fully registered bonds in denominations of \$5,000 and integral multiples thereof. The 2014 Bonds will bear interest at the fixed rate shown on the inside front cover page of this Official Statement from their original issue date or from the most recent Interest Payment Date to which interest has been paid or duly provided for. The 2014 Bonds bear interest on the basis of a 360-day year comprised of twelve 30-day months, payable commencing on July 1, 2014 and on each January 1 and July 1 thereafter. See “DESCRIPTION OF THE 2014 BONDS.”

Issuer..... The Colorado High Performance Transportation Enterprise (“**HPTE**” or, when acting in the capacity as issuer of the 2014 Bonds, the “**Issuer**”) is a government-owned business within and a division of the Colorado Department of Transportation (“**CDOT**”). HPTE was created in 2009 pursuant to the Funding Advancements for Surface Transportation and Economic Recovery Act (§§43-4-801 et seq., Colorado Revised Statutes, as amended) (“**FASTER**”). As provided in FASTER, the business purpose of HPTE is to pursue public-private partnerships and other innovative and efficient means of completing surface transportation projects in Colorado. HPTE has no taxing power. See “PROJECT PARTICIPANTS – The Issuer” and “NO LITIGATION – Issuer.”

Project..... The proceeds of the 2014 Bonds, together with other funds, are being used to pay a portion of the costs of a project being undertaken by Plenary Roads Denver LLC (the “**Concessionaire**”) and consisting generally of: (i) adding a managed lane toll facility to a segment of U.S. 36 between Denver and Boulder; (ii) operating (A) a managed lane toll facility on the segment of U.S. 36 on which it builds the managed lane toll facility, (B) a managed lane toll facility currently being built by HPTE on an adjacent section of U.S. 36 and (C) an existing managed lane toll facility on I-25 that intersects with the segment of U.S. 36 described in clause (B) above; and (iii) operating and maintaining certain general purpose lanes and other facilities adjacent to the managed lane toll facilities described above. See “THE PROJECT” below.

THE PROJECT

General..... HPTE and the Concessionaire have entered into the Concession Agreement for U.S. 36 and I-25 Managed Lanes dated June 27, 2013, as previously amended on October 4, 2013 and December 27, 2013, and as expected to be amended and restated on or prior to the Closing Date (collectively, the “**Concession Agreement**”) to undertake a project (the “**Project**”) that will consist of the Phase 2 Construction Project (described below) and the Operations Project (described below).

Background..... The “**U.S. 36 Corridor**” is a section of U.S. 36 that is a heavily congested, four-lane divided highway that runs for approximately 18 miles east-to-west from the northwest section of Denver, Colorado to Boulder, Colorado. In order to ease congestion on the U.S. 36 Corridor, HPTE is developing one managed lane in each direction along the median of the U.S. 36 Corridor in two phases. The “**Phase 1 Managed Lanes**,” will run for approximately 10 miles from Pecos Street in Denver to 88th Street in Louisville, Colorado (the “**Phase 1 Corridor**”). See “PHASE 1 PROJECT.” The “**Phase 2 Managed Lanes**” run for approximately 5.1 miles from the western terminus of the Phase 1 Corridor at 88th Street in Louisville to Table Mesa/Foothills Parkway in Boulder (the “**Phase 2 Corridor**”).

Phase 2 Construction Project.... The “**Phase 2 Construction Project**” includes: (i) the design and construction of the Phase 2 Managed Lanes, which will consist of one managed lane in each direction along the median of the Phase 2 Corridor; (ii) the pavement replacement and the widening of the general purpose lanes to accommodate 12-foot inside and outside shoulders along the Phase 2 Corridor (the “**Phase 2 GP Lanes**” and, together with the Phase 1 GP Lanes, the “**U.S. 36 GP Lanes**”); (iii) the addition of the Bus Rapid Transit (“**BRT**”) improvements that include new electronic signage and bus improvements at ramps and the improvements to Regional Transportation District (“**RTD**”) stations along the Phase 2 Corridor, including new canopies with enhanced weather protection; (iv) the design and construction of other improvements to the Phase 2 Corridor, including sound and retaining walls, a bikeway, dynamic messaging signs and Intelligent System Improvements; and (v) the installation and commissioning of an electronic toll collection system on the Phase 2 Corridor.

Under the Concession Agreement, the Concessionaire may not commence any of the Phase 2 Work (other than design work, which the Concessionaire may commence at any time at its own risk, and certain work associated with utilities), until the Conditions Precedent to the Commencement Date have been satisfied or waived by HPTE. On the day following the date when the Conditions Precedent to the Commencement Date have been satisfied or waived (the “**Commencement Date**”), HPTE will issue a notice to proceed and the Concessionaire will begin the Phase 2 Work. The Commencement Date is currently expected to occur within two to three Business Days of the Closing Date. See “PHASE 2 CONSTRUCTION PROJECT – Conditions Precedent to Commencement Date; Notice to Proceed” and Section 2.3 in APPENDIX B hereof for a description of the Conditions Precedent to the Commencement Date.

The “**Full Services Commencement Date**” occurs upon the later of the date of Phase 2 Work Completion (as defined herein) and the date when HPTE has given notice to the Concessionaire that certain conditions precedent have been satisfied or waived. See Section 2.5 in APPENDIX B hereof for a description of the conditions precedent to the Full Services Commencement Date. The Full Services Commencement Date is currently expected to occur by December 31, 2015 (as such date may be changed by HPTE and the Concessionaire in accordance with the Concession Agreement, the “**Planned Full Services Commencement Date**”).

Phase 1 Project..... The “**Phase 1 Project**” consists of: the development of the Phase 1 Managed Lanes; the widening, reconstruction and pavement replacement of the general purpose lanes within the Phase 1 Corridor (the “**Phase 1 GP Lanes**” and, together with the Phase 1 Managed Lanes, the “**Phase 1 Lanes**”); the replacement of certain bridges, enhancements to bus rapid transit stations, the development of sound and retaining walls, a commuter bikeway, dynamic messaging signs and Intelligent System Improvements within the Phase 1 Corridor; and improvements to RTD bus stations along the Phase 1 Corridor. The Phase 1 Project was funded in part by the Phase 1 TIFIA Loan (as defined herein). Under the Concession Agreement, on the Phase 1 Services Commencement Date (as defined herein), the Concessionaire will begin receiving the Toll Revenues from the Phase 1 Managed Lanes (the “**Phase 1 Toll Revenues**”). See “PHASE 1 PROJECT.”

Phase 1 Assumption..... A portion of the costs being incurred by HPTE to construct the Phase 1 Project are being financed with the proceeds of a loan from the TIFIA Lender (the “**Phase 1 TIFIA Loan**”) in an amount up to \$54,000,000. On a date on which certain conditions set out in the Phase 1 TIFIA Loan Agreement are met (including achieving the Phase 1 Services Commencement Date), Plenary Roads Finco LP (“**Borrower Finco**”) will assume HPTE’s obligations as borrower under the Phase 1 TIFIA Loan (except for some specific obligations which are assumed only to the extent they arise from facts or matters arising after the Phase 1 Assumption Date) and HPTE will be released from such obligations (the “**Phase 1 Assumption Date**”). The Phase 1 TIFIA Loan will be treated as senior debt secured on a parity with the 2014 Bonds under the MSA after the Phase 1 Assumption Date. See “PHASE 1 PROJECT – Financing of the Phase 1 Project; Assumption of Phase 1 TIFIA Loan” and “FINANCING AGREEMENTS – TIFIA Loan Agreements.”

If the conditions to the occurrence of the Phase 1 Assumption Date cannot be satisfied or are not waived by the TIFIA Lender within a time period set forth in the Concession Agreement, then HPTE would remain obligated on the Phase 1 TIFIA Loan Agreement and pursuant to the Concession Agreement HPTE and the Concessionaire would be required to develop and implement a plan for satisfying the unfulfilled conditions precedent to the Phase 1 Assumption Date and for interim operations of the Phase 1 Managed Lanes pending such satisfaction. Any such plan will be subject to agreement by all relevant parties (such as the TIFIA Lender and/or Owners of the 2014 Bonds, if applicable at the time) including the agreement of any necessary waivers or amendments to the Phase 1 TIFIA Loan Agreement, the Amended and Restated Master Indenture and the Funding Documents.

If a plan or an interim plan is not put forth by the Concessionaire within 60 Business Days after HPTE gives an irrevocable notice to the Concessionaire that all conditions precedent to the Phase 1 Assumption Date (except for the condition that the Phase 1 Assumption Date occurs simultaneously with the Phase 1 Services Commencement Date), or is not agreed to by the Full Services Commencement Longstop Date (currently, December 31, 2016) or the Phase 1 Assumption Date does not occur prior to the Full Services Commencement Longstop Date after a plan has been put forward but has not, by that date, been agreed, then HPTE may, at its option, terminate the Concession Agreement. The Termination Compensation paid to the Concessionaire will vary depending on which condition precedent to the Phase 1 Assumption Date is not satisfied and may not be sufficient to pay the outstanding principal of and accrued interest on the 2014 Bonds. See “PHASE 1 PROJECT – Assumption of Phase 1 TIFIA Loan” for a full description of the process relating to the satisfaction of the conditions precedent to the Phase 1 Assumption and “CONCESSION AGREEMENT – Termination Events – Termination Following Non-Assumption of the Phase 1 TIFIA Loan” for a description of Termination Compensation in these circumstances.

I-25 Managed Lanes..... The Phase 1 Managed Lanes and the Phase 2 Managed Lanes will connect to the northern terminus of the I-25 Express Toll Lanes (the “**I-25 Managed Lanes**”), an approximately 7.7 mile section of U.S. 36 and Interstate 25 (“**I-25**”) between Downtown Denver and Pecos Street (the “**I-25 Corridor**”). I-25 is a north-south interstate highway that runs through Denver. HPTE currently operates the I-25 Managed Lanes. The I-25 Managed Lanes, which consist of two reversible lanes, allows passenger vehicles carrying two or more people, RTD buses, hybrid vehicles with permits and motorcycles to travel toll-free, while single occupancy vehicles must pay a toll. Under the Concession Agreement, on the Commencement Date (as defined herein), the Concessionaire will begin receiving the Toll Revenues from the I-25 Managed Lanes (the “**I-25 Toll Revenues**”). See “I-25 MANAGED LANES” for a detailed description of the I-25 Managed Lanes.

Managed Lanes..... The Phase 1 Managed Lanes, the Phase 2 Managed Lanes and the I-25 Managed Lanes are referred to collectively as the “**Managed Lanes**.” For reference, maps of the Managed Lanes, the U.S. 36 Corridor and the I-25 Corridor are located on the inside front cover of this Official Statement.

Operations Project The “**Operations Project**” is broader in scope than the Phase 2 Construction Project. It consists of the operation, lifecycle replacement, maintenance, and tolling of the Managed Lanes; the lifecycle replacement of the bridge decks and the road carrying the Managed Lanes and the general purpose lanes on the I-25 Corridor and the expansion joints within those bridge decks of the certain bridges; and the operation and maintenance of the U.S. 36 GP Lanes (collectively the “**Services**”) and the provision of the Snow and Ice Control Services (as defined herein). Different parts of the Operations Project come into effect at three points in time. Each such point in time is triggered when certain conditions precedent have been fulfilled.

- On the Commencement Date, the Concessionaire will begin delivering all services necessary to comply with the HPTE Service Requirements and the Concession Agreement, including: the Services in relation to the I-25 Managed Lanes and the Snow and Ice Control Services in relation to the I-25 Managed Lanes; and will begin receiving I-25 Toll Revenues.
- On the Phase 1 Services Commencement Date, the Concessionaire will begin delivering Services in relation to the Phase 1 Lanes and the Snow and Ice Control Services for the Phase 1 Lanes and will begin receiving Phase 1 Toll Revenues.
- On the Full Services Commencement Date, the Concessionaire will begin delivering Services and the Snow and Ice Control Services for the Phase 2 Managed Lanes and the Phase 2 GP Lanes (together, the “**Phase 2 Lanes**”) and will begin receiving Toll Revenues generated by the Phase 2 Managed Lanes.

Concession Agreement;

Concessionaire Under the Concession Agreement, HPTE will grant the Concessionaire the exclusive right to undertake the Project until the end of the term of the Concession Agreement, which is the 50th anniversary of the Planned Full Services Commencement Date (the “**Expiration Date**”) unless the Concession Agreement is terminated earlier in accordance with its terms. See “CONCESSION AGREEMENT” and APPENDIX B for a more detailed description of the Concession Agreement.

The Concessionaire is a Colorado limited liability company that was formed in May 2013 for the purpose of undertaking the Project. The Concessionaire is a wholly-owned subsidiary of Plenary Roads Denver Ltd. (the “**Equity Member**”), a Colorado corporation, which is a business unit and a wholly-owned subsidiary of Plenary Group Investments America Ltd., a Delaware corporation (“**PIA**”), which is in turn a business unit and a wholly-owned subsidiary of Plenary Group USA Concessions Ltd., a Delaware corporation (“**Plenary Group USA**”). Plenary Group USA is a wholly-owned indirect subsidiary of Plenary Group (Canada) Ltd, a Canadian corporation (“**Plenary Group**”). See “THE PROJECT – Project Participants – *The Concessionaire*; and – *Plenary Group*.”

Construction; Design-Build

Contractor The Concessionaire and Ames/Granite JV (the “**Design-Build Contractor**”), a joint venture partnership formed in the State of Minnesota, of which each of Ames Construction, Inc., a Minnesota corporation (“**Ames Construction**”) and Granite Construction Company, a California corporation, hold a 50% ownership interest, have entered into a Design-Build Contract dated June 27, 2013, as previously amended, and as expected to be amended and restated prior to the Closing Date (the “**Design-Build Contract**”) pursuant to which (subject to limited exceptions) all of the Concessionaire’s obligations under the Concession Agreement with respect to the design and construction of the Phase 2 Construction Project will be undertaken by the Design-Build Contractor on a lump-sum, fixed-price, “turn-key basis” for a contract price of \$120.6 million, subject to adjustment

as described below, except that this amount does not include the costs of construction of the McCaslin Underpass of approximately \$850,000 which will be paid to the Design-Build Contractor in addition to the contract price of \$120.6 million. See “CONCESSION AGREEMENT – Principal Rights and Responsibilities of the Concessionaire.”

If the Concessionaire does not complete the Phase 2 Construction Project by the Planned Full Services Commencement Date, HPTE may be entitled to assess daily liquidated damages, the payment of which (in certain cases) would be the responsibility of the Design-Build Contractor. See “OTHER PROJECT AGREEMENTS – Design-Build Contract – Liquidated Damages.” The Design-Build Contractor also serves as the design-build contractor for the Phase 1 Project. See “THE PROJECT—Project Participants – *Design-Build Contractor*.”

Operations and Maintenance;

Operating Contractor..... Under the Concession Agreement, the Concessionaire has to make the Managed Lanes available for use by vehicles and to provide the Services and Snow and Ice Control Services. The Concessionaire will collect all Toll Revenue and receive certain Maintenance Fees (as defined herein) from HPTE. See “OPERATIONS PROJECT – Operations and Maintenance – Maintenance Fees” and “TOLLING ON THE MANAGED LANES.”

The Concessionaire and Transfield Services Infrastructure Inc. (the “**Operating Contractor**”) have entered into the Operating Contract dated June 27, 2013, as expected to be amended and restated on or prior to the Closing Date (the “**Operating Contract**”), pursuant to which the Concessionaire engaged the Operating Contractor to perform the operations, maintenance, management, administration and related services required of the Concessionaire under the Concession Agreement and other services specified in the Operating Contract. The Operating Contract expires 20 years after the Full Services Commencement Date, as such expiration date may be extended by the parties. See “OTHER PROJECT AGREEMENTS—The Operating Contract” and “THE PROJECT—Operation and Maintenance.”

CDOT Funding Obligations..... HPTE and CDOT have entered into an agreement pursuant to which CDOT has agreed to pay for certain maintenance services to be provided by the Concessionaire for the U.S. 36 GP Lanes under the Concession Agreement and to make loans to HPTE to fund HPTE’s monetary obligations under the Concession Agreement, including the HPTE Capital Payment. These obligations of CDOT are not currently subject to appropriation from the General Assembly of the State of Colorado (the “**State**”), but are subject to annual allocation by the Transportation Commission from the State Highway Fund (as defined herein). See “OTHER PROJECT AGREEMENTS – Intergovernmental Agreements – HPTE-CDOT Agreement” and “CERTAIN RISK FACTORS – Annual Allocation and Budgetary Process.”

Tolling on the

Managed Lanes..... Under the Concession Agreement, the Concessionaire has the exclusive right to receive and retain user fees imposed by HPTE pursuant to FASTER

(“Tolls”), on Tolloed Vehicles riding on the I-25 Managed Lanes (starting on the Commencement Date), the Phase 1 Managed Lanes (starting on the Phase 1 Services Commencement Date) and the Phase 2 Managed Lanes (starting on the Full Services Commencement Date).

Under the Concession Agreement, HPTE will establish a schedule for Tolls and a schedule for civil penalties for toll evasion after a proposed toll and penalty schedule is submitted to HPTE by the Concessionaire. As a condition precedent to each of the Commencement Date, the Phase 1 Services Commencement Date and the Full Services Commencement Date, the Concessionaire is required to deliver to HPTE a proposed toll and penalty schedule for the related portion of the Managed Lanes. The Concessionaire submitted a toll and penalty schedule to HPTE for the I-25 Managed Lanes which was approved by HPTE and will take effect on the Commencement Date. See “TOLLING ON THE MANAGED LANES – Tolling on the I-25 Managed Lanes.”

Under the Concession Agreement, the occurrence of events that relate to certain delays in the travel time within a specified period of time can trigger the termination of the exemption of passenger vehicles carrying two people from paying Tolls (each, an “HOV Change Event”). In any event, pursuant to a resolution adopted by the Transportation Commission on February 21, 2013, effective January 1, 2017, passenger vehicles carrying less than three people, will have to pay a Toll. See “TOLLING ON THE MANAGED LANES – HOV Change Event.”

Toll Enforcement The Colorado Department of Public Safety, Division of Colorado State Patrol (the “CSP”) currently provides tolling enforcement services on the I-25 Managed Lanes pursuant to a State of Colorado, Colorado Department of Transportation Interagency Agreement dated July 26, 2011 (the “**I-25 Toll Enforcement Agreement**”) between HPTE and the CSP. The Concessionaire currently intends to enter into a toll enforcement agreement (the “**System Toll Enforcement Agreement**”) for the I-25 Managed Lanes and the US 36 Managed Lanes and has begun discussions to that end with the CSP. Although the terms of a System Toll Enforcement Agreement have yet to be finalized, the Concessionaire believes that its final terms will be similar to those set forth in the I-25 Toll Enforcement Agreement with HPTE. See “OTHER PROJECT AGREEMENTS – Toll Enforcement Agreement.”

Tolling Services Agreement On or prior to the Closing Date, the Concessionaire, HPTE and the E-470 Public Highway Authority (the “**E-470 Authority**”) will enter into a Tolling Services Agreement (the “**I-25 Tolling Services Agreement**”) in which, among other things, the Concessionaire will be entitled to receive Tolls collected on the I-25 Managed Lanes and the E-470 Authority will provide tolling collection services, back-office services and toll collection/toll evasion adjudication services for the Concessionaire in connection with the I-25 Managed Lanes. Currently, the I-25 Tolling Services Agreement is scheduled to terminate in part on the earliest to occur of: (1) the commencement of tolling operations on the Phase 1 Managed Lanes, (2) the Concessionaire and HPTE entering into a Tolling Services Agreement (the “**Project Tolling Services Agreement**”) covering the entire Managed Lanes

with the E-470 Authority (or another suitable toll services provider) and (3) January 1, 2016. Even if there is a partial termination of the I-25 Tolling Services Agreement, the obligations of the E-470 Authority to provide tolling collection and back-office services to the Concessionaire and the right of the Concessionaire to collect Tolls on the I-25 Managed Lanes will remain in effect. The E-470 Authority, the Concessionaire and HPTE have entered into a memorandum of understanding that sets forth principles and negotiation for a Project Tolling Services Agreement.

As security for the Concessionaire’s obligations under the Funding Documents, the Concessionaire, HPTE, the E-470 Authority and the Security Trustee are entering into a consent and agreement in which the E-470 Authority consents to the Concessionaire’s pledge, assignment and grant of a security interest in and under the I-25 Tolling Services Agreement, the Project Tolling Services Agreement (when executed and delivered) and related agreements. This consent and agreement also gives assurances by the E-470 Authority to the Secured Parties with respect to each of the I-25 Tolling Services Agreement and the Project Tolling Services Agreement and related agreements described in the preceding sentence.

PLAN OF FINANCE

General..... The cost of completing the Phase 2 Construction Project, as well as paying financing costs and funding reserves expected to be incurred prior to the Full Services Commencement Date is expected to be approximately \$164,026,000. Such costs are expected to be funded from the following sources of funds.

2014 Bonds..... The proceeds of the 2014 Bonds will be loaned by the Issuer to Borrower Finco pursuant to a Loan Agreement to be dated the Closing Date (the “**Bond Proceeds Loan Agreement**”) by and among the Issuer, the Concessionaire, Borrower Finco, Plenary Roads Finco ULC (“**Finco 1**”) and Plenary Denver Finco, LLC (“**Finco 2**” and, together with the Concessionaire, Borrower Finco and Finco 1, the “**Borrower Group**”) and will be made available to the Concessionaire pursuant to a series of intercompany loan agreements. Pursuant to the Bond Proceeds Loan Agreement, Borrower Finco will be required to make periodic payments to enable The Bank of New York Mellon Trust Company, N.A., as trustee (the “**Bond Trustee**”) to timely pay to the Owners any principal of, purchase price or redemption price of and interest on the 2014 Bonds as provided in the Indenture (as defined herein). See “DESCRIPTION OF THE 2014 BONDS.”

Phase 2 TIFIA Loan..... Prior to the Closing Date, the Borrower Group and the United States Department of Transportation, acting by and through the Federal Highway Administrator (the “**TIFIA Lender**”) will enter into a Loan Agreement (the “**Phase 2 TIFIA Loan Agreement**”) and, together with the Phase 1 TIFIA Loan Agreement, the “**TIFIA Loan Agreements**”) pursuant to which the TIFIA Lender will provide a subordinated loan in a principal amount not to exceed \$60,000,000 (the “**Phase 2 TIFIA Loan**”) to Borrower Finco, the proceeds of which will be made available to the Concessionaire pursuant to

a series of intercompany loan agreements relating to the Phase 2 TIFIA Loan Agreement. See “PLAN OF FINANCE – TIFIA Loan Agreements.”

Subordinated Loan..... Prior to the Closing Date, Northleaf/PRD LenderCo LP (the “**Subordinated Lender**”) will provide a subordinated loan in a principal amount not to exceed \$21,600,000 (the “**Subordinated Loan**”) to Borrower Finco pursuant to a Credit Agreement (the “**Subordinated Loan Agreement**”) among the Subordinated Lender, Northleaf/PRD LenderCo LP, as agent (the “**Subordinated Agent**”), PGC US Finco GP Ltd. and the Borrower Group. Borrower Finco’s payment obligations under the Subordinated Loan Agreement will be subordinate to the Senior Obligations and subordinate to Borrower Finco’s payment obligations under the Phase 2 TIFIA Loan Agreement. The proceeds of the Subordinated Loan will be made available to the Concessionaire pursuant to a series of intercompany loan agreements relating to the Subordinated Loan and used by the Concessionaire to pay Project Costs. See “PLAN OF FINANCE – Subordinated Loan.” The obligations of the Subordinate Lender to fund the Subordinated Loan will be supported by a letter of credit in the stated amount equal to the principal amount of the Subordinated Loan available to be drawn by Borrower Finco. The letter of credit will meet the criteria of an Acceptable Letter of Credit and will be issued prior to the Closing Date by an Acceptable Letter of Credit Provider in favor of the Security Trustee.

HPTE Capital Payment Under the Concession Agreement, HPTE is required to make a capital payment to the Concessionaire, in installments, to fund a portion of the Phase 2 Construction Costs in an aggregate amount of approximately \$44,950,000, (the “**HPTE Capital Payment**”), as such amount may be increased (to an amount not to exceed \$49,650,000) or decreased at or prior to the Closing Date. See “PLAN OF FINANCE – HPTE Capital Payment.”

Equity Contribution On or prior to the Commencement Date, the Sponsor will provide an initial Equity Contribution in an amount anticipated to be \$20,554,000 (the “**Initial Equity Contribution**”) pursuant to the terms of an Equity Contribution Agreement (the “**Equity Contribution Agreement**”) by and among the Equity Member, Plenary Group and Plenary Group USA (collectively, the “**Plenary Parties**”), the Concessionaire and the Security Trustee. In the event that the Initial Equity Contribution is less than the anticipated amount of \$20,554,000 (the “**Equity Contribution Commitment**”), the Sponsor will also agree to make or cause to be made, Equity Contributions to the Concessionaire for the purposes of funding Project Costs in an aggregate amount equal to the Equity Contribution Commitment minus the amount of the Initial Equity Contribution. In addition, if there is a shortfall in available funds to satisfy the obligations of the Concessionaire or any other Obligor under the Material Project Contracts (other than a shortfall resulting directly from a failure by a Secured Creditor or HPTE to fund) or with respect to the funding of Reserve Accounts in accordance with the MSA, the Sponsor will make, or cause to be made, one or more additional Equity Contributions in the amount of such shortfall in an amount not to exceed \$2,000,000.

On or prior to the Closing Date, as security for the Sponsor’s obligations under the Equity Contribution Agreement, the Sponsor will deliver an irrevocable letter of credit that will meet the criteria of an Acceptable Letter

of Credit and will be issued by an Acceptable Letter of Credit Provider, which will initially be a Canadian Schedule 1 Chartered Bank, in an aggregate amount equal to the Equity Contribution Commitment. The letter of credit so delivered may be drawn upon in the event that an Equity Contribution is not made when required. See “PLAN OF FINANCE – Equity Contribution.”

Intercompany Loan Structure... The proceeds of the 2014 Bonds will be made available to the Concessionaire through a series of intercompany loans made from Borrower Finco to Finco 1, by Finco 1 to Finco 2 (Borrower Finco, Finco 1 and Finco 2 collectively referred to herein as the “**Intercompany Loan Subsidiaries**”) and by Finco 2 to the Concessionaire. The Intercompany Loan Subsidiaries are single purpose entities and wholly-owned indirect subsidiaries of Plenary Group and are required in the Bond Proceeds Loan Agreement to comply with “single purpose entity” restrictions that restrict them from undertaking any activities other than to be parties to, and as contemplated in, the intercompany loan agreements and the other Funding Documents.

Similar intercompany loan arrangements are being used with respect to the Phase 2 TIFIA Loan, the Phase 1 TIFIA Loan (upon its assumption) and the Subordinated Loan to make loan proceeds available to the Concessionaire. The intercompany loan arrangements are described in greater detail in “PLAN OF FINANCE – Intercompany Loans” and the Intercompany Loan Subsidiaries are described in greater detail in “PROJECT PARTICIPANTS – Intercompany Loan Subsidiaries.”

Finco Guarantees..... Pursuant to the Bond Proceeds Loan Agreement, each of the Concessionaire, Finco 1 and Finco 2 will issue a guarantee in favor of the Issuer guaranteeing the obligations of Borrower Finco to the Issuer under the Bond Proceeds Loan Agreement (collectively, the “**Finco Guarantees**”). The Issuer will assign its rights under each of the Finco Guarantees to the Bond Trustee as security for the 2014 Bonds as part of the Trust Estate. The Concessionaire, Finco 1 and Finco 2 will also issue similar guarantees in favor of the TIFIA Lender guaranteeing the obligations of Borrower Finco to the TIFIA Lender pursuant to the TIFIA Loan Agreements and the Subordinated Lender pursuant to the Subordinated Loan Agreement. See “SECURITY AND SOURCES OF PAYMENT FOR 2014 BONDS – Finco Guarantees.”

Order of Uses of Funds..... The Concessionaire expects to use the funds described above to pay for the Phase 2 Construction Project in the following order: first, the Equity Contributions; second, the net proceeds of the 2014 Bonds; third, the proceeds of the Phase 2 TIFIA Loan; and fourth, the proceeds of the Subordinated Loan. From the Commencement Date, the HPTE Capital Payment will be drawn and used to pay for the Phase 2 Construction Project, as described in “– HPTE Capital Payment” below.

THE 2014 BONDS

Indenture..... The 2014 Bonds are being issued pursuant to the Trust Indenture to be dated the Closing Date (the “**Indenture**”), by and between the Issuer and the Bond Trustee. See APPENDIX E for a summary of certain provisions of the Indenture.

Bond Proceeds Loan

Agreement The proceeds of the 2014 Bonds are being loaned by the Issuer to Borrower Finco pursuant to a Bond Proceeds Loan Agreement and made available to the Concessionaire pursuant to a series of intercompany loan agreements, to pay a portion of the costs of the Phase 2 Construction Project and to pay a portion of the costs of issuing the 2014 Bonds. See “DESCRIPTION OF THE 2014 BONDS” and APPENDIX E.

Limited Obligations..... **The 2014 Bonds are special, limited obligations of the Issuer, payable solely from and secured by the Trust Estate. The 2014 Bonds do not constitute an obligation, moral or otherwise, of CDOT or the State of Colorado (the “State”), any other agency, instrumentality or political subdivision of the State, or any official, board member, director, officer, employee, agent or representative of any of the foregoing, and neither the full faith and credit of the Issuer, CDOT or the State nor the taxing power of the State or any other agency, instrumentality or political subdivision of the State is pledged to the payment of the principal of and interest or premium, if any, on the 2014 Bonds. The Owners of the 2014 Bonds may not look to any revenues of the Issuer, CDOT or the State for repayment of the 2014 Bonds and the only source of repayment of the 2014 Bonds is the Trust Estate. The payment of the 2014 Bonds shall not be secured by any encumbrance, mortgage, or other pledge of property of the Issuer, CDOT or the State, other than the Trust Estate. The Issuer has no taxing powers.**

Optional Redemption The 2014 Bonds are subject to optional redemption prior to maturity, at the written direction of the Concessionaire, in whole or in part, with funds provided by Borrower Finco, on any Business Day on or after January 1, 2023 at a redemption price equal to 100% of the principal amount of the 2014 Bonds to be redeemed, plus accrued interest to, but not including, the redemption date, without premium. See “DESCRIPTION OF THE 2014 BONDS—Redemption—Optional Redemption.”

Purchase in Lieu of Optional Redemption.....

If the 2014 Bonds are called for optional redemption, Borrower Finco may elect to purchase in lieu of optional redemption all or any portion of the 2014 Bonds called for optional redemption upon written notice to the Bond Trustee prior to or on the Business Day immediately preceding the date fixed for redemption at a purchase price equal to 100% of the principal amount thereof (without premium) plus interest accrued to the date fixed for redemption. See “DESCRIPTION OF THE 2014 BONDS—Redemption—Purchase of 2014 Bonds in Lieu of Optional Redemption.”

***Extraordinary Mandatory
Redemption from Unspent
Bond Proceeds.....***

The 2014 Bonds are subject to extraordinary mandatory redemption, in whole or in part, at a redemption price equal to 100% of the principal amount of the 2014 Bonds subject to redemption (without premium), plus accrued interest to, but not including, the redemption date (which will be a Business Day that is no earlier than the date that is five years and 30 days after the Closing Date and no later than the date that is five years and 90 days after the Closing Date) in the principal amount of (rounded upward to a multiple of \$5,000) and to the extent of any remaining unspent 2014 Bond proceeds on deposit in the Bond Proceeds Subaccounts of the Project Proceeds Account on such date, sufficient to effectuate such redemption. See “DESCRIPTION OF THE 2014 BONDS – Redemption – Extraordinary Mandatory Redemption from Unspent Bond Proceeds.”

***Extraordinary Mandatory
Redemption Upon a
Determination of Taxability.....***

The 2014 Bonds are subject to extraordinary mandatory redemption not later than 120 days after a Determination of Taxability. Such redemption will be in whole, or in part to the extent that a Favorable Opinion of Bond Counsel is delivered to the effect that interest on the 2014 Bonds which would remain outstanding after such partial redemption will be excludable from gross income for federal income tax purposes. The 2014 Bonds will be redeemed at a redemption price of par plus accrued interest to, but not including, the redemption date, without premium, and such redemption price will be paid from prepayments made by Borrower Finco pursuant to the Bond Proceeds Loan Agreement. See “DESCRIPTION OF THE 2014 BONDS – Redemption – Extraordinary Mandatory Redemption Upon a Determination of Taxability.”

If Borrower Finco is unable to obtain funds sufficient to pay the redemption price of the 2014 Bonds subject to extraordinary redemption following a Determination of Taxability, an Event of Default will occur under the Bond Proceeds Loan Agreement and the Bond Trustee may exercise remedies thereunder. However, the Bond Trustee’s ability to direct the exercise of remedies against the Collateral upon the occurrence of an Event of Default is limited by the terms of the Intercreditor Agreement. The Intercreditor Agreement provides in substance that the exercise of remedies against the Collateral must be approved by a majority in principal amount of the sum of the principal amount of the 2014 Bonds, the principal amount of the Phase 1 TIFIA Loan (after the Phase 1 Assumption Date) and the principal amount of the Phase 2 TIFIA Loan after a TIFIA Parity Trigger Event. See “INTERCREDITOR ARRANGEMENTS – Intercreditor Agreement.”

***Extraordinary Mandatory
Redemption from
Net Loss Proceeds.....***

The 2014 Bonds will be subject to extraordinary mandatory redemption, in whole or in part, at a redemption price equal to 100% of the principal amount of the 2014 Bonds subject to redemption (without premium), plus accrued interest to, but not including, the redemption date (which will be set by the Bond Trustee on a Business Day that is no later than 90 days after the deposit of Net Loss Proceeds to the Borrower Finco Senior Bonds Debt Service Account) in the principal amount of and to the extent of any Net

Loss Proceeds on deposit in the Borrower Finco Senior Bonds Debt Service Account on such date, sufficient to effectuate such redemption. See “DESCRIPTION OF THE 2014 BONDS – Redemption – Extraordinary Mandatory Redemption from Net Loss Proceeds.”

Mandatory Sinking

Fund Redemption..... The 2014 Bonds are subject to mandatory redemption on each January 1 and July 1, commencing on July 1, 2036 through application of semi-annual sinking fund installments at a redemption price equal to 100% of the principal amount thereof, plus accrued interest to, but not including, the date fixed for redemption. See “DESCRIPTION OF THE 2014 BONDS—Redemption—Mandatory Sinking Fund Redemption.”

Book-Entry-Only System DTC will act as the securities depository for the 2014 Bonds. The 2014 Bonds will be issued as fully-registered bonds in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered 2014 Bond certificate will be issued for the 2014 Bonds of each maturity, in the aggregate principal amount of such maturity. See APPENDIX K for a description of the Book-Entry Only System.

SECURITY AND SOURCES OF PAYMENT FOR 2014 BONDS

General..... The 2014 Bonds are special, limited obligations of the Issuer payable solely from and secured by the Trust Estate.

Trust Estate Pursuant to the Indenture, the Issuer pledges and grants to the Bond Trustee a security interest in the following (the “**Trust Estate**”): (a) all right, title and interest of the Issuer (except for certain Reserved Rights of the Issuer, such as the right to payment of fees and expenses and to indemnification) in and to the Bond Proceeds Loan Agreement, the Series 2014 Note, and any loan agreement and any promissory note entered into in connection with the issuance of Additional Senior Bonds; (b) all moneys from time to time held by the Bond Trustee under the Indenture including the Series 2014 Debt Service Fund, or any other debt service fund established with respect to Additional Senior Bonds, and any other Account other than any Defeasance Escrow Fund or any rebate fund established with respect to any Additional Senior Bonds; (c) any Security Interest created for the benefit of the Issuer under the Security Documents, including without limitation the Collateral pledged under the MSA; and (d) any and all other property, revenues, rights or funds from time to time granted or pledged as and for additional security for the 2014 Bonds in favor of the Bond Trustee.

Bonds Debt Service

Reserve Account..... The Concessionaire currently expects to fund the Bonds Debt Service Reserve Account with a portion of the Equity Contribution made pursuant to the Equity Contribution Agreement and other available sources of funds with the expectation that it will be fully funded by the Full Services Commencement Date. The Bonds Debt Service Reserve Account is held as Segregated Collateral for the sole benefit of the Owners of the 2014 Bonds. See “SECURITY AND SOURCES OF PAYMENT FOR 2014 BONDS — Bonds Debt Service Reserve Account.”

Master Security Agreement The 2014 Bonds are further secured by the Collateral (as defined herein) pledged and assigned to The Bank of New York Mellon, as the Security

Trustee (the “**Security Trustee**”) under the Master Security Agreement dated the Effective Date (the “**MSA**”) by and among the Issuer, the Borrower Group Members, the Bond Trustee, the TIFIA Lender, the Subordinated Lender, the Subordinated Agent, The Bank of New York Mellon, as Intercreditor Agent (the “**Intercreditor Agent**”), the Security Trustee and such other parties as accede thereto from time to time as Secured Parties in accordance with the terms thereof. See “FINANCING AGREEMENTS – MSA.”

Collateral Pledged

Under MSA..... The payment of the 2014 Bonds and any other Secured Obligations and the performance and observance of all the covenants and conditions set forth in the Funding Documents will be secured under the MSA by the grant, assignment and pledge of the Collateral to the Security Trustee by each of Borrower Finco, the Concessionaire, Finco 1 and Finco 2, respectively. See “SECURITY AND SOURCES OF PAYMENT FOR 2014 BONDS – Collateral Pledged Under MSA.”

Equity Member Pledge

Agreement On or prior to the Closing Date, the Equity Member, the current owner of all of the membership interests in the Concessionaire, will enter into a Pledge Agreement (the “**Equity Member Pledge Agreement**”) pursuant to which the Equity Member will grant to the Security Trustee for the ratable benefit of the Secured Parties, a security interest in all of the Equity Member’s right, title and interest in and to all of its membership interests and other equity interests in the Concessionaire. See “SECURITY AND SOURCES OF PAYMENT FOR 2014 BONDS – Equity Member Pledge Agreement.”

Subordinated Lender Pledge

Agreement and Guaranty..... On or prior to the Closing Date, the Subordinated Lender will enter into a Pledge Agreement and Guaranty (the “**Subordinated Lender Pledge Agreement**”) pursuant to which the Subordinated Lender will grant to the Security Trustee for the ratable benefit of the senior creditors (consisting of the Bond Trustee, TIFIA Lender under the Phase 2 TIFIA Loan Agreement, TIFIA Lender under the Phase 1 TIFIA Loan Agreement (from and after the Phase 1 Assumption Date) and any holder of Additional Senior Obligation), a security interest in all of the Subordinate Lender’s right, title and interest in and to the Subordinated Loan Agreements and any other indebtedness owed to the Subordinated Lender by the Borrower Group or the Concessionaire. See “FINANCING AGREEMENTS – Subordinated Loan Agreements – Pledge of the Subordinated Loans.”

HPTE Direct Agreement.....

On or prior to the Closing Date, HPTE, the Concessionaire and the Security Trustee will enter into the Direct Agreement (the “**HPTE Direct Agreement**”) pursuant to which, among other things, HPTE will acknowledge and consent to the grant by the Concessionaire to the Security Trustee (for the benefit of the Secured Parties) of a first-priority security interest in all of the Concessionaire’s right, title and interest, in, to and under the Concession Agreement. See “SECURITY AND SOURCES OF PAYMENT FOR 2014 BONDS – HPTE Direct Agreement.”

Consents and Agreement.....

Each of the Design-Build Contractor and the Operating Contractor will enter into a Consent and Agreement with the Security Trustee and the Concessionaire pursuant to which, the Design-Build Contractor and the

Operating Contractor consent to the Concessionaire’s pledge, assignment and grant of a security interest on all of the Concessionaire’s right, title and interest in, to and under the Design-Build Contract and the Operating Contract, as applicable, and provide assurance of certain of the Secured Parties’ rights with respect to the Design-Build Contract and the Operating Contract, as applicable. See “SECURITY AND SOURCES OF PAYMENT FOR 2014 BONDS – Consents and Agreement; Guarantees.”

Design-Build and Operating

Guarantees

Each of Ames Construction and Granite Construction Incorporated will provide, prior to the Closing Date, a parent company guarantee in favor of the Concessionaire pursuant to which it will guarantee all of the obligations of the Design-Build Contractor under the Design-Build Contract, including the payment of liquidated damages. However, the obligations, responsibilities and liabilities of the Design-Build Guarantor in the Design-Build Guarantee will not exceed those of the Design-Build Contractor in the Design-Build Contract and the Interface Agreement. See “SECURITY AND SOURCES OF PAYMENT FOR THE 2014 BONDS – Consent and Agreement; Guarantees.” The Concessionaire will grant a lien on and security interest in all of its right, title and interest in and to each parent company guarantee to the Security Trustee for the benefit of the Secured Parties.

Prior to the Closing Date, Transfield Services Limited will provide a parent company guarantee in favor of the Concessionaire pursuant to which it will guarantee all the obligations of the Operating Contractor under the Operating Contract. See “SECURITY AND SOURCES OF PAYMENT FOR THE 2014 BONDS – Consent and Agreement; Guarantees.” The Concessionaire will grant a lien on and security interest in all of its right, title and interest in and to the parent company guarantee to the Security Trustee for the benefit of the Secured Parties.

Intercreditor Agreements

On or prior to the Closing Date, the Intercreditor Agent, the Bond Trustee, the TIFIA Lender and the Security Trustee will enter into a Subordination and Intercreditor Agreement (the “**Intercreditor Agreement**”). The Intercreditor Agreement will in general set forth the parties’ rights and obligations with respect to (i) the intercreditor terms applicable among the Senior Creditors; (ii) exercise and enforcement of remedies against the Collateral; (iii) the subordination provisions relating to the Phase 2 TIFIA Loan in respect of right of payment and Lien on the Collateral (subject to certain limitations and conditions); and (iv) the voting mechanics applicable to, among other things, certain modifications to the Funding Documents. See “INTERCREDITOR ARRANGEMENTS – Intercreditor Agreement” for a description of the Intercreditor Agreement.

Additionally, the Bond Trustee, the TIFIA Lender, the Subordinated Lender, the Subordinated Agent and the Security Trustee will enter into a Subordination and Intercreditor Agreement (the “**Subordination Agreement**”), which will provide for, among other things: (i) the exercise and enforcement of remedies against the Collateral; (ii) the subordination provisions relating to the Subordinated Loans in respect of right of payment and Lien on the Collateral; and (iii) amendment provisions to the Subordinated Loan Agreements. See “INTERCREDITOR

ARRANGEMENTS – Subordination Agreement” for a description of the Subordination Agreement.

REPORTS

Traffic and Revenue Study..... Buro Happold Limited (the “**Buro Happold**”) has prepared its U.S. 36/I-25 Managed Lanes Traffic and Revenue Study dated February 4, 2014 with respect to the Project (the “**Traffic and Revenue Study**”) included herein as APPENDIX H. The Traffic and Revenue Study provides traffic and revenue projections for the Managed Lanes. The Traffic and Revenue Study includes the collection and review of traffic data and patterns and of economic data in the Managed Lanes corridor and an analysis of socio-economic trends in the area affected by the Project for the purposes of developing a forecasting model and preparing the Managed Lanes traffic and revenue forecasts.

Technical Report..... BTY Group (“**BTY**”) has prepared its Technical Report dated February 8, 2014 (the “**Technical Report**” and, together with the Traffic and Revenue Study, the “**Reports**”), which provides a review of the fundamental technical features of the Project and which is included herein as APPENDIX I. The Technical Report was prepared for the benefit of the Concessionaire, the Underwriter and the Owners of the Bonds. BTY analyzed certain Project agreements, site conditions, preliminary design plans and documents, environmental records, and other materials to assess the degree to which potential Project risks have been mitigated or transferred to the appropriate party under the terms of the Project agreements. **Each Report should be read in its entirety.**

MISCELLANEOUS

Certain Risk Factors..... A number of risks that could affect the payments to be made with respect to the 2014 Bonds and/or the market value or liquidity of the 2014 Bonds are described in this Official Statement. Risks include but are not limited to: revenue risks, operating risks; financial risks; the risk of changes of law; risks related to collateral; limitations on enforceability; bankruptcy-related risks; tax matter-related risks; political, litigation and community risks; Colorado state budget and funding allocation risks; and absence of a market for the 2014 Bonds. See “CERTAIN RISK FACTORS” for a discussion of some of the risks that could affect the security or market value or liquidity of the 2014 Bonds.

Rating..... The 2014 Bonds were assigned a rating of “BBB-” by Fitch. This rating is not a recommendation to buy, sell or hold the 2014 Bonds and is subject to revision or withdrawal at any time by Fitch. See “RATING” herein.

Continuing Disclosure..... The Concessionaire and Borrower Finco are entering into a Continuing Disclosure Agreement with the Bond Trustee for the benefit of the Owners of the 2014 Bonds to provide certain financial information and operating data concerning the Concessionaire and the Project to the MSRB pursuant to the requirements of the Rule. See APPENDIX G for the form of Continuing Disclosure Agreement.

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\$20,360,000
Colorado High Performance Transportation Enterprise
U.S. 36 and I-25 Managed Lanes
Senior Revenue Bonds Series 2014

INTRODUCTION

General. This Official Statement, which includes the cover page, the inside front cover page, the summary and all of the Appendices hereto, is furnished in connection with the issuance by the Colorado High Performance Transportation Enterprise (in the capacity as issuer of the 2014 Bonds, the “**Issuer**”) of its U.S. 36 and I-25 Managed Lanes Senior Revenue Bonds Series 2014 in the aggregate original principal amount of \$20,360,000 (the “**2014 Bonds**”). The proceeds of the 2014 Bonds will be loaned by the Issuer to Plenary Roads Finco LP (“**Borrower Finco**”) pursuant to a Loan Agreement to be dated the Closing Date (the “**Bond Proceeds Loan Agreement**”) by and among the Issuer, Borrower Finco, Plenary Roads Finco ULC (“**Finco 1**”), Plenary Denver Finco, LLC (“**Finco 2**”) and Plenary Roads Denver LLC (the “**Concessionaire**” and, together with Borrower Finco, Finco 1 and Finco 2, the “**Borrower Group**” and individually, a “**Borrower Group Member**”) and made available to the Concessionaire pursuant to a series of Intercompany Loan Agreements (as defined herein), to pay a portion of the costs of the Phase 2 Construction Project (as defined herein) and to pay a portion of the costs of issuing the 2014 Bonds. **Capitalized terms used and not otherwise defined herein shall have the respective meanings assigned thereto in APPENDIX A.**

Changes from the Preliminary Official Statement. This Official Statement includes certain information which was either not available or differs from that contained in the Preliminary Official Statement dated February 12, 2014, as supplemented by the Supplement to Preliminary Official Statement dated February 19, 2014. In addition to the principal amount, purchase price, interest rate, yield, CUSIP number and mandatory sinking fund payments, information under “RISK FACTORS – Political, Litigation and Community Risks,” “NO LITIGATION – HPTE” and “LEGISLATIVE REQUEST” has been updated to reflect developments in certain threatened litigation related to the Project. Further, information in sections “PROJECT ACCOUNTS AND FLOW OF FUNDS – Project Proceeds Account – *Equity Subaccount; – Supplemental Contribution Amount*” and “OTHER PROJECT AGREEMENTS – Management Services Agreement; Finance Services Agreement” was updated to reflect a correction in the MSA and the Management Services Agreement which now provide that on the Phase 2 Completion Date and after all Reserve Accounts have been fully funded, amounts remaining in all subaccounts of the Project Proceeds Account (as opposed to just the amounts remaining in the Equity Subaccount) may be transferred to the Concessionaire. However the amount transferred to the Concessionaire may not exceed the Supplemental Contribution Amount (currently estimated to be approximately \$1,500,000).

Other changes were made to reflect changes to the cost of completing the Phase 2 Construction Project, the Equity Contribution Commitment, the not to exceed principal amount available to be drawn under the Subordinated Loan, the estimated sources and uses of funds as described under “ESTIMATED SOURCES AND USES OF FUNDS,” the debt service table under “ANNUAL SENIOR DEBT SERVICE REQUIREMENTS,” the information in the tables under “PROJECTED FINANCIAL INFORMATION,” the Maximum Debt to Equity Ratio as reflected under “FINANCING AGREEMENTS – TIFIA Loan Agreements – Covenants,” to the Concession Agreement as reflected in “PLAN OF FINANCE – HPTE Capital Payment” and in “CONCESSION AGREEMENT – Termination Events – Termination Following Non-Assumption of the Phase 1 TIFIA Loan – *Certificate Confirming that Certain Representations Remain True*,” to the description of the MSA in clause twenty-three under “PROJECT ACCOUNTS AND FLOW OF FUNDS – Project Proceeds Account – Monthly Transfers from Project Proceeds Account,” the description of the MSA under “FINANCING AGREEMENTS – MSA – Events of Default; MSA – Exercise of Remedies,” to the description of the TIFIA Loan Agreements as reflected in “FINANCING AGREEMENTS – TIFIA Loan Agreements – Covenants –

Management and Finance Services Agreements,” and the description of the Subordinated Loan Agreements and the Subordination Agreement under “FINANCING AGREEMENTS – Subordinated Loan Agreements” and “INTERCREDITOR ARRANGEMENTS – Subordination Agreement,” respectively. Certain conforming changes were also made in Appendices A and B, including, without limitation the definition of “Force Majeure” as defined in the Concession Agreement. **Purchasers of the 2014 Bonds should read this Official Statement in its entirety.**

The Project. The “**U.S. 36 Corridor**” is a section of U.S. 36 that is a heavily congested, four-lane divided highway that runs for approximately 18 miles east-to-west from the northwest section of Denver to Boulder. In order to ease congestion on the U.S. 36 Corridor, the Colorado High Performance Transportation Enterprise (in this capacity, “**HPTE**”) is developing one managed lane in each direction along the median of U.S. 36 Corridor in two phases. The “**Phase 1 Managed Lanes**,” will run for approximately 10 miles from Pecos Street in Denver to 88th Street in Louisville (the “**Phase 1 Corridor**”). See “PHASE 1 PROJECT.” The “**Phase 2 Managed Lanes**” will run for approximately 5.1 miles from the western terminus of the Phase 1 Corridor at 88th Street in Louisville, Colorado to Table Mesa/Foothills Parkway in Boulder (the “**Phase 2 Corridor**”).

The Phase 1 Managed Lanes and the Phase 2 Managed Lanes will connect to the northern terminus of the I-25 Express Toll Lanes (the “**I-25 Managed Lanes**”), an approximately 7.7 mile section of U.S. 36 and Interstate 25 (“**I-25**”) between Downtown Denver and Pecos Street (the “**I-25 Corridor**”). I-25 is a north-south interstate highway that runs through Denver. HPTE currently operates the I-25 Managed Lanes. The Phase 1 Managed Lanes, the Phase 2 Managed Lanes and the I-25 Managed Lanes are referred to collectively as the “**Managed Lanes**.” For reference, maps of the Managed Lanes, the U.S. 36 Corridor and the I-25 Corridor are located at the beginning of this Official Statement.

HPTE and the Concessionaire have entered into the Concession Agreement (as defined below) to undertake a project (the “**Project**”) that will consist of the Phase 2 Construction Project and the Operations Project. The “**Phase 2 Construction Project**” includes (i) the design and construction of the Phase 2 Managed Lanes, which will consist of one managed lane in each direction along the median of the Phase 2 Corridor; (ii) the pavement replacement and the widening of the general purpose lanes to accommodate 12-foot inside and outside shoulders along the Phase 2 Corridor (the “**Phase 2 GP Lanes**” and, together with the Phase 1 GP Lanes (as defined herein), the “**U.S. 36 GP Lanes**”); (iii) the addition of the Bus Rapid Transit (“**BRT**”) improvements that include new electronic signage and bus improvements at ramps and the improvements to Regional Transportation District (“**RTD**”) stations along the Phase 2 Corridor, including new canopies with enhanced weather protection; (iv) the design and construction of other improvements to the Phase 2 Corridor, including sound and retaining walls, a bikeway, dynamic messaging signs and Intelligent System Improvements; and (v) the installation and commissioning of an electronic toll collection system on the Phase 2 Corridor (the “**Phase 2 ETCS**”). See “PHASE 2 CONSTRUCTION PROJECT.” The “**Operations Project**” is broader in scope than the Phase 2 Construction Project, consisting of the operation, maintenance, and tolling of the Managed Lanes and U.S. 36 GP Lanes and the provision of the Snow and Ice Control Services (as defined herein). See “OPERATIONS PROJECT.”

Concession Agreement. The Project is being undertaken pursuant to the Concession Agreement for U.S. 36 and I-25 Managed Lanes dated June 27, 2013, as previously amended on October 4, 2013 and December 27, 2013, and as expected to be amended and restated on or prior to the Closing Date (collectively, the “**Concession Agreement**”) between HPTE and the Concessionaire. Under the Concession Agreement, HPTE will grant the Concessionaire the exclusive right to undertake the Project until the end of the term of the Concession Agreement, which is the 50th anniversary of the Planned Full Services Commencement Date (as defined herein) (the “**Expiration Date**”) unless the Concession Agreement is terminated earlier in accordance with its terms. See “CONCESSION AGREEMENT” and APPENDIX B for a more detailed description of the Concession Agreement.

Certain Investment Risks. A number of risks that could affect the payments to be made with respect to the 2014 Bonds and/or the market value or liquidity of the 2014 Bonds are described in this Official Statement. Risks include but are not limited to: revenue risks; operating risks; financial risks; the risk of changes of law; risks related to collateral; limitations on enforceability; bankruptcy-related risks; tax matter-related risks; political, litigation and community risks; Colorado state budget and funding allocation risks; and absence of a market for the 2014 Bonds. See “CERTAIN RISK FACTORS” for a discussion of some of the risks that could affect the security or market value or liquidity of the 2014 Bonds.

Entire Official Statement Should be Read. The order and placement of information in this Official Statement, including Appendices, are not an indication of relevance, materiality or relative importance, and this Official Statement, including the Appendices, must be read in its entirety. The captions and headings in this Official Statement are for convenience only and in no way define, limit or describe the scope or intent, or affect the meaning or construction, of any provision or section of this Official Statement. This Official Statement contains summaries of and references to documents; all such summaries and references are qualified in their entirety by reference to the actual documents. *Capitalized terms used in this Official Statement and not defined in the forepart of the Official Statement have the meanings ascribed to them in APPENDIX A.*

PHASE 2 CONSTRUCTION PROJECT

General

Under the Concession Agreement, the Concessionaire has agreed to carry out all of the design, construction, testing, defect rectification and works necessary to obtain access to the Site (as defined herein) relating to the Phase 2 Construction Project in accordance with the Concession Agreement (the “**Phase 2 Construction Work**”) and the Phase 2 ETCS (collectively, the “**Phase 2 Work**”) by December 31, 2015 (as such date may be changed by HPTE and the Concessionaire in accordance with the Concession Agreement, the “**Planned Full Services Commencement Date**”). The “**Full Services Commencement Date**” occurs upon the later of the date of Phase 2 Work Completion (as defined herein) and the date when HPTE has given notice to the Concessionaire that certain conditions precedent have been satisfied or waived. See Section 2.5 in APPENDIX B hereof for a description of the conditions precedent to the Full Services Commencement Date.

If the Concessionaire does not complete the Phase 2 Work by the Planned Full Services Commencement Date, HPTE may be entitled to assess daily liquidated damages. See “– Completion; Liquidated Damages” below and “CONCESSION AGREEMENT – Principal Rights and Responsibilities of the Concessionaire.” In any event, the Concessionaire must complete the Phase 2 Work by December 31, 2016 (as such date may be changed by HPTE and the Concessionaire, the “**Full Services Commencement Longstop Date**”). If the Concessionaire does not complete the Phase 2 Work by the Full Services Commencement Longstop Date, HPTE may terminate the Concession Agreement. See “CONCESSION AGREEMENT – Termination Events.” The Concessionaire is responsible for financing the Phase 2 Work, except that a portion of the Phase 2 Work will be funded with the HPTE Capital Payment as described under “PLAN OF FINANCE – HPTE Capital Payment.”

Conditions Precedent to Commencement Date; Notice to Proceed

Under the Concession Agreement, the Concessionaire may not commence any of the Phase 2 Work (other than design work, which the Concessionaire may commence at any time at its own risk, and certain work associated with utilities as described under “– Early Works” below), until the Conditions Precedent to the Commencement Date have been satisfied or waived by HPTE. On the day following the date when the Conditions Precedent to the Commencement Date have been satisfied or waived (the

“**Commencement Date**”), HPTE will issue a notice to proceed (the “**Notice to Proceed**”) and the Concessionaire will begin the Phase 2 Work. The Concessionaire currently expects the Commencement Date to occur within two to three Business Days of the Closing Date.

The “**Conditions Precedent to the Commencement Date**” include, among other things: (i) Financial Close has occurred; (ii) HPTE has received evidence of the Required Insurances; (iii) HPTE has received the Design-Build Contract (as defined herein), the Operating Contract (as defined herein), the I-25 Tolling Services Agreement (as defined herein) and certain other Project-related documents; (iv) the Concessionaire has received all Necessary Consents (as defined herein) required for the Concessionaire to commence the operations and maintenance services in relation to the I-25 Managed Lanes from government agencies with jurisdiction; (v) the Concessionaire has delivered all required submissions, plans and schedules required under the Concession Agreement and HPTE has accepted or approved all such submissions, plans and schedules pursuant to the Concession Agreement, as applicable; (vi) no temporary restraining order or other form of injunction by a court with jurisdiction that prohibits prosecution of any portion of the Project exists; (vii) no litigation challenging any Necessary Consent under NEPA (as defined herein) has been filed within the time limit for filing such litigation and remains pending on the Financial Close Deadline Date; (viii) the Concessionaire has not received notice from HPTE of a Concessionaire Default (as defined herein); (ix) the Concessionaire has delivered to HPTE a proposed Toll schedule for the I-25 Managed Lanes and either 60 days have elapsed or HPTE has established such proposed schedule as the established Toll schedule; (x) the Source Code and Source Code Documentation relating to the operation of the I-25 Managed Lanes has been validated and placed in escrow; and (xi) the Financial Plan has been approved by the FHWA and the TIFIA Lender as provided for in the Phase 2 TIFIA Loan Agreement. For a complete list of the Conditions Precedent to the Commencement Date listed in the Concession Agreement, see Section 2.3 of APPENDIX B.

Early Works

The Concession Agreement originally contemplated that Financial Close would occur by October 4, 2013. As described above, the occurrence of Financial Close is one of the Conditions Precedent to the Commencement Date for the commencement of Phase 2 Construction Work. In order to avoid delay to the Planned Full Services Commencement Date and the Full Services Commencement Longstop Date, on October 4, 2013, HPTE and the Concessionaire entered into Amendment No. 1 to Concession Agreement for U.S. 36 and the I-25 Managed Lanes (the “**First Amendment to Concession Agreement**”) to allow the Concessionaire access to certain portions of the Site to perform certain utility and other works as part of the Phase 2 Construction Work (the “**Early Works**”). HPTE agreed to pay the Concessionaire certain amounts for the performance of the Early Works and to the extent paid, such amounts will be applied against the first Interim Capital Payment once the Commencement Date occurs. See “PLAN OF FINANCE – HPTE Capital Payment.” As of February 24, 2014, HPTE had paid to the Concessionaire approximately \$6,494,528 for the performance of the Early Works.

Construction Standards

Upon the issuance of the Notice to Proceed, the Concessionaire will begin the Phase 2 Work in accordance with the Concession Agreement, the HPTE Phase 2 Work Requirements, the Concessionaire’s Phase 2 Work Proposals, Good Industry Practice, all Necessary Consents and all applicable Law to achieve the Phase 2 Work Completion by the Planned Full Services Commencement Date. “**Good Industry Practice**” is defined in the Concession Agreement as 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 the Design-Build Contractor (as defined herein) or any sub-contractor under the same or similar circumstances. See Section 6 of APPENDIX B for a description of requirements applicable to the Phase 2 Work under the Concession Agreement.

Design-Build Contract

The Concessionaire and Ames/Granite JV (the “**Design-Build Contractor**”), a joint venture partnership formed in the State of Minnesota, of which Ames Construction, Inc., a Minnesota corporation (“**Ames Construction**”) holds a 50% ownership interest and Granite Construction Company, a California corporation (“**Granite Construction**”), holds a 50% ownership interest, have entered into a Design-Build Contract dated June 27, 2013, which is expected to be amended and restated prior to the Closing Date (the “**Design-Build Contract**”). The Phase 2 Construction Work (other than certain elements of the Phase 2 ETCS) will be undertaken by the Design-Build Contractor pursuant to the Design-Build Contract. The Design-Build Contract includes, on a lump-sum, fixed-price, “turn-key basis,” any and all work and services required or appropriate in connection with the design and construction of the Phase 2 Construction Project. Under the Design-Build Contract, the Design-Build Contractor is obligated to the Concessionaire to the same extent the Concessionaire is obligated to HPTE under the Concession Agreement with respect to performing the Phase 2 Construction Work and all of the Concessionaire’s construction related obligations under the Concession Agreement.

The contract price in the Design-Build Contract is a fixed lump-sum price of \$120.6 million inclusive of all design fees and costs, insurance, construction costs, necessary consents, applicable taxes, utilities costs, development and building permits. The Design-Build Contractor acknowledges that the contract price is adequate to enable it to meet Phase 2 Work Completion by the Planned Full Services Commencement Date and to satisfy all of its other obligations under the Design-Build Contract. The foregoing contract does not include \$850,000 representing construction costs of McCaslin Underpass which will be paid to the Design-Build Contractor in addition to \$120.6 million. See “ESTIMATED SOURCES AND USES OF FUNDS.”

The Design-Build Contractor’s obligations under the Design-Build Contract will be guaranteed by each of Ames Construction and Granite Construction Incorporated (together, the “**Design-Build Guarantor**”). The maximum liability of the Design-Build Guarantor is limited to the maximum liability of the Design-Build Contractor’s obligations under the Design-Build Contract and the Interface Agreement (as defined herein).

See “OTHER PROJECT AGREEMENTS – Design-Build Contract; and – Interface Agreement,” “FINANCING AGREEMENTS – Consents and Agreements; Guarantees – Consents of Design-Build Guarantor and Operating Guarantor” and “PROJECT PARTICIPANTS – Design-Build Contractor.”

Design Work

Although the preliminary design of the Phase 2 Construction Work was prepared on behalf of HPTE and provided to the Concessionaire as part of the procurement process for the Project, the Concessionaire is fully responsible for the design and execution of the Phase 2 Construction Work, including producing additional drawings necessary for the completion of the Phase 2 Construction Work. The Concessionaire contracted with the Design-Build Contractor for all design of the Phase 2 Construction Work and the Design-Build Contractor has subcontracted that work to HDR Engineering Inc. See “PROJECT PARTICIPANTS – HDR.”

Phase 2 Electronic Toll Collection System

As part of the Phase 2 Construction Project, the Concessionaire agreed to install the electronic toll collection system on the Phase 2 Corridor which will include the design, construction and integration of all of the system electronics as well as the supporting infrastructure (structures, power, fiber optic communications) needed to support the operation and maintenance of the equipment. The construction portion of the Phase 2 ETCS (such as installation of the ETCS lane equipment (including readers, lane

controllers, cameras and related equipment), connection and integration with the on-site servers and performing the “Operational Readiness” and “Acceptance Testing” for the lane equipment) will be performed by the Design-Build Contractor under the Design-Build Contract. The Operational Readiness and Acceptance Testing will document and confirm that the lane-based transactions and images are correctly transmitted to and formatted on the servers by the installed lane systems. However, the Design-Build Contractor is not responsible for any software development to support the customer service/back office functions or dynamic tolling which will be performed by the E-470 Authority. See “OTHER PROJECT AGREEMENTS – Tolling Services Agreement.”

Site Conditions; Hazardous Substances; Differing Site Conditions

Site Conditions. Under the Concession Agreement, HPTE has given the Concessionaire a license to use the land identified in the Concession Agreement for the performance of the Phase 2 Construction Work (the “**Site**”) and various other buildings and maintenance facilities owned by CDOT to perform the Phase 2 Construction Work. The Concession Agreement provides that the condition of the Site (including its suitability for the Phase 2 Construction Work) is the sole responsibility of the Concessionaire, unless otherwise specified in the Concession Agreement. Before commencing the Phase 2 Construction Work, the Concessionaire is required to verify all governing dimensions and conditions at the Site and to examine all adjoining work, which may have an impact on such Phase 2 Construction Work.

Hazardous Substances. Except for certain circumstances specified in the Concession Agreement, some of which are described below, the Concessionaire will be responsible, and is required to compensate HPTE, for any Losses that HPTE may incur in relation to cleaning up and otherwise dealing with any ground contamination at or from the Site so that it will comply with its obligations under the Concession Agreement, any applicable law and any Necessary Consents. The Concession Agreement provides that HPTE is responsible for any “**HPTE Hazardous Substances Circumstances**,” which includes the presence, release or threatened release of Hazardous Substances on or from the Site or the Managed Lanes which were generated or introduced (i) on the Site or the I-25 Managed Lanes before the Commencement Date; (ii) on the Phase 1 Managed Lanes before the Phase 1 Services Commencement Date (as defined herein); (iii) after the dates specified in (i) and (ii), other than by reason of any act or omission of the Concessionaire or any Concessionaire Related Party; (iv) 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 (v) 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.

If the Concessionaire has to remediate any HPTE Hazardous Substances Circumstances, then the Concessionaire is entitled to 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 the Full Services Commencement Longstop Date as is reasonably required to permit such work to be carried out, and/or to relief from its obligations under the Concession Agreement. HPTE has agreed to reimburse the Concessionaire for any losses, liabilities and claims arising out of the existence of HPTE Hazardous Substances Circumstances or any bodily injury, damage to property or environmental removal or response costs, in each case arising out of HPTE Hazardous Substances Circumstances to the extent that such amounts cannot be mitigated, reduced or avoided by reasonable steps taken by the Concessionaire. See “CONCESSION AGREEMENT – Environmental Requirements” and Section 5 in APPENDIX B.

Differing Site Conditions. The Concession Agreement provides relief to the Concessionaire upon the discovery of certain “**Differing Site Conditions**,” which include (a) subsurface or latent conditions encountered at the exact boring holes identified in the geotechnical reports included in the Concession

Agreement which differ materially from those conditions indicated in the geotechnical reports for such boring holes; (b) physical conditions of an unusual nature, differing materially from those ordinarily encountered in the area and generally recognized as inherent in the type of work provided for in the Concession Agreement; or (c) the presence of any paleontological, archeological or cultural resources or biological resources (which term is deemed to mean any threatened or endangered species, raptors or eagles). Any Differing Site Conditions that the Concessionaire had actual or constructive knowledge of as of the Commencement Date do not qualify as a Differing Site Condition. See Section 6.2 of APPENDIX B for a description of the Concession Agreement provisions relating to Site conditions.

Process After Discovery of Certain Site Conditions. If the Concessionaire becomes aware of any Hazardous Substances that are required to be removed or treated or any Differing Site Conditions, then the Concessionaire is required to notify HPTE and promptly stop work in and secure the area affected by any such matter. The Concessionaire will advise HPTE of any action recommended to be taken regarding the situation and HPTE will either approve, or require modification of, the Concessionaire's proposed actions. HPTE will then use the Change Procedure to compensate the Concessionaire for additional costs and losses caused by changes in the Phase 2 Construction Work arising from such Hazardous Substance or Differing Site Conditions, and extend the Planned Full Services Commencement Date and the Full Services Commencement Longstop Date as the result of any delay caused by any such Hazardous Substance or Differing Site Conditions. See “– Change Orders; Directive Letters” and “OPERATIONS PROJECT – Change Procedure” for a description of Change Procedures.

Change Orders; Directive Letters

General. A “**Change**” is any structural alteration, variation, extension, addition or reduction in the Managed Lanes and/or to the Services to be provided by the Concessionaire pursuant to the Concession Agreement. The Concession Agreement sets out procedures (the “**Change Procedures**”) governing changes proposed by HPTE or by the Concessionaire, both for the performance of the Phase 2 Work and thereafter until the end of the Phase 2 Warranty Period.

From the Commencement Date up to (and including) the date when Phase 2 Work Completion occurs (the “**Construction Period**”), either HPTE or the Concessionaire may initiate a Change Order for the following purposes: (i) to modify the Phase 2 Work, (ii) to revise the Planned Full Services Commencement Date and/or the Full Services Commencement Longstop Date, (iii) to provide for changes in costs arising out of certain Relevant Events and (iv) to revise other terms and conditions of the Concession Agreement as a result of modification of the Phase 2 Work. See Section 16 in APPENDIX B for a description of the Change Procedures and limits on requests for Changes.

HPTE-Directed Changes. HPTE may initiate a Change (“**HPTE-Directed Change**”) by issuing a Request for Change Proposal (“**RCP**”) or a unilateral Change Order. If HPTE issues a RCP, then the parties will consult with each other to define the scope and cost of the Change and who will issue the Change Order. HPTE may, in the alternative, issue a unilateral Change Order but only for the Phase 2 Work that does not involve the Phase 2 Managed Lanes or the Phase 2 ETCS. If HPTE issues a unilateral Change Order, then the Concessionaire will be entitled to payment of compensation for the additional Phase 2 Construction Work required. See Section 16 in APPENDIX B.

Concessionaire Changes. The Concessionaire may request a Change to obtain payment of changes in costs caused by an HPTE-Directed Change, a Compensation Event, Differing Site Conditions, costs relating to HPTE Hazardous Substances Circumstances, certain utility work and a Qualifying Change in Law. The Concessionaire may request a Change to extend the Planned Full Services Commencement Date and/or the Full Services Commencement Longstop Date only for the delays caused by the matters discussed in the previous sentence, a Force Majeure Event and a Relief Event. See Section 16 in APPENDIX B.

Directive Letter. At any time during the Construction Period, HPTE may issue a directive letter to the Concessionaire in the event of any desired change in the Phase 2 Construction Work or of any Dispute regarding the Phase 2 Construction Work. The directive letter will describe the Phase 2 Construction Work and will state the basis for determining compensation, if any. The Concessionaire is required to proceed immediately with the Phase 2 Construction Work as directed in the letter, pending the execution of a formal Change Order.

Relevant Events; Relief and Force Majeure Events

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, monetary compensation from HPTE or relief from the allocation of Noncompliance Points and/or from any right which HPTE otherwise would have to assert that certain event constituted a Concessionaire Default. Certain “**Relevant Events**,” such as an HPTE Change, a Qualifying Change in Law, a Compensation Event or any other matter resulting in a Change in Costs entitle the Concessionaire to claim monetary compensation from HPTE, while a Relief Event or a Force Majeure Event entitle the Concessionaire to claim relief from certain of its obligations under the Concession Agreement. A “**Change in Costs**” generally means the effect that a Relevant Event has on the actual or anticipated costs, revenues or liabilities of the Concessionaire, whether of a one off or recurring nature and whether positive or negative. See “CONCESSION AGREEMENT – Relevant Events; Relief and Force Majeure Events” and Section 15 in APPENDIX B.

Governmental Consents and Approvals

The Project must comply with numerous federal, State and local regulatory requirements, including requirements to obtain various 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 (the “**Necessary Consents**”). Failure to obtain or maintain one or more of these Necessary Consents could delay the Project or cause a need to substantially modify, suspend or even to terminate the Project. The Concessionaire believes that all such Necessary Consents will be obtained prior to the time when needed and will not contain any materially adverse restrictions. Moreover, although no assurances can be given, the Concessionaire expects to be able to satisfy all of the terms and conditions in the Necessary Consents it has received, and to be able to maintain, extend or renew the authorization provided by these Necessary Consents so as to avoid any material adverse restrictions on the Project.

HPTE and CDOT obtained many of the Necessary Consents during the procurement process that led to the selection of the Concessionaire as the winning bidder. However, the Concession Agreement provides that the Concessionaire is responsible for obtaining all Necessary Consents and for arranging any necessary amendments to any Necessary Consents. When reasonably requested by the Concessionaire, HPTE will use its reasonable endeavors to assist the Concessionaire in obtaining any Necessary Consent. Within 30 Business Days of the Commencement Date and thereafter on each anniversary of the Commencement Date, the Concessionaire is required to provide a comprehensive list of all Necessary Consents which are required in respect of the Phase 2 Construction Work, which have been or will be applied for and/or all the Necessary Consents obtained as well as certain other information relating to the status of obtaining or renewing any Necessary Consents.

The Project has undergone all of the planning stages as required by the National Environmental Policy Act (“**NEPA**”). In December 2009, the Federal Highway Administration (the “**FHWA**”) issued a Record of Decision (the “**ROD**”) for the US 36 Corridor Final Environmental Impact Statement/Section 4(f) Evaluation (the “**FEIS**”).

Subsequently, reevaluations were conducted as required by NEPA, due to changes in the scope of the Project as HPTE advanced the engineering design of the Project to an approximate 30% level of design. The U.S. 36 Phase 1 NEPA Reevaluation was approved in July 2012 and the U.S. 36 Phase 2 NEPA Reevaluation was approved in March 2013 (together, the “**NEPA Reevaluations**”). The NEPA Reevaluations provided an updated ROD granting approval to the current proposals based on further refinement of the design since the 2009 decision. The NEPA Reevaluations conclude that none of the changes result in new significant impacts that were not identified in the FEIS or the ROD. The NEPA Reevaluations also state that they are final and no additional studies or other requirements are needed for the proposed action.

The Concessionaire has also received other construction related Necessary Consents including: the Section 404 Wetland Permit from the U.S. Army Corps of Engineers covering the anticipated impacts on the wetland and water areas, the U.S. 36 Phase 2 Site Specific Biological Assessment approved by the U.S. Fish & Wildlife Service, a U.S. 36 Phase 2 Site Specific Biological Opinion issued by the U.S. Fish & Wildlife Service, a Colorado Discharge Permit System Stormwater Construction Permit from the Colorado Department of Public Health and Environment (“**CDPHE**”) Water Quality Control Division, a Letter of Approval regarding the impact of the Project to historic resources from the Colorado Office of Archaeology & Historic Preservation, construction access permits from the City of Louisville and Boulder County, and construction/right of way and open space access permits from the City of Louisville.

The Design-Build Contractor on behalf of the Concessionaire also plans to obtain or is in the process of obtaining additional Necessary Consents relating to the Phase 2 Construction Project, such as consents and permits relating to air pollution emissions and air pollution control; construction permits and construction noise permits from all applicable local jurisdictions; wild life related permits; floodplain grading permit; certifications on impacts to stream banks, stream channels and riparian areas; and a Conditional Letter of Map Revision from the Federal Emergency Management Agency. The Concessionaire also plans to obtain or is in the process of obtaining additional Necessary Consent relating to the Operations Project, such as consents and permits relating to air pollution emissions and air pollution control. Although no assurances can be given, the Concessionaire expects that it or the Design-Builder Contractor (on behalf of the Concessionaire) will obtain these Necessary Consents without terms containing materially adverse restrictions and on a schedule which will not materially interfere with the construction and operation of the Project.

Applicable appeal periods may not have expired for certain of these Necessary Consents. Although the Concessionaire currently has no knowledge that any appeal will be filed by any third party on any such Necessary Consent, there can be no assurance that any such Necessary Consent will not be the subject of an appeal that may delay or interfere with at least part of the Project. In addition to those Necessary Consents already received, certain other Necessary Consents or extensions of Necessary Consents will be required prior to commencing specific portions of the construction and operation of the Project.

Completion; Liquidated Damages

Under the Concession Agreement, the Concessionaire has covenanted to achieve the Phase 2 Work Completion by the Planned Full Services Commencement Date (currently expected to be December 31, 2015). Upon receipt from the Concessionaire of an affidavit of completion of the Phase 2 Work, HPTE will make a final inspection and will either issue a notice of completion of the Phase 2 Work which will state the date on which the Phase 2 Work has been completed (the “**Phase 2 Work Completion**”) or will notify the Concessionaire regarding any Phase 2 Work remaining to be performed. If the Phase 2 Work is not completed by the Planned Full Service Commencement Date (as it may be extended pursuant to the Concession Agreement), then the Concession Agreement provides that the Concessionaire must: (1) pay daily liquidated damages of \$3,000 until the date of Phase 2 Work Completion; and (2) pay over

to HPTE a portion of the Toll Revenues from the I-25 Managed Lanes and the Phase 1 Managed Lanes (\$15,000 per day) until the date of the Phase 2 Work Completion. The total aggregate amount of the damages payable as described in (1) and (2) in the preceding sentence is capped \$1.095 million and \$5.475 million respectively. See “CONCESSION AGREEMENT – Principal Rights and Responsibilities of the Concessionaire” and Section 6.9 of APPENDIX B.

Under the Design-Build Contract, if the Design-Build Contractor fails to complete the Phase 2 Construction Project by the Planned Full Services Commencement Date, to the extent such failure is not directly attributable to an act or omission of the Concessionaire or certain other parties, the Design-Build Contractor has agreed to pay to the Concessionaire the full amount of the liquidated damages described above and the Design-Build Guarantor will, prior to the Closing Date, guarantee the payment of such liquidated damages. See “OTHER PROJECT AGREEMENTS – Design-Build Contract – Liquidated Damages” and “SECURITY AND SOURCES OF PAYMENT FOR 2014 BONDS – Consents and Agreements; Guarantees – Design-Build Guarantee and Operating Guarantee.”

Coordination with Phase 1 Construction Work

Ames/Granite JV, the Design-Build Contractor for the Phase 2 Construction Work, is also the Design-Build Contractor for the Phase 1 Construction Work (the “**Phase 1 Design-Build Contractor**”). CDOT and the Phase 1 Design-Build Contractor previously entered into the US 36 Express Lanes/Design-Build Contract dated as of April 12, 2012, as amended (the “**Phase 1 Design-Build Contract**”) between CDOT and the Phase 1 Design-Build Contractor. Under the Phase 1 Design-Build Contract, the Phase 1 Design-Build Contractor is designing and constructing the Phase 1 Managed Lanes, widening, reconstructing and repaving the general purpose lanes within the Phase 1 Corridor (the “**Phase 1 GP Lanes**” and, together with the Phase 1 Managed Lanes, the “**Phase 1 Lanes**”) and making other improvements to the Phase 1 Corridor (the “**Phase 1 Construction Work**”). Additionally, the E-470 Authority (as defined herein) has agreed to install an electronic tolling collection system for the Phase 1 Managed Lanes (the “**Phase 1 ETCS**”) pursuant to a task order contract between HPTE and the E-470 Authority (the “**Phase 1 ETCS Installation Contract**”).

In the Concession Agreement, the Concessionaire has agreed to coordinate its work with the work of the Phase 1 Design-Build Contractor, including the implementation of a traffic crossover at the boundary between the projects contemplated to be in place in early 2014. See Section 6.6 of APPENDIX B and “OPERATIONS PROJECT – Conditions Precedent; Commencement Dates – Concessionaire’s Participation in the Acceptance of the Phase 1 Project” for a description of the Concessionaire’s role in the acceptance of the Phase 1 Construction Work.

OPERATIONS PROJECT

General

Under the Concession Agreement, the Concessionaire has agreed to carry out an “**Operations Project**” that generally consists of: (i) the provision of the Services; (ii) the provision of the Snow and Ice Control Services; and (iii) the collection of Toll Revenues, all as described below. In addition, during the period from the Full Services Commencement Date to the earlier of the Expiration Date and the Termination Date (the “**Services Period**”), the Concessionaire is responsible for the operation of the ETCS and the maintenance of certain elements of the ETCS. For a discussion of tolling on the Managed Lanes, see “TOLLING ON THE MANAGED LANES.” Different parts of the Operations Project come into effect at different points in time:

- On the Commencement Date, the Concessionaire will begin delivering Services and the Snow and Ice Control Services for the I-25 Managed Lanes and the road carrying the I-25

Managed Lanes and the general purpose lanes on the I-25 Corridor and the expansion joints within those bridge decks of certain bridges (the “**I-25 Shared Bridge Decks**”); and will begin receiving I-25 Toll Revenues (as defined herein).

- On the Phase 1 Services Commencement Date, the Concessionaire will begin delivering Services and the Snow and Ice Control Services for the Phase 1 Lanes and will begin receiving Toll Revenues generated by the Phase 1 Managed Lanes (the “**Phase 1 Toll Revenues**”).
- On the Full Services Commencement Date, the Concessionaire will begin delivering Services and the Snow and Ice Control Services for the Phase 2 Managed Lanes and the Phase 2 GP Lanes (together, the “**Phase 2 Lanes**”) and will begin receiving Toll Revenues generated by the Phase 2 Managed Lanes.

I-25 Managed Lanes

The I-25 Managed Lanes, which consists of two “tidal” reversible lanes, allows passenger vehicles carrying two or more people, buses, hybrid vehicles with permits and motorcycles to travel toll-free while single occupancy vehicles pay a toll. The I-25 Managed Lanes run for approximately 7.7 miles on U.S. 36 and I-25 between Downtown Denver and Pecos Street. HPTE currently operates the I-25 Managed Lanes. On the Commencement Date, HPTE will turn over the responsibility for operating, maintaining and collecting Tolls on the I-25 Managed Lanes to the Concessionaire. See “I-25 MANAGED LANES” for a description of the I-25 Managed Lanes and “PHASE 2 CONSTRUCTION PROJECT – Conditions Precedent to Commencement Date; Notice to Proceed” for a discussion of the Commencement Date.

Phase 1 Project

The “**Phase 1 Project**” consists of (i) the construction of the Phase 1 Managed Lanes; (ii) the widening, reconstruction and pavement replacement of the Phase 1 GP Lanes; (iii) the replacement of certain bridges along the Phase 1 Corridor; (iv) enhancements to BRT stations and ramps; (v) the development of other improvements to the Phase 1 Corridor, including sound and retaining walls, a commuter bikeway, dynamic messaging signs and Intelligent System Improvements; and (vi) improvements to RTD stations along the Phase 1 Corridor. Construction of the Phase 1 Project began in July 2012 and is planned to be completed by January 2015. HPTE believes there is the possibility that delivery of the Phase 1 Managed Lanes could be delayed past January 1, 2015, but is unable at the time of this Official Statement to determine the length of any such delay. See “PHASE 1 PROJECT” for additional information about the Phase 1 Project. Upon achieving the Phase 1 Services Commencement Date, the Concessionaire will be entitled to all Phase 1 Toll Revenues. For a detailed description of the conditions precedent to the Phase 1 Services Commencement Date see Section 2.4 of APPENDIX B. For a detailed description of the conditions to achieving the Phase 1 Assumption Date, see “PHASE 1 PROJECT – Financing of the Phase 1 Project; Assumption of Phase 1 TIFIA Loan.”

Full Services Commencement Date

Upon the satisfaction or waiver by HPTE of the Conditions Precedent to the Full Services Commencement Date, the Concessionaire will begin delivering Services and the Snow and Ice Control Services in relation to the Phase 2 Managed Lanes and the Phase 2 GP Lanes and collection of Tolls on the Phase 2 Managed Lanes. The Concessionaire and HPTE currently estimate that the Full Services Commencement Date will be on or about December 31, 2015. As set forth in the Concession Agreement, the “**Conditions Precedent to the Full Services Commencement Date**” include, among other things: the receipt of the Required Insurances, Necessary Consents and all plans, submissions and schedules required

under the Concession Agreement; no court order then exists that restrains, enjoins, challenges or delays the Services in relation to the Managed Lanes or the U.S. 36 GP Lanes; the Source Code and Source Code Documentation has been placed in escrow; the Concessionaire has not received notice from HPTE of any Concessionaire Default; the Concessionaire has delivered to HPTE a proposed toll and penalty schedule for the Managed Lanes and either 60 days have elapsed or HPTE has established that as the established toll and penalty schedule; and HPTE has issued a notice to the Concessionaire that the Phase 2 Construction Work has been completed. For a complete list of the conditions precedent to the Full Services Commencement Date see Section 2.5 of APPENDIX B.

Operations and Maintenance

General. The Concessionaire has agreed to make the Managed Lanes available for use by vehicles and to provide all services necessary to comply with the HPTE Service Requirements and other provisions of the Concession Agreement (the “**Services**”) for the Managed Lanes, the I-25 Shared Bridge Decks and the U.S. 36 GP Lanes, and the Snow and Ice Control Services. See Section 7.1 of APPENDIX B for a discussion of the requirements applicable to the Services.

The Concessionaire must ensure that at all times its maintenance and operating procedures are sufficient to ensure that (i) Managed Lanes are available to the public, (ii) the Concessionaire can maintain the design intention of the elements of the Managed Lanes and the U.S. 36 GP Lanes described in the Concession Agreement (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 Handback Requirements (as defined herein). See “– Handback” below.

Snow and Ice Control Services. Under the Concession Agreement, the Concessionaire has agreed to provide for 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 U.S. 36 GP Lanes in accordance with the Concession Agreement (the “**Snow and Ice Control Services**”). The Concessionaire will sub-contract the Snow and Ice Control Services to the Operating Contractor (as defined herein) but all actions of such sub-contractor are deemed to be the actions and responsibilities of the Concessionaire for purposes of the Concession Agreement. To the extent that a Relief Event or a Force Majeure Event prevents or diminishes the performance of the Snow and Ice Control Services, then HPTE will be entitled to a fair and reasonable reduction in the Maintenance Fees which it agreed to pay to the Concessionaire for the performance of such services in the amount as may be agreed to by HPTE and the Concessionaire. See Section 8 of APPENDIX B for a description of the Snow and Ice Control Services.

Maintenance Fees. In consideration for providing certain routine maintenance services for the U.S. 36 GP Lanes, HPTE is obligated to pay to the Concessionaire an annual fee in the amount of \$519,075 payable in monthly installments commencing from the month which includes the Phase 1 Services Commencement Date and until the month which includes the Full Services Commencement Date, at which point the annual fee will increase to \$675,000 per year and will be payable monthly. In addition, in consideration for providing Snow and Ice Control Services in the U.S. 36 GP Lanes, HPTE is obligated to pay to the Concessionaire an annual fee of \$352,470 payable in installments from November to April commencing from the month which includes the Phase 1 Services Commencement Date (or from the November following that month) until the month which includes the Full Services Commencement Date, at which point the fee will increase to \$458,348 and will be payable in the same manner as prior to such date. The foregoing fees are referred to as the “**Maintenance Fees.**” The Concessionaire is not entitled to any payment from HPTE to provide the Services or the Snow and Ice Control Services in the Managed Lanes.

Sources of Funding of Maintenance Fees. Pursuant to an HPTE U.S. 36 Concession Project Intra-Agency Agreement dated June 27, 2013, as amended on October 17, 2013 (the “**HPTE-CDOT**

Agreement”) between CDOT and HPTE, CDOT has agreed to provide funds to HPTE to pay the Maintenance Fees and HPTE’s obligations under the Concession Agreement in relation to Non-Separable Tasks in the amounts and at the times necessary for HPTE to meet its obligations under the Concession Agreement. This payment obligation of CDOT is subject to annual allocation by the Transportation Commission from the State Highway Fund (as defined herein) but is not subject to annual appropriation by the State legislature. See “PROJECT PARTICIPANTS – CDOT – Appropriations and Budgetary Process” and “CERTAIN RISK FACTORS – Annual Allocation and Budgetary Process.” See also “OTHER PROJECT AGREEMENTS – Intergovernmental Agreements – HPTE-CDOT Agreement.”

Operating Contract. The Concessionaire has selected Transfield Services Infrastructure Inc. (the “**Operating Contractor**”) as the Operating Contractor to perform operations, maintenance, management, administration and related obligations under the Concession Agreement and certain other specified services pursuant to the Operating Contract dated June 27, 2013, as expected to be amended and restated on or prior to the Closing Date (the “**Operating Contract**”). The Operating Contractor is responsible for operating the Managed Lanes and maintaining the Managed Lanes, the I-25 Shared Bridge Decks and the U.S. 36 GP Lanes, for providing Snow and Ice Control Services and for causing the Project to be continuously open and operational for use by all members of the public 24 hours a day, 365 days a year. See “PROJECT PARTICIPANTS – Operating Contractor” and “– Transfield Services Limited” for a description of the Operating Contractor and Transfield Services Limited and see “OTHER PROJECT AGREEMENTS – Operating Contract” and APPENDIX D for a description of the Operating Contract. Transfield Services Limited will provide, prior to the Closing Date, a parent company guarantee in favor of the Concessionaire pursuant to which it will guarantee all the obligations of the Operating Contractor under the Operating Contract. The Concessionaire will grant a lien on and security interest in all of its right, title and interest in and to the parent company guarantee to the Security Trustee for the benefit of the Secured Parties.

Performance Monitoring; Noncompliance Points. The Concessionaire is required to monitor the Services and 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 information relating to the maintenance of the Project. The Concessionaire is also required to prepare an annual performance report. The Concession Agreement contains a regime pursuant to which “**Noncompliance Points**” are allocated to the Concessionaire based on the Concessionaire’s acts, omissions, breaches or failure to perform under the Concession Agreement. 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 in accordance with a schedule set forth in the Concession Agreement. Upon receipt of a monthly statement of Noncompliance Points from HPTE, 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. See “CONCESSION AGREEMENT – Monitoring of Performance of Services; Noncompliance Points” and Section 10 of APPENDIX B. In addition, see “REPORTS – Technical Report” and APPENDIX I for BTY’s technical risk assessment of the Noncompliance Points system.

Life Cycle Maintenance. Each year, the Concessionaire is required to deliver to HPTE a five-year Life Cycle Maintenance Plan. The Life Cycle Maintenance Plan is required to set out the design, construction, completion, commissioning and testing of and related updating of relevant documentation in connection with all work of reconstruction, rehabilitation, restoration, renewal or replacement of the Managed Lanes and identifying all Non-Separable Tasks. The Concessionaire bears the responsibility for performing the elements of the Life Cycle Maintenance Plan. See Section 9 of APPENDIX B.

Change Procedure

During the Term, either HPTE or the Concessionaire may request a Change Order to modify the Services and Snow and Ice Control Services, however the Concession Agreement restricts the parties from proposing or implementing certain changes which, among other things, would materially and adversely affect the Concessionaire's ability to deliver the Services and Snow and Ice Control Services carried out in a manner not compensated pursuant to the Concession Agreement, would violate the applicable law or Good Industry Practice or cause any Necessary Consents to be revoked or if a new Necessary Consent required to implement the change would be unobtainable. HPTE has absolute discretion to accept or reject any Concessionaire Change unless the change is required as a result of a Change in Law. See Section 16 of APPENDIX B.

Requested changes are broken down into values - low, medium and high - depending on the cost of such change. See Section 17 of APPENDIX B for a description of these three categories. The Concessionaire is required to bear the cost of any Concessionaire Change, except if it arises in connection with the Change in Law, in which case such costs are funded as described in the "CONCESSION AGREEMENT – Relevant Events; Relief and Force Majeure Events." If the Concessionaire either fails to respond to the HPTE's request for a Change Order or fails to fully implement the agreed upon Change Order within the specified time limits, HPTE may implement the Change Order as long as it is carried out in accordance with Good Industry Practice, does not affect the delivery of Services under the Concession Agreement and does not require any alteration, demolition, extension or addition to the Managed Lanes.

Handback

General. The Concessionaire is required to ensure that the Maintained Elements meet the Residual Life Requirements set forth in the Concession Agreement. 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 certain requirements relating to the handback of the Project and the Renewal Works (the "**Handback Requirements**") and a plan describing the methodology used to assess and calculate the Residual Life for each Maintained Element.

Inspections, Renewal Amount. The Concessionaire is also required to engage an independent expert (the "**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 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**").

Handback Reserve Fund. 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 under the MSA (the "**Handback Reserve Fund**") or provide an irrevocable letter of credit, in form and substance reasonably satisfactory to HPTE for the same amount. The amount in the Handback Reserve 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 Handback Reserve Fund or letter of credit in the amount required to address such failures up to the full amount of the security available. See Section 19 of APPENDIX B.

I-25 MANAGED LANES

General

The I-25 Managed Lanes were originally opened in 1994 as high occupancy vehicle (“HOV”) and BRT lanes between downtown Denver and U.S. 36. In 1999, the State of Colorado (the “State”) enacted legislation allowing CDOT to convert existing HOV lanes on I-25 into a high occupancy toll (“HOT”) lane. In 2002, the State enacted legislation authorizing the Colorado Tolling Enterprise (the predecessor to HPTE) to finance, construct, operate, regulate and maintain a system of toll highways. In June 2006, the existing HOV and BRT lanes were converted into a two-lane (one HOV lane and one HOT lane) barrier-separated reversible facility in the median of I-25. The I-25 Managed Lanes are reversible, with vehicles moving with rush hour traffic southbound in the morning and northbound in the evening. A traffic management system, which includes changeable signs, traffic gates, and closed-circuit television, provides a safety feature to the barrier-separated lanes. HPTE currently operates and maintains the I-25 Managed Lanes.

Currently, Toll Revenues from the I-25 Managed Lanes (the “I-25 Toll Revenues”) are used first to pay the costs of operating, maintaining, renewing and replacing the I-25 Managed Lanes; those costs currently are approximately \$2.5 million yearly. On June 13, 2013, HPTE, CDOT and the RTD entered into a U.S. 36 Concession Project Intergovernmental Agreement, as amended effective on November 7, 2013 (the “U.S. 36 Concession Project IGA”) to govern certain elements of the Project and the use of the I-25 Toll Revenues. Under the U.S. 36 Concession Project IGA, the parties have agreed to allow the use of I-25 Toll Revenues in accordance with the Concession Agreement and to include the I-25 Toll Revenues as part of the Collateral for the Secured Obligations. See “OTHER PROJECT AGREEMENTS – Intergovernmental Agreements – U.S. 36 Concession Project IGA.”

On the Commencement Date, the Concessionaire will commence collecting Tolls on the I-25 Managed Lanes.

Historical Traffic

The I-25 Managed Lanes have been in operation in their current form since July 2006. The table below shows annual traffic from the opening of the I-25 Managed Lanes through the fiscal year ended June 30, 2013.

**I-25 Managed Lanes Historical Traffic
(vehicles per year)**

| Fiscal Year | LPT¹ | LPT¹ % of Total | AVI² | AVI² % of Total | HOV2+ of Total | HOV2+ % of Total | Total |
|--------------------|------------------------|---------------------------------------|------------------------|---------------------------------------|---------------------------|-----------------------------|--------------|
| 2007 | * | 0% | 799,809 | 24% | 2,527,910 | 76% | 3,327,719 |
| 2008 | * | 0 | 1,163,359 | 31 | 2,644,606 | 69 | 3,807,965 |
| 2009 | 52,909 | 2 | 1,021,704 | 29 | 2,424,888 | 69 | 3,499,501 |
| 2010 | 138,265 | 4 | 969,330 | 28 | 2,327,693 | 68 | 3,435,288 |
| 2011 | 225,717 | 7 | 952,548 | 27 | 2,287,920 | 66 | 3,466,185 |
| 2012 | 393,085 | 12 | 782,858 | 23 | 2,182,094 | 65 | 3,358,037 |
| 2013 | 424,487 | 12 | 866,499 | 25 | 2,178,100 | 64 | 3,422,541 |

* License plate tolling began January, 2009.

¹ License Plate Tolling

² Automatic Vehicle Identification also referred to herein as the EXpressToll™ collection system.

Source: CDOT

As shown in the table above, in fiscal year ended June 30, 2013, approximately 64% of traffic on the I-25 Managed Lanes was comprised of non-tolled HOV2+ Vehicles (as defined herein). The Concessionaire estimates that out of all traffic on the I-25 Managed Lanes in such fiscal year (i) only 11% is estimated to have constituted vehicles with three occupants or more, or HOV3+ Vehicles (as defined herein), which would continue to be Non-Tolled Vehicles (as defined herein) upon the HOV Change Event and (ii) 53% is estimated to have carried two occupants. See “TOLLING ON THE MANAGED LANES – Non-Tolled Vehicles.”

Historical Revenue

The table below sets forth the approximate historical I-25 Toll Revenues during the period from fiscal years ended June 30, 2007 through June 30, 2013. The figures below take into account adjustments for certain extraordinary events. See APPENDIX H for a description of these adjustments.

I-25 Managed Lanes Historical Toll Revenues

| <u>Fiscal Year</u> | <u>Amount (\$ millions)</u> |
|---------------------------|------------------------------------|
| 2007 | \$1.070 |
| 2008 | 2.497 |
| 2009 | 2.357 |
| 2010 | 2.462 |
| 2011 | 2.680 |
| 2012 | 2.632 |
| 2013 | 2.731 |

Source: Traffic and Revenue Study

I-25 Toll Revenues Projections

The Concessionaire expects I-25 Toll Revenues to increase from approximately \$2.7 million in 2013 to approximately \$8.7 million in 2017. The components of the projected increase in I-25 Toll Revenues are as follows, in approximate numbers:

- \$2.4 million to the HOV Change Event (as defined herein), as the I-25 Managed Lanes are expected to see a decrease in usage by toll-free users, an increase in traffic due to more congestion in the I-25 general purpose lanes and increased pricing flexibility with fewer non-tolled users. As mentioned above, an estimated 53% of traffic on the I-25 Managed Lanes in fiscal year ended June 30, 2013 was comprised of vehicles with two occupants, which would no longer travel toll-free upon the HOV Change Event. See “TOLLING ON THE MANAGED LANES – Non-Tolled Vehicles” for a discussion of the HOV Change Event and APPENDIX H for information on the projected Toll Revenues.
- \$0.7 million to the completion of the Denver Union Station project and associated interchange work, which is expected to reduce congestion, increase time savings and increase volume on the I-25 Managed Lanes.
- \$1.5 million to the increase in Toll rates currently projected based on the Base Case Financial Model.

- \$1.4 million to overall traffic growth on the I-25 Managed Lanes, revenue growth from increased traffic and value of time growth among users of the I-25 Managed Lanes.

Transition of Operation and Maintenance of the I-25 Managed Lanes

The I-25 Managed Lanes were built by CDOT and are currently operated and maintained by HPTE. See “CERTAIN RISK FACTORS – Concessionaire’s Risk Relating to Phase 1 Project and the I-25 Managed Lanes.” The Concessionaire is required to complete an initial inspection with respect to the I-25 Managed Lanes and submit the results to HPTE at least 60 days prior to the anticipated Commencement Date. HPTE has agreed that some aspects of that inspection of the I-25 Shared Bridge Decks can be deferred until after the Commencement Date. If such initial inspection, whether carried out before or after the Commencement Date, reveals any defects (either those defects which require immediate and urgent attention because they are likely to create a danger or serious inconvenience to drivers or defects which can be fixed at a later time) and such defects are not corrected before the Commencement Date, then either (i) the Concessionaire is required to correct those defects starting on the Commencement Date and HPTE is required to pay the Concessionaire’s reasonable costs incurred in correcting such defects, or (ii) HPTE may waive the requirement to correct such defect. In either case, HPTE may not allocate Noncompliance Points for such defects, unless HPTE did not waive the requirement to correct such defect or the Concessionaire fails to correct it in accordance with the Concession Agreement. See “CONCESSION AGREEMENT – Monitoring of Performance of Services; Noncompliance Points.” In addition, if the performance of the correction work on the I-25 Managed Lanes and the I-25 Shared Bridge Decks in accordance with Good Industry Practice causes a loss of Toll Revenues, then HPTE is required to reimburse the Concessionaire for such loss.

If, prior to the Commencement Date, any loss or damage to the I-25 Managed Lanes assets occurs and such loss or damage would cause the Concessionaire’s failure to comply with HPTE Service Requirements, then such loss or damage is required to be treated as caused by a Compensation Event, unless HPTE waives or modifies the HPTE Service Requirements. See “CONCESSION AGREEMENT – Relevant Events; Relief and Force Majeure Events – Compensation Events.”

PHASE 1 PROJECT

General

The “**Phase 1 Project**” consists generally of (i) the construction of the Phase 1 Managed Lanes; (ii) the widening, reconstruction and pavement replacement of the Phase 1 GP Lanes; (iii) the replacement of certain bridges along the Phase 1 Corridor; (iv) enhancements to BRT stations and ramps; (v) the development of other improvements to the Phase 1 Corridor, including sound and retaining walls, a commuter bikeway, dynamic messaging signs and Intelligent System Improvements; and (vi) improvements to RTD stations along the Phase 1 Corridor. HPTE is undertaking the Phase 1 Project.

HPTE previously entered into a Design-Build Contract for the Phase 1 Project with Ames/Granite JV, which also is undertaking the Phase 2 Construction Work. The Concessionaire believes that using the same Design-Build Contractor for the Phase 1 Project and the Phase 2 Construction Project will simplify coordination of construction activities and schedules. Construction on the Phase 1 Project commenced in July 2012 and the Phase 1 Project is scheduled to open to the public on the Phase 1 Services Commencement Date, which is currently expected to be on or about January 1, 2015.

Phase 1 Services Commencement Date

Upon the “**Phase 1 Services Commencement Date**,” which is 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, the Concessionaire will commence the operations, maintenance and collection of Tolls on the Phase 1 Managed Lanes and the operations and maintenance of the Phase 1 GP Lanes and the Concessionaire will be thereafter entitled to receive all Phase 1 Toll Revenues. See “– Status of Phase 1 Project” for a discussion of the current schedule for the Phase 1 Services Commencement Date. The “**Conditions Precedent to the Phase 1 Services Commencement Date**” include: the receipt of the Required Insurances, Necessary Consents and all plans, submissions and schedules required under the Concession Agreement; no court order then exists that restrains, enjoins, challenges or delays the Services on the Phase 1 Lanes; the Source Code and Source Code Documentation has been placed in escrow; the Concessionaire has not received notice from HPTE of any Concessionaire Default; and the Concessionaire and HPTE entering into a Tolling Services Agreement (the “**Project Tolling Services Agreement**”) covering the entire Managed Lanes with the E-470 Authority (or another suitable toll services provider). For a complete list of the Conditions Precedent to the Phase 1 Services Commencement Date, see Section 2.4 of APPENDIX B.

Concessionaire’s Participation in the Acceptance of the Phase 1 Project

Under the Concession Agreement, the Concessionaire has certain rights to review and consult with HPTE regarding change orders under the Phase 1 Design-Build Contract and a right to consent to any amendments of the Phase 1 ETCS Installation Contract. If HPTE and the Concessionaire agree or determine that a change order under the Phase 1 Design-Build Contract constitutes a Material Phase 1 Change Order, then such order will be treated as an HPTE Change Order pursuant to the Concession Agreement. See “PHASE 2 CONSTRUCTION PROJECT – Change Orders; Directive Letters.”

In addition, under the Concession Agreement, the Concessionaire has the right to participate in the acceptance process of the Phase 1 Construction Work under the Phase 1 Design-Build Contract and 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 Design-Build Contract and the Phase 1 ETCS Installation Contract (i) no later than one year prior to January 1, 2015, (ii) after that, every two months until four months before the expected date for acceptance of the Phase 1 Managed Lanes under the Phase 1 Design-Build Contract, and (iii) after that, every week until the Phase 1 Services Commencement Date.

With respect to the Phase 1 Design-Build Contract and the Phase 1 ETCS Installation Contract, HPTE agreed to promptly provide the Concessionaire with copies of all material communications and written information which it receives: (i) from the Phase 1 Design-Build Contractor under the provisions of the Phase 1 Design-Build Contract dealing with the completion of the Phase 1 Project and the Phase 1 Design-Build Contractor’s warranties related to the Phase 1 Project (together, the “**Completion and Warranties Provisions**”) and (ii) under the provisions of the Phase 1 ETCS Installation Contract relating to such matters as the acceptance, operational readiness and punch list of the Phase 1 ETCS.

In addition, HPTE agreed to provide or cause CDOT to provide (as applicable) the Concessionaire with 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 Design-Build Contract or the Phase 1 ETCS Installation Contract (as applicable) 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 Completion and Warranties Provisions or the Phase 1 ETCS Installation Contract (as applicable) to provide to CDOT or HPTE (as applicable) the Concessionaire’s views on the outcome of these inspections, surveys, tests and/or walkthroughs and to propose the matters to be included in any punch list to be issued to the Phase 1 Design-Build Contractor or the E-470 Authority, as applicable.

CDOT is required to enforce its rights against the Phase 1 Design-Build Contractor and HPTE is required to enforce its rights against the E-470 Authority and to make sure that those items included on any punch list issued under Phase 1 Design-Build Contract or the Phase 1 ETCS Installation Contract, respectively, are corrected by the respective contractor or, alternatively, correct those items itself.

Pursuant to the Concession Agreement, if the Concessionaire encounters any defect in the Phase 1 Managed Lanes or the Phase 1 ETCS which existed, but was not 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 Phase 1 Managed Lanes and the Phase 1 ETCS under the applicable contract (a "**Phase 1 Latent Defect**"), then such Phase 1 Latent Defect will be treated as a Compensation Event. See "CONCESSION AGREEMENT – Relevant Events; Relief and Force Majeure Events."

Delays in Phase 1 Project Acceptance

Under the Concession Agreement, as long as 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 January 1, 2015 up until June 30, 2015 (the "**Phase 1 Services Commencement Compensation Date**"). After the Phase 1 Services Commencement Compensation 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. See "CONCESSION AGREEMENT – Relevant Events; Relief and Force Majeure Events."

Financing of the Phase 1 Project

The Phase 1 Project is being financed with the proceeds of (i) a TIFIA loan (the "**Phase 1 TIFIA Loan**") in the amount up to \$54,000,000 pursuant to a TIFIA Loan Agreement dated as of September 1, 2011 (the "**Existing Phase 1 TIFIA Loan Agreement**") between the United States Department of Transportation, acting by and through the Federal Highway Administrator (the "**TIFIA Lender**") and HPTE; (ii) a grant from the Federal Highway Administration through the Transportation Investment Generating Economic Recovery grant program; (iii) contributions from each of CDOT, the RTD, and the Statewide Bridge Enterprise, (iv) certain federal aid highway funds assigned to the Phase 1 Project by the Denver Regional Council of Governments (the "**DRCOG**"); and (v) contributions from the City of Westminster and the City and County of Broomfield. See "FINANCING AGREEMENTS – TIFIA Loan Agreements – Phase 1 TIFIA Loan."

Prior to the Closing Date, the Borrower Group and the TIFIA Lender will enter into an Amended and Restated TIFIA Loan Agreement dated the Effective Date (the "**Phase 1 TIFIA Loan Agreement**"), which will become effective on the Phase 1 Assumption Date to reflect the Phase 1 Assumption and other related changes. See "FINANCING AGREEMENTS – TIFIA Loan Agreements – Phase 1 TIFIA Loan Agreement."

HPTE's liabilities under the Existing Phase 1 TIFIA Loan Agreement are secured by a Master Trust Indenture dated as of September 1, 2011, as supplemented by the 2011 Supplemental Trust Indenture dated as of September 1, 2011 (together, the "**Existing Master Indenture**") between HPTE and Zions First National Bank, as trustee (the "**Master Trustee**"). On or prior to the Closing Date, HPTE and the Master Trustee will enter into an Amended and Restated Master Trust Indenture to be dated the Closing Date (the "**Amended and Restated Master Indenture**") to reflect certain changes in connection with the Project. Among other things, the Amended and Restated Master Indenture will provide that during the period starting on the Commencement Date and ending on the date of termination of the Concession Agreement pursuant to its terms, a portion of the I-25 Toll Revenues which was available

under the Existing Master Indenture to pay for operations and maintenance expenses of the Phase 1 Project in the event of a shortfall of revenues pledged under the Phase 1 TIFIA Loan, will not be available for deposit, and will not be deposited, to any fund, account or subaccount established and maintained under the Amended and Restated Master Indenture. See “FINANCING AGREEMENTS – Existing Master Indenture.”

Assumption of Phase 1 TIFIA Loan

Conditions Precedent to the Phase 1 Assumption Date. On a date on which certain conditions set forth in the Phase 1 TIFIA Loan Agreement outlined below are met (including achieving the Phase 1 Services Commencement Date), Borrower Finco will assume HPTE’s obligations under the Phase 1 TIFIA Loan Agreement, as borrower (except for some specific obligations which are assumed only to the extent they arise from facts or matters arising after the Phase 1 Assumption Date), and HPTE will be released from its obligations thereunder (the “**Phase 1 Assumption Date**”). The Phase 1 Assumption Date will occur if the following conditions are met or waived by the TIFIA Lender: (i) the Phase 1 TIFIA Loan has been fully advanced to HPTE by the TIFIA Lender; (ii) the Phase 1 Services Commencement Date occurs concurrently with the Phase 1 Assumption Date; (iii) the TIFIA Lender has received, within 30 days prior to the Phase 1 Assumption Date, evidence of the assignment of a rating (“**Updated Rating**”) of the Phase 1 TIFIA Loan, the Senior Bonds and the Phase 2 TIFIA Loan, on a combined basis, after giving effect to the assumption of the Phase 1 TIFIA Loan by Borrower Finco, that is either (A) an Investment Grade Rating, or (B) is no lower than the annual rating last delivered by Borrower Finco pursuant to the Phase 2 TIFIA Loan Agreement; (iv) all Project Accounts required to be established under the MSA on or prior to the Phase 1 Assumption Date have been established; (v) the TIFIA Phase 1 Debt Service Reserve Account will have been funded to the requisite levels as required under the Phase 1 TIFIA Loan Agreement; (vi) the Master Trustee has caused certain amounts to be released from existing reserves under the Amended and Restated Master Indenture; (vii) each of the Borrower Group Members have delivered the Phase 1 TIFIA Loan Agreement and promissory notes to the TIFIA Lender relating to the Phase 1 TIFIA Loan; (viii) the Concessionaire, HPTE and a tolling services provider (currently, the E-470 Authority) have entered into the Project Tolling Services Agreement, a direct agreement in respect of the Project Tolling Services Agreement and, if applicable, a trademark license agreement; (ix) each Borrower Group Member will have delivered to the TIFIA Lender and the Security Trustee a reaffirmation of its grant of security for the benefit of the Secured Creditors; (x) no Material Adverse Effect, or any event or condition that could reasonably be expected to result in a Material Adverse Effect, will have occurred since the date of the most recent annual rating, which requirement will be deemed satisfied if an Updated Rating is delivered to the TIFIA Lender within ten Business Days prior to the Phase 1 Assumption Date; and (xi) certain other documents, certificates, opinions and warranties are delivered. The conditions precedent described under clauses (i), (v), (vii), (viii), (ix) and certain other conditions precedent which can be satisfied in advance of the Phase 1 Services Commencement Date are referred to herein as the “**Advance Fulfillment CPs**.”

The Concessionaire and the TIFIA Lender have agreed on the forms of the certificates and promissory notes to be delivered on the Phase 1 Assumption Date and the forms of opinions to be delivered by the Concessionaire in connection with the assumption of the Phase 1 TIFIA Loan by Borrower Finco on or prior to the Closing Date. However, one condition to the occurrence of the Phase 1 Assumption Date is an affirmation to the effect that no Material Adverse Effect (or event which it could reasonably be expected to result in a Material Adverse Effect) has occurred since the annual rating last delivered by Borrower Finco pursuant to the Phase 2 TIFIA Loan Agreement. In order to provide a more objective basis for meeting this condition, the TIFIA Lender, the Concessionaire and HPTE have agreed that this requirement will be deemed satisfied if an Updated Rating is delivered to the TIFIA Lender within ten Business Days prior to the Phase 1 Assumption Date.

If the Phase 1 Assumption Date does not occur, then the Phase 1 Services Commencement Date will not occur. The Concession Agreement provides in substance that HPTE and the Concessionaire develop and attempt to produce a plan for satisfying the unfulfilled conditions precedent to the Phase 1 Assumption Date and for interim operations of the Phase 1 Managed Lanes pending such satisfaction. If a plan or interim plan cannot be implemented within 30 Business Days after the Phase 1 Acceptance Notice (as defined below) was given, then HPTE may commence interim operations of the Phase 1 Managed Lanes and will retain any Phase 1 Toll Revenues, as described below. See “CERTAIN RISK FACTORS – Risks Associated With Phase 1 Assumption.”

Process for Fulfilling Conditions Precedent to the Phase 1 Assumption Date. Under the Concession Agreement, one of the Conditions Precedent to the Phase 1 Services Commencement Date is a requirement that the Phase 1 Assumption Date occur simultaneously with the Phase 1 Services Commencement Date (the “**Concurrent Phase 1 Assumption and Commencement Condition**”).

HPTE must notify the Concessionaire of the expected date for acceptance of the Phase 1 Construction Work and this notice must be updated weekly during the four months prior to the expected date for acceptance of the Phase 1 Managed Lanes under the Phase 1 Design-Build Contract. The Concessionaire and HPTE will fulfill or obtain waivers in respect of the various conditions precedent to the Phase 1 Assumption Date. Once acceptance has occurred under the Phase 1 Design-Build Contract and the Phase 1 ETCS Contract and HPTE is satisfied that the conditions precedent to the Phase 1 Services Commencement Date (apart from the Concurrent Phase 1 Assumption and Commencement Condition) are fulfilled or waived by HPTE, HPTE will give an irrevocable notice stating that all conditions precedent to the Phase 1 Services Commencement Date (apart from the Concurrent Phase 1 Assumption and Commencement Condition) are satisfied or waived (the “**Phase 1 Acceptance Notice**”). Upon receipt of the Phase 1 Acceptance Notice if the Advance Fulfillment CPs have been fulfilled, the Concessionaire will proceed to obtain the Updated Rating. Once the Updated Rating is received, the TIFIA Lender will provide confirmation to the Master Trustee that the conditions precedent to the Phase 1 Assumption Date have been satisfied and the Amended and Restated Master Indenture will be defeased.

Process for Unfulfilled Conditions Precedent to the Phase 1 Assumption Date. If the Phase 1 Assumption Date does not occur within ten Business Days of the Phase 1 Acceptance Notice, then HPTE and the Concessionaire can give notice to the other party requiring either (a) the outstanding conditions precedent to be fulfilled or waived; or (b) a plan to be produced through which the Phase 1 Managed Lanes can be opened to traffic while the outstanding conditions precedent to the Phase 1 Assumption Date are addressed together with a plan for addressing those outstanding conditions precedents (the “**Phase 1 Assumption Plan**”); in each case within 30 Business Days after the Phase 1 Acceptance Notice. The plan described in clause (b) may be an interim plan, permitting the Phase 1 Managed Lanes to be operated while a more detailed plan is developed and agreed by the parties.

One possible Phase 1 Assumption Plan is for the Concessionaire to be responsible for operating the Phase 1 Project as if it had become part of an integrated managed lane toll facility as contemplated in the Concession Agreement, while HPTE remains obligated on the Phase 1 TIFIA Loan. The Concessionaire would pay for the operating and maintenance costs of the Phase 1 Lanes and would agree to comply with covenants in the Existing Phase 1 TIFIA Loan Agreement related to the operation and maintenance of the Phase 1 Lanes. In addition, to the extent that Phase 1 Toll Revenues are available to HPTE after payment of its obligations on the Phase 1 TIFIA Loan, HPTE would pay those revenues over to the Security Trustee for deposit in the Project Proceeds Account under the MSA. The Concessionaire has no assurances or guarantees that such Phase 1 Assumption Plan would occur.

If the Phase 1 Assumption Plan cannot be implemented within 30 Business Days after the Phase 1 Acceptance Notice, then HPTE may commence interim operations of the Phase 1 Managed Lanes. The

Phase 1 Toll Revenues will be retained by HPTE and dealt with in accordance with the Amended and Restated Master Indenture. Any revenues generated by the Phase 1 Managed Lanes not required to be retained in accordance with the Amended and Restated Master Indenture will be held in a separate account by HPTE until the Phase 1 Assumption Plan is developed and agreed by HPTE and the Concessionaire. HPTE may use the funds in this account for O&M Expenses for the Phase 1 Managed Lanes if at any time the Phase 1 Toll Revenues and the reserves held under the Amended and Restated Master Indenture are insufficient for that purpose. The Phase 1 Assumption Plan will be subject to agreement by all relevant parties (such as the TIFIA Lender and/or Owners of the 2014 Bonds, if applicable at the time) including the agreement of any necessary waivers or amendments to the Phase 1 TIFIA Loan Agreement, the Amended and Restated Master Indenture and the Funding Documents.

Termination Following Non-Assumption of the Phase 1 TIFIA Loan. If following the delivery by HPTE of the Phase 1 Acceptance Notice: (a) a Phase 1 Assumption Plan is not presented within 60 Business Days; (b) a Phase 1 Assumption Plan is presented within 60 Business Days but (i) the parties cannot agree on the terms of the Phase 1 Assumption Plan prior to the Full Services Commencement Longstop Date; or (ii) the Phase 1 Assumption Date does not occur prior to the Full Services Commencement Longstop Date; or (c) if other material conditions included in the Phase 1 Assumption Plan are not met at all or by such deadlines as may be prescribed by the Phase 1 Assumption Plan; then HPTE may terminate the Concession Agreement. See “CONCESSION AGREEMENT – Termination Events – Termination Following Non-Assumption of the Phase 1 TIFIA Loan.”

Status of Phase 1 Project

Under the terms of the Phase 1 Design-Build Contract, the Phase 1 Design-Build Contractor is to complete all work necessary for the operation of the Phase 1 Managed Lanes no later than December 31, 2014. CDOT is in receipt of a letter from the Phase 1 Design-Build Contractor dated September 16, 2013 stating that weather events, including above normal rainfall and severe flooding, have the potential to cause delays relative to the completion of work under the Phase 1 Design-Build Contract. CDOT has requested additional information from the Phase 1 Design-Build Contractor. CDOT and the Phase 1 Design-Build Contractor have had verbal discussions about potential impacts to the schedule, but as of February 24, 2014, CDOT has not received a formal request from the Phase 1 Design-Build Contractor to extend the completion date for any of the work under the Phase 1 Design-Build Contract.

HPTE believes there is the possibility that delivery of the Phase 1 Managed Lanes could be delayed past January 1, 2015, but is unable at the time of this Official Statement to determine the length of any such delay. HPTE currently does not anticipate that any such delay would exceed 180 days. The Concession Agreement contemplates that changes to the schedule of the delivery of the Phase 1 Managed Lanes may occur and provides for actions by the parties thereto in such an event. See Section 4.8 of APPENDIX B for a discussion of the consequences of a delay in the Phase 1 Services Commencement Date.

TOLLING ON THE MANAGED LANES

General

Under the Concession Agreement, the Concessionaire has the exclusive right to receive and retain user fees imposed by HPTE pursuant to FASTER (“Tolls”), on Tolloed Vehicles riding on the I-25 Managed Lanes (starting on the Commencement Date), the Phase 1 Managed Lanes (starting on the Phase 1 Services Commencement Date) and the Phase 2 Managed Lanes (starting on the Full Services Commencement Date).

HPTE Liability

Except for its specific obligations to the Concessionaire under the terms and conditions of the Concession Agreement, including, without limitation, the HPTE Capital Payments, HPTE does not have any risk or liability related to the Project's traffic volume and revenue, including but not limited to the risk that actual traffic volume is less than projected.

HPTE's Authority to Impose Tolls; Rights of the Concessionaire to Receive Toll Revenues

Under Colorado's Funding Advancements for Surface Transportation and Economic Recovery Act (§§43-4-801 et seq., Colorado Revised Statutes, as amended) ("FASTER"), HPTE is authorized to impose Tolls for the privilege of using surface transportation infrastructure, such as the Managed Lanes. Further, FASTER requires among other things that (i) all revenues generated from Tolls are deposited in a "transportation special fund" created in the State treasury, (ii) moneys in such fund are continuously appropriated to HPTE for the purposes set forth in FASTER and (iii) moneys in such fund are not used for any purpose other than those set forth in FASTER. Pursuant to FASTER, HPTE may spend moneys in the transportation special fund to fund surface transportation infrastructure projects and that the HPTE board of directors has exclusive authority to budget and approve the expenditure of moneys in the transportation special fund.

Under the Concession Agreement, the Concessionaire has an exclusive right to receive from HPTE those Tolls which have been established by HPTE in accordance with the terms of the Concession Agreement. In order to give effect to the Concessionaire's right to receive Tolls, HPTE will enter into the I-25 Tolling Services Agreement and the Project Tolling Services Agreement (each as defined herein) through which Tolls will be collected, and by the terms of that I-25 Tolling Services Agreement and that Project Tolling Services Agreement, will irrevocably direct the E-470 Authority to hold all Tolls collected exclusively to the order of the Concessionaire so that, at the point when such Tolls are collected they are treated as the property of the Concessionaire and not of HPTE, and pay them as directed by the Concessionaire. HPTE is not entitled to any right of set-off against such Tolls. See "—Toll Collection" below and "OTHER AGREEMENTS – Tolling Services Agreement."

Establishment of Tolls and Penalties

Under the Concession Agreement, HPTE will establish a schedule for Tolls and a schedule for civil penalties for toll evasion after a proposed toll and penalty schedule is submitted to HPTE by the Concessionaire. As a condition precedent to each of the Commencement Date, the Phase 1 Services Commencement Date and the Full Services Commencement Date, the Concessionaire is required to deliver to HPTE a proposed toll and penalty schedule for the related portion of the Managed Lanes. The Concessionaire submitted a toll and penalty schedule to HPTE for the I-25 Managed Lanes which was approved by HPTE and will take effect on the Commencement Date. The toll and penalty schedules for the Phase 1 Managed Lanes and the Phase 2 Managed Lanes will be established prior to the Phase 1 Services Commencement Date and the Full Services Commencement Date, respectively. See "– Tolling on the I-25 Managed Lanes" for the toll and penalty schedule for the I-25 Managed Lanes.

After an initial toll and penalty schedule is established for a related portion of the Managed Lanes, the Concessionaire may propose changes to the existing established toll and penalty schedule from time to time and as it considers appropriate. Any proposed toll and penalty schedule must be submitted to HPTE not less than 30 days prior to the proposed effective date of such schedule (with certain exceptions for a Bus Delay Event (as defined herein), errors or unintended consequences of the application of the established toll and penalty schedule, for which proposed changes may be submitted three days prior to the proposed effective date of such schedule) and reviewed by HPTE within the time frame specified in the Concession Agreement.

If HPTE rejects the Concessionaire's proposed toll and penalty schedule, under certain circumstances, HPTE will pay to the Concessionaire the Concessionaire's good faith estimate of the financial benefits which would have arisen from the implementation of the proposed toll and penalty schedule. See Section 11 of APPENDIX B for a more detailed description of the procedure for establishing the toll and penalty schedules. See also "– Tolling on the I-25 Managed Lanes" below for the current toll and penalty schedule for the I-25 Managed Lanes.

Managed Lanes Speeds

The established toll and penalty schedule must be designed to ensure that (i) motor vehicle speeds are an average of 55 miles per hour for the portion of the U.S. 36 Managed Lanes from Table Mesa Drive in Boulder to Broomfield, (ii) motor vehicle speeds are an average of 50 miles per hour for the portion of the U.S. 36 Managed Lanes from Broomfield to Pecos Street, in Denver and (iii) the travel time from Pecos Street, in Denver to Denver Union Station is no more than 8.75 minutes (collectively, the "**Managed Lanes Goals**"). Additionally, if the RTD Buses are not meeting the Managed Lanes Goals during Peak Periods (as defined herein) after the HOV Change Event has occurred (a "**Bus Delay Event**"), three times or more in the same hour, and such occurrence happened one day or more every week in a rolling four-week period, the Concessionaire is obligated to promptly submit a proposed toll and penalty schedule that eliminates future Bus Delay Events from occurring. Pursuant to a weekly bus travel time report for the week of June 29, 2013 (which was before RTD started to switch out transponders), the average bus speed was approximately 53.5 miles per hour.

Minimum Tolls, Maximum Tolls

Minimum Tolls. The Concession Agreement sets forth minimum Tolls for the Managed Lanes during 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, on Business Days (the "**Peak Periods**"). For the I-25 Managed Lanes, the minimum Tolls must at least equal the existing I-25 Express Bus Fare, which currently is \$4.00.

For the Managed Lanes as an integrated system: (i) the Toll for driving the full length of the Managed Lanes (in either direction) is required to be no less than the greater of the then existing fare for the Regional Bus Service (which is currently \$5.00) or the lowest publically available adult fare for the Express Bus Service for the direction being travelled; and (ii) for trips that are less than the full length of the Managed Lanes (in either direction), there will only be a minimum Toll during Peak Periods for trips by Tolloed Vehicles which terminate at either the Downtown Denver end of the Managed Lanes or the Table Mesa end of the Managed Lanes.

Maximum Tolls. The maximum Toll for the Managed Lanes from and after the first year after the Full Services Commencement Date will be \$13.91 subject to automatic annual adjustment for inflation, unless the Concessionaire is reasonably required to charge a Toll in excess of such maximum Toll in order to achieve any of the other requirements of the Concession Agreement.

Non-Tolloed Vehicles

Under the Concession Agreement, the following categories of motor vehicles (the "**Non-Tolloed Vehicles**") are exempt from all Tolls on the Managed Lanes: prior to an HOV Change Event, passenger vehicles carrying two or more people ("**HOV2+ Vehicles**"), and after the HOV Change Event, passenger vehicles carrying three or more people ("**HOV3+ Vehicles**"), motorcycles, RTD Buses, hybrid vehicles that have appropriately registered, RTD, CDOT, HPTE and the Concessionaire maintenance and incident support vehicles (including any contractors engaged by such party) and all public safety and emergency vehicles with jurisdiction, delivering public safety or emergency services. In fiscal year ended June 30,

2013, approximately 64% of traffic on the I-25 Managed Lanes was comprised of the Non-Tolled Vehicles.

Pursuant to the Concession Agreement, events that constitute an HOV Change Event relate to certain delays within a specified period of time in the travel time that can trigger possible termination of the exemption of passenger vehicles carrying two people (“**HOV2 Vehicles**”) (but not HOV3+ Vehicles) from paying Tolls as follows:

- average speed in 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 day in four out of six consecutive weeks;
- average speed in the Managed Lanes during Peak Periods is less than 50 miles per hour for any such Peak Period on at least one day in each of four consecutive weeks;
- volume of motor vehicles traveling on the Managed Lanes, exceeds a particular threshold; and
- certain other factors.

Upon occurrence of one of these events or factors, an “**HOV Change Event**” will have occurred and the Concessionaire is required to submit a proposed toll and penalty schedule to reflect the fact that HOV2 Vehicles are no longer Non-Tolled Vehicles. In any event, pursuant to a resolution adopted by the Transportation Commission on February 21, 2013, effective January 1, 2017, HOV2 Vehicles will no longer be Non-Tolled Vehicles and will have to pay a Toll. See APPENDIX H—Traffic and Revenue Study for a discussion of the effect of the conversion to HOV3+ Vehicles as Non-Tolled Vehicles.

Tolling on the I-25 Managed Lanes

The I-25 Managed Lanes currently consists of two “tidal” lanes. Vehicles “self-select” to pay a toll at the gantry by selecting the appropriate lane – one lane at the gantry that is reserved for Non-Tolled Vehicles (“**HOV Lane**”) and another lane at the gantry is reserved for single occupancy vehicles to travel if they pay a varying Toll based on the time of day (“**Express Lane**”). All vehicles use the same entrances to access the HOV Lanes and the Express Lanes, as well as the same exits. Currently, HOV Lanes users are not required to obtain a transponder in order to ride on the HOV Lane without paying a Toll. From the Phase 1 Services Commencement Date, all Non-Tolled Vehicles will be required to obtain a multi-position transponder and to set it in a toll-free mode when entering the HOV Lane in order to ride on the HOV Lane without paying a Toll. ETCS lane equipment will be updated such that all vehicles can use either gantry lane and the ETCS equipment will charge a toll only if the transponder is not set to toll-free mode.

Toll sections are “S1” and “N1” as shown on the map under “—Electronic Toll Collection System” below. After the Full Services Commencement Date, both lanes of the I-25 Managed Lanes will be available to both Tolled Vehicles and Non-Tolled Vehicles.

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The toll schedule for the I-25 Managed Lanes for passenger vehicles that was approved by HPTE and will become effective as of the Commencement Date is set forth below. Non-passenger vehicles (vehicles with four or more axles) will be charged a \$25 premium on the applicable passenger vehicle toll.

| <u>Time</u> | <u>Toll Rate</u> | | <u>Time</u> | <u>Toll Rate</u> | |
|---------------------|-------------------------|----------------------------|--------------------|-------------------------|----------------------------|
| | <u>With Transponder</u> | <u>Without Transponder</u> | | <u>With Transponder</u> | <u>Without Transponder</u> |
| 3:00 am – 5:00 am | Closed ¹ | | 12:00 pm – 3:00 pm | \$0.60 | \$1.05 |
| 5:00 am – 6:00 am | \$0.60 | \$1.05 | 3:00 pm – 3:30 pm | 1.90 | 2.40 |
| 6:00 am – 6:45 am | 2.20 | 2.75 | 3:30 pm – 4:30 pm | 2.55 | 3.20 |
| 6:45 am – 7:15 am | 4.00 | 5.00 | 4:30 pm – 6:00 pm | 4.45 | 5.55 |
| 7:15 am – 8:15 am | 4.45 | 5.55 | 6:00 pm – 7:00 pm | 1.90 | 2.40 |
| 8:15 am – 8:45 am | 4.00 | 5.00 | 7:00 pm – 3:00 am | 0.60 | 1.05 |
| 8:45 am – 10:00 am | 1.55 | 2.00 | Weekends | 0.60 | 1.05 |
| 10:00 am – 12:00 pm | Closed ¹ | | | | |

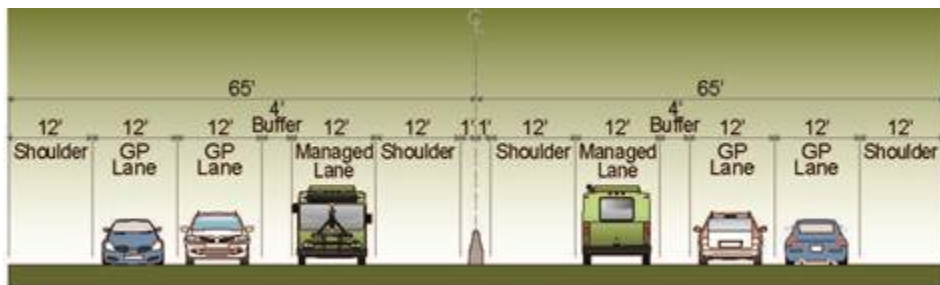
¹ Closed for maintenance activities.
Source: Concessionaire

Tolls on the I-25 Managed Lanes are currently collected electronically through a fully electronic toll collection and traffic management system (the “**I-25 ETCS**”), with no cash payments and no toll booths. The Tolls are collected using two tolling methods described under “—Electronic Toll Collection System” below. The E-470 Authority currently provides Tolling Back Office Control Services and similar services for the I-25 Managed Lanes pursuant to an intergovernmental agreement with HPTE. On or prior to the Closing Date, the Concessionaire, HPTE and the E-470 Authority will enter into the I-25 Tolling Services Agreement, to become effective on the Commencement Date, pursuant to which the E-470 Authority will provide the Tolling Back Office Control Services on the I-25 Managed Lanes. “**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. See “OTHER PROJECT AGREEMENTS – Tolling Services Agreement.”

Tolling on the Phase 1 Managed Lanes and Phase 2 Managed Lanes

As part of Phase 1 Project and Phase 2 Construction Project, one managed lane will be constructed in each direction along the U.S. 36 median, separated from the general purpose lanes by a four-foot striped managed lane painted buffer. Access to the Phase 1 Managed Lanes and Phase 2 Managed Lanes will be allowed between all interchanges shown on the map under “—Electronic Toll Collection System” below.

A depiction of the Phase 2 Lanes upon completion is included below:

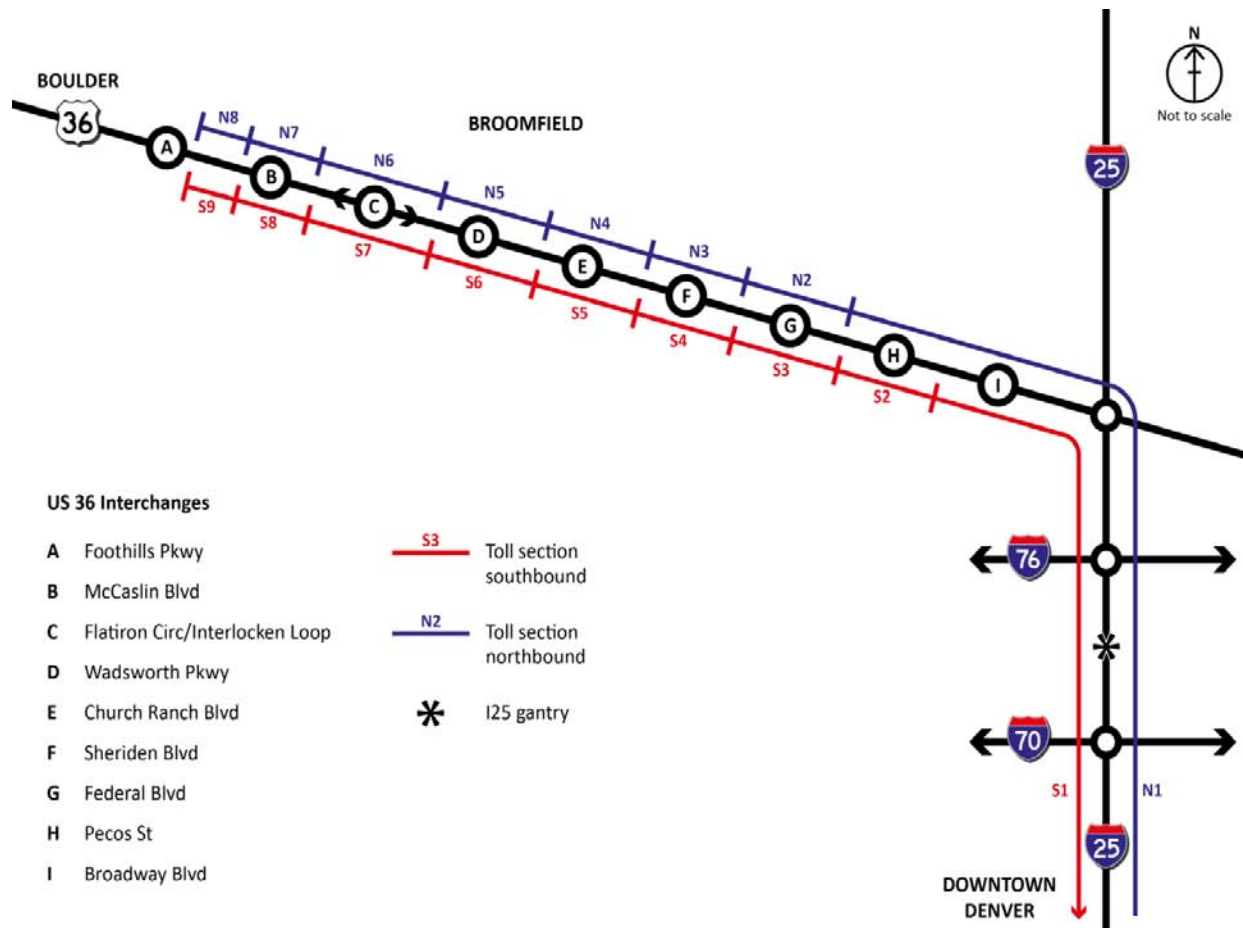


RTD Buses and Non-Tolled Vehicles that are equipped with an appropriate transponder will be able to use the Phase 1 Managed Lanes and Phase 2 Managed Lanes free of charge.

Tolls will be collected using the electronic toll collection system described below.

Electronic Toll Collection System

General. The Concessionaire will collect Tolls through the operation of an electronic toll collection system (“ETCS”) that comprises the I-25 ETCS, the Phase 1 ETCS and the Phase 2 ETCS. Current toll sections on the I-25 Managed Lanes and the future tolling segments (points where motor vehicles may lawfully enter and exit the Managed Lanes) on the U.S. 36 Managed Lanes are shown on the map below.



Source: Traffic and Revenue Study

ETCS Maintenance. The Concessionaire is responsible for performing Level 1 ETCS Maintenance for the Lane Equipment. The E-470 Authority is responsible for performing the Level 2 ETCS Maintenance. The Operating Contractor will be responsible for maintaining the ETCS Infrastructure which includes all of the infrastructure related to the ETCS Equipment including the toll gantries, electrical systems and automatic gate equipment.

“**Level 1 Maintenance**” means that Lane Equipment maintenance comprising, including but not limited to: (i) real time monitoring of servers and lane equipment including error logs, alarms, and specific messages (ii) visual camera and antenna inspections to ensure that camera and antenna

angles/aim have not changed (iii) camera glass cleaning on a weekly basis and more frequently during weather events (iv) camera/antenna cable inspections on a quarterly basis (v) lane cabinet inspections of AVI Reader status lights, camera power supplies, loop detectors, and lane controllers and (vi) arranging lane closure and coordinating with HPTE in the event of Level 2 Maintenance support. “**Level 2 Maintenance**” means maintenance necessary after Level 1 Maintenance actions were unable to resolve the problem comprising: (i) diagnosis of the problem (ii) creation of plan to resolve the problem (iii) facilitation of any warranty claims for hardware or 3rd Party components (iv) installation of spare equipment (if available) (v) installation of vendor repaired equipment and (vi) testing to verify problem resolution.

Tolling Services. Under the Concession Agreement, upon occurrence of the applicable commencement date, 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 the I-25 Tolling Services Agreement to become effective on the Commencement Date pursuant to which the E-470 Authority will provide the Tolling Back Office Control Services on the I-25 Managed Lanes. Concurrently with the execution and delivery of the I-25 Tolling Services Agreement, in a Memorandum of Understanding, the E-470 Authority, the Concessionaire and HPTE express their respective commitment to negotiate in good faith toward entering into the Project Toll Services Agreement covering the I-25 Managed Lanes and the U.S. 36 Managed Lanes and have set out principles to guide the negotiations. See “OTHER PROJECT AGREEMENTS – Tolling Services Agreement.”

Tolling Methods. Toll collection on the Managed Lanes will be through an open road electronic toll collection system requiring no reduction in speed. Non-Tolled Vehicles will be able to travel the Managed Lanes without paying a Toll, provided that a multi-position transponder in Toll-free mode is used. The all electronic toll collection system uses two methods to collect Tolls. The first method, EXpressToll™ collection system, utilizes a transponder to recognize the vehicle and collect the Toll from a prepaid EXpressToll™ account. There are currently approximately 935,000 EXpressToll™ transponders outstanding. The second method, a license plate toll collection system (“LPT”), captures images of the vehicle of which the registered owner will receive a statement of use for toll collection. Currently, LPT customers pay a surcharge of approximately 25% in toll rates and such surcharge may increase in the future.

Users utilizing transponders will be required to prepay their accounts. The account is typically set up to automatically replenish itself to a predetermined amount using a stored credit card on file. For accounts that are paid by cash or check, once the account balance is reduced to a predetermined level, an invoice is mailed to collect payment on the account. The transponders used on the Managed Lanes will be interoperable with all other existing tolled roads in the State including the toll highways known as E-470 and the Northwest Parkway. The E-470 Authority will operate and manage EXpressToll™ accounts.

Customers who drive without a transponder automatically become an LPT customer. Cameras installed at each toll section (S1 to S9 and N1 to N8 on the map shown above) capture images of the vehicle’s license plate. The image is processed and sent to either the State’s Department of Motor Vehicles or to a third party vendor to acquire out-of-state registered owner information of the vehicle. LPT tolls are accumulated for 30 days, and then a statement is mailed to the customer for all tolls incurred during those 30 days. If the statement is not paid in full by the due date, a second statement is issued with a \$5.00 late fee added to the amount due. If the amount overdue becomes three months overdue, the account is referred to an outside agency collections law firm, at which time a one-time \$20 collection fee is assessed. If the amount overdue becomes four months overdue, a civil penalty assessment notice is issued. If the civil penalty assessment notice is not responded to, the customer may be found liable for the unpaid Tolls, which may result in a civil penalty (\$20), an administrative law court adjudication fee (\$20), and non-renewal of the customer’s vehicle registration.

Toll Violation Enforcement Services

The Colorado Department of Public Safety, Division of Colorado State Patrol (the “CSP”) currently provides tolling enforcement services on the I-25 Managed Lanes pursuant to a State of Colorado, Colorado Department of Transportation Interagency Agreement dated July 26, 2011 (the “**I-25 Toll Enforcement Agreement**”) between HPTE and the CSP. Under the I-25 Toll Enforcement Agreement, the CSP provides specified toll enforcement services and HPTE pays fees for those services. The Concessionaire currently intends to enter into a toll enforcement agreement (the “**System Toll Enforcement Agreement**”) for the I-25 Managed Lanes and the U.S. 36 Managed Lanes and has begun discussions to that end with the CSP. Although the terms of a System Toll Enforcement Agreement have yet to be finalized, the Concessionaire believes that its final terms will be similar to those set forth in the I-25 Toll Enforcement Agreement with HPTE. The Concessionaire also believes that its costs under a System Toll Enforcement Agreement will be reasonable and within its projected operating costs.

The Concessionaire may not engage private security services to provide traffic patrol or traffic law enforcement services on the Managed Lanes; private security firms may not stop vehicles, apprehend road users, or engage in any other direct enforcement activity on the Managed Lanes. However, the Concessionaire may engage private security firms or employ other appropriate security devices, vehicle occupancy detection equipment or other automated technology to protect, collect and enforce the payment of Tolls, or to identify toll violators, subject to compliance with applicable law.

Emergency and Suspension of Tolls or Closure of the Managed Lanes

HPTE will have no liability to the Concessionaire for the loss of Toll Revenues or the increases in costs or expenses attributable to the closure of the Managed Lanes or a portion of the Managed Lanes pursuant to applicable law. 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 12 hours in each year. However, any loss in Toll Revenues or increases in costs or expenses attributable to suspensions over an aggregate of 12 hours in each year will be treated as a Compensation Event. See “CONCESSION AGREEMENT – Relevant Events; Relief and Force Majeure Events – Compensation Events.”

HPTE may also suspend Toll collection on, or provide for the 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 reimburse the Concessionaire under the following circumstances:

- 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.
- 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.
- 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.

- 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;

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. See “OTHER PROJECT AGREEMENTS – Intergovernmental Agreements – HPTE-CDOT Agreement” for a description of the sources of funding of HPTE’s monetary obligations under the Concession Agreement.”

PROJECT PARTICIPANTS

HPTE

The Colorado High Performance Transportation Enterprise (“**HPTE**”) is a government-owned business within and a division of CDOT. HPTE was created in 2009 pursuant to FASTER. As provided in FASTER, the business purpose of HPTE is to pursue public-private partnerships and other innovative and efficient means of completing surface transportation projects in Colorado. FASTER authorizes HPTE, among other things, to (i) impose user fees, subject to limitations provided in FASTER, the Colorado State Constitution and federal law for the privilege of using surface transportation infrastructure, (ii) issue revenue bonds payable from revenues and other available moneys of HPTE pledged for their payment, and (iii) make and enter into contracts with any private or public entity to facilitate a public-private partnership, including design-build contracts, operating and maintenance contracts and agreements pursuant to which a private entity, such as the Concessionaire, completes all or any portion of a surface transportation infrastructure project on behalf of HPTE. FASTER provides that HPTE constitutes an “enterprise” for purposes of Section 20 of Article X of the State Constitution (commonly referred to as “**TABOR**”) and, accordingly, is not subject to the revenue and spending limitations of TABOR. HPTE has no taxing power.

HPTE is governed by a board of directors consisting of seven members, four of whom are appointed by the Governor and are required to reside in certain designated geographic areas and to have professional expertise in matters that the Governor believes will benefit the board in the execution of its powers and performance of its duties. The remaining three members are members of the Transportation Commission appointed by its resolution.

HPTE acts in two distinct, separate capacities in the transactions described in this Official Statement. Pursuant to its statutory authority under FASTER, it has entered into the Concession Agreement with the Concessionaire to provide generally for the Project. HPTE has financial and other obligations under the Concession Agreement, including the obligation to pay Maintenance Fees to the Concessionaire and to pay compensation to the Concessionaire upon a termination of the Concession Agreement at by HPTE or by the Concessionaire following an HPTE Default. See “OPERATIONS PROJECT – Operations and Maintenance – Maintenance Fees” for a description of the Maintenance Fee and “CONCESSION AGREEMENT – Termination Events” for a description of the components of the compensation HPTE is required to pay upon a termination of the Concession Agreement by HPTE or by Concessionaire’ following an HPTE Default. However, HPTE is not obligated to pay the principal or redemption price of or interest on the 2014 Bonds, the Phase 1 TIFIA Loan (following its assumption by Borrower Finco), the Phase 2 TIFIA Loan or the Subordinated Loans (as defined herein).

At the request of the Concessionaire and Plenary Group, HPTE also has agreed separately to serve as the conduit issuer of the 2014 Bonds. In this Official Statement, when HPTE is acting as conduit issuer of the 2014 Bonds, it is referred to as the “**Issuer.**” As described below, the 2014 Bonds are special, limited obligations of the Issuer. HPTE’s board of directors authorized the issuance of the 2014 Bonds by resolution adopted on November 20, 2013.

The 2014 Bonds are special, limited obligations of the Issuer, payable solely from and secured by the Trust Estate. The 2014 Bonds do not constitute an obligation, moral or otherwise, of CDOT or the State, any other agency, instrumentality or political subdivision of the State, or any official, board member, director, officer, employee, agent or representative of any of the foregoing, and neither the full faith and credit of the Issuer, CDOT or the State nor the taxing power of the State or any other agency, instrumentality or political subdivision of the State is pledged to the payment of the principal of and interest or premium, if any, on the 2014 Bonds. The Owners of the 2014 Bonds may not look to any revenues of the Issuer, CDOT or the State for repayment of the 2014 Bonds and the only source of repayment of the 2014 Bonds is the Trust Estate. The payment of the 2014 Bonds shall not be secured by any encumbrance, mortgage, or other pledge of property of the Issuer, CDOT or the State, other than the Trust Estate. The Issuer has no taxing powers.

CDOT

General. CDOT is an executive department of the State, with all the powers, duties, and privileges permitted by Title 43, Colorado Revised Statutes, as amended. CDOT works in conjunction with the Transportation Commission (the “**Transportation Commission**”), which under Colorado law is responsible for formulating general policy with respect to State public highways and other transportation systems, and which promulgates and adopts all CDOT budgets and all State transportation programs. The Transportation Commission is the budgetary and policy making body for CDOT. In cooperation with the Transportation Commission and other State entities and local, federal, and private entities, CDOT is responsible for the planning, development, and construction of public highways and other components of the transportation network for the State. CDOT has no taxing powers.

CDOT was established by State statute in order to provide strategic planning for Statewide transportation systems, to promote coordination among the different modes of transportation, to integrate governmental functions in order to reduce the costs incurred by the State in transportation matters, to obtain the greatest benefit from State expenditures by producing a Statewide transportation policy to address the Statewide transportation problems faced by Colorado, and to enhance the State’s prospects to obtain federal funds by responding to federal mandates for multi-modal transportation planning. CDOT is under the direction of the Executive Director, who is appointed by the Governor with the consent of the Senate and who serves at the pleasure of the Governor.

The Transportation Commission. The Transportation Commission is established under State statute as a body corporate, and consists of 11 members appointed by the Governor with the consent of the State Senate from each of 11 districts. Under its authorizing statute, the Transportation Commission has the power and duty, among others to:

- formulate the State’s general policy with respect to the management, construction, and maintenance of the public highways and other transportation systems in the State,
- assure that the preservation and enhancement of Colorado’s environment, safety, mobility, and economics be considered in the planning, selection, construction, and operation of all transportation projects in the State,

- make such studies as it deems necessary to guide the Executive Director and the Chief Engineer concerning the transportation needs of the State,
- prescribe the administrative practices to be followed by the Executive Director and the Chief Engineer in the performance of any duty imposed on them by law,
- advise and make recommendations to the Governor and the General Assembly relative to the transportation policy of the State and, to achieve these ends, to formulate and recommend for approval to the Governor and the General Assembly a Statewide transportation policy, and
- promulgate and adopt all CDOT budgets, including that for the administration of the Division of Aeronautics and excepting those for HPTE and the Statewide Bridge Enterprise and the legislatively appropriated portion of the budget, and State transportation programs, including construction priorities and the approval of extensions or abandonments of the State highway system and including a capital construction request, based on the Statewide transportation improvement programs, for State highway reconstruction, repair, and maintenance projects to be funded from the State capital construction fund.

Current Maintenance; Budget. CDOT's highway maintenance program, consisting of regular maintenance and snow and ice removal activities, covers seven regions within the State and includes an additional maintenance unit to service the Eisenhower/Johnson Memorial Tunnel on I-70 and a Traffic and Safety Engineering section that is responsible for signals, signing, and striping in the Denver metropolitan area. Nearly two-thirds of CDOT's staff is dedicated to highway maintenance, and CDOT's maintenance program budget for Fiscal Year 2011-12 totaled \$257.7 million, with approximately \$64.3 million allocated to snow and ice removal.

For Fiscal Years 2011-12 and 2012-13, CDOT's total budget covering all its programs was \$1,104.6 million and \$1,205.3 million, respectively. For Fiscal Year 2013-14, CDOT's total budget, including the budget for HPTE and the Statewide Bridge Enterprise (both created under FASTER), is \$1,249.86 million.

Funding of CDOT's Annual Budget. CDOT's annual budget is funded with a combination of federal and state funds. Federal funds are received pursuant to a number of federal programs for highway, safety, transit, and motor carrier projects, together generally known as the Federal-Aid Highway Program ("FAHP") administered by the Federal Highway Administration ("FHWA"), which provides funding for state projects approved by FHWA. Federal Funds comprised 44.6% of CDOT's total revenues in Fiscal Year 2013-14. The remaining portion of CDOT's annual budget consists of revenues from a variety of sources including motor fuel taxes and vehicle registration fees, but not including the State's General Fund, deposited to the state highway fund (the "**State Highway Fund**"), which generated \$502.9 million (45.6%) of total CDOT revenues in Fiscal Year 2013-14.

In addition, CDOT receives revenues from the imposition of certain road safety surcharges authorized by FASTER, which revenues represented approximately 10.4% of total CDOT revenues in Fiscal Year 2013-14 and from miscellaneous sources including safety education program funds, transit funds, aeronautics funds, local funds, miscellaneous permits and interest on funds, which sources collectively represented approximately 14.7% of total CDOT revenues in Fiscal Year 2013-14.

Appropriations and Budgetary Process. CDOT's annual budget is developed through CDOT's Office of Financial Management and Budget, which is also responsible for submitting the budget to the appropriate budget authority. The majority of CDOT's budget (approximately 97% of the Fiscal Year

2013-14 budget) is appropriated pursuant to statutory continuing appropriation and is subject to annual approval and allocation by the Transportation Commission. The portion of the budget that is subject to continuing appropriation includes budgeting for operations, construction, and maintenance activities. CDOT's obligations under the HPTE-CDOT Agreement are funded from this portion of the budget. The remaining portion of CDOT's budget (less than 3% of the Fiscal Year 2013-2014 budget) is appropriated annually by the State General Assembly. This appropriated portion of the budget includes primarily the budgets for administration, such as salaries and expenses of the offices and staff of the Transportation Commission, certain officers and directors of CDOT, budget, internal audit, accounting, administrative services, building operations, management systems, personnel, procurement, insurance, legal, and central data processing.

With respect to the portion of CDOT's budget that is subject to continuing appropriation, on or before December 15 of each year, the Transportation Commission is to adopt a proposed budget allocation plan for moneys subject to its jurisdiction for the Fiscal Year beginning on July 1 of the succeeding year. The Transportation Commission approves CDOT's final budget in late April, and the budget is submitted to the Governor for final approval and signature in accordance with State statute. It is not clear under State law what the effect, if any, might be on CDOT's ability to operate in accordance with its adopted final budget if the Governor refuses to give final approval to or sign the budget for any Fiscal Year. The signed budget is effective July 1 of each year. The fiscal year 2013-14 budget was signed by the Governor on June 27, 2013.

Pursuant to the HPTE-CDOT Agreement, CDOT agreed to pay for certain maintenance services to be provided by the Concessionaire for the U.S. 36 GP Lanes under the Concession Agreement and, at the sole discretion of CDOT, to make loans to HPTE to fund HPTE's monetary obligations under the Concession Agreement, including the HPTE Capital Payment and payments that may be due from HPTE upon termination of the Concession Agreement. These obligations of CDOT are not currently subject to appropriation from the State General Assembly, but are subject to annual allocation by the Transportation Commission from the State Highway Fund. See "OTHER PROJECT AGREEMENTS – Intergovernmental Agreements – HPTE-CDOT Agreement" and "CERTAIN RISK FACTORS – Annual Allocation and Budgetary Process."

U.S. Department of Transportation and TIFIA

Pursuant to the Transportation Infrastructure Finance and Innovation Act of 1998 (the "**TIFIA Act**"), the TIFIA Lender may provide grants and credit assistance to major transportation projects of critical or national significance, such as inter-modal facilities, border crossing infrastructure, highway trade corridors, and transit and passenger rail facilities with regional and national benefit.

A portion of the Phase 1 Project in the amount of \$4.8 million was funded with a Transportation Investment Generating Economic Recovery grant from the United States Department of Transportation. In addition, the TIFIA Lender has previously loaned the Phase 1 TIFIA Loan, which will be assumed by Borrower Finco on the Phase 1 Assumption Date. The TIFIA Lender will also provide the Phase 2 TIFIA Loan to pay a portion of the costs of the Phase 2 Construction Project. See "PLAN OF FINANCE – Phase 2 TIFIA Loan."

Concessionaire

Plenary Roads Denver LLC (the "**Concessionaire**") is a Colorado limited liability company formed in May 2013 for the purpose of undertaking the Project. The Concessionaire is permitted to engage in any lawful act or activity that may be engaged in by a special-purpose limited liability company organized under State law in pursuit of the company's principal purpose. These activities include but are not limited to obtaining financing in furtherance of such purpose and entering into agreements such as the

Concession Agreement, financing agreements, design-build contracts, operating agreements and other relevant documents.

The Concessionaire is a wholly-owned subsidiary of Plenary Roads Denver Ltd. (the “**Equity Member**”), a Colorado corporation, which is a business unit and a wholly-owned subsidiary of Plenary Group Investments America Ltd., a Delaware corporation (“**PIA**”). PIA is in turn a business unit and a wholly-owned subsidiary of Plenary Group USA Concessions Ltd., a Delaware corporation (“**Plenary Group USA**”). Plenary Group USA is a wholly-owned indirect subsidiary of Plenary Group (Canada) Ltd, a Canadian corporation (“**Plenary Group**”). Under the Equity Contribution Agreement, the Equity Member, Plenary Group and Plenary Group USA (collectively, the “**Plenary Parties**”) have agreed to provide an equity contribution to the Concessionaire in an aggregate amount anticipated to be \$20,554,000. The Equity Contribution will be made available to the Concessionaire pursuant to the terms of the Equity Contribution Agreement.

Plenary Group

Plenary Group was established in 2004 in Australia, and shortly thereafter commenced operations in North America where it now has offices across Canada, as well as offices in Denver and Los Angeles, including a number of site offices that manage the construction and operation of its concessions. Plenary Group has extensive experience in the development, financial structuring and long-term asset management of P3 infrastructure in North America and generally. It is currently a leading sponsor in Canada and Australia, with over \$11 billion in public private partnership transactions completed since 2004.

Plenary Group specializes in the delivery of public infrastructure through public-private partnership arrangements. Plenary Group’s business model is true to its name – delivering a comprehensive and complete, or ‘plenary’ approach. Taking the role of developer, financier, owner and manager, Plenary Group provides dedicated leadership through all cycles of a project – deal development, financing, construction and operations management. This ensures continuity of knowledge, resulting in the effective resolution of issues and focused management of key relationships. Importantly, this principal role covers both the development and long term concession period, with participation supported through Plenary Group’s commitment to long term equity ownership of these projects.

In recognition of Plenary Group’s capability and experience with developing and financing infrastructure, *Infrastructure Journal* recently ranked Plenary Group 2nd globally as a sponsor for P3 transactions (with 8% of the global market share in 2011) and Dealogic ranked Plenary Group as the 10th largest sponsor of global project finance deals in 2011. In addition, *World Finance Magazine* recently recognized Plenary Group as the Best Project Sponsor in North America and Plenary Group’s Humber River Regional Hospital Project as the Best Healthcare Project at their recent 2013 PPP Awards. In addition, Plenary Group was named in 2013 as the Developer of the Year by *Infrastructure Investor*.

Representative infrastructure transactions of Plenary Group include the following:

| <u>Project</u> | <u>Value</u> <u>(Canadian \$)</u> | <u>Asset Type</u> |
|--|--|--------------------------|
| Disraeli Bridges | \$195 million | Transportation |
| Ontario Driver Exam Services | \$200 million | Transportation |
| Thunder Bay Consolidated Courthouse | \$247 million | Justice |
| Communications Security Establishment Canada Long-Term Accommodation Project | \$867 million | Defense |
| Bridgepoint Hospital | \$622 million | Health Care |
| British Columbia Cancer Agency Centre for the North | \$78.7 million | Health Care |

| <u>Project</u> | <u>Value (Canadian \$)</u> | <u>Asset Type</u> |
|----------------------------------|--------------------------------|-------------------|
| Niagara Health System | \$759 million | Health Care |
| North Bay Regional Health Centre | \$551 million | Health Care |
| St. Joseph's Healthcare Hamilton | \$581 million | Health Care |
| Humber River Regional Hospital | \$1.75 billion | Health Care |
| Interior Heart and Surgical Care | \$95.3 million | Health Care |

Further information about Plenary Group can be found on its website at www.plenarygroup.com. References in this Official Statement to Plenary Group's website are not hyperlinks, and Plenary Group's website by these references is not incorporated herein.

Plenary Group USA

Established in 2013, Plenary Group USA is a subsidiary of Plenary Group, one of the leading international infrastructure businesses with management teams located in the North America and the Asia Pacific regions. Plenary Group USA is the main operating entity for Plenary Group's operations in the United States. All Plenary Group corporate group employees that are domiciled in the United States are employed by Plenary Group USA.

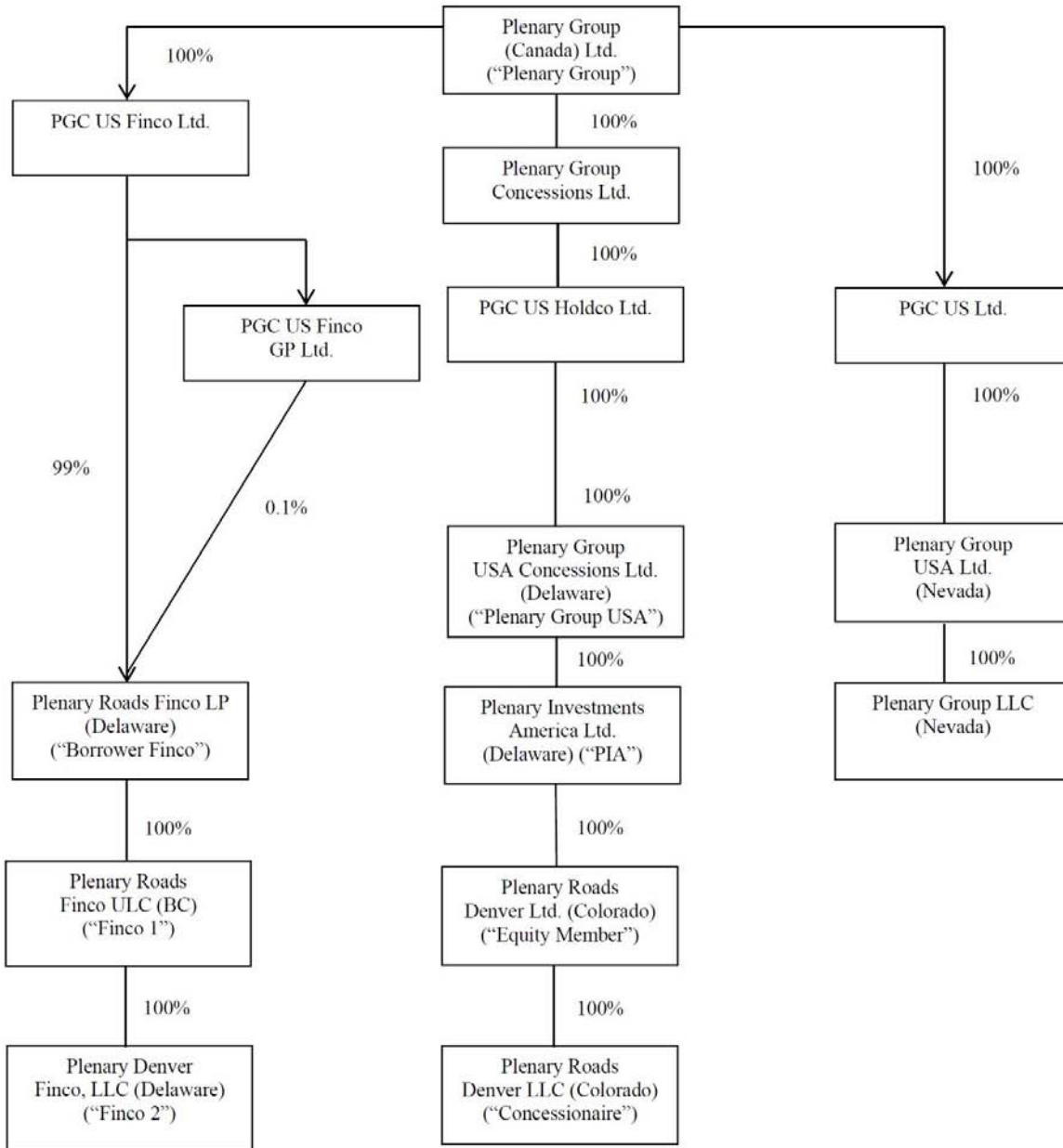
Intercompany Loan Subsidiaries

The proceeds of the 2014 Bonds are being loaned in the first instance to Plenary Roads Finco LP ("**Borrower Finco**"), which is a limited partnership organized under the laws of the State of Delaware. Plenary Roads Finco ULC ("**Finco 1**") is an unlimited liability corporation established under the laws of the Province of British Columbia, Canada. Plenary Denver Finco, LLC ("**Finco 2**") and, together with Borrower Finco and Finco 1, the "**Intercompany Loan Subsidiaries**") is a limited liability company established under the laws of the State of Delaware. The proceeds of the 2014 Bonds, the Phase 2 TIFIA Loan and the Subordinated Loan will be made available by Borrower Finco to the Concessionaire pursuant to a series of Intercompany Loans (as defined herein) made from Borrower Finco to Finco 1, by Finco 1 to Finco 2, and by Finco 2 to the Concessionaire as described in "PLAN OF FINANCE – Intercompany Loans."

Under the terms of such Intercompany Loans, payments will flow from the Concessionaire to Borrower Finco such that at all times Borrower Finco is fully able to meet all of its payment obligations under the Bond Proceeds Loan Agreement (in case of Borrower Finco, Finco 1 and Finco 2 obligations, when combined with distributions received by Finco 1 and Borrower Finco from Finco 2 and Finco 1, respectively), the Phase 1 TIFIA Loan Agreement (upon assumption thereof), the Phase 2 TIFIA Loan Agreement and the Subordinated Loan Agreement. In addition, each of the Concessionaire, Finco 1 and Finco 2 will provide a full recourse guarantee of all of the obligations of Borrower Finco with respect to all of its obligations under the MSA. See "SECURITY AND SOURCES OF PAYMENT FOR BONDS."

Each of Borrower Finco, Finco 1 and Finco 2 is a wholly-owned indirect subsidiary of Plenary Group. The general partner of Borrower Finco is PGC US Finco GP Ltd, a British Columbia corporation and the limited partner of Borrower Finco is PGC US Finco Ltd, a British Columbia corporation. The general partner of Borrower Finco is wholly-owned by the limited partner of Borrower Finco. Finco 2 is wholly-owned by Finco 1. As described in greater detail above, the Concessionaire is an indirect wholly-owned subsidiary of Plenary Group.

Enclosed below is an organizational chart of the various Plenary-related Project participants.



Design-Build Contractor

The Concessionaire has entered into the Design-Build Contract with the Design-Build Contractor to design and construct the Project. The Design-Build Contractor is a joint venture (“Ames/Granite JV”) formed by its members Ames Construction and Granite Construction. The obligations of Ames Construction and Granite Construction as the Design-Build Contractor under the Design-Build Contract will be joint and several. Ames Construction is not a subsidiary of any other business association and has no ultimate parent entity and the obligations of Granite Construction will be guaranteed by Granite Construction Incorporated. Ames/Granite JV is also serving as the design-build contractor for the Phase 1 Project.

Ames Construction, Inc.

Ames Construction, Inc. (“**Ames Construction**”) is a family owned, heavy civil and general contractor founded in 1960. Ames Construction specializes in large, complex, industrial and civil projects, with a full spectrum of past project experience across sectors, including highways, bridges, railroads, airports and power plants. Ames Construction has five offices across the Midwest and Western United States, with its corporate headquarters in Minnesota.

Ames Construction has successfully completed many highway projects in Colorado and across the United States using both design-build (as a sole contractor and as part of a joint venture) and traditional routes. Ames’ experience includes:

- Phase 1 Project
- Arizona SR-51, Phoenix, Arizona (Design-Build contract widening a narrow corridor of State Route 51 and addition of HOV lanes)
- Prima Parkway expansion, Phoenix, Arizona (addition of a 7 kilometer 6-lane freeway, and associated frontage roads, constructed within the busy Phoenix metropolitan area)
- County Road J Reconstruction, Anoka and Ramsey counties, Minnesota (2 miles of road widening works and associated utility realignment, in which extensive regulatory coordination was required due to location of the road)

Ames Construction has also been awarded repeat contracts by transportation departments, including the CDOT, Arizona Department of Transportation and the Utah Department of Transportation. Ames Construction is not a subsidiary of any other business association and has no ultimate parent entity.

Granite Construction Company

Granite Construction Company (“**Granite Construction**”) is a wholly-owned subsidiary of Granite Construction Incorporated. Granite Construction Incorporated is a publicly traded company listed on the New York Stock Exchange under the symbol “GVA.” Substantially all assets of the business reside in Granite Construction and it is the primary operating entity.

Granite Construction is a heavy civil contractor founded in 1922, which has fifteen offices across the United States with its corporate headquarters in California. Granite Construction has extensive experience throughout the United States in all areas of heavy civil contracting, successfully delivering challenging highway, bridge, power and rail projects amongst others. Granite Construction is ranked 25th on the list of Top 400 Contractors in the United States (Engineering News-Record, Top 400 Contractors 2012).

Granite Construction has successfully completed approximately 50 design-build contracts worth in excess of \$10 billion, with more currently under construction. Granite Construction has also successfully delivered many horizontal infrastructure projects using various other delivery methods. Granite’s public sector clients include California Department of Transportation, U.S. Bureau of Reclamation, Port Authority of New York and New Jersey and the Bureau of Indian Affairs. Granite Construction’s experience includes:

- Phase 1 Project
- Camino Colombia Tollway, Texas (design and construction of the first toll road in Texas to be funded through the private sector)

- I-15 Corridor Reconstruction Salt Lake City, Utah (joint venture Design-Build which included the reconstruction and widening of I-15 in addition to reconstructing 146 bridges, ramps and viaducts)
- I-17 Thomas to Peoria Design-Build, Phoenix, Arizona (redevelopment of both carriageways, providing HOV and auxiliary lanes, replacement of 2 bridges and associated irrigation and landscaping works)

HDR

The Design-Build Contractor has subcontracted the design of the Phase 2 Construction Project to HDR Engineering Inc. (“**HDR**”). HDR is an operating company of a full service architecture and engineering firm based in Omaha, Nebraska with more than 8,000 professional staff across 185 locations worldwide. HDR is one of the largest design firms operating in the United States. In 2012, HDR ranked No. 4 in Areas of Expertise – Engineering (Building Design Magazine), while ranking No. 7 in Top 50 Transportation (Engineering News Record). HDR has completed over 30 large design-build transportation projects across the United States, including four large urban freeway reconstruction design-build projects with Ames Construction and Granite Construction. Project experience of particular relevance includes:

- TH 212 (Minnesota) (lead designer for the reconstruction of bridges on Trunk Highway 212 in Minnesota)
- I-15 Core (Utah) (lead designer for the I-15 Core project for the Utah Department of Transportation to reconstruct 24 miles of freeway in Utah County)
- 11400 South at I-15 Interchange (Utah) (managed the project design for the construction of a Single Point Urban Interchange at I-15 and 114th South)
- I-75 Roadway Expansion (Florida) (lead engineering design consultant for the a roadway project including 30 miles of widening, bridge reconstructions and new bridges)

HDR is also currently the lead designer with Ames/Granite JV for the Phase 1 Project.

Operating Contractor

Transfield Services Infrastructure Inc., a Virginia corporation (the “**Operating Contractor**”), has entered into an Operating Contract with the Concessionaire dated June 27, 2013, as expected to be amended and restated prior to the Closing Date (the “**Operating Contract**”), pursuant to which the Operating Contractor will be responsible for the operation and maintenance of the Managed Lanes for the duration of the Services Period. Transfield Services Infrastructure Inc. is a wholly-owned subsidiary of Transfield Services Limited.

Transfield Services Limited

Transfield Services Limited, an Australian publicly listed company (“**Transfield**”), will guarantee all of the obligations of the Operating Contractor under the Operating Contract. Transfield has over 4,100 directly employed personnel in 200 locations across the Americas. Transfield is currently listed on the Australian Securities Exchange under the ticker TSE.

Transfield currently maintains 20,000 km of roads and tunnels (including toll roads) globally, approximately 17,000 km of which is in the North America. With a global maintenance portfolio of complex assets and infrastructure, including 30 across North America, Transfield has a skilled and disciplined workforce with global maintenance knowledge to draw on. Transfield has a track record of

asset management, maintenance and safety while delivering value added services within the strict parameters of its contractual responsibilities.

E-470 Authority

The E-470 Public Highway Authority (the “**E-470 Authority**”), is a body corporate and political subdivision of the State, established in January 1988 by an establishing contract among several counties and municipalities, and has all the powers, duties, and privileges permitted by the Public Highway Authority Law of the State, part 5 of article 4 of title 43, Colorado Revised Statutes, as amended. The E-470 Authority is responsible for the financing, construction, and operations of the toll highway known as E-470. It is governed by a board of directors composed of representatives of the governmental members of the E-470 Authority. The E-470 Authority currently provides Tolling Back Office Control Services and similar services for the I-25 Managed Lanes. On or prior to the Closing Date, the Concessionaire, HPTE and the E-470 Authority will enter into the I-25 Tolling Services Agreement pursuant to which the E-470 Authority will provide the Tolling Back Office Control Services for the I-25 Managed Lanes. The I-25 Tolling Services Agreement will contain a memorandum of understanding among the parties relating to the Project Tolling Services Agreement, which the Concessionaire, HPTE and the E-470 Authority will negotiate in good faith with a view to entering into such Project Tolling Services Agreement. See “OTHER PROJECT AGREEMENTS – Tolling Services Agreement.”

PLAN OF FINANCE

General

The total cost of completing the Phase 2 Construction Project, including financing costs and the funding of certain reserves and other costs expected to be incurred prior to the Full Services Commencement Date currently is estimated to be \$164,026,000. On the Closing Date, the following funds are expected to be committed to pay all Phase 2 Construction Project costs:

- Net proceeds from the sale of the 2014 Bonds, which will be secured on parity with the Phase 1 TIFIA Loan after the Phase 1 Assumption Date occurs;
- A subordinated loan from the TIFIA Lender to Borrower Finco in a principal amount not to exceed \$60,000,000 (the “**Phase 2 TIFIA Loan**” and, together with the Phase 1 TIFIA Loan, the “**TIFIA Loans**”) as discussed below under “– Phase 2 TIFIA Loan,” provided, however, from and after the occurrence of a TIFIA Parity Trigger Event, the lien securing the Phase 2 TIFIA Loan will be on parity with the lien securing the 2014 Bonds and, after the Phase 1 Assumption Date occurs, the Phase 1 TIFIA Loan;
- A capital payment from HPTE in an aggregate amount of approximately \$44,950,000, as such amount may be increased (to an amount not to exceed \$49,650,000) or decreased on or prior to the Closing Date, to be disbursed from time to time pursuant to the terms of the Concession Agreement (the “**HPTE Capital Payment**”) as discussed below under “– HPTE Capital Payment.”
- A subordinated loan from Northleaf/PRD LenderCo LP, an indirect subsidiary of Northleaf Mid-Market Infrastructure Partners LP, a fund managed by Northleaf Capital Partners (the “**Subordinated Lender**”) to Borrower Finco in a principal amount not to exceed \$21,600,000 (the “**Subordinated Loan**”) as discussed below under “– Subordinated Loan.”
- An initial Equity Contribution from the Sponsor to the Concessionaire in an amount anticipated to be \$20,554,000 (the “**Initial Equity Contribution**”), which will be

contributed on or before the Commencement Date; additional Equity Contributions, if needed, in an aggregate amount anticipated to be \$20,554,000 (the “**Equity Contribution Commitment**”) minus the amount of the Initial Equity Contribution; and additional Equity Contributions in an amount not to exceed \$2,000,000 to fund certain shortfalls, all as discussed below under “– Equity Contribution.”

Order of Uses of Funds

The Concessionaire expects to use the funds described above to pay for the Phase 2 Construction Project in the following order: first, the Equity Contributions; second, the net proceeds of the 2014 Bonds; third, the proceeds of the Phase 2 TIFIA Loan; and fourth, the proceeds of the Subordinated Loan. From the Commencement Date, the HPTE Capital Payment will be drawn in installments and used to pay for the Phase 2 Construction Project, as described in “– HPTE Capital Payment” below.

2014 Bonds

The proceeds of the 2014 Bonds will be loaned by the Issuer to Borrower Finco pursuant to the Bond Proceeds Loan Agreement and will be made available to the Concessionaire, indirectly, pursuant to the Intercompany Loan Agreements. Upon the issuance of the 2014 Bonds, the net proceeds of the 2014 Bonds are expected to be deposited into: the Bond Proceeds (Project Costs) Subaccount of the Project Proceeds Account and the Bond Proceeds (Costs of Issuance) Subaccount of the Project Proceeds Account (together, the “**Bond Proceeds Subaccounts**”). The Bond Proceeds Subaccounts will be held by the Security Trustee under the Master Security Agreement to be dated the Effective Date (the “**MSA**”) by and among the Issuer, the Concessionaire, the Intercompany Loan Subsidiaries, the Bond Trustee, the TIFIA Lender, the Subordinated Lender, the Subordinated Agent and The Bank of New York Mellon, as security trustee (the “**Security Trustee**”) and as intercreditor agent (the “**Intercreditor Agent**”) and such other parties as accede thereto from time to time as Secured Parties in accordance with the terms thereof. Pending disbursement, amounts on deposit in the Bond Proceeds Subaccounts will be held by the Security Trustee solely for the benefit of the Owners of the 2014 Bonds. Funds in the Bond Proceeds (Project Costs) Subaccount will be used to pay, or to reimburse for the prior payment of, a portion of the Phase 2 Construction Project costs. See “ESTIMATED SOURCES AND USES OF FUNDS” “PROJECT ACCOUNTS AND FLOW OF FUNDS — Project Proceeds Account” and “DESCRIPTION OF THE 2014 BONDS.”

Phase 2 TIFIA Loan

Prior to the Closing Date, the Borrower Group and the TIFIA Lender will enter into a Loan Agreement (the “**Phase 2 TIFIA Loan Agreement**” and, together with the Phase 1 TIFIA Loan Agreement, the “**TIFIA Loan Agreements**”) pursuant to which the TIFIA Lender will provide the proceeds of the Phase 2 TIFIA Loan to Borrower Finco, which proceeds will be made available to the Concessionaire, indirectly, pursuant to the Intercompany Loan Agreements relating to the Phase 2 TIFIA Loan Agreement. The proceeds of the Phase 2 TIFIA Loan are expected to be funded in multiple disbursements and used to finance up to 33% of Phase 2 Construction Project costs that are eligible to be financed with proceeds of the Phase 2 TIFIA Loan in compliance with federal law. The Phase 2 TIFIA Loan will bear a fixed interest rate calculated by adding one basis point (.01%) to the rate of Treasury Securities – State and Local Government Series of comparable maturity on the date of execution of the Phase 2 TIFIA Loan Agreement, as such rate is published in the United States Treasury Bureau of Public Debt’s daily rate tables for State and Local Government Series investments. As of February 24, 2014, such U.S. Treasury rate was 3.69%. See “FINANCING DOCUMENTS – Phase 2 TIFIA Loan Agreement.”

HPTE Capital Payment

General. HPTE is required to make the HPTE Capital Payment in installments to the Concessionaire to fund a portion of the Phase 2 Construction Costs in an aggregate amount of approximately \$44,950,000, as such amount may be increased or decreased at or prior to the Closing Date (the “**Financial Close Adjustment**”) to provide for potential changes in interest rate costs and other aspects of the debt financing assumed in the Concessionaire's financial model prepared as part of the procurement process for the Project and the actual interest rates and final debt terms and the payment by HPTE of its share of any increase in such interest rate costs, provided that as adjusted, the HPTE Capital Payment may not exceed \$49,650,000. See Section 3.2 of APPENDIX B for a more detailed description of the Financial Close Adjustment.

Whenever a payment is due from the Concessionaire to the Design-Build Contractor under the Design-Build Contract, the Concessionaire may apply for a payment of the HPTE Capital Payment (the “**Interim Capital Payment**”) from HPTE.

The Concessionaire may request not more often than monthly an Interim Capital Payment in an amount not higher than the amount which is due in such month from the Concessionaire under the Design-Build Contract, subject to a maximum amount listed in the second column of the table below for the applicable request period. To the extent that the full amount of Interim Capital Payments has not been fully drawn during a specific request period, any unused amount may be requested by the Concessionaire during the next request period subject to a maximum amount shown in the third column.

| <u>Request Period</u> ⁽¹⁾ | <u>Interim Capital Payment Cap</u> ⁽²⁾ | <u>Cumulative Maximum Interim Capital Payment Cap</u> ⁽²⁾ |
|--------------------------------------|---|--|
| From the Commencement Date | \$15,457,829 | \$15,457,829 |
| From January 2014 | 10,390,829 | 25,848,658 |
| From January 2015 | 19,101,342 | 44,950,000 |

⁽¹⁾ The Concession Agreement provides that any Interim Capital Payment which has not been fully drawn up to the maximum Interim Capital Payment Cap during any request period may be drawn in the next request period until fully drawn.

⁽²⁾ Subject to Financial Close Adjustment. The amount of any Financial Close Adjustment will be allocated to each annual Interim Capital Payment Cap. Any amounts paid by HPTE to the Concessionaire for the Early Works, will be deducted from the Interim Capital Payment which may be requested from January 1, 2014 through December 31, 2015. See “PHASE 2 CONSTRUCTION PROJECT – Early Works.”

Source: Concession Agreement

Funding Sources. Under the Concession Agreement, funding of the HPTE Capital Payment is not subject to annual appropriation by the Colorado legislature. HPTE expects to fund the HPTE Capital Payment from CDOT payments to be made to HPTE pursuant to the HPTE-CDOT Agreement. Such CDOT payments are derived from a variety of sources. Under the HPTE-CDOT Agreement, CDOT will provide to HPTE funds in the amount of the HPTE Capital Payment. See “OTHER PROJECT AGREEMENTS – Intergovernmental Agreements – HPTE-CDOT Agreement.” The Transportation Commission has authorized in a budget action the remittance of these funds to HPTE for such purposes. Under the Concession Agreement, HPTE agreed to promptly enforce any and all rights it has against CDOT under the HPTE-CDOT Agreement, unless the failure to perform an obligation or to enforce any right has received the prior written approval of the Concessionaire. Further, HPTE agreed not to terminate, amend or otherwise modify the HPTE-CDOT Agreement without first receiving the prior written approval of the Concessionaire. In addition, in the Bond Proceeds Loan Agreement, the Concessionaire agrees that it will not terminate the Concession Agreement without the consent of the Owners of the 2014 Bonds.

Subordinated Loan

On or prior to the Closing Date, the Subordinated Lender will provide the Subordinated Loan to Borrower Finco in a principal amount not to exceed \$21,600,000 pursuant to a Credit Agreement (the “**Subordinated Loan Agreement**”) among the Subordinated Lender, Northleaf/PRD LenderCo LP, as agent (the “**Subordinated Agent**”), PGC US Finco GP Ltd., and the Borrower Group. Proceeds of the Subordinated Loan will be available for draws by Borrower Finco during the period commencing on the Financial Close and ending on the Full Services Commencement Longstop Date. Borrower Finco’s payment obligations under the Subordinated Loan Agreement will be subordinate to the Senior Obligations and Borrower Finco’s payment obligations under the Phase 2 TIFIA Loan Agreement and all other Indebtedness of Borrower Finco that ranks ahead of the Subordinated Loan (collectively, the “**Subdebt Senior Obligations**”). The proceeds of the Subordinated Loan will be made available to the Concessionaire, indirectly, pursuant to the Intercompany Loan Agreements relating to the Subordinated Loan and are required by the Subordinated Loan Agreement to be used to pay Project Costs.

Northleaf/PRD LenderCo LP, the lender under the Subordinated Loan and the Secondary Subordinated Loan (as defined herein), is an indirect, wholly-owned subsidiary of Northleaf Mid-Market Infrastructure Partners LP, a Canadian based fund that focuses on investing in core infrastructure projects. Northleaf Mid-Market Infrastructure Partners LP is a fund managed by Northleaf Capital Partners, an independent Canadian private markets fund manager and advisor. Over the last 15 years, Northleaf Capital Partners’ infrastructure professionals (during and prior to their time with Northleaf Capital Partners) have participated in several dozen infrastructure projects in North America, serving various roles, such as lead equity sponsor, developer, asset manager, lender and financial advisor with respect to the acquisition, divestiture, refinancing and valuation of various infrastructure projects.

The Subordinated Loan will mature on July 1, 2050 or if the date on which the Project has achieved Substantial Completion has been revised as reflected in a Financial Plan submitted to the Subordinated Lender, the last January 1 or July 1 occurring no later than 35 years from such date of Substantial Completion. The Subordinated Loan Agreement contains certain covenants for the benefit of the Subordinated Lender. However, a default on the Subordinated Loan will not trigger a default on the 2014 Bonds or the TIFIA Loans. Moreover, the ability of the Subordinated Lender to exercise remedies against the Collateral is limited. See “INTERCREDITOR ARRANGEMENTS – Subordination Agreement.” The obligations of the Subordinated Lender to fund the Subordinated Loan will be supported by a letter of credit in the stated amount equal to the principal amount of the Subordinated Loan available to be drawn by the Security Trustee. The letter of credit will meet the criteria of an Acceptable Letter of Credit and will be issued by an Acceptable Letter of Credit Provider, which will initially be a U.S. branch of a Canadian Schedule 1 Chartered Bank, in favor of the Security Trustee on or prior to the Closing Date. For a more detailed description of the Subordinated Loan Agreement and the supporting letter of credit, see “FINANCING AGREEMENTS – Subordinated Loan Agreement.”

Equity Contribution

General. On or prior to the Commencement Date, the Sponsor will provide the Initial Equity Contribution pursuant to the terms of an Equity Contribution Agreement (the “**Equity Contribution Agreement**”) by and among the Plenary Parties, the Concessionaire and the Security Trustee. The Sponsor will also agree to make or cause to be made, Equity Contributions to the Concessionaire in an aggregate amount up to the Equity Contribution Commitment minus the amount of the Initial Equity Contribution as follows: (i) at any time when Project Costs are due and payable by the Concessionaire and the Concessionaire has no other source of available funds to pay such Project Costs in an amount equal to such unfunded Project Costs; (ii) on the Substantial Completion Date if required to comply with the Maximum Debt to Equity Ratio (as defined herein) in an amount sufficient to so comply with the

Maximum Debt to Equity Ratio; and (iii) upon the occurrence of a Finance Event of Default that is continuing.

The Sponsor agrees to provide the Equity Contribution Commitment by means of cash equity contributions or one or more subordinated loans made to the Concessionaire, directly or indirectly, by the Sponsor or a combination thereof such that the cash deposited into the Equity Subaccount is equal to the Equity Contribution Commitment.

Funding Shortfalls. If, at any time prior to the Substantial Completion Date, the amount of available funds to satisfy the obligations of the Concessionaire or any other Obligor under the Material Project Contracts or with respect to the funding of Reserve Accounts under the MSA is less than the amount of such funds forecasted pursuant to the Base Case Financial Model as of the Effective Date (other than any such shortfall resulting directly from (i) a failure by HPTE to make any installment of the HPTE Capital Payment in a timely manner or (ii) a failure to fund on the part of the Secured Creditors) (a “**Funding Shortfall**”), the Sponsor will promptly after becoming aware thereof: (A) notify the Security Trustee in reasonable detail of the nature and amount of such Funding Shortfall and (B) make, or cause to be made, one or more additional Equity Contributions in the amount of such Funding Shortfall; provided that the aggregate amount of such additional Equity Contributions will not exceed \$2,000,000.

Equity Letter of Credit. On or prior to the Closing Date, as security for the Sponsor’s obligations under the Equity Contribution Agreement, the Sponsor will deliver one or more irrevocable letters of credit (the “**Equity Letter of Credit**”) that will meet the criteria of an Acceptable Letter of Credit and will be issued by an Acceptable Letter of Credit Provider, which will initially be a Canadian Schedule 1 Chartered Bank (the “**Equity Letter of Credit Provider**”), in an aggregate amount equal to the Equity Contribution Commitment. Any Equity Letter of Credit must be an Acceptable Letter of Credit and must be issued by an Acceptable Letter of Credit Provider. The Plenary Parties currently expect that a portion of the Equity Contribution will be used to fund the Bonds Debt Service Reserve Account in an amount equal to the Bonds Debt Service Reserve Requirement. The Equity Letter of Credit may be drawn upon the failure of the Sponsor to make certain payments when due in respect of any Equity Contribution in an amount equal to such unpaid amount.

Intercompany Loans

Upon the issuance of the 2014 Bonds, the proceeds of the 2014 Bonds will be loaned (the “**Bond Proceeds Loan**”) to Borrower Finco pursuant to the Bond Proceeds Loan Agreement. The proceeds of the 2014 Bonds, the Phase 2 TIFIA Loan and the Subordinated Loan will be made available to the Concessionaire pursuant to a series of loans by and to subsidiaries of Plenary Group, as described below. The Concessionaire will also provide for the repayment of the Phase 1 TIFIA Loan (upon the Phase 1 Assumption Date) through the Intercompany Loan Agreements. See “PROJECT PARTICIPANTS – Intercompany Loan Subsidiaries” for an organizational chart of the various subsidiaries of Plenary Group.

- First, Borrower Finco immediately will make loans of the proceeds of the 2014 Bonds, the Phase 2 TIFIA Loan and the Subordinated Loan to Finco 1 (the “**Finco 1 Loans**”) pursuant to loan agreements to be dated on or prior to the Closing Date between Borrower Finco and Finco 1 (the “**Finco 1 Loan Agreements**”). The Finco 1 Loan Agreements will be on the same terms and conditions (except that the Finco 1 Loans will bear interest at a nominal rate) as the terms in the Bond Proceeds Loan Agreement, the Phase 2 TIFIA Loan Agreement, the Amended and Restated Phase 1 Loan Agreement and the Subordinated Loan Agreement, respectively, and will be evidenced by promissory notes.

- Finco 1 in turn immediately will make loans to Finco 2 (the “**Finco 2 Loans**”) pursuant to loan agreements to be dated on or prior to the Closing Date between Finco 1 and Finco 2 (the “**Finco 2 Loan Agreements**”). The Finco 2 Loan Agreements will be on the same terms and conditions (except that the Finco 2 Loans will bear interest at a nominal rate) as the terms in the Bond Proceeds Loan

Agreement, the Phase 2 TIFIA Loan Agreement, the Amended and Restated Phase 1 Loan Agreement and the Subordinated Loan Agreement, respectively, and will be evidenced by promissory notes.

- Finco 2 in turn immediately will make loans to the Concessionaire (the “**Concessionaire Loans**” and, together with the Finco 1 Loans and the Finco 2 Loans, the “**Intercompany Loans**”) pursuant to loan agreements to be dated on or prior to the Closing Date between Finco 2 and the Concessionaire (the “**Concessionaire Loan Agreements**” and, together with the Finco 1 Loan Agreements and the Finco 2 Loan Agreements, the “**Intercompany Loan Agreements**”). The Concessionaire Loan Agreements will be on the same terms and conditions (except that the Concessionaire Loans will bear interest at a rate nominally higher) as the terms in the Bond Proceeds Loan Agreement, the Phase 2 TIFIA Loan Agreement, the Amended and Restated Phase 1 Loan Agreement and the Subordinated Loan Agreement, respectively, and will be evidenced by promissory notes.

As described under “PROJECT ACCOUNTS AND FLOW OF FUNDS – Project Proceeds Account,” the MSA provides that the proceeds of the 2014 Bonds be deposited directly into the Bond Proceeds (Project Costs) Subaccount and the Bond Proceeds (Costs of Issuance) Subaccount. Each of Finco 1, Finco 2 and the Concessionaire have irrevocably directed that the proceeds of the Intercompany Loan that it is receiving relating to the Bond Proceeds Loan are deposited directly into the Bond Proceeds Subaccounts, all of which are held and controlled by the Security Trustee. Similarly, each of Finco 2, Finco 1 and Borrower Finco have irrevocably directed the Concessionaire, Finco 2 and Finco 1, in turn, to deposit all repayments of the Concessionaire Loans, the Finco 2 Loans and the Finco 1 Loans, respectively relating to the Bond Proceeds Loan, directly in the Borrower Finco Senior Bonds Debt Service Account held by the Security Trustee. The Security Trustee holds and controls all of these accounts on the terms set out in the MSA.

In the Bond Proceeds Loan Agreement, the TIFIA Loan Agreements and the Subordinated Loan Agreements, Borrower Finco, Finco 1 and Finco 2 agree to comply with the “**Single Purpose Entity**” covenants designed to ensure that their activities are limited solely to acting pursuant to the Intercompany Loans and the other Funding Documents. The Single Purpose Entity covenants include, among other things: agreements not to engage, directly or indirectly, in any business other than the actions required or permitted to be performed by each of them under the Intercompany Loan Agreements and the other Funding Documents; not to have any assets other than its rights under the Funding Documents; not to commingle its assets with any other person; to continue to hold itself out as a person separate and apart from any other person and to maintain an arm’s length relationship with its affiliates. Each of Borrower Finco, Finco 1 and Finco 2 will also agree not to commence any voluntary proceeding under any bankruptcy or insolvency law or file a petition seeking liquidation, reorganization or other arrangement with creditors for relief under any insolvency law. See “FINANCING AGREEMENTS – Bond Proceeds Loan Agreement,” for a description of the Single Purpose Entity covenants and other provisions of the Bond Proceeds Loan Agreement and the Intercompany Loan Agreements designed to assure that Borrower Finco, Finco 1 and Finco 2 can only act as single purpose entities.

ESTIMATED SOURCES AND USES OF FUNDS¹

The following table sets forth the estimated sources and uses of funds relating to the Phase 2 Construction Project. See “PROJECTED FINANCIAL INFORMATION – Projected Cash Flow Up to the Full Services Commencement Date” for a description of the timing of the sources and uses of funds set forth below.

| SOURCES: | (in thousands) |
|--|-------------------------|
| Par Amount of the 2014 Bonds ² | \$20,360 |
| Original Issue Discount | (358) |
| Phase 2 TIFIA Loan ³ | 60,000 |
| Subordinated Loan ⁴ | 20,554 |
| Equity Contribution ⁵ | 20,554 |
| Net Revenues During Construction ⁶ | 1,945 |
| HPTE Capital Payment ⁷ | <u>40,814</u> |
| TOTAL | <u>\$163,869</u> |
| | |
| USES: | |
| Design-Build Contract Price ⁸ | \$111,764 |
| McCaslin Underpass ⁹ | 850 |
| Bonds Debt Service Reserve Account ¹⁰ | 1,171 |
| TIFIA Phase 1 Debt Service Reserve Account ¹⁰ | 1,595 |
| Ramp Up Reserve Account | 6,000 |
| Major Maintenance Reserve Account | 310 |
| Interest During Construction ¹¹ | 2,163 |
| Cash Reserves and Contingency ¹² | 5,091 |
| Development Fees and Costs of Issuance ¹³ | <u>34,927</u> |
| TOTAL | <u>\$163,869</u> |

¹ Numbers may not total exactly due to rounding.

² The 2014 Bonds will be secured by the Collateral on parity with the Phase 1 TIFIA Loan after the Phase 1 Assumption Date.

³ The Phase 2 TIFIA Loan may be drawn up to an amount equal to \$60,000,000.

⁴ The Subordinated Loan may be drawn up to an amount not to exceed \$21,600,000.

⁵ The Plenary Parties will fund the Equity Contribution by making cash equity contributions or subordinated loans to the Concessionaire on or before the Commencement Date and/or delivering to the Security Trustee the Equity Letter of Credit in an aggregate amount equal to the contribution required under the Equity Contribution Agreement. See “PLAN OF FINANCE – Equity Contribution.”

⁶ Includes I-25 Toll Revenues and Phase 1 Toll Revenues following the Phase 1 Services Commencement Date less operating and maintenance expenses.

⁷ HPTE is required to make the HPTE Capital Payment to the Concessionaire to fund a portion of the Phase 2 Construction Project. The amount of the HPTE Capital Payment may be increased or decreased at or prior to the Closing Date. The HPTE Capital Payment reflects the maximum HPTE Capital Payment of \$49,650,000 less \$8,836,000 which the Concessionaire currently expects to be paid for the Early Works and less \$850,000 representing the costs of construction of McCaslin Underpass. See “PHASE 2 CONSTRUCTION PROJECT – Early Works” and “PLAN OF FINANCE – HPTE Capital Payment.”

⁸ Reflects the Design-Build contract price of \$120.6 million less \$8,836,000 which the Concessionaire currently expects to be paid for the Early Works. See “PHASE 2 CONSTRUCTION PROJECT – Early Works.”

⁹ The work related to the McCaslin Underpass was included after the RFP bid but is not included in the contract price under the Design-Build Contract and will be paid to the Design-Build Contractor in addition to the contract price of \$120.6 million.

¹⁰ The Debt Service Reserve Accounts will not be funded with proceeds of the 2014 Bonds or the Phase 2 TIFIA Loan. They will be funded up to their respective required reserve amounts by the Full Services Commencement Date with a portion of the Equity Contribution, I-25 Toll Revenues, Phase 1 Toll Revenues, other available revenue of the Concessionaire and amounts on deposit in the debt service reserve account on the Phase 1 Assumption Date under the Amended and Restated Master Indenture to be transferred on such date by the Master Trustee to the TIFIA Phase 1 Debt Service Reserve Account.

¹¹ Project Revenues received during construction and other available sources of funding are expected to be used to pay capitalized interest on the 2014 Bonds.

¹² Includes start-up cash and operating accounts.

¹³ Includes costs during construction, transition costs and costs of issuance including Underwriter’s discount, legal, advisory, rating agency fees and other costs of issuance.

Source: Concessionaire

DESCRIPTION OF THE 2014 BONDS

General

The 2014 Bonds are being issued pursuant to the Indenture of Trust, to be dated the Closing Date (the “**Indenture**”), by and between the Issuer and The Bank of New York Mellon Trust Company, N.A., as trustee (the “**Bond Trustee**”) and the provisions of FASTER. The 2014 Bonds will be issued in the aggregate principal amount, and mature in the amount and on the date, indicated on the inside front cover page of this Official Statement.

The 2014 Bonds will bear interest at the rate and mature on the date set forth on the inside front cover page of this Official Statement. Interest will be calculated on the basis of a 360-day year consisting of twelve 30-day months. The 2014 Bonds will be dated their date of delivery, and will bear interest from that date, payable semi-annually on January 1 and July 1 of each year (each an “**Interest Payment Date**”), commencing on July 1, 2014. Interest due and payable on the 2014 Bonds on any Interest Payment Date will be paid to the registered owner as of the Record Date (Cede & Co., so long as the book-entry system with The Depository Trust Company (“**DTC**”) is in effect). Each 2014 Bond will bear interest from the Interest Payment Date next preceding the date of authentication thereof unless such date of authentication is an Interest Payment Date, in which event such 2014 Bond will bear interest from such date of authentication, or unless such date of authentication is after a Record Date and before the next succeeding Interest Payment Date, in which event such 2014 Bond will bear interest from such succeeding Interest Payment Date, or unless such date of authentication is on or before June 15, 2014, in which event such 2014 Bond will bear interest from its date of delivery. If interest on the 2014 Bonds is in default, 2014 Bonds issued in exchange for 2014 Bonds surrendered for transfer or exchange will bear interest from the Interest Payment Date to which interest has been paid in full on the 2014 Bonds surrendered.

The 2014 Bonds will be issued in denominations of \$5,000 or integral multiples thereof. The 2014 Bonds will be issued in fully registered form and, when issued, will be registered in the name of Cede & Co., as registered owner and nominee of DTC. DTC will act as securities depository for the 2014 Bonds. Individual purchases may be made in book-entry-form only. Purchasers will not receive certificates representing their interest in the 2014 Bonds purchased. So long as Cede & Co., as a nominee of DTC, is the registered owner of the 2014 Bonds, references herein to the Owners or registered owners means Cede & Co., and does not mean the Beneficial Owners of the 2014 Bonds.

So long as Cede & Co. is the registered owner of the 2014 Bonds, principal and redemption price of and interest on the 2014 Bonds will be payable by wire transfer by the Bond Trustee to Cede & Co., as nominee for DTC, which is required, in turn, to remit such amounts to the DTC Participants, for subsequent disbursement to the Beneficial Owners. See “APPENDIX K – BOOK-ENTRY ONLY SYSTEM.”

Redemption

The 2014 Bonds are subject to optional, extraordinary mandatory, mandatory sinking fund redemption and purchase in lieu of optional redemption, as described below.

Optional Redemption. The 2014 Bonds are subject to optional redemption prior to maturity, at the written direction of the Concessionaire, in whole or in part, with funds provided by Borrower Finco, on any Business Day on or after January 1, 2023, at a redemption price equal to 100% of the principal amount of the 2014 Bonds to be redeemed, plus accrued interest to, but not including, the redemption date, without premium.

Mandatory Sinking Fund Redemption. The 2014 Bonds will be subject to mandatory sinking fund redemption prior to maturity in the aggregate principal amounts and on the dates set forth in the following schedule at a redemption price of 100% of the principal amount thereof, plus accrued interest to, but not including, the date fixed for redemption. Such 2014 Bonds will be redeemed by lot in accordance with the arrangements with DTC.

| Redemption Date | Principal Amount to be Redeemed | Redemption Date | Principal Amount to be Redeemed |
|------------------------|--|------------------------|--|
| 7/1/2036 | \$1,035,000 | 7/1/2040 | \$1,295,000 |
| 1/1/2037 | 1,035,000 | 1/1/2041 | 1,300,000 |
| 7/1/2037 | 1,090,000 | 7/1/2041 | 1,370,000 |
| 1/1/2038 | 1,100,000 | 1/1/2042 | 1,375,000 |
| 7/1/2038 | 1,160,000 | 7/1/2042 | 1,455,000 |
| 1/1/2039 | 1,160,000 | 1/1/2043 | 1,455,000 |
| 7/1/2039 | 1,230,000 | 7/1/2043 | 1,535,000 |
| 1/1/2040 | 1,225,000 | 1/1/2044* | 1,540,000 |

* Final Maturity Date

At the option of the Concessionaire, to be exercised by delivery of a certificate to the Bond Trustee at least 60 days prior to any mandatory sinking fund redemption date, it may (i) deliver to the Bond Trustee for cancellation 2014 Bonds or portions thereof (in Authorized Denominations) purchased in the open market or otherwise acquired by Borrower Finco or the Concessionaire, or (ii) specify a principal amount of such 2014 Bonds or portions thereof (in Authorized Denominations) which prior to said date have been optionally redeemed as described above under “Optional Redemption” or mandatorily redeemed as described below under “– Extraordinary Mandatory Redemption from Unspent Bond Proceeds,” “– Extraordinary Mandatory Redemption Upon a Determination of Taxability” or “– Extraordinary Mandatory Redemption from Net Loss Proceeds” and previously cancelled by the Bond Trustee at the written request of the Concessionaire and not theretofore applied as a credit against any mandatory sinking fund redemption requirement. Each such 2014 Bond or portion thereof so purchased, acquired or redeemed and delivered to the Bond Trustee for cancellation will be credited by the Bond Trustee at 100% of the principal amount thereof against the obligation of the Issuer to pay the principal of such 2014 Bond on such mandatory sinking fund redemption date or such other mandatory sinking fund redemption date as may be selected by the Concessionaire. In the event any 2014 Bonds are optionally redeemed as described above under “– Optional Redemption” or mandatorily redeemed as described below under “– Extraordinary Mandatory Redemption from Unspent Bond Proceeds,” “– Extraordinary Mandatory Redemption Upon a Determination of Taxability” or “– Extraordinary Mandatory Redemption from Net Loss Proceeds,” the Issuer will provide the Bond Trustee and Borrower Finco with a revised mandatory sinking fund schedule, if applicable.

Extraordinary Mandatory Redemption from Unspent Bond Proceeds. The 2014 Bonds will be subject to extraordinary mandatory redemption, in whole or in part, at a redemption price equal to 100% of the principal amount of the 2014 Bonds subject to redemption (without premium), plus accrued interest to, but not including, the redemption date (which will be set by the Bond Trustee on a Business Day that is no earlier than the date that is five years and thirty days after the Closing Date and no later than the date that is five years and ninety days after the Closing Date) in the principal amount of (rounded upward to a multiple of \$5,000) and to the extent of any remaining unspent 2014 Bond proceeds on deposit in the Bond Proceeds (Project Costs) Subaccount or the Bond Proceeds (Costs of Issuance) Subaccount of the Project Proceeds Account on such date, sufficient to effectuate such redemption. However, no such redemption will be required if Borrower Finco obtains an opinion of Bond Counsel to the effect that the

failure to perform the extraordinary mandatory redemption from unspent 2014 Bond proceeds will not adversely affect the exclusion of interest on such 2014 Bonds from gross income for federal or State income tax purposes and is not required by FASTER.

Extraordinary Mandatory Redemption Upon a Determination of Taxability. The 2014 Bonds will be subject to extraordinary mandatory redemption not later than 120 days after a Determination of Taxability. Such redemption will be in whole, or in part to the extent that, a Favorable Opinion of Bond Counsel is delivered to the effect that interest on the 2014 Bonds which would remain Outstanding after such partial redemption will be excludable from gross income for federal income tax purposes. If the 2014 Bonds are redeemed in part, the 2014 Bonds will be redeemed as described under “– Selection of 2014 Bonds for Redemption” (provided that a portion of a 2014 Bond may be redeemed only in Authorized Denominations). The 2014 Bonds will be redeemed at a redemption price of par plus accrued interest to, but not including, the redemption date, without premium, and such redemption price will be paid from prepayments made by Borrower Finco pursuant to the Bond Proceeds Loan Agreement. See “PROJECT ACCOUNTS AND FLOW OF FUNDS – Project Proceeds Account – Monthly Transfers from Project Proceeds Account” for a discussion of the placement of such extraordinary mandatory redemption in the order of transfers and distributions from the Project Proceeds Account.

If Borrower Finco is unable to obtain funds sufficient to pay the redemption price of the 2014 Bonds subject to extraordinary redemption following a Determination of Taxability, an Event of Default will occur under the Bond Proceeds Loan Agreement and the Bond Trustee may exercise remedies thereunder. However, the Bond Trustee’s ability to direct the exercise of remedies against the Collateral is limited by the terms of the Intercreditor Agreement. The Intercreditor Agreement provides in substance that the exercise of remedies against the Collateral must be approved by a majority in principal amount of the sum of the principal amount of the 2014 Bonds and the principal amount of the Phase 1 TIFIA Loan. See “INTERCREDITOR ARRANGEMENTS – Intercreditor Agreement.”

Extraordinary Mandatory Redemption from Net Loss Proceeds. The 2014 Bonds will be subject to extraordinary mandatory redemption, in whole or in part, at a redemption price equal to 100% of the principal amount of the 2014 Bonds subject to redemption (without premium), plus accrued interest to, but not including, the redemption date (which will be set by the Bond Trustee on a Business Day that is no later than 90 days after the deposit of Net Loss Proceeds to the Borrower Finco Senior Bonds Debt Service Account) in the principal amount of (rounded upward to a multiple of \$5,000) and to the extent of any Net Loss Proceeds on deposit in the Borrower Finco Senior Bonds Debt Service Account on such date, sufficient to effectuate such redemption.

Selection of 2014 Bonds for Redemption. In the case of optional redemption, if less than all of the 2014 Bonds are to be redeemed at the option of the Concessionaire at any one time, the Concessionaire may select the principal amount and mandatory sinking fund redemption payments of the 2014 Bonds to be redeemed (which mandatory sinking fund redemption payments and principal amounts to be redeemed will be determined by the Concessionaire in its sole discretion, provided that with respect to any 2014 Bond to be redeemed in part, the portion of such 2014 Bond which is not to be redeemed will be in an Authorized Denomination), and the Trustee (or DTC, as long as DTC is the Securities Depository for the 2014 Bonds) will select by lot such 2014 Bonds to be redeemed.

In the case of extraordinary mandatory redemption, if less than all of the 2014 Bonds are called for prior redemption, the particular 2014 Bonds or portions thereof to be redeemed will be selected by the Bond Trustee on a pro rata pass-through distribution of principal basis in accordance with DTC procedures, provided that, so long as the 2014 Bonds are held in book-entry form, the selection for redemption of such 2014 Bonds will be made in accordance with the operational arrangements of DTC then in effect. None of the Issuer, Borrower Finco, the Concessionaire or the Underwriter can provide

any assurance that DTC, DTC's direct and indirect participants or any other intermediary will allocate the redemption of 2014 Bonds on such basis. If the DTC operational arrangements do not allow for redemption on a pro rata pass-through distribution of principal basis, the 2014 Bonds will be selected for redemption, in accordance with DTC procedures, by lot.

If the book-entry system through DTC for determining beneficial interests of the Direct Participants of the 2014 Bonds is discontinued and less than all of the 2014 Bonds are to be redeemed pursuant to the extraordinary mandatory redemption provisions of the Indenture, the 2014 Bonds to be redeemed will be selected by the Bond Trustee on a pro rata pass-through distribution of principal basis among all of the Owners of the 2014 Bonds based on the principal amount of 2014 Bonds owned by such Owners.

Notice of Redemption. Notice of the call for an optional redemption or mandatory redemption, identifying the 2014 Bonds or portions thereof to be redeemed and specifying the terms of such redemption, will be given by the Bond Trustee by mailing a copy of the redemption notice by United States first-class mail, at least 30 days and not more than 60 days prior to the date fixed for redemption, to the Owner of each 2014 Bond to be redeemed at the address as it last appears on the registration records of the Bond Trustee; provided, however, that failure to give such notice by mailing, or any defect therein, will not affect the validity of any proceedings of any 2014 Bonds as to which no such failure has occurred. The Bond Trustee will call the 2014 Bonds for redemption and payment as provided in the Indenture upon receipt by the Bond Trustee at least 35 days prior to the redemption date of a written request of the Concessionaire; provided that the Bond Trustee is required to give notice of redemption of 2014 Bonds for mandatory sinking fund redemption without such written request. Such request will specify the principal amount of 2014 Bonds so to be called for redemption, the applicable redemption price or prices, the date fixed for redemption and the provision or provisions above referred to pursuant to which 2014 Bonds are to be called for redemption. Any notice mailed as provided in this paragraph will be conclusively presumed to have been duly given, whether or not the Owner receives the notice.

If at the time of mailing of notice of any redemption of 2014 Bonds at the option of the Concessionaire, there will not have been deposited with the Bond Trustee moneys sufficient to pay the redemption price of all the 2014 Bonds called for redemption, which moneys are or will be available for redemption of 2014 Bonds, such notice will state that it is conditional upon the deposit of the redemption moneys with the Bond Trustee for such purpose not later than the Business Day immediately preceding the redemption date, and such notice will be of no effect unless such moneys are so deposited.

Effect of Redemption. On the date so designated for redemption, notice having been given in the manner and under the conditions provided in the Indenture and sufficient moneys for payment of the redemption price being held in trust to pay the redemption price, the 2014 Bonds so called for redemption will become and be due and payable on the redemption date, interest on such 2014 Bonds will cease to accrue from and after such redemption date, such 2014 Bonds will cease to be entitled to any lien, benefit or security under the Indenture and the Owners of such 2014 Bonds will have no rights in respect thereof except to receive payment of the redemption price.

Purchase of 2014 Bonds in Lieu of Optional Redemption. Whenever 2014 Bonds are subject to optional redemption and are called for optional redemption, Borrower Finco may elect to purchase in lieu of optional redemption all or any portion of the 2014 Bonds called for optional redemption upon provision of written notice to the Bond Trustee prior to or on the Business Day immediately preceding the redemption date that Borrower Finco wishes to purchase the principal amount of 2014 Bonds specified in such notice at a purchase price equal to the redemption price. On the date specified as the redemption date unless such redemption will not occur in the case of a conditional notice of redemption, the Bond Trustee will be furnished with funds in sufficient time for the Bond Trustee to make the purchase on the

redemption date. Any such purchase of 2014 Bonds by Borrower Finco will not be deemed to be a payment or redemption of the 2014 Bonds or any portion thereof and such purchase will not operate to extinguish or discharge the indebtedness evidenced by such 2014 Bonds.

Defaults; Termination Compensation

Indenture Events of Default. Any of the following will constitute an “**Indenture Event of Default**” with respect to the 2014 Bonds: (a) default in the payment of the principal of any outstanding 2014 Bond when due and payable at maturity or upon redemption or otherwise; (b) default in the payment of any portion of interest on any outstanding 2014 Bond when due and payable; (c) the failure by the Issuer to observe or perform in any material way any covenant, condition, agreement or provision contained in the 2014 Bonds or in the Indenture on the part of the Issuer to be performed and such failure continues for 30 days after written notice specifying such failure; (d) failure to preserve the Lien of the Indenture upon any material part of the Trust Estate; or (e) a Bond Proceeds Loan Event of Default occurs (see “FINANCING AGREEMENTS – Bond Proceeds Loan Agreement – Bond Proceeds Loan Events of Default” for additional information on the Bond Proceeds Loan Events of Default).

Payment of Termination Compensation Upon Termination of Concession Agreement. One of the Bond Proceeds Loan Events of Default is a termination of the Concession Agreement. The Concession Agreement may be terminated by reason of a default thereunder or by mutual agreement of the parties thereto or otherwise. Upon any such termination, HPTE has agreed to pay Termination Compensation to the Concessionaire. See “CONCESSION AGREEMENT – Termination Events” for a description of the Termination Events in the Concession Agreement. Upon such termination, the Termination Compensation will be deposited into the Termination Compensation Subaccount and applied as described under “PROJECT ACCOUNTS AND FLOW OF FUNDS – Use of Moneys Received from Exercise of Remedies.”

SECURITY AND SOURCES OF PAYMENT FOR 2014 BONDS

General

Overview. Ultimately, the Concessionaire expects to operate, maintain and collect Tolls on the Managed Lanes; to operate and maintain for a fee the U.S. 36 GP Lanes; and to operate and maintain ETCS. The Concessionaire expects that it will begin to collect the I-25 Toll Revenues on the Commencement Date, the Phase 1 Toll Revenues on the Phase 1 Services Commencement Date and Toll Revenues from the Phase 2 Managed Lanes on the Full Services Commencement Date.

The Concessionaire will provide through the Intercompany Loan Agreements for payment of the principal of and interest on the 2014 Bonds and for the payment of the Phase 2 TIFIA Loan and the Subordinated Loan incurred in connection with the Phase 2 Construction Project. In addition, once the Phase 1 Assumption Date occurs, Borrower Finco will assume HPTE’s obligations under the Phase 1 TIFIA Loan as borrower, and the TIFIA Lender will release HPTE from its obligations thereunder. The Concessionaire will provide for the payment of the Phase 1 TIFIA Loan through the Intercompany Loan Agreements. See “PLAN OF FINANCE.” Borrower Finco’s obligations to make payments under the Bond Proceeds Loan Agreement, the Phase 1 TIFIA Loan (after the Phase 1 Assumption Date), the Phase 2 TIFIA Loan, the Subordinated Loan and other related obligations will be made from the Toll Revenues and the other revenues and monies pledged therefor, at the times and in the order of priority set forth in the MSA.

2014 Bonds are Limited Obligations. **The 2014 Bonds are special, limited obligations of the Issuer, payable solely from and secured by the Trust Estate. The 2014 Bonds do not constitute an obligation, moral or otherwise, of CDOT or the State, any other agency, instrumentality or political**

subdivision of the State, or any official, board member, director, officer, employee, agent or representative of any of the foregoing, and neither the full faith and credit of the Issuer, CDOT or the State nor the taxing power of the State or any other agency, instrumentality or political subdivision of the State is pledged to the payment of the principal of and interest or premium, if any, on the 2014 Bonds. The Owners of the 2014 Bonds may not look to any revenues of the Issuer, CDOT or the State for repayment of the 2014 Bonds and the only source of repayment of the 2014 Bonds is the Trust Estate. The payment of the 2014 Bonds shall not be secured by any encumbrance, mortgage, or other pledge of property of the Issuer, CDOT or the State, other than the Trust Estate. The Issuer has no taxing powers.

Senior Obligations. On the Closing Date, the 2014 Bonds (and the related Bond Proceeds Loan) will be the only senior secured debt to be incurred in connection with the financing of the Phase 2 Construction Project. However, upon the Phase 1 Assumption Date, the Phase 1 TIFIA Loan will also become senior secured debt and the lien and payments due on the Phase 1 TIFIA Loan will be on a parity with the payment of principal and redemption price of and interest on the 2014 Bonds (and the related Bond Proceeds Loan). The 2014 Bonds (and the related Bond Proceeds Loan), the Phase 1 TIFIA Loan and any Additional Senior Obligations are referred to as the “**Senior Obligations**.”

Subordinate Obligations. The lien and payments due on the Phase 2 TIFIA Loan, the Subordinated Loan, the Secondary Subordinated Loan, the Subordinated Refinancing Debt, the Permitted Subordinated Debt and the Permitted Affiliate Subordinated Debt (collectively, the “**Subordinate Obligations**” and, (other than the Permitted Affiliate Subordinated Debt) together with the Senior Obligations, the “**Secured Obligations**”) will be subordinate to the Senior Obligations, except that in the event of a TIFIA Parity Trigger Event, the Phase 2 TIFIA Loan (to the extent the Phase 2 TIFIA Loan is held by the TIFIA Lender or by another federal agency) will be automatically elevated to parity debt with the Senior Obligations. The lien and payments due on each of the Subordinate Obligations will be in the following order of priority: (i) the Phase 2 TIFIA Loan, (ii) the Subordinated Loan, the Secondary Subordinated Loan, the Subordinated Refinancing Debt and the Permitted Subordinated Debt and (iv) the Permitted Affiliate Subordinated Debt.

Trust Estate for the 2014 Bonds

The 2014 Bonds and any Additional Senior Bonds issued in the future in accordance with the Indenture (collectively, the “**Senior Bonds**”) are special, limited obligations of the Issuer secured by and payable from the Trust Estate.

The “**Trust Estate**” includes:

- All right, title and interest of the Issuer (except for Reserved Rights, i.e., generally the right to indemnification, the payment of costs, etc.) in and to the Bond Proceeds Loan Agreement, the Series 2014 Note, and any additional loan agreements and any promissory notes entered into in connection with Additional Senior Bonds, the present and continuing right of the Issuer to make claim for, collect, receive and receipt for any of the loan payments required to be made by Borrower Finco in repayment of the loan made to Borrower Finco under the Bond Proceeds Loan Agreement, loan payments received pursuant to any loan agreements entered into in connection with Additional Senior Bonds and any and all sums, amounts, income, revenues, issues and profits and any other sums of money payable or receivable under the Bond Proceeds Loan Agreement, the Series 2014 Note and any loan agreement and any promissory note entered into in connection with Additional Senior Bonds, to bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all things which the Issuer is entitled to do under the Bond Proceeds Loan Agreement, the Series 2014 Note and any loan agreements or any promissory notes entered into in connection with Additional Senior Bonds.

- All moneys from time to time held by the Bond Trustee under the Indenture including the Series 2014 Debt Service Fund, or any other debt service fund established with respect to Additional Senior Bonds, and any other Account other than any Defeasance Escrow Fund or any rebate fund established with respect to any Additional Senior Bonds issued as Tax-Exempt Senior Bonds.

- Any Security Interest created for the benefit of the Issuer under the Security Documents (as defined below) or otherwise, including without limitation the Collateral (as defined herein) pledged thereunder, and the present and continuing right of the Issuer to make claim for, collect, receive and receipt for any of the sums, amounts, income, revenues, issues and profits and any other sums of money payable or receivable under the Security Documents, to bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all things which the Issuer is entitled to do under such Security Documents.

- Any and all other property, revenues, rights or funds from time to time hereafter by delivery or by writing of any kind specially granted, assigned, pledged, bargained, sold, alienated, remised, released, conveyed, set over or confirmed as and for additional security for any of the Senior Bonds, the Bond Proceeds Loan Agreement, the Series 2014 Note, or any loan agreements or any promissory notes entered into in connection with Additional Senior Bonds in favor of the Bond Trustee.

The “**Security Documents**” include, among other agreements, the MSA, the Pledge Agreements (including the Equity Member Pledge Agreement (as defined herein)), the HPTE Direct Agreement (as defined herein) and other direct agreements.

Loan Payments Under Bond Proceeds Loan Agreement

Pursuant to the provisions of the Bond Proceeds Loan Agreement, Borrower Finco has agreed to make loan payments to the Bond Trustee, as assignee of the Issuer, prior to each principal and interest payment date with respect to the 2014 Bonds in amounts sufficient to pay the principal and interest due on the 2014 Bonds on such principal and interest payment dates.

Bonds Debt Service Reserve Account

The Concessionaire currently expects to fund the Bonds Debt Service Reserve Account with a portion of the Equity Contribution (in the form of cash) made pursuant to the Equity Contribution Agreement and other available sources of funds with the expectation that it will be fully funded by the Full Services Commencement Date. The Bonds Debt Service Reserve Account is held as Segregated Collateral for the sole benefit of the Owners of the 2014 Bonds. Monies on deposit in the Bonds Debt Service Reserve Account will be applied by the Security Trustee in accordance with the MSA. See “PROJECT ACCOUNTS AND FLOW OF FUNDS — Bonds Debt Service Reserve Account.”

Collateral Pledged Under the MSA

Under the MSA, each Borrower Group Member has assigned and transferred to the Security Trustee, for the benefit of the Secured Parties, a security interest in, all the present and after acquired personal property of such Obligor including the following property now owned or at any time after acquired by each Borrower Group Member or in which each Borrower Group Member now has or at any time in the future may acquire any right, title or interest (collectively, the “**Collateral**”): (1) all Project Accounts (other than the Excluded Accounts); (2) all Assigned Agreements; (3) all Chattel Paper; (4) all Deposit Accounts (including each Project Account); (5) all Commercial tort claims from time to time; (6) all Documents; (7) all Equipment; (8) all Fixtures; (9) all General Intangibles; (10) all Instruments; (11) all Intellectual Property; (12) all Inventory; (13) all Investment Property; (14) all Pledged Equity

Collateral; (15) all Letter-of-Credit Rights; (16) Money; (17) all Permits now or hereafter held in the name, or for the benefit of, any Borrower Group Member; (18) all books and records pertaining to the Collateral; (19) all Concessionaire Collateral, Borrower Finco Collateral, Finco 1 Collateral and Finco 2 Collateral; (20) to the extent not otherwise included above, all other personal property relating to any of the foregoing; and (21) to the extent not otherwise included above, all Proceeds, supporting obligations and products of any and all of the foregoing and all collateral security and guarantees given by any Person with respect to any of the foregoing; provided the Collateral will not include any Excluded Assets.

The “**Borrower Finco Collateral**” will consist of: (a) all money held by the Security Trustee in the Borrower Finco Accounts; (b) all receivables owing to Borrower Finco including all amounts payable to Borrower Finco pursuant to the Intercompany Loan Agreements; (c) all rights of Borrower Finco to receive dividends and distributions in respect of Equity Interests in Finco 1; and (d) 100% of the Equity Interests of Borrower Finco in Finco 1.

The “**Concessionaire Collateral**” will consist of: (a) all Project Revenues; (b) all money held by the Security Trustee in the Concessionaire Accounts and the Subaccounts (including the Bonds Debt Service Reserve Account), and any other bank accounts of Concessionaire (other than the Excluded Accounts); (c) the Concessionaire’s right, title and interest in all of its accounts, general intangibles, insurance policies and all contracts or other rights to receive Project Revenues, including its right, title and interest in and to the Concession Agreement and all other Material Project Contracts; (d) the Concessionaire’s right, title and interest in all assignable permits and governmental approvals relating to the Project; and (e) all proceeds of insurance policies or condemnation proceedings received or receivable by the Concessionaire to the extent not used to repair or rebuild the Project, as may be permitted under the Concession Agreement and other Material Project Contracts.

Generally, “**Project Revenues**” consist of all revenues of the Concessionaire from the operation of the Project, and include, among other things, (i) all Toll Revenues (including, for certainty, all I-25 Toll Revenues from and after the Commencement Date and all Phase 1 Toll Revenues, from and after the Phase 1 Services Commencement Date), (ii) payments received by the Concessionaire under any Material Project Contract (including any warranty payments, delay liquidated damages, Termination Compensation and the proceeds of any Compensation Event), and (iii) any payments to the Concessionaire made by HPTE (including the Maintenance Fees). For a more complete description of the Project Revenues, see the definition of this term in APPENDIX A. The Toll Revenues will be the main source of the Project Revenues. See “TOLLING ON THE MANAGED LANES” for a discussion of tolling of the Managed Lanes, including information on the historical I-25 Toll Revenues.

The “**Finco 1 Collateral**” will consist of: (a) all the receivables owing to Finco 1, including all amounts payable to Finco 1 pursuant to the Intercompany Loan Agreements; (b) all rights to receive dividends or distributions in respect of Finco 1’s Equity Interests in Finco 2; and (c) 100% of the Equity Interests of Finco 1 in Finco 2.

The “**Finco 2 Collateral**” will consist of all the receivables owing to Finco 2, including all amounts payable to Finco 2 pursuant to the Intercompany Loan Agreements.

The Collateral will be held and administered by the Security Trustee in the manner contemplated by the MSA. The MSA also provides for the creation of the Project Accounts, and the deposits, withdrawals and transfers of funds to and from the Project Accounts, including transfers of funds to the Bond Trustee for deposit to the Series 2014 Debt Service Fund created under the Indenture. The flow of funds is set forth in the MSA and is summarized in “PROJECT ACCOUNTS AND FLOW OF FUNDS.”

Finco Guarantees

Pursuant to the Bond Proceeds Loan Agreement, each of the Concessionaire, Finco 1 and Finco 2 will issue a guarantee in favor of the Issuer guaranteeing the obligations of Borrower Finco to the Issuer pursuant to the Bond Proceeds Loan Agreement (collectively, the “**Finco Guarantees**” and each, a “**Finco Guarantee**”). The Issuer will assign its rights under each of the Finco Guarantees to the Bond Trustee as security for the 2014 Bonds as part of the Trust Estate. The Concessionaire, Finco 1 and Finco 2 will also issue similar guarantees in favor of the TIFIA Lender guaranteeing the obligations of Borrower Finco to the TIFIA Lender pursuant to the TIFIA Loan Agreements and the Subordinated Lender pursuant to the Subordinated Loan Agreement.

Equity Member Pledge Agreement

As additional security for the Borrower Group Member’s obligations under the Bond Proceeds Loan Agreement, the MSA, the Phase 2 TIFIA Loan Agreement, the Phase 1 TIFIA Loan Agreement (upon the Phase 1 Assumption Date) and other agreements included in the definition of Funding Documents under the MSA (as more particularly defined in APPENDIX A, the “**Funding Documents**”), the Equity Member, the current owner of all of the membership interests in the Concessionaire, will enter into a Pledge Agreement on or prior to the Closing Date (the “**Equity Member Pledge Agreement**”). In the Equity Member Pledge Agreement, the Equity Member will grant to the Security Trustee, for the ratable benefit of the Secured Parties, a security interest in all of the Equity Member’s right, title and interest in and to all of its membership interests and other equity interests (the “**Pledged Collateral**”) in the Concessionaire. So long as an Event of Default under the MSA has not occurred and is continuing, the Equity Member will be entitled to exercise voting rights and other consent rights unless doing so would be reasonably expected to have an adverse effect on the value of the Pledged Collateral or the remedies of the Security Trustee, and to receive and retain any and all dividends, interests, income, cash and other amounts payable in cash to the extent permitted by the terms of the Funding Documents. The Equity Member agrees that it will not sell or assign or otherwise dispose of any option with respect to its membership interests in the Concessionaire or allow any lien to be created thereon except for the pledge, assignment and security interest created under the Equity Member Pledge Agreement.

HPTE Direct Agreement

On or prior to the Closing Date, HPTE, the Concessionaire and the Security Trustee will enter into the Direct Agreement dated the Closing Date (the “**HPTE Direct Agreement**”). In the HPTE Direct Agreement, HPTE acknowledges and consents to the grant by the Concessionaire to the Security Trustee (for the benefit of the Secured Parties) of a first-priority security interest in all of the Concessionaire’s right, title and interest, in, to and under the Concession Agreement (the “**Assigned Rights**”). HPTE further acknowledges and agrees that it will not consent to any further assignment, transfer, pledge or encumbrance of the Assigned Rights by the Concessionaire without the prior consent of the Security Trustee.

The HPTE Direct Agreement sets forth certain assurances from HPTE of the Secured Parties’ rights with respect to the Concession Agreement in the event of a Concessionaire Default thereunder, including step-in and cure rights, forbearance obligations of HPTE with respect to its exercise of remedies under the Concession Agreement, rights of substitution and other rights of the Secured Parties. HPTE agrees that it will not terminate the Concession Agreement following a Concessionaire Default without first giving at least 90 days’ notice (120 days’ notice, if during the period prior to the Full Services Commencement Date) to the Security Trustee. Then, the Secured Parties may direct the Security Trustee (or its designated representative) to assume the Concessionaire’s rights and responsibilities during this “step-in period” in order to cure Concessionaire Defaults under the Concession Agreement. The Security Trustee (or its designated representative) subsequently may step-out and be released from all of its

obligations and liabilities arising prior to the step-out date. In addition, the Secured Parties may direct the Security Trustee to transfer the Concessionaire's rights and liabilities under the Concession Agreement to a Suitable Substitute Concessionaire. A "**Suitable Substitute Concessionaire**" is an entity that has the legal capacity, power and authority to perform the obligations of the Concessionaire under the Concession Agreement, employs persons having the appropriate qualifications, experience and technical expertise, and has sufficient resources available to enable it to perform the obligations of the Concessionaire under the Concession Agreement. HPTE must approve any proposed Suitable Substitute Concessionaire but it may not withhold or condition its approval on any grounds apart from not being reasonably satisfied that the qualifications described in the preceding sentence have been met.

Nothing in the HPTE Direct Agreement amends or modifies any of the Concessionaire's obligations to HPTE under the Concession Agreement. HPTE further acknowledges that the Concessionaire may not amend, restate, supplement or otherwise modify the Concession Agreement without obtaining the consent of the Security Trustee thereto (which acknowledgement is not binding on HPTE).

Consents and Agreements; Guarantees

Consents and Agreements. On or prior to the Closing Date, the Design-Build Contractor will enter into a Consent and Agreement (the "**Design-Build Contractor Consent**") with the Security Trustee (for the benefit of the Secured Parties) and the Concessionaire providing for the Design-Build Contractor's consent to the Concessionaire's pledge, assignment and grant of a security interest on all of the Concessionaire's right, title and interest in, to and under the Design-Build Contract, and its assurance of certain of the Secured Parties' rights with respect to the Design-Build Contract.

On or prior to the Closing Date, the Operating Contractor will enter into a Consent and Agreement (the "**Operating Contractor Consent**" and, together with the Design-Build Contractor Consent, the "**Consents and Agreements**") with the Security Trustee (for the benefit of the Secured Parties) and the Concessionaire providing for the Operating Contractor's consent to the Concessionaire's pledge, assignment and grant of a security interest on all of the Concessionaire's right, title and interest in, to and under the Operating Contract, and its assurance of certain of the Secured Parties' rights with respect to the Operating Contract.

Under each Consent and Agreement, the assurances referred to in the two preceding paragraphs include the relevant consenting Project participant's: (1) acknowledgement of the right of the Security Trustee to make demands, give notices, take actions, and enforce directly and exercise rights and remedies of the Concessionaire under the applicable assigned agreement; (2) agreement to provide the Security Trustee with notice of any default, condition or event that would give the consenting Project participant the right to terminate the applicable assigned agreement and to give the Security Trustee (or its designee) an opportunity to cure the default during a cure period prior to terminating the applicable assigned agreement; (3) agreement that the Security Trustee (or its designee) may elect to assume the Concessionaire's rights and obligations under the applicable assigned agreement if the Security Trustee (or its designee) assumes liability for the Concessionaire's obligations thereunder and cures any outstanding monetary defaults; and (4) agreement that in the event the applicable assigned agreement is terminated in a bankruptcy or insolvency proceeding affecting the Concessionaire, the consenting Project participant, at the request of the Security Trustee and subject to the Security Trustee's (or its designee) certification that it intends to perform the Concessionaire's obligations under the applicable agreement, will enter into a new agreement with the Security Trustee (or its designee) having the same terms as the applicable original assigned agreement.

Design-Build Guarantee and Operating Guarantee. Each of Ames Construction, Inc. and Granite Construction Incorporated (together, the "**Design-Build Guarantor**") will, prior to the Closing Date,

guarantee (the “**Design-Build Guarantee**”) the Design-Build Contractor’s obligations under the Design-Build Contract. In addition, Transfield Services Limited (the “**Operating Guarantor**”) will, prior to the Closing Date, guarantee (the “**Operating Guarantee**”) the Operator Contractor’s obligations under the Operating Contract.

In the Design-Build Guarantee, the Design-Build Guarantor absolutely, unconditionally and irrevocably guarantees as a direct obligation the full and timely performance, observance and payment by the Design-Build Contractor of all of its covenants and undertakings in the Design-Build Contract and the Interface Agreement, including the obligation to pay any moneys owing by the Design-Build Contractor under the terms of either of them (the “**Design-Build Liabilities**”). However, the obligations, responsibilities and liabilities of the Design-Build Guarantor in the Design-Build Guarantee will not exceed those of the Design-Build Contractor in the Design-Build Contract and the Interface Agreement. The Design-Build Guarantor acknowledges that its obligations under the Design-Build Guarantee are absolute and unconditional. The Design-Build Guarantor also agrees not to exercise any right of subrogation or similar right with respect to any payment it makes under the Design-Build Guarantee until the Design-Build Liabilities have been paid or performed in full, and the Design-Build Guarantor further subordinates the payment of all obligations and indebtedness of the Design-Build Contractor owing to it to the indefeasible payment in full in cash of all amounts owing under the Funding Documents.

In the Operating Guarantee, the Operating Guarantor absolutely, unconditionally and irrevocably guarantees as a direct obligation the full and timely performance, observance and payment by the Operating Contractor of all of its covenants and undertakings in the Operating Contract and the Interface Agreement, including the obligation to pay any moneys owing by the Operating Contractor under the terms of either of them (the “**Operating Contract Liabilities**”). However, the obligations, responsibilities and liabilities of the Operating Guarantor in the Operating Guarantee will not exceed those of the Operating Contractor in the Operating Contract and the Interface Agreement. The Operating Guarantor acknowledges that its obligations under the Operating Guarantee are absolute and unconditional. The Operating Guarantor also agrees not to exercise any right of subrogation or similar right with respect to any payment it makes under the Operating Guarantee until the Operating Contract Liabilities have been paid or performed in full, and the Operating Guarantor further subordinates the payment of all obligations and indebtedness of the Operating Contractor owing to it to the indefeasible payment in full in cash of all amounts owing under the Funding Documents.

In addition, as security for the Operating Contractor’s obligations under the Operating Contract, the Operating Contract requires that an irrevocable letter of credit be delivered by the Operating Contractor to the Concessionaire identifying each of the Concessionaire and the Security Trustee as beneficiaries in an amount equal to the average monthly Operating Contractor Payment and the average monthly Operating Contractor Life Cycle Payment projected to be payable in the then current and the next following two months. The letter of credit must be irrevocable, unconditional and provide for partial draws, and the Concessionaire or the Security Trustee will be entitled to draw upon this letter of credit. On or prior to the Closing Date, at the request of the Operating Guarantor, on behalf of the Operating Contractor, Australia and New Zealand Group Limited is issuing its irrevocable letter of credit in favor of the Concessionaire and the Security Trustee in the amount of \$550,000.

Consents of Design-Build Guarantor and Operating Guarantor. On or prior to the Closing Date, the Design-Build Guarantor will enter into a consent and agreement with the Security Trustee (on behalf of the Secured Parties) providing for the Design-Build Guarantor’s consent to the Concessionaire’s pledge, assignment and grant of a lien on all of the Concessionaire’s right, title and interest in the Design-Build Guarantee, and its assurance of certain of the Secured Parties’ rights with respect to the Design-Build Guarantee.

Among other things, the Design-Build Guarantor agrees that it will not cancel, terminate or suspend performance under the Design-Build Guarantee without the prior written consent of the Security Trustee (unless such cancellation, termination or suspension is expressly provided for in the Design-Build Guarantee).

On or prior to the Closing Date, the Operating Guarantor will enter into a consent and assignment with the Security Trustee (on behalf of the Secured Parties) providing for the Operating Guarantor's consents to the Concessionaire's pledge, assignment, and grant of a security interest in the Operating Contract Guaranty and its assurance of certain of the Secured Parties' rights with respect to the Operating Contract Guaranty. Among other things, the Operating Guarantor agrees that it will not cancel, terminate or suspend performance under the Operating Guarantee without the prior written consent of the Security Trustee (unless such cancellation, termination or suspension is expressly provided for in the Operating Guarantee).

Consent of E-470 Authority. As security for the Concessionaire's obligations under the Funding Documents, the Concessionaire, HPTE, the E-470 Authority and the Security Trustee are entering into a consent and agreement (the "**E-470 Consent**") in which the E-470 Authority consents to the Concessionaire's pledge, assignment and grant of a security interest in to and under the I-25 Tolling Services Agreement, the Project Tolling Services Agreement (when executed and delivered) and related agreements (collectively, the "**E-470 Agreements**"). In the E-470 Consent, the E-470 Authority agrees to give the Security Trustee the opportunity to cure defaults by the Concessionaire under the Tolling Services Agreements and further agrees to notify the Security Trustee prior to cancelling, terminating or suspending performance under any of the E-470 Agreements. The E-470 Consent also allows a "Permitted Transferee," with the E-470 Authority's consent, to assume, and succeed to, the Concessionaire's interests under the E-470 Agreements. A "Permitted Transferee" includes the Security Trustee and a "Suitable Substitute Concessionaire" which includes an entity approved by the E-470 Authority as having the legal capacity, power and authority to become a party to and perform the obligations of the Concessionaire under the E-470 Agreements, employing persons having the appropriate qualifications, experience and technical competence, and having the resources available to it (including committed financial resources in sub-contracts) which were sufficient to enable it to perform the obligations of the Concessionaire under the E-470 Agreements. The E-470 Authority agrees that it would be unreasonable to withhold its approval of a proposed Suitable Substitute Concessionaire on any grounds apart from not being reasonably satisfied that the criteria described in the preceding sentence have not been fulfilled.

Additional Permitted Indebtedness

See "FINANCING AGREEMENTS – Bond Proceeds Loan Agreement – Additional Senior Obligations" and "– TIFIA Loan Agreements – Additional Senior Obligations" for a description of the provisions governing the incurrence of additional debt under each of the Bond Proceeds Loan Agreement and the TIFIA Loan Agreements.

FINANCING AGREEMENTS

The following is a summary of selected provisions of certain financing agreements and is not a full statement of the terms of such agreements. Accordingly, the following summaries are qualified in their entirety by reference to such financing agreements and are subject to the full text thereof.

MSA

General. The proceeds of the 2014 Bonds, the HPTE Capital Payment, the proceeds of the Phase 2 TIFIA Loan, the proceeds of the Subordinated Loan and the proceeds of the Equity Contribution are to

be deposited into the Project Accounts pursuant to the MSA. The Concessionaire will also deposit all Project Revenues pursuant to the MSA. See “SECURITY AND SOURCES OF PAYMENT FOR 2014 BONDS – Trust Estate for the 2014 Bonds” and “PROJECT ACCOUNTS AND FLOW OF FUNDS.”

Events of Default Under the MSA. Any of the following events will constitute an “**Event of Default**” under the MSA:

- (a) the occurrence of a Bond Proceeds Loan Event of Default as defined in the Bond Proceeds Loan Agreement;
- (b) the occurrence of an Event of Default as defined in the Phase 2 TIFIA Loan Agreement;
- (c) the occurrence of an “event of default” as defined in the Funding Documents pursuant to which any Additional Senior Obligations are incurred;
- (d) from and after the Phase 1 Assumption Date, the occurrence of an Event of Default as defined in the Phase 1 TIFIA Loan Agreement; and
- (e) from and after such time as the Borrower Finco Senior Obligations and Borrower Finco TIFIA Phase 2 Obligations are paid and discharged in full and the Bond Proceeds Loan Agreement, the Phase 1 TIFIA Loan Agreement, Phase 2 TIFIA Loan Agreement and any Funding Documents pursuant to which Additional Senior Obligations are incurred are terminated, the occurrence of an Event of Default as defined in either Subordinated Loan Agreement or in any loan agreements pursuant to which Permitted Subordinated Debt or Subordinated Refinancing Debt is incurred.

Exercise of Remedies. Upon the occurrence and during the continuance of any Event of Default, the Security Trustee will (a) upon receipt of notice of such Event of Default from the Intercreditor Agent, deliver notice of the same to each Secured Creditor and (b) take such Enforcement Action with respect to such Event of Default as directed by the Intercreditor Agent, acting in accordance with the terms of the Intercreditor Agreement and the Security Documents (a “**Direction Notice**”); provided that, in the absence of a Direction Notice, the Security Trustee may take such action, or refrain from taking such action, with respect to such Event of Default as it deems advisable in the best interests of the Secured Parties and solely to the extent permitted under the MSA or pursuant to the other Security Documents. Upon receipt by the Security Trustee of a Direction Notice, the Security Trustee will seek to enforce the Security Documents and to realize upon the Collateral in accordance with such Direction Notice; provided that the Security Trustee will not be obligated to follow any Direction Notice if the Security Trustee reasonably determines that such Direction Notice is in conflict with any provisions of any applicable law or any Security Document, and the Security Trustee will not, under any circumstances, be liable to any Secured Party, the Obligors or any other Person for following a Direction Notice. Under the Intercreditor Agreement, there are restrictions on the Owners of the 2014 Bonds to exercise remedies. See “INTERCREDITOR ARRANGEMENTS – Intercreditor Agreement.”

Application of Funds in Certain Project Accounts Following an Event of Default. Upon the occurrence of any Event of Default under the MSA:

- (i) **Payment of Borrower Finco Senior Bond Obligations.** The Security Trustee may, and at the written request of the Bond Trustee (acting on the instructions of the Owners of a majority in aggregate principal amount of 2014 Bonds) is required to without further demand or notice, transfer moneys to the Borrower Finco Senior Bond Debt Service Account, first, from the Bond Proceeds (Project Costs) Subaccount and the Bond Proceeds (Costs of Issuance) Subaccount of the Project Proceeds Account, and second, from the Bonds Debt Service Reserve Account, in each case, for application to the payment of outstanding Borrower Finco Senior Bond Obligations.

(ii) **Payment of Borrower Finco TIFIA Phase 1 Obligations.** The Security Trustee may, and at the written request of the TIFIA Lender is required to, without further demand or notice, transfer moneys to the Borrower Finco TIFIA Phase 1 Debt Service Account from the TIFIA Phase 1 Debt Service Reserve Account for application to the payment of outstanding Borrower Finco TIFIA Phase 1 Obligations.

(iii) **Payment of Borrower Finco TIFIA Phase 2 Obligations.** The Security Trustee may, and at the written request of the TIFIA Lender is required to, without further demand or notice, transfer moneys to the Borrower Finco TIFIA Phase 2 Debt Service Account, first, from the TIFIA Phase 2 Subaccount of the Project Proceeds Account and second, from the TIFIA Phase 2 Debt Service Reserve Account, in each case, for application to the payment of outstanding Borrower Finco TIFIA Phase 2 Obligations.

See “PROJECT ACCOUNTS AND FLOW OF FUNDS – Use of Moneys Received from Exercise of Remedies” and “INTERCREDITOR ARRANGEMENTS” for a discussion of the use of moneys in the MSA following an Event of Default.

Restricted Payment Conditions. The “**Restricted Payment Conditions**” will be deemed satisfied if the following conditions are met as of any Calculation Date:

(a) all transfers and distributions required to be made pursuant to clauses (i) through (xxii) as described under “PROJECT ACCOUNTS AND FLOW OF FUNDS – Project Proceeds Account – Monthly Transfers from Project Proceeds Account” on or prior to the Calculation Date will be satisfied in full;

(b) no Default or Event of Default under the MSA has occurred and is continuing, or would occur as a direct result of the proposed transfer of funds to the Concessionaire Distribution Account;

(c) the Reserve Accounts have been funded in an amount equal to the then applicable reserves required to be maintained therein pursuant to the terms of the MSA;

(d) (i) HPTE has not exercised its rights to terminate the Concession Agreement pursuant to a Concessionaire Default or HPTE has rescinded any notice of termination previously issued and (ii) the Concessionaire has not exercised its rights to terminate the Concession Agreement in respect of an HPTE Default or the Concessionaire has rescinded any notice of termination previously issued;

(e) the Full Services Commencement Date has occurred;

(f) the TIFIA Debt Service Payment Commencement Date has occurred;

(g) the payment of all Debt Service in respect of Borrower Finco Senior Obligations and Borrower Finco TIFIA Phase 2 Obligations, the payment of any TIFIA Revenue Share Amounts, the transfer of any Sinking Fund Amount to the Sinking Fund Account in accordance with the MSA and, if applicable, the payment of Borrower Finco Senior Obligations and Borrower Finco TIFIA Phase 2 Loan Obligations with amounts in the Sinking Fund Account in accordance with the MSA, is current;

(h) (i) the Total Debt Service Coverage Ratio as of the Calculation Date occurring on the last day of the Calculation Period most recently ended was not less than 1.25:1:00 and (ii) for each Calculation Date occurring during the immediately succeeding Calculation Period, the Total Debt Service Coverage Ratio is projected to be not less than 1.25:1:00;

(i) (i) the Senior DSCR as of the Calculation Date occurring on the last day of the Calculation Period most recently ended was not less than 1.45:1.00 and (ii) for each Calculation Date occurring during the immediately succeeding Calculation Period, the Senior DSCR is projected to be not less than 1.45:1.00;

(j) the Loan Life Coverage Ratio, as of the Calculation Date occurring on the last day of the Calculation Period most recently ended, and for each future Calculation Date through the Final Maturity Date, is at least 1.30:1.00;

(k) the Borrower Group Members are not insolvent and no Borrower Group Member would be rendered insolvent by the making of the proposed transfer; and

(l) the Security Trustee has received, not earlier than ten Business Days and not later than three Business Days prior to the proposed Distribution Date, a certificate certifying as to the matters contemplated in clauses (a), (b), (g), (h), (i), (j) and (k) above, including a computation in reasonable detail of the applicable coverage ratios.

Bond Proceeds Loan Agreement

General. The proceeds of the 2014 Bonds will be loaned by the Issuer to Borrower Finco pursuant to the Bond Proceeds Loan Agreement and made available to the Concessionaire pursuant to the Intercompany Loan Agreements, to pay a portion of the costs of the Phase 2 Construction Project and to pay a portion of the costs of issuing the 2014 Bonds. See APPENDIX E for additional information on the Bond Proceeds Loan Agreement.

Covenants. Each Borrower Group Member has agreed to comply with certain covenants in the Bond Proceeds Loan Agreement as follows:

(a) ***Maintain Legal Structure.*** Each Borrower Group Member will maintain its existence and good standing under its jurisdiction of formation, and such Borrower Group Member will not consolidate with, privatize or merge into any other Person or convey, assign, transfer or lease all or substantially all of the Project or its other assets to any other Person, other than the pledge and assignment of the Collateral granted by it pursuant to the Security Documents. Notwithstanding the previous sentence, a Borrower Group Member may consolidate with, privatize or merge into any other Person after the Full Services Commencement Date, if the resulting or acquiring Person meets certain requisite requirements set forth in the Bond Proceeds Loan Agreement.

(b) ***Prosecution of Work; Maintenance of Operations.*** The Concessionaire will (i) diligently prosecute, or cause to be prosecuted the Phase 2 Construction Project in accordance with the schedule set forth in the Concession Agreement and (ii) operate and maintain the Operations Project in a reasonable and prudent manner.

(c) ***Insurance.*** The Concessionaire is required to maintain or will require its contractors to maintain insurance that is required to be obtained by the Concessionaire and its contractors to satisfy the requirements of the Concession Agreement. Such policies will name the Security Trustee, on behalf of the Secured Creditors, as an additional payee as their interests may appear. The Concessionaire will not take, or fail to take, any action, which would result in any insurance obtained by the Concessionaire, lapsing, becoming cancelled or otherwise being rendered void, voidable or ineffective and will not cancel or vary any policy of insurance required to be maintained by it unless the Concession Agreement requires or permits otherwise.

(d) **Material Obligations.** Each Borrower Group Member agrees to pay each of its material obligations promptly and in accordance with its terms and pay and discharge promptly all material taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or in respect of its property, before the same becomes delinquent or in default, as well as all lawful and material claims for labor, materials and supplies or other claims which, if unpaid, in each case, might give rise to a Lien upon such properties or any part thereof; provided that such payment and discharge will not be required with respect to any such tax, assessment, charge, levy or claim so long as the validity or amount thereof is contested by such Borrower Group Member in good faith by appropriate proceedings and so long as such Borrower Group Member sets aside on its books adequate reserves with respect thereto, or unless failure to pay such tax, assessment, charge, levy or claim would not reasonably be expected to have a Material Adverse Effect.

(e) **Notices.**

(i) Each Borrower Group Member will give the Issuer and the Bond Trustee notices relating to Events of Default, litigation, insurance claims, the occurrence of any other event or condition, which could reasonably be expected to result in a Material Adverse Effect, certain plans, reports and notices received from HPTE, CDOT or the Independent Engineer, audited financial statements for such Borrower Group Member, a certificate of such Borrower Group Member that states whether an Event of Default has occurred under the Bond Proceeds Loan Agreement has occurred and is continuing and monthly construction progress reports.

(ii) No Borrower Group Member will, at any time, change its name, jurisdiction of formation, principal place of business or its fiscal year without giving the Issuer, the Bond Trustee and the Security Trustee at least ten days' prior written notice.

(f) **Accounts and Records.** Each Borrower Group Member is required to keep proper books of records and accounts in which complete and correct entries will be made of its transactions in accordance with IFRS, and if required by applicable law, GAAP. Borrower Finco and the Concessionaire will employ and maintain independent auditors of nationally recognized standing to audit their respective annual financial statements.

(g) **Rating Agencies.** The Concessionaire will use commercially reasonable efforts to cooperate with each Nationally Recognized Rating Agency rating the 2014 Bonds, deliver to the Issuer and the Bond Trustee copies of any public reports or public ratings on the 2014 Bonds, and comply with reasonable and customary "ratings surveillance" agreements with each Nationally Recognized Rating Agency rating the 2014 Bonds.

(h) **Enforcement of Documents.** Each Borrower Group Member will use commercially reasonable efforts to enforce against any other party thereto each covenant or obligation of such party in each Funding Document and Material Project Contract to which it is a party or an intended beneficiary in accordance with its terms, except to the extent that the failure to do any of the foregoing could not reasonably be expected to have a Material Adverse Effect.

(i) **Liens.**

(i) The Issuer and each Borrower Group Member agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements to the Bond Proceeds Loan Agreement and such further instruments as may reasonably be required for carrying out the expressed intentions of the Bond Proceeds Loan Agreement. Each Borrower Group Member will, so far as it is authorized by law, pass, make, do, execute, acknowledge and deliver, every further resolution, act, deed, conveyance, assignment,

transfer and assurance as may be necessary or desirable to assure, convey, grant, assign, secure, confirm and maintain the Liens in and to the Collateral granted by such Borrower Group Member to the Security Trustee for the benefit of the Issuer and the Bond Trustee. Each Borrower Group Member will, at all times, defend, preserve and protect the Liens on such Collateral and all the rights of the Security Trustee for the benefit of the Issuer and the Bond Trustee under the Security Documents against all claims and demands of all Persons whomsoever, subject to Permitted Liens.

(ii) No Borrower Group Member will create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, or assign or sell any income or Project Revenues or rights in respect of any thereof, except Permitted Liens.

(j) **No Prohibited Business.** The Concessionaire will not, at any time, engage in any business or activity other than the financing, design, construction, operation and maintenance of the Project, and activities incidental or related thereto.

(k) **Restricted Payments.** No Borrower Group Member will at any time make (i) any distribution or other payment in respect of an outstanding Equity Interest in such Borrower Group Member, or in respect of any redemption, repurchase or other acquisition thereof (or otherwise permit the withdrawal of capital from such Borrower Group Member), (ii) any payment of, interest on or other amounts in respect of any debt for borrowed money owed by such Borrower Group Member to any holder of an outstanding equity interest in such Borrower Group Member, or (iii) any payment to any Affiliate of such Borrower Group Member or of any holder of an equity interest in such Borrower Group Member, other than (i) payments due under or to fund payments due under any Intercompany Loan Agreement so long as, at the time such payment is made, all similar such payments between Borrower Group Members can be made as required to make the related debt service payment by the Borrower Finco in accordance with the terms of the Intercompany Loan Agreements, (ii) payments to an Affiliate of such Borrower Group Member permitted under the Bond Proceeds Loan Agreement, (iii) certain payments to the Sponsor out of the Equity Subaccount as contemplated in the MSA and (iv) payments to the Sponsor or an Affiliate thereof in an amount equal to the applicable Tax Distribution Amount as contemplated in the MSA (collectively, “**Restricted Payments**”). The Concessionaire may make Restricted Payments on any Distribution Date if all of the Restricted Payment Conditions have been satisfied as of such Distribution Date subject to the terms of the MSA (including terms relating to the satisfaction of the Subordinated Loan Restricted Payment Conditions).

(l) **Tax Covenants.** Each of Borrower Finco, the Concessionaire and the Issuer covenant that it will not take any action or omit to take any action with respect to the 2014 Bonds and the proceeds thereof, the Series 2014 Loan and the proceeds thereof, any other funds of such Borrower Group Member or any of the facilities financed with the proceeds of the 2014 Bonds and the Series 2014 Loan if such action or omission (i) would cause interest paid on the 2014 Bonds to be included in the gross income of the Owners of the 2014 Bonds for federal income tax purposes (other than interest paid to Owners of the 2014 Bonds that are a “substantial user” of the facilities financed or refinanced with the 2014 Bonds or a “related person” within the meaning of Section 147(a) of the Code), or (ii) would cause interest paid on the 2014 Bonds to be included in the taxable income of the Owners of the 2014 Bonds for Colorado income tax purposes, under present Colorado law.

(m) **Continuing Disclosure.** Borrower Finco and the Concessionaire covenant and agree that they will comply with and carry out all of the provisions of the Continuing Disclosure Agreement (as defined herein). Failure of Borrower Finco or the Concessionaire to comply with their obligations set forth in Continuing Disclosure Agreement will not constitute an Event of Default.

(n) ***No Lien Extinguishment.*** No Borrower Group Member will, or will permit any Person to, without the prior written consent of the Owners of the 2014 Bonds, extinguish the Liens on the Collateral granted by it pursuant to the Security Documents, except as provided under the MSA and the other Security Documents.

(o) ***Changes to Material Project Contracts.*** The Concessionaire will not amend, assign, modify or waive performance by any other party under any Material Project Contract, in any material respect, or terminate any Material Project Contract or enter into any other material agreement that are not related to the Project (or incidental or ancillary thereto) without the prior written consent of the Bond Trustee (at the direction of the Owners of a majority in aggregate principal amount of the then outstanding Senior Bonds); provided, however, (i) the Design-Build Contract, the Operating Contract or the Project Tolling Services Agreement may be amended if required for compliance by the Concessionaire with the Concession Agreement; (ii) each of the Design-Build Contract, the Operating Contract or the Project Tolling Services Agreement may be amended if such amendment will not require the payment by the Concessionaire, net of any payments received from HPTE or any other party, to exceed certain amounts set forth in the Bond Proceeds Loan Agreement without the consent of the Owners of the 2014 Bonds if (A) it is required by applicable Law; (B) the applicable scope of work will not have been changed as a result thereof, or (C) with respect to the Design-Build Contract, the Independent Engineer has certified that there are sufficient funds available to the Concessionaire to complete the Project by the Full Services Commencement Longstop Date; (iii) the Concessionaire may amend, waive any provision of, or terminate any Material Project Contract if such amendment, waiver or termination could not reasonably be expected to have a Material Adverse Effect; (iv) any Material Project Contract may be terminated if such termination occurs by the express expiry of such Material Project Contract and not as a result of any default or breach on the part of any party to such Material Project Contract, and (v) if a Material Project Contract is terminated prior to the expiry of such contract, (A) such Material Project Contract is replaced by a replacement agreement that provides projected economic benefits for the Project that are at least as favorable as the benefits under the existing contract and (B) if the contract being replaced is the Design-Build Contract, the replacement agreement is entered into with a counterparty of similar or greater creditworthiness and experience as the Design-Build Contractor or with the prior written consent of the Bond Trustee.

(p) ***No Prohibited Sale or Assignment.*** The Concessionaire will not Dispose of its rights in and to the Project, any of the assets of the Concessionaire included in the Project or its rights and obligations under the Concession Agreement or the Bond Proceeds Loan Agreement; and no other Borrower Group Member will Dispose of any of its rights, interests or other assets except as set forth in the Bond Proceeds Loan Agreement.

(q) ***Affiliate Transactions.*** No Borrower Group Member is allowed to sell or transfer any property or assets to, or purchase or acquire any property or assets of, or otherwise engage in any other material transactions with, any of its Affiliates, except (a) Permitted Affiliate Subordinated Debt, (b) as to the Concessionaire, transactions at prices and on terms and conditions not less favorable to the Concessionaire than fair market prices and on terms and conditions not less favorable to the Concessionaire than could be reasonably obtained on an arm's-length basis from unrelated third parties, (c) transactions pursuant to the Management Services Agreement or the Financial Services Agreement and (d) any replacement O&M Contract entered into with an Affiliate of the Concessionaire.

(r) ***Single Purpose Entity.*** Each of the Intercompany Loan Subsidiaries must at all times maintain its existence as a Single Purpose Entity.

Permitted Indebtedness. The Bond Proceeds Loan Agreement provides that no Borrower Group Member may create, issue, incur or assume any Indebtedness, other than Permitted Indebtedness. Under the Bond Proceeds Loan Agreement, “**Permitted Indebtedness**” includes:

(i) in respect of Borrower Finco: (A) the Series 2014 Loan; (B) from and after the Phase 1 Assumption Date, Indebtedness under the Phase 1 TIFIA Loan Agreement; (C) Indebtedness under the Phase 2 TIFIA Loan Agreement; (D) Indebtedness under the Subordinated Loan Agreement; (E) any Additional Senior Obligations; (F) any Subordinated Refinancing Debt or Permitted Subordinated Debt; (G) any Permitted Hedging Arrangement; and (H) Permitted Affiliate Subordinated Debt;

(ii) in respect of the Concessionaire: (A) Indebtedness owing to Finco 2 in respect of certain Intercompany Loan Agreements; (B) Indebtedness under the Secondary Subordinated Loan Agreement; (C) Permitted Affiliate Subordinate Debt; (D) certain reimbursement obligations in respect of letters of credit, and other financial obligations, arising under the Material Project Contracts or any other agreement executed by the Concessionaire in connection with the Project; (E) certain purchase money obligations or capitalized leases incurred to finance discrete items of equipment not comprising an integral part of the Project; (F) trade accounts or accrued expenses payable so long as such trade accounts or expenses payable are not overdue by more than 90 days; (G) amounts payable under the Concession Agreement or any other Material Project Contract to the extent the same constitute Indebtedness; and (H) Indebtedness under guarantees made in respect of Indebtedness of the Borrower Finco described in clauses (i)(A) through (G) above;

(iii) in respect of Finco 1: (A) Indebtedness owing to Borrower Finco in respect of certain Intercompany Loan Agreements; and (B) Indebtedness under guarantees made in respect of Indebtedness of the Borrower Finco described in clauses (i)(A) through (G) above; and

(iv) in respect of Finco 2: (A) Indebtedness owing to Finco 1 in respect of certain Intercompany Loan Agreements; and (B) Indebtedness under guarantees made in respect of Indebtedness of the Borrower Finco described in clauses (i)(A) through (G) above;.

Additional Senior Obligations. Under the Bond Proceeds Loan Agreement, Additional Senior Obligations (other than Senior Refinancing Indebtedness) may not be issued or entered into by Borrower Finco unless each of the following conditions applicable thereto has been satisfied:

(i) the Bond Trustee receives a certification from Borrower Finco stating that after giving effect to the issuance of such Additional Senior Obligations, (A) the Total Debt Service Coverage Ratio for each full Calculation Period occurring between the date of incurrence of such Additional Senior Obligations and the Final Maturity Date of the 2014 Bonds will not be less than 1.20:1.00, and (B) the Senior Debt Service Coverage Ratio for each full Calculation Period occurring between the date of incurrence of such Additional Senior Obligations and the Final Maturity Date of the 2014 Bonds will not be less than 1.50:1.00, in each case, on a pro forma basis;

(ii) the Bond Trustee receives an updated Base Case Financial Model upon which the Total Debt Service Coverage Ratio and Senior Debt Service Coverage Ratio, as applicable, as described in clause (i) above will be based, provided such updated Base Case Financial Model: (A) contains current projections as of the time of the issuance of such Additional Senior Obligations, and (B) has been reviewed and certified to be correct and accurate in all material respects by Borrower Finco and by an independent financial model auditor; provided that a review and certification by an independent financial model auditor described in this sub-clause (ii)(B) will not be required if such a review and certification was undertaken in the previous six months immediately prior to the incurrence of such Additional Senior Obligations;

(iii) the Bond Trustee receives certified copies of the financing documents pursuant to which such Additional Senior Obligations are issued, incurred or entered into, which financing documents will not prohibit Borrower Finco from incurring new indebtedness to refinance the Senior Obligations (subject to the restrictions described in this section);

(iv) the Bond Trustee receives a certificate from Borrower Finco stating that, as of the date the Additional Senior Obligations are issued, incurred or entered into either: (A) there is no Bond Proceeds Loan Event of Default; or (B) if a Bond Proceeds Loan Event of Default has occurred and is continuing, such Bond Proceeds Loan Event of Default will be cured upon the issuance or incurrence of or entering into the Additional Senior Obligations and the application of the proceeds of the Additional Senior Obligations in accordance with the financing documents authorizing the issuance or incurrence of such Additional Senior Obligations

(v) if the Additional Senior Obligations are being incurred in connection with the issuance of Additional Senior Bonds, proceeds of such Additional Senior Bonds or other moneys will be loaned to Borrower Finco and then on-lent to Finco 1, Finco 2 and the Concessionaire pursuant to additional Intercompany Loan Agreements, who will deposit or cause to be deposited such proceeds into the Bond Proceeds (Project Costs) Subaccount, the Bond Proceeds (Costs of Issuance) Subaccount, the Bonds Debt Service Reserve Account, if necessary, or such other funds and accounts established under the MSA, as applicable;

(vi) each of the Borrower Group Members have entered into Intercompany Loan Agreements as required to make available the proceeds of the Additional Senior Obligations indirectly from Borrower Finco to the Concessionaire;

(vii) such Additional Senior Obligations will have interest payment dates (except for Additional Senior Obligations issued as Variable Rate Indebtedness) and principal payment dates that coincide with the interest payment dates and principal payment dates of the 2014 Bonds and any other Senior Obligations then outstanding;

(viii) the lenders or other holders of such Additional Senior Obligations have acceded to the MSA and the Intercreditor Agreement;

(ix) the covenants and terms of such Additional Senior Obligations are not materially more restrictive for the Borrower Group Members than the covenants and other terms in the applicable Funding Documents entered into with respect to the previously issued Senior Obligations;

(x) Borrower Finco will provide to the Bond Trustee evidence of the assignment by a Nationally Recognized Rating Agency of a rating on such Additional Senior Obligations that is either (A) an Investment Grade Rating or (B) a rating that is no lower than the rating last assigned by such Rating Agency to the other outstanding Senior Obligations prior to its assignment of rating on such Additional Senior Obligations; and

(xi) if a TIFIA Loan is then outstanding, Borrower Finco provides evidence to the Bond Trustee that the TIFIA Lender has consented to, or waived its consent right to the issuance or incurrence of such Additional Senior Obligations.

Senior Refinancing Indebtedness. Under the Bond Proceeds Loan Agreement, Senior Refinancing Indebtedness may not be issued, incurred or entered into by Borrower Finco unless each of the following conditions applicable thereto has been satisfied:

(i) the Bond Trustee receives a certification from Borrower Finco stating that after giving effect to the issuance of such Senior Refinancing Indebtedness and the refinancing, replacement or refunding of the applicable Senior Obligations, Senior Debt Service for each full Calculation Period occurring between the date of incurrence of such Senior Refinancing Indebtedness and the Final Maturity Date of the 2014 Bonds will be less than or equal to the Senior Debt Service forecast for each such Calculation Period in the most recent Base Case Financial Model that does not take into account the issuance or incurrence of such Senior Refinancing Indebtedness and the refinancing, replacement or refunding of the applicable Senior Obligations;

(ii) the covenants and terms of such Senior Refinancing Indebtedness are not materially more restrictive for the Borrower Group Members than the covenants and other terms in the applicable Funding Documents entered into with respect to the Senior Obligations being refinanced;

(iii) such Senior Refinancing Indebtedness will have interest payment dates (except for Senior Refinancing Indebtedness issued as Variable Rate Indebtedness) and principal payment dates that coincide with the interest payment dates and principal payment dates of the Senior Obligations being refinanced;

(iv) the lenders or other holders of such Senior Refinancing Indebtedness have acceded to the MSA and the Intercreditor Agreement;

(v) the Bond Trustee receives a certificate from Borrower Finco stating that, as of the date the Senior Refinancing Indebtedness is issued, incurred or entered into either: (A) there is no Bond Proceeds Loan Event of Default; or (B) if a Bond Proceeds Loan Event of Default has occurred and is continuing, such Bond Proceeds Loan Event of Default will be cured upon the issuance or incurrence of the Senior Refinancing Indebtedness and the application of the proceeds of the Senior Refinancing Indebtedness in accordance with the financing documents authorizing the incurrence of such Senior Refinancing Indebtedness;

(vi) Borrower Finco will provide to the Bond Trustee evidence of the assignment by a Nationally Recognized Rating Agency of a rating on such Senior Refinancing Indebtedness that is either (A) an Investment Grade Rating or (B) a rating that is no lower than the rating last assigned by such Rating Agency to the other outstanding Senior Obligations prior to its assignment of rating on such Senior Refinancing Indebtedness;

(vii) the Bond Trustee receives certified copies of the financing documents pursuant to which such Senior Refinancing Indebtedness is issued or incurred, which will not prohibit Borrower Finco from issuing or incurring new indebtedness to refinance the Senior Obligations (subject to the restrictions set forth in this section);

(viii) if the Senior Refinancing Indebtedness is being incurred in connection with the issuance of Additional Senior Bonds, proceeds of such Additional Senior Bonds or other moneys will be loaned to the Borrower Finco and then on-lent to Finco 1, Finco 2 and the Concessionaire pursuant to certain Intercompany Loan Agreements who will deposit or cause to be deposited such proceeds into (A) such funds and accounts established under the MSA and used to refinance, replace or refund the applicable Senior Obligations, (B) the Bond Proceeds (Costs of Issuance) Subaccount, if any, (C) the Bonds Debt Service Reserve Account, if necessary, and (D) such other funds and accounts established under the MSA;

(ix) each of the Borrower Group Members will have entered into such Intercompany Loan Agreements as required to make available the proceeds of the Senior Refinancing Indebtedness indirectly from Borrower Finco to the Concessionaire; and

(x) if a TIFIA Loan is then outstanding, Borrower Finco provides evidence to the Bond Trustee that the TIFIA Lender has consented to, or waived its consent right to the issuance or incurrence of such Senior Refinancing Indebtedness.

Bond Proceeds Loan Events of Default. The following events constitute events of default under the Bond Proceeds Loan Agreement (each, a “**Bond Proceeds Loan Event of Default**”):

(a) failure by Borrower Finco to pay any amounts required to be paid pursuant to the Bond Proceeds Loan Agreement; or

(b) any representation or warranty of any Borrower Group Member made in or delivered pursuant to the Bond Proceeds Loan Agreement and any other loan documents entered into in connection with the 2014 Bonds proves to have been incorrect in any material respect when made, and a Material Adverse Effect could reasonably be expected to result therefrom, and, if such misrepresentation is capable of remedy, such misrepresentation has not been cured within 30 days after the Borrower Group Member’s receipt of written notice from the Bond Trustee of such misrepresentation; provided that such cure period is extended as is reasonably necessary under the circumstances to remedy such misrepresentation so long as corrective action is instituted by the Borrower Group Member within the 30-day period and is diligently pursued until such misrepresentation is remedied; or

(c) failure by any Borrower Group Member to observe and perform any covenant, condition or agreement on its part to be observed or performed under the Bond Proceeds Loan Agreement, the 2014 Note or any other loan documents entered into in connection with the 2014 Bonds (other than the Tax Regulatory Agreement) to which such Borrower Group Member is a party, unless such failure is remedied within the timeframe set forth in the Bond Proceeds Loan Agreement; or

(d) failure to achieve the Full Services Commencement Date by the Full Services Commencement Longstop Date; or

(e) a TIFIA Parity Trigger Event has occurred; or

(f) any of the events described under the definition of TIFIA Parity Trigger Event occurs (i) with respect to the Equity Member, or (ii) with respect to the Sponsor prior to the termination of the Equity Contribution Agreement in accordance with its terms; or

(g) the Concession Agreement expires or is terminated (whether by reason of a default thereunder or by mutual agreement of the parties thereto or otherwise), or for any reason ceases to be in full force and effect; or

(h) Borrower Finco fails to maintain its existence as a limited partnership under the laws of the State of Delaware, Finco 1 fails to maintain its existence as an unlimited liability company under the laws of the Province of British Columbia, Finco 2 fails to maintain its existence as a limited liability company under the laws of the State of Delaware, or the Concessionaire fails to maintain its existence as a Colorado limited liability company; or

(i) any acceleration occurs of the maturity of any Indebtedness pursuant to any Cross Default Funding Document or any such Indebtedness will not be paid in full upon the final maturity thereof; or

(j) a Change of Control occurs with respect to the Concessionaire that has occurred other than in compliance with the Concession Agreement; or

(k) an Indenture Event of Default occurs and is continuing; or

(l) An “event of default” (howsoever described) occurs and is continuing under any Cross Default Funding Document, provided that (i) such “event of default” is continuing after the giving of any applicable notice and the expiration of any applicable grace period specified in such Cross Default Funding Document with respect to such “event of default,” (ii) the effect of such “event of default” is to permit the immediate acceleration of the maturity of or require the early repayment of any or all of the Senior Obligations related to such Cross Default Funding Document and (iii) the applicable Borrower Group Member fails to cure such “event of default” or to obtain an effective written waiver thereof within thirty (30) days after receipt of written notice of such “event of default” from the Trustee;

(m) the Concessionaire or any counterparty thereof defaults in the timely performance of any covenant, agreement or obligation under any Material Project Contract, and such default is continuing after the giving of any applicable notice and the expiration of any applicable grace period specified in the relevant Material Project Contract (unless in any case such default could not reasonably be expected to have a Material Adverse Effect), and the Concessionaire or the relevant counterparty fails to cure such default or to obtain an effective written waiver thereof, within 30 days after receipt of written notice thereof from the Bond Trustee; or

(n) one or more judgments for the payment of money in an aggregate amount in excess of \$1,000,000 and not otherwise covered by insurance is entered against a Borrower Group Member and such judgment remains unsatisfied without any procurement of a stay of execution for a period of 30 days; provided, that any such judgment will not constitute a Bond Proceeds Loan Event of Default during the pendency of an appeal thereof, so long as, during such appeal, execution is effectively stayed or the liability for such judgment is adequately covered by insurance or a performance bond; or

(o) any Security Document ceases (other than as expressly permitted thereunder or under the other Funding Documents) to be effective to grant a perfected security interest on any material portion of the Collateral described therein (other than Collateral that is permitted to be disposed of) other than as a result of actions or failure to act by the Bond Trustee, the Security Trustee or any other Secured Creditor, and with the priority purported to be created thereby and such event continues for 30 days after the applicable Secured Creditor giving notice thereof to the Borrower; or

(p) the Subordinated Lender Pledge Agreement ceases (other than as expressly permitted thereunder or under the Funding Documents) to be effective to grant a perfected security interest on any material portion of the collateral described therein other than as a result of actions or a failure to act by the Security Trustee or any Secured Creditor, and with the priority purported to be created thereby; or

(q) at any time, a Finco Guarantee, for any reason, other than the satisfaction in full of all obligations hereunder, ceases to be in full force and effect (other than in accordance with its terms) or is declared to be null and void or any of the Concessionaire, Finco 1 or Finco 2 repudiates its obligations thereunder; or

(r) the Concessionaire (i) announces that it is abandoning the Project or (ii) voluntarily ceases the Phase 2 Construction Project or the Operations Project (unless by reason of a Relief Event, a Compensation Event or a Force Majeure Event); or

(s) any Equity Contribution required to be made under the provisions of the Equity Contribution Agreement fail to be made at the time and in the amounts required thereunder.

Remedies. Whenever any Bond Proceeds Loan Event of Default has occurred and is continuing, the Bond Trustee, or the Issuer at the direction or with the written consent of the Bond Trustee, may, in conjunction with its available remedies under the Indenture, exercise all remedies available to it at law or in equity, including one or any combination of the following remedial steps, by notice to the Borrower Group Members and the Security Trustee:

(a) subject to the provisions of the Intercreditor Agreement, declare that all or any part of any amount outstanding under the Bond Proceeds Loan Agreement and the Series 2014 Notes is (i) immediately due and payable, and/or (ii) payable on demand by the Bond Trustee, and any such notice takes effect in accordance with its terms but only if all amounts payable with respect to the outstanding 2014 Bonds are being accelerated, or if all of the outstanding 2014 Bonds are being defeased under the terms of the Indenture or otherwise paid;

(b) have reasonable access to and inspect, examine and make copies of the books and records and any and all accounts, data and income tax and other tax returns of each of the Borrower Group Members during regular business hours of the Borrower Group Members;

(c) subject to the provisions of the Intercreditor Agreement, take whatever other action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower Group Members under the Bond Proceeds Loan Agreement; or

(d) subject to the provisions of the Intercreditor Agreement, pursuant to the terms of the Security Documents, direct the Security Trustee to take any and all actions necessary to implement any available remedies with respect to the Collateral under any Security Document.

TIFIA Loan Agreements

Phase 1 TIFIA Loan. As discussed above in “PHASE 1 PROJECT,” HPTE is currently the borrower under the Existing Phase 1 TIFIA Loan Agreement. Prior to the Closing Date, HPTE, the TIFIA Lender and Borrower Finco will also enter into an Assignment, Assumption and Release Agreement (the “**Assignment Agreement**”) pursuant to which HPTE will transfer its rights and obligations under the Existing Phase 1 TIFIA Loan Agreement to Borrower Finco and Borrower Finco agrees to assume HPTE’s rights and obligations. The Assignment Agreement will be executed prior to the Closing Date but the assignment and the assumption of HPTE’s rights and obligations will not become effective until the Phase 1 Assumption Date.

Prior to the Closing Date, the Borrower Group and the TIFIA Lender will enter into the Phase 1 TIFIA Loan Agreement, which will become effective on the Phase 1 Assumption Date to reflect the Phase 1 Assumption and other related changes. Upon the Phase 1 Assumption Date, (i) Borrower Finco will assume the Phase 1 TIFIA Loan and HPTE’s rights and obligations under the Existing Phase 1 TIFIA Loan Agreement; (ii) the terms of the Phase 1 TIFIA Loan Agreement will become effective; and (iii) HPTE will no longer have any liabilities or obligations under the Existing Phase 1 TIFIA Loan Agreement or the Amended and Restated Master Indenture. See “FINANCING AGREEMENTS – TIFIA Loan Agreements – Phase 1 TIFIA Loan Agreement” and APPENDIX F.

Phase 2 TIFIA Loan. Prior to the Closing Date, the Borrower Group and the TIFIA Lender will enter into the Phase 2 TIFIA Loan Agreement. The proceeds of the Phase 2 TIFIA Loan are expected to be funded in multiple disbursements and used to finance up to 33% of Phase 2 Construction Project costs that are eligible to be financed with proceeds of the Phase 2 TIFIA Loan in compliance with federal law.

Debt service on the Phase 2 TIFIA Loan is broken into two components: (i) TIFIA Phase 2 Mandatory Debt Service, which is the portion of interest and/or principal unconditionally required to be paid on the Phase 2 TIFIA Loan on any Payment Date occurring after the TIFIA Phase 2 Debt Service Payment Commencement Date and (ii) TIFIA Phase 2 Scheduled Debt Service, which is the portion of principal and/or interest of the Outstanding TIFIA Phase 2 Loan Balance scheduled to be paid on any Payment Date occurring on or after the TIFIA Phase 2 Debt Service Payment Commencement Date and prior to the Level Payment Commencement Date as set forth in the Phase 2 TIFIA Loan Agreement. Non-payment of the TIFIA Phase 2 Scheduled Debt Service is not an Event of Default under the Phase 2 TIFIA Loan Agreement if Borrower Finco has insufficient funds to pay TIFIA Phase 2 Scheduled Debt Service. Any unpaid portion of such TIFIA Phase 2 Scheduled Debt Service is deferred until the next Payment Date and will be applied to the Outstanding TIFIA Phase 2 Loan Balance that is due and payable on the next Payment Date. TIFIA Phase 2 Scheduled Debt Service is only permitted to be deferred as described above until the Level Payment Commencement Date. On and after the Level Payment Commencement Date, Borrower Finco is required, on each Payment Date, to make level payments of principal and interest on the Outstanding TIFIA Phase 2 Loan Balance. See APPENDIX F for a description of the TIFIA Loan Agreements.

Security. Following the Phase 1 Assumption Date, the Phase 1 TIFIA Loan will be secured by a lien on the Collateral on parity with the 2014 Bonds and Additional Senior Obligations, if any. Borrower Finco's payment obligations under the Phase 1 TIFIA Loan Agreement will be on a parity with Borrower Finco's payment obligations under the Bond Proceeds Loan Agreement and Additional Senior Obligations, if any, all in accordance with and subject to the terms of the MSA and the Intercreditor Agreement.

The Phase 2 TIFIA Loan will be secured by a (i) first priority lien on the Segregated TIFIA Phase 2 Accounts and (ii) a second priority lien on the other Collateral (other than the Bond Proceeds Subaccounts) subordinate to the lien securing the obligations arising under the Bond Proceeds Loan Agreement, the Phase 1 TIFIA Loan Agreement and Additional Senior Obligations.

The Phase 2 TIFIA Loan also will be subordinated in right of payment to the obligations arising under the 2014 Bonds, the Phase 1 TIFIA Loan and Additional Senior Obligations, if any. However, from and after the occurrence of a TIFIA Parity Trigger Event (for so long as the Phase 2 TIFIA Loan is held by the TIFIA Lender or by another federal agency) the lien securing the Phase 2 TIFIA Loan will be on parity with the lien securing the 2014 Bonds, the Phase 1 TIFIA Loan and Additional Senior Obligations, if any, and automatically will be equal in right of payment with the 2014 Bonds, the Phase 1 TIFIA Loan and Additional Senior Obligations, if any, in each case in accordance with and subject to the terms of the MSA. Generally, a TIFIA Parity Trigger Event occurs upon the occurrence of certain bankruptcy events of the Borrower Group Members. See “– TIFIA Parity Trigger Event” below.

Guaranty. Under the TIFIA Loan Agreements, each of the Concessionaire, Finco 1 and Finco 2 (collectively, the “**TIFIA Guarantors**”) have jointly and severally guaranteed the punctual payment when due, whether at scheduled maturity or on any date of a required prepayment or by acceleration, demand or otherwise, of all of the obligations of Borrower Finco under each of the TIFIA Loan Agreements, whether direct or indirect, absolute or contingent, and whether for principal, interest, premiums, fees, indemnities, contract causes of action, costs, expenses or otherwise (collectively, the “**TIFIA Guaranteed Obligations**”). Each Guarantor's liability extends to all amounts that constitute part of the TIFIA Guaranteed Obligations and would be owed by any other party to the TIFIA Loan Agreements to the TIFIA Lender but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving Borrower Finco.

Covenants. Each Borrower Group Member has agreed to comply with certain covenants in the TIFIA Loan Agreements including the following:

(a) **Further Assurances; Securing Liens.** Each Borrower Group Member will, from time to time, execute, acknowledge and deliver supplements to the TIFIA Loan Agreements, and such further instruments as may be necessary or reasonably be required for carrying out the expressed intentions of the TIFIA Loan Agreements. Each Borrower Group Member will, at any and all times, so far as it may be authorized by law, pass, make, do, execute, acknowledge and deliver, every further resolution, act, deed, conveyance, assignment, transfer and assurance as may be necessary or desirable to assure, convey, grant, assign, secure, confirm and maintain the Liens in and to the Collateral (whether now existing or hereafter arising) granted by such Borrower Group Member to the Security Trustee for the benefit of the TIFIA Lender pursuant to the Security Documents, or intended so to be granted pursuant to the Security Documents, or which such Borrower Group Member may become bound to grant, and each Borrower Group Member will ensure that such Collateral is and will be free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto other than Permitted Liens. Each Borrower Group Member will take all actions as may be necessary or desirable to effect the foregoing. Each Borrower Group Member will, at all times, defend, preserve and protect the Liens on such Collateral and all the rights of the Security Trustee for the benefit of the TIFIA Lender under the Security Documents against all claims and demands of all Persons whomsoever, subject to Permitted Liens.

(b) **Use of Proceeds.** The Concessionaire will use the proceeds of the Phase 2 TIFIA Loan to pay for or reimburse the Concessionaire for Eligible Project Costs for the Phase 2 Construction Project.

(c) **Prosecution of Work; Maintenance of Operations.** The Concessionaire will (i) diligently prosecute, or cause to be prosecuted the Phase 2 Construction Project in accordance with the schedule set forth in the Concession Agreement; (ii) operate and maintain the Operations Project in a reasonable and prudent manner and will maintain the Project in good repair, working order and condition and in accordance with the requirements of the Concession Agreement; (iii) comply with the Concession Agreement in all material respects; and (iv) not terminate the Concession Agreement without the TIFIA Lender's consent.

(d) **Insurance.** The Concessionaire will maintain or cause to be maintained on its behalf in effect at all times the types of insurance relating to its business, the Phase 2 Construction Project and the Operations Project with responsible insurers, as is customarily maintained in the United States with respect to works and properties of like character, against accident to, loss of or damage to such works or properties, provided that such insurance will be maintained, in minimum amounts, and on the terms and conditions specified in that are required to be maintained pursuant to the TIFIA Loan Agreements.

(e) **Notices.** Each Borrower Group Member will give the TIFIA Lender notices relating to any Defaults or Events of Default, litigation, insurance claims, extensions or proposed extensions to the Planned Full Services Commencement Date or the Full Services Commencement Longstop Date, the occurrence of any other event or condition, which could reasonably be expected to result in a Material Adverse Effect, certain plans, reports and notices received from HPTE, CDOT or the Independent Engineer. No Borrower Group Member will, at any time, change its fiscal year without giving the TIFIA Lender prior written notice.

(f) **No Lien Extinguishment or Adverse Amendments.** Each Borrower Group Member will not, or will not permit any Person to, without the prior written consent of the TIFIA Lender, either (i) extinguish the Liens on the Collateral granted by it pursuant to the Security Documents, except as provided under the MSA and the other Security Documents, (ii) except as consented to by the TIFIA

Lender, amend, modify, terminate, supplement, replace, waive or permit a waiver of any provisions of any (A) Subordinated Loan Agreement and certain related documents, in the case of this clause (A) in a manner that could reasonably be expected to affect the TIFIA Lender in connection with the TIFIA Loans or (B) any other Funding Document or any Material Project Contract to which it is a party, in the case of this clause (B), in a manner that could reasonably be expected to adversely affect the TIFIA Lender in connection with the TIFIA Loans or (iii) as to the Concessionaire, terminate, assign, amend or modify, or waive timely performance of any party of any material covenant under, the Concession Agreement or any other Material Project Contract except for a termination, assignment, amendment, modification or waiver of such material covenant that could not reasonably be expected to have a Material Adverse Effect.

(g) **Change of Control.** No Change of Control will occur without the prior written consent of the TIFIA Lender; *provided* that (x) after the date that is two years after the Substantial Completion Date for the Phase 2 TIFIA Loan, and (y) as long as no Default or Event of Default has occurred and is continuing, and no event of default under any Senior Loan Agreement or the Phase 2 TIFIA Loan Agreement, or an event of default which may exist with due notice or the passage of time or both under any Senior Loan Agreement or the Phase 2 TIFIA Loan Agreement, has occurred and is continuing, the TIFIA Lender may withhold such consent only if (i) the proposed transfer is prohibited by applicable law or (ii) the Person to whom Control is proposed to be transferred is, in the reasonable judgment of the TIFIA Lender, not capable of performing the obligations of such Borrower Group Member under the Funding Documents, or, as to the Concessionaire, the covenants of the Concessionaire under the Concession Agreement.

(h) **Maintain Legal Structure.** Each Borrower Group Member will maintain its existence and good standing under its jurisdiction of formation, and such Borrower Group Member will not consolidate with, privatize or merge into any other Person or convey, assign, transfer or lease all or substantially all of the Project (or of any Segment thereof) or its other assets to any other Person, other than the pledge and assignment of the Collateral granted by it pursuant to the Security Documents, without the consent of the TIFIA Lender.

(i) **Annual Rating.** Borrower Finco will, no later than the last Business Day of June of each year during the term of the TIFIA Loans, at no cost to the TIFIA Lender, provide to the TIFIA Lender a rating on the Senior Obligations (taking into account the assumption of the Phase 1 TIFIA Loan by Borrower Finco) and the Phase 2 TIFIA Loan by a Nationally Recognized Rating Agency.

(j) **Rate Covenant.** Commencing after the Substantial Completion Date for the Phase 2 TIFIA Loan, if the Concessionaire fails on any Calculation Date to maintain (A) a Senior Debt Service Coverage Ratio at least equal to 1.40:1:00 for the relevant Calculation Period and (B) a Total Debt Service Coverage Ratio (provided that, for purposes of this clause (B), clause (b) of the definition of “Total Debt Service Coverage Ratio” will include only Senior Debt Service and TIFIA Phase 2 Mandatory Debt Service) at least equal to 1.30:1:00 for the relevant Calculation Period (clauses (A) and (B), together, the “**Rate Covenant**”), or the forecasts furnished by the Concessionaire in the most recently updated Base Case Financial Model demonstrate that projected Net Cash Flow may be inadequate to satisfy the Rate Covenant for any Calculation Period until the Final Maturity Date, the Concessionaire will, upon the request of the TIFIA Lender (1) engage the Traffic Consultant to review and analyze the Operations Project and recommend actions to increase the Net Cash Flow so as to satisfy the Rate Covenant and (2) either (x) implement the Traffic Consultant’s recommendations or (y) undertake an alternative course of action after demonstrating to the TIFIA Lender’s reasonable satisfaction the manifest errors contained in the Traffic Consultant’s recommendations or that such recommendations are not commercially reasonable and that the Concessionaire’s alternative course of action is likely to generate equivalent or greater Net Cash Flow than the Traffic Consultant’s recommended actions, or (z) to the extent agreed by the TIFIA Lender and the Traffic Consultant or another independent traffic consultant

acceptable to the TIFIA Lender, undertake an alternative course of action that is reasonably likely to increase the Net Cash Flow so as to satisfy the Rate Covenant. Failure to comply with the Rate Covenant will not constitute an Event of Default if (A) the Concessionaire takes steps to implement the Traffic Consultant's recommendations and diligently complies with the recommendations of the Traffic Consultant, (B) the Concessionaire undertakes an alternative course of action as described in the TIFIA Loan Agreements, or (C) the Traffic Consultant provides a written opinion satisfactory to the TIFIA Lender that the actions required in order to produce the required Net Cash Flow are impracticable at that time.

(k) **Equity Contribution.** The Equity Contribution will be payable no later than the dates required by the Equity Contribution Agreement, including upon the occurrence and during the continuation of an Event of Default. Such Equity Contributions will be used for the purposes specified in the Equity Contribution Agreement and the MSA. The outstanding Equity Commitment Amount will be supported at all times prior to the Substantial Completion Date by one or more Equity Letters of Credit or by cash.

(l) **Maximum Debt to Equity Ratio.** At the Substantial Completion Date, the ratio of (i) the contributed principal amount of the 2014 Bonds, the Phase 2 TIFIA Loan, the Subordinated Loans, any Subordinated Refinancing Debt and any Permitted Subordinated Debt then outstanding less an amount equal to 50% of the Supplemental Contribution Amount to (ii) the amount of all Equity Contributions made by the Sponsor pursuant to the terms of the Equity Contribution Agreement (including amounts drawn from any Equity Letter of Credit but excluding an amount equal to 50% of the Supplemental Contribution Amount, if any), is committed to be the same as it will be on the Closing Date after the interest rates have been set for the Secured Obligations, and is currently estimated, based on certain assumptions, to be approximately 81.48%:18.52% (the "**Maximum Debt to Equity Ratio**").

(m) **No Prohibited Liens.** No Borrower Group Member will create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, or assign or sell any income or Project Revenues (including accounts receivable) or rights in respect of any thereof, except Permitted Liens.

(n) **Restricted Payments.** No Borrower Group Member will at any time make any Restricted Payments on any Distribution Date unless all of the Restricted Payment Conditions have been satisfied as of such Distribution Date.

(o) **Capitalized Interest Period Prepayment.** If the Restricted Payment Conditions are satisfied on the TIFIA Phase 2 Debt Service Payment Commencement Date, or on the first Calculation Date thereafter, if such Calculation Date falls within two years following the TIFIA Phase 2 Debt Service Payment Commencement Date, Borrower Finco will cause the Security Trustee to transfer an amount equal to the TIFIA Phase 2 Capitalized Interest Prepayment Amount from the Project Proceeds Account as contemplated in the MSA and, if applicable, from the Equity Lock-up Account pursuant to the MSA, to the TIFIA Phase 2 Prepayment Account and to apply such amount to the prepayment of the Phase 2 TIFIA Loan.

(p) **Revenue Sharing Prepayment.** On the last Business Day of each January on and after the TIFIA Phase 1 Debt Service Payment Commencement Date and the TIFIA Phase 2 Debt Service Payment Commencement Date, as applicable, Borrower Finco will cause the TIFIA Loans to be prepaid in the aggregate by an amount equal to the lesser of (i) the amount remaining in the Project Proceeds Account after giving effect to the payments in clauses First through Nineteenth (with regards to the Phase 2 TIFIA Loan) and Twentieth (with regards to the Phase 1 TIFIA Loan) described under "PROJECT ACCOUNTS AND FLOW OF FUNDS – Project Proceeds Account – Monthly Transfers from Project Proceeds

Account” on such date and (ii) the applicable TIFIA Revenue Share Amount; provided that the TIFIA Revenue Share Amount will be reset to \$0 following each prepayment date.

(q) **Hedging Transaction.** No Borrower Group Member will enter any interest rate protection agreement, interest rate swap transaction, inflation-indexed swap transaction, interest rate “cap” or “collar” transaction, interest rate future, interest rate option or rate lock or any other interest rate hedging transaction relating to Permitted Indebtedness or otherwise without the prior written consent of the TIFIA Lender. The TIFIA Lender will negotiate the terms and conditions of any proposed hedging transaction in good faith with the Borrower Group Members in order to mutually agree upon a commercially reasonable hedging strategy.

(r) **No Prohibited Sale or Assignment.** The Concessionaire will not Dispose of its rights in and to the Project, any of the assets of the Concessionaire included in the Project or its rights and obligations under the Concession Agreement or the TIFIA Loan Agreements; and no other Borrower Group Member will Dispose of any of its rights, interests or other assets except as set forth in the TIFIA Loan Agreements.

(s) **Material Obligations.** Each Borrower Group Member agrees to pay each of its material obligations promptly and in accordance with its terms and pay and discharge promptly all material taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or in respect of its property, before the same becomes delinquent or in default, as well as all lawful and material claims for labor, materials and supplies or other claims which, if unpaid, in each case, might give rise to a Lien upon such properties or any part thereof; provided that such payment and discharge will not be required with respect to any such tax, assessment, charge, levy or claim so long as the validity or amount thereof is contested by such Borrower Group Member in good faith by appropriate proceedings and so long as such Borrower Group Member sets aside on its books adequate reserves with respect thereto.

(t) **Affiliate Transactions.** No Borrower Group Member is allowed to sell or transfer any property or assets to, or purchase or acquire any property or assets of, or otherwise engage in any other material transactions with, any of its Affiliates, except (a) Permitted Affiliate Subordinated Debt, (b) as to the Concessionaire, transactions at prices and on terms and conditions not less favorable to the Concessionaire than fair market prices and on terms and conditions not less favorable to the Concessionaire than could be reasonably obtained on an arm’s-length basis from unrelated third parties, (c) transactions pursuant to the Management Services Agreement and the Finance Services Agreement and (d) any replacement O&M Contract entered into with an Affiliate of the Concessionaire.

(u) **No Prohibited Business.** The Concessionaire will not, at any time, engage in any business or activity other than the financing, design, construction, operation and maintenance of the Project, and activities incidental or related thereto.

(v) **Operating Costs.** The Concessionaire will not increase in any Fiscal Year the amount of O&M Expenses or Maintenance Capex by more than 10% over the amount shown for such expenditures in such Fiscal Year in the annual operating budget of the Concessionaire for such Fiscal Year delivered to the TIFIA Lender without the prior written consent of the TIFIA Lender.

(w) **OFAC Compliance.** Neither any Borrower Group Member or Sponsor, nor to any Borrower Group Member's knowledge, any Person owning or controlling any of them, in each case, if the OFAC regulations are applicable to such entity: (i) will violate: (A) any applicable anti-money laundering laws, including those contained in the Bank Secrecy Act; (B) any applicable economic sanction laws administered by OFAC or by the United States Department of State; or (C) any applicable anti-drug trafficking, anti-terrorism, or anti-corruption laws, civil or criminal; or (ii) is a Person: (A) that is charged

with, or has reason to believe that he, she or it is under investigation for, any violation of any such laws; (B) that has been convicted of any violation of, has been subject to civil penalties pursuant to, or had any of its property seized or forfeited under any such laws; (C) named on the list of “Special Designated Nationals or Blocked Persons” maintained by OFAC, or any similar list maintained by the United States Department of State; (D) with whom any United States Person, any entity organized under the laws of the United States or its constituent states or territories, or any entity, regardless of where organized, having its principal place of business within the United States or any of its territories, is prohibited from transacting business of the type contemplated by the TIFIA Loan Documents under any other applicable law; or (E) that is owned, controlled by, or affiliated with any Person identified in clause (A), (B), (C) or (D) of this clause (ii); or (F) is in violation of any obligation to maintain appropriate internal controls as required by the governing laws of the jurisdiction of such Person as are necessary to ensure compliance with the economic sanctions, anti-money laundering and anti-corruption laws of the United States and the jurisdiction where the Person resides, is domiciled or has its principal place of business.

(x) ***Single Purpose Entity.*** Each Intercompany Loan Subsidiaries must at all times maintain its existence as a Single Purpose Entity.

(y) ***Replacement of Operating Contract.*** Prior to the date of expiration or termination of the Operating Contract, the Concessionaire will execute and deliver to the TIFIA Lender a replacement Operating Contract and a lenders’ direct agreement with such counterparty and the Security Trustee, on terms satisfactory to the TIFIA Lender.

(z) ***Replacement of Tolling Services Agreement and Trademark License Agreement.*** On or prior to the earlier of (i) the date that is (x) in the case that the applicable Tolling Services Provider is E-470 Authority, four months following the Effective Date, or (y) in the case that the applicable Tolling Services Provider is another entity reasonably acceptable to the TIFIA Lender, two months prior to the Planned Phase 1 Services Commencement Date (provided that the Concessionaire must inform the TIFIA Lender of the identity of such Tolling Services Provider no later than six months prior to the Planned Phase 1 Services Commencement Date and will deliver to the TIFIA Lender a draft of the replacement Tolling Services Agreement and Trademark License Agreement no later than four months prior to the Planned Phase 1 Services Commencement Date) and (ii) the termination of the I-25 Tolling Services Agreement in accordance with its terms (other than a partial termination), the Concessionaire will execute and deliver to the TIFIA Lender (x) a replacement Tolling Services Agreement and, if applicable, a replacement Trademark License Agreement with respect to each Segment of the Project in form and substance reasonably satisfactory to the TIFIA Lender, and (y) a lenders’ direct agreement with the relevant counterparty or counterparties, HPTE and the Security Trustee, on terms substantially similar to the direct agreement entered into as of the Effective Date with respect to the I-25 Tolling Services Agreement and Trademark License Agreement or otherwise on terms reasonably satisfactory to the TIFIA Lender; provided that in the case of clause (i)(y) described above, concurrently with the delivery of the draft replacement Tolling Services Agreement, the Concessionaire is required to deliver evidence reasonably acceptable to the TIFIA Lender that the services to be provided under such Tolling Service Agreement will be able to be provided on the terms described therein on or prior to the Phase 1 Services Commencement Date.

(aa) ***Enforcement of Documents.*** Each Borrower Group Member will enforce against any other party thereto each covenant or obligation of such party in each Funding Document and Material Project Contract to which it is a party or an intended beneficiary in accordance with its terms, except to the extent that the failure to so enforce could not reasonably be expected to result in a Material Adverse Effect.

(bb) ***Bankruptcy; Dissolution.*** Neither Borrower Finco nor Finco 1 will authorize or permit any other Borrower Group Member in which it holds a direct or indirect equity interest to: (i) (A) commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to such Borrower Group Member or such Borrower Group Member's debts under any insolvency law in effect on and after the Effective Date or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of such Borrower Group Member or any substantial part of such Borrower Group Member's property, (B) consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against such Borrower Group Member or (C) make a general assignment for the benefit of such Borrower Group Member's creditors; (ii) commence or join with any other Person (other than the Security Trustee and the Secured Creditors) in commencing any proceeding against such Borrower Group Member under any insolvency law now or hereafter in effect in any jurisdiction; or (iii) liquidate, wind-up or dissolve.

(cc) ***Management and Finance Services Agreements.*** Without the prior written consent of the TIFIA Lender, (i) the Concessionaire will not (A) terminate or (B) agree to amend, waive or otherwise modify any provision of either of the Management Services Agreement and the Finance Services Agreement, in the case of this clause (B), in a manner that could reasonably be expected to adversely affect the TIFIA Lender (it being understood and agreed that any increase in the fees or other amounts payable by the Concessionaire under either of such agreements is deemed to adversely affect the TIFIA Lender) and (ii) no Loan Party will enter into any other similar or comparable agreement with any other Person.

(dd) ***Financial Plan; Reports.***

(i) The Concessionaire agrees to provide a Financial Plan to the TIFIA Lender and the FHWA Division Office within 60 days after the Effective Date and annually thereafter not later than 90 days after the beginning of each Fiscal Year.

(ii) Within 90 days following Substantial Completion, the Concessionaire will provide the TIFIA Lender with a final written narrative report, summarizing all significant activities and events, since the date of the most recently updated Base Case Financial Model, affecting the operation, maintenance, financing, or management of the Project, in a form satisfactory to the TIFIA Lender.

(iii) For the period through Substantial Completion, the Concessionaire agrees to provide the TIFIA Lender with written notification at least 30 days prior to instituting any increase or decrease of the overall Project Costs with respect to the Phase 2 Construction Project in an amount equal to or greater than \$2,500,000.

(iv) Each Borrower Group Member will and will cause the Sponsor to provide to the TIFIA Lender (A) quarterly unaudited income statement and balance sheets of such Person and the related unaudited statements of operations and changes in member capital and of cash flow of such Person; and (B) annual audited income statement and balance sheets of such Person and the related audited statements of operations, changes in member capital and of cash flow of such Person for such fiscal year.

(v) During the Construction Period, the Concessionaire will provide to the TIFIA Lender, a monthly construction progress report, an Independent Engineer's certificate, a copy of each report delivered by a contractor to the Concessionaire pursuant to the Concession Agreement, an Annual Operating Budget and each material Governmental Approval or other consent or approval obtained by or on behalf of the Concessionaire.

(vi) Not later than 90 days after the end of each fiscal quarter of the Concessionaire, the Concessionaire will provide to the TIFIA Lender, a traffic and operating report showing, in each case, with respect to the Project, (A) the operating data for the previous fiscal quarter, including total Project Revenues received and total O&M Expenses and Maintenance Capex incurred, (B) the variances for such period between the Project Revenues actually received and the budgeted Project Revenues as shown in the Annual Operating Budget, together with a brief narrative explanation of the reasons for any such variance of 20% or more, and (C) the variances for such period between the actual O&M Expenses and/or Maintenance Capex incurred and the budgeted O&M Expenses and/or Maintenance Capex, as shown in the Annual Operating Budget, together with a brief narrative explanation of the reasons for any such variance of 20% or more.

Permitted Indebtedness. The TIFIA Loan Agreements provide that except for Permitted Indebtedness, no Borrower Group Member will, without the prior written consent of the TIFIA Lender, issue or incur Indebtedness of any kind. Under the TIFIA Loan Agreements, “**Permitted Indebtedness**” includes:

(i) in respect of Borrower Finco: (A) the Phase 2 TIFIA Loan; (B) from and after the Phase 1 Assumption Date, Indebtedness under the Phase 1 TIFIA Loan Agreement; (C) Indebtedness under the Bond Proceeds Loan Agreement; (D) Indebtedness under the Subordinated Loan Agreement; (E) any Additional Senior Obligations; (F) any Subordinated Refinancing Debt; (G) any Permitted Hedging Arrangement; and (H) Permitted Affiliate Debt;

(ii) in respect of the Concessionaire: (A) Indebtedness owing to Finco 2 in respect of certain Intercompany Loan Agreements; (B) Permitted Affiliate Debt; (C) the Secondary Subordinated Loan; (D) certain reimbursement obligations in respect of letters of credit, and other financial obligations, arising under the Material Project Contracts or any other agreement executed by the Concessionaire in connection with the Project; (E) certain purchase money obligations or capitalized leases incurred to finance discrete items of equipment not comprising an integral part of the Project; (F) trade accounts or accrued expenses payable so long as such trade accounts or expenses payable are not overdue by more than 90 days; (G) amounts payable under the Concession Agreement or any other Material Project Contract to the extent the same constitute Indebtedness; and (H) Indebtedness under guarantees made in respect of Indebtedness of the Borrower Finco described in clauses (i)(A) through (G) above;

(iii) in respect of Finco 1: (A) Indebtedness owing to Borrower Finco in respect of certain Intercompany Loan Agreements; and (B) Indebtedness under guarantees made in respect of Indebtedness of the Borrower Finco described in clauses (i)(A) through (G) above; and

(iv) in respect of Finco 2: (A) Indebtedness owing to Finco 1 in respect of certain Intercompany Loan Agreements; and (B) Indebtedness under guarantees made in respect of Indebtedness of the Borrower Finco described in clauses (i)(A) through (G) above.

Additional Senior Obligations. Under the TIFIA Loan Agreements, Borrower Finco may incur Additional Senior Obligations as long as Borrower Finco also complies with the following:

(a) the proceeds thereof may be used to complete the Phase 2 Construction Project if Borrower Finco certifies to the TIFIA Lender, and the Independent Engineer confirms, (i) that in its reasonable belief, remaining Phase 2 TIFIA Loan proceeds together with other funds then available for the Phase 2 Construction Project are not expected to be sufficient to complete the Phase 2 Construction Project by the Development Default Trigger Date or to comply with obligations under the Material Project Contracts, and (ii) that the additional investment is necessary to complete the Phase 2 Construction Project or comply with obligations under the Material Project Contracts; provided that the

aggregate principal amount of Additional Senior Obligations incurred pursuant to this clause (a) may not, without the prior written consent of the TIFIA Lender, exceed 5% of the maximum principal amount of the 2014 Bonds;

(b) the proceeds thereof may be used to refurbish, upgrade, modify, expand or add to the Project, so long as such Additional Senior Obligations have an Investment Grade Rating and the Borrower certifies to the TIFIA Lender, and the Independent Engineer confirms in writing, that (i) there will be no fundamental change in the use of the Project, (ii) the proceeds of such Additional Senior Obligations, together with other funds available, will be sufficient for the proposed purpose, (iii) the additional investment is not expected to have a Material Adverse Effect, and (iv) the Total Debt Service Coverage Ratio is not less than 1.30:1.00, and the Senior Debt Service Coverage Ratio is not less than 1.75:1.00, in each case, on a *pro forma* basis for each Calculation Period occurring prior to the Final Maturity Date of each TIFIA Loan;

(c) the proceeds thereof may be used to refinance or replace the 2014 Bonds or any then-outstanding Additional Senior Obligations, so long as (i) such Additional Senior Obligations being incurred have an Investment Grade Rating, (ii) the net proceeds thereof do not exceed the principal amount of the 2014 Bonds (or the principal amount of the Additional Senior Obligations) being refinanced or replaced pursuant to this paragraph and (iii) Senior Debt Service, after the incurrence of such Additional Senior Obligations, in each year of the remaining term of each TIFIA Loan, is forecast to be no more than the Senior Debt Service forecast for such year in the most recently updated Base Case Financial Model; and

(d) the proceeds thereof may be used to add to, refinance or replace the 2014 Bonds or any then outstanding Additional Senior Obligations other than as permitted under clauses (a), (b) and (c) above, so long as (i) at least 50% of the net proceeds (after repayment of such Senior Obligations refinanced with such Additional Senior Obligations and after any deposits required to satisfy any debt service reserve requirement for any Senior Obligations, and, in respect of any Additional Senior Obligations that are tax-exempt Bonds, costs of issuance not to exceed 2% of the principal amount of such Additional Senior Obligations) of such Additional Senior Obligations is applied, concurrently with the receipt thereof by Borrower Finco, to prepay each TIFIA Loan, (ii) the Additional Senior Obligations have an Investment Grade Rating, (iii) the Total Debt Service Coverage Ratio is not less than 1.30:1.00, and the Senior Debt Service Coverage Ratio is not less than 1.75:1.00, in each case, on a *pro forma* basis for each Calculation Period occurring prior to the Final Maturity Date of each TIFIA Loan and (iv) the balance of such net proceeds of any such Additional Senior Obligations may, at the option of Borrower Finco, be used to make a Restricted Payment;

provided that for each of clauses (a) through (d) above, (i) no Event of Default has occurred and is continuing, (ii) a Nationally Recognized Rating Agency will have provided a reaffirmation of an Investment Grade Rating with respect to each TIFIA Loan (which ratings will take into account such Additional Senior Obligations), (iii) each lender or holder of any such Additional Senior Obligations at the time of execution of any documentation with respect thereto will become a party to and be bound by the MSA and the Intercreditor Agreement, (iv) the governing documents thereof will have covenants and terms not materially more restrictive to Borrower Finco than the TIFIA Phase 1 Loan Documents, (v) such Additional Senior Obligations will have a Stated Maturity not earlier than the Final Maturity Date and an Average Life not shorter than that of the Phase 2 TIFIA Loan, (vi) unless otherwise consented to by the TIFIA Lender, such Additional Senior Obligations will bear interest at a fixed rate and have interest payment dates and principal payment dates that coincide with the Payment Dates, (vii) the Borrower Group Members will have entered into such Intercompany Loan Agreements as will be required to make available the proceeds of the Additional Senior Obligations indirectly from Borrower Finco to Concessionaire and (viii) except with regard to any Additional Senior Obligations incurred pursuant to

clause (c) of this definition, the incurrence of such Additional Senior Obligations has been consented to by the TIFIA Lender, which consent will not be unreasonably withheld.

TIFIA Parity Trigger Event. The Phase 2 TIFIA Loan Agreement and the Intercreditor Agreement contain a “springing lien” implementing a non-subordination provision contained in the TIFIA Lender’s authorizing law. These provisions state that if a TIFIA Parity Trigger Event occurs, then the Phase 2 TIFIA Loan no longer will be subordinated but instead will spring to a parity position with the Senior Obligations and the Senior Lenders share their Collateral with the TIFIA Lender on a pari passu basis. In other words, when a TIFIA Parity Trigger Event occurs, the Phase 2 TIFIA Loan will automatically be secured on a parity basis with the 2014 Bonds and any other Senior Obligations.

Under the Phase 2 TIFIA Loan Agreement and the Intercreditor Agreement, a “**TIFIA Parity Trigger Event**” occurs under the following circumstances: (a) in the event of a bankruptcy, insolvency or liquidation or other relief under insolvency laws (either voluntary or involuntary) of a Borrower Group Member and relevant proceedings are undismissed for 60 days or an order of decree approving or ordering any of the foregoing is entered; (b) all or a substantial part of the Collateral is sold or otherwise disposed of pursuant to a foreclosure of the Liens securing the Secured Obligations or transferred pursuant to a sale or disposition of such Collateral in lieu of foreclosure; or (c) the Security Trustee transfers funds on deposit in any of the Project Accounts following the occurrence and during the continuation of an Event of Default under any Funding Document related to Secured Obligations for application to the prepayment or repayment of any principal amount of Secured Obligations.

Subject to the terms and conditions of the Intercreditor Agreement, and consistent with the TIFIA Act, in the event of a TIFIA Parity Trigger Event, the right to payment on the Phase 2 TIFIA Loan, to the extent outstanding, and to the extent then held by the TIFIA Lender, will, in the context of a foreclosure on the Collateral, automatically change from being secured subordinate to the right to payment on the Senior Obligations to ranking equally with the same. In addition, in such a circumstance, the lien securing the Phase 2 TIFIA Loan will rank pari passu with the lien securing the Senior Obligations. To the extent that the Collateral is subsequently foreclosed upon in a bankruptcy or any other foreclosure proceeding, the Senior Lenders will be required to share the proceeds of the Collateral with the TIFIA Lender proportionally reducing any claim that the Senior Lenders may have to such proceeds or Termination Compensation amount.

If, at any time when a default in the payment when due of any TIFIA Phase 2 Mandatory Debt Service has occurred and has continued without cure for a period of twelve months or more, or the TIFIA Lender determines that a TIFIA Parity Trigger Event has occurred and is continuing, the TIFIA Lender will notify the Intercreditor Agent, the Security Trustee, each other Designated Representative and Borrower Finco in writing. If within 30 days after receipt of such notice, the Intercreditor Agent (acting at the direction of the Required Senior Creditors) delivers to the TIFIA Lender and the Security Trustee a written objection to such determination, stating in reasonable detail the reasons for such objection, then the TIFIA Lender will have the right to commence an action in a court of competent jurisdiction seeking a determination as to whether a TIFIA Parity Trigger Event has occurred and is continuing. If the Intercreditor Agent fails to deliver such objection to the TIFIA Lender and the Security Trustee within such 30-day period, it will be deemed conclusively established that a TIFIA Parity Trigger Event will then exist.

Events of Default. The following events in relation to each TIFIA Loan Agreement constitute events of default under the respective TIFIA Loan Agreement (in case of the Phase 1 TIFIA Loan Agreement, from and after the Phase 1 Assumption Date):

(i) failure to pay any of the principal amount of or interest due and payable on the Phase 1 TIFIA Loan or the Phase 2 TIFIA Loan (including the TIFIA Phase 1 Debt Service (as defined in APPENDIX F) or TIFIA Phase 2 Mandatory Debt Service and any mandatory prepayment required under either TIFIA Loan Agreement but excluding any TIFIA Phase 2 Scheduled Debt Service capitalized or deferred due to insufficient funds), as applicable under each TIFIA Loan Agreement or failure by any TIFIA Guarantor to pay any applicable TIFIA Guaranteed Obligation; or

(ii) failure by any Borrower Group Member to observe or perform certain covenants in their capacities as lenders under the Intercompany Loan Agreements that are Cross Default Funding Documents or observe or perform any covenant, agreement or obligation of such Borrower Group Member under the applicable TIFIA Loan Agreement, the related note or any Security Document (other than in the case of any event of default under (i) above or any Development Default), and such failure is not cured within 30 days after receipt by such Borrower Group Member from the TIFIA Lender of written notice thereof; provided, however, that if such failure is capable of cure but cannot reasonably be cured within such 30-day period, then no event of default under the applicable TIFIA Loan Agreement will be deemed to have occurred or be continuing under this provision if, and so long as within such 30-day period, such Borrower Group Member commences actions reasonably designed to cure such failure and diligently pursues such actions until such failure is cured; provided further that such failure is cured not later than 180 days after first occurrence of such failure; or

(iii) a Development Default occurs (with respect to the Phase 2 TIFIA Loan Agreement only);
or

(iv) any representation, warranty or certification of any Borrower Group Member made in or delivered pursuant to the applicable TIFIA Loan Agreement, the MSA, the related note or any Security Document prove to be (or to have been) false or misleading in any material respect when made; or

(v) (A) any Security Document ceases (other than as expressly permitted thereunder or under the other Funding Documents) to be effective to grant a perfected security interest on any material portion of the Collateral described therein other than as a result of actions or a failure to act by the Security Trustee or any Secured Creditor, and with the priority purported to be created thereby; or (B) the Subordinated Lender Pledge Agreement ceases (other than as expressly permitted thereunder or under the Funding Documents) to be effective to grant a perfected security interest on any material portion of the collateral described therein other than as a result of actions or a failure to act by the Security Trustee or any Secured Creditor, and with the priority purported to be created thereby; or (C) at any time, the Guaranty provided under the applicable TIFIA Loan Agreement for any reason, other than the satisfaction in full of all obligations hereunder, ceases to be in full force and effect (other than in accordance with its terms) or is declared to be null and void or any TIFIA Guarantor repudiates its obligations thereunder; or

(vi) any acceleration occurs of the maturity of any Indebtedness pursuant to any Cross Default Funding Document or of any other Indebtedness of any Borrower Group Member (other than the Subordinated Loans, Subordinated Refinancing Debt, Permitted Affiliate Debt, Permitted Subordinate Debt and any Indebtedness pursuant to any Intercompany Loan Agreements entered into in connection with said Indebtedness) in an aggregate principal amount equal to or greater than \$1,000,000, or any such Indebtedness will not be paid in full upon the final maturity thereof; or

(vii) an “Event of Default” under and as defined in any Cross Default Funding Document or any event of default or early termination event (howsoever described or designated) under any Cross Default Funding Document occurs and is continuing; or

(viii) any of the representations, warranties or certifications of any Borrower Group Member or the Equity Member made in or delivered pursuant to any document (each, an “**Other Loan Document**”)

under which any other Indebtedness (other than the Subordinated Loans, Subordinated Refinancing Debt, Permitted Affiliate Debt, Permitted Subordinate Debt and any Indebtedness pursuant to any Intercompany Loan Agreements entered into in connection with said Indebtedness) of any Borrower Group Member in an aggregate principal amount equal to or greater than \$2,500,000 (the “**Other Material Indebtedness**”) is created or incurred, prove to be false or misleading in any material respect (each a “**Misrepresentation Default**”), or any default occurs in respect of the performance of any covenant, agreement or obligation of any Borrower Group Member or the Equity Member under any Other Loan Document (each a “**Cross Default**”), and, in either case, such default continues after the giving of any applicable notice and the expiration of any applicable grace period specified in such Other Loan Document with respect to such default, if the effect of such Misrepresentation Default or Cross Default is to permit the immediate acceleration of the maturity of or require the early repayment of any or all of the underlying obligations and, such Borrower Group Member has failed to cure such Misrepresentation Default or Cross Default or to obtain an effective written waiver thereof within 30 days after receipt of written notice thereof from the TIFIA Lender; or

(ix) the Concessionaire or any counterparty thereof defaults in the timely performance of any covenant, agreement or obligation under any Material Project Contract, and such default is continuing after the giving of any applicable notice and the expiration of any applicable grace period specified in the relevant Material Project Contract, or any such Material Project Contract terminates prior to its scheduled expiration (unless in any case such default or termination could not reasonably be expected to have a Material Adverse Effect), and the Concessionaire or the relevant counterparty, as the case may be, has failed to cure such default or to obtain an effective written waiver thereof, or to obtain an effective revocation of such termination, within 30 days after receipt of written notice thereof from the TIFIA Lender; or (B) any Material Project Contract, or any material provision thereof, ceases to be in full force and effect (other than as a result of the termination thereof in accordance with its terms) or becomes void, voidable, illegal or unenforceable, or the Concessionaire or any Material Project Party contests in any manner the validity or enforceability of any Material Project Contract or any material provision thereof or denies it has any further liability under any Material Project Contract, or purports to revoke, terminate or rescind any Material Project Contract or any material provision thereof (unless such failure to be in full force and effect or such contest, denial or purported revocation, termination or rescission could not reasonably be expected to have a Material Adverse Effect); *provided* that no Event of Default will be deemed to have occurred or be continuing under this subsection if, in the case of clause (A) (in the case of a termination of a Material Project Contract (other than the Concession Agreement), or clause (B) above (1) the Concessionaire replaces such Material Project Contract (other than the Concession Agreement) with a replacement agreement (x) entered into with another counterparty that (i) is of similar or greater creditworthiness and experience as the counterparty being replaced (or otherwise reasonably acceptable to the TIFIA Lender) and (ii) is not, at the time of such replacement, suspended or debarred or subject to a proceeding to suspend or debar from bidding, proposing or contracting with any federal or state department or agency, (y) on substantially the same terms and conditions as the Material Project Contract being replaced (or otherwise reasonably acceptable to the TIFIA Lender) and (z) effective as of the date of termination of the Material Project Contract being replaced and (2) the Concessionaire enters into a lenders’ direct agreement with such counterparty and the Security Trustee, on terms satisfactory to the TIFIA Lender; or

(x) one or more judgments for the payment of money in an aggregate amount in excess of \$1,000,000 and not otherwise covered by insurance is rendered against one or more Borrower Group Members, which remains undischarged for a period of 30 consecutive days during which execution will not be effectively stayed, or any action will be legally taken by a judgment creditor to attach or levy upon any assets of such Borrower Group Member to enforce any such judgment; or

(xi) a Change of Control occurs in breach of the applicable TIFIA Loan Agreement other than a Change of Control for which the TIFIA Lender has given its consent; or

(xii) the Concessionaire fails to maintain its existence as a Colorado limited liability company; Borrower Finco fails to maintain its existence as a Delaware limited partnership, Finco 1 fails to maintain its existence as a British Columbia unlimited liability company, or Finco 2 fails to maintain its existence as a Delaware limited liability company; or

(xiii) with respect to the Phase 2 TIFIA Loan Agreement, (A) any Equity Contribution required to be made under the Equity Contribution Agreement is not made when and in the amount required, (B) any Plenary Party fails to comply with its material obligations under the Equity Contribution Agreement in accordance with the terms thereof, or (C) Borrower Finco fails to satisfy the Maximum Debt to Equity Ratio test within five Business Days after the Substantial Completion Date; or

(xiv) a TIFIA Parity Trigger Event occurs; or

(xv) any of the events described under the definition of the term TIFIA Parity Trigger Event occurs (A) with respect to the Equity Member or (B) with respect to the Sponsor, prior to the termination of the Equity Contribution Agreement in accordance with its terms; or

(xvi) the Concession Agreement expires or terminates (whether by reason of a default thereunder or by mutual agreement of the parties thereto or otherwise), or for any reason ceases to be in full force and effect or HPTE has delivered a notice to the Concessionaire that it is terminating the Concession Agreement due to certain Concessionaire Defaults; or

(xvii) (A) the Concessionaire announces that it is abandoning the Project; or (B) the Concessionaire voluntarily ceases construction or operation activities with respect to the Project and the Concessionaire declares in writing or by authorized public statement its intention that such activities not be resumed (except if such cessation occurs by reason of an Uncontrollable Force, a Relief Event, or a Compensation Event), such cessation event continues without interruption for 90 days, the TIFIA Lender delivers a notice to the Concessionaire requesting a certificate to the effect that the Concessionaire intends to resume as soon as commercially practicable, and either (x) the Concessionaire fails to deliver such a certificate to the TIFIA Lender within 45 days or (y) the Concessionaire delivers such a certificate but fails to resume construction or operation activities within 45 days (except as a result of an Uncontrollable Force, a Relief Event, or a Compensation Event);

(xviii) the Phase 2 Construction Project or the Operation Project (or a substantial portion thereof) ceases for a continuous period of not less than 180 days unless such cessation of construction or operation occurs by reason of an Uncontrollable Force or by a Relief Event or a Compensation Event and either (A) the Concessionaire has in force an insurance policy or policies under which the Concessionaire is entitled to recover no less than substantially all Senior Debt Service and TIFIA Phase 2 Debt Service and any costs and expenses of the Concessionaire during such cessation of operations, or (B) the Concessionaire has received relief from its obligations under the Concession Agreement pursuant to the terms thereof for the relevant cessation period, and the Concessionaire has raised sufficient money to pay for no less than substantially all Senior Debt Service and TIFIA Phase 2 Debt Service and costs and expenses of the Concessionaire during such cessation of operations and the Concessionaire diligently restores any physical damage or destruction to the Project; or

(xix) any TIFIA Loan Document ceases to be in full force and effect (other than as a result of the termination thereof in accordance with its terms) or becomes void, voidable, illegal or unenforceable, or any Borrower Group Member contests in any manner the validity or enforceability of any TIFIA Loan

Document or denies it has any further liability under any TIFIA Loan Document, or purports to revoke, terminate or rescind any TIFIA Loan Document; or

(xx) any Borrower Group Member makes or causes to be made or indicates in writing its intention to make or cause to be made, a payment of any amount pursuant to a put provision in the Subordinated Loan Agreements or the Subordinated Agent has delivered a put notice pursuant to the Subordinated Loan Agreements.

Remedies. If an event of default under the Phase 2 TIFIA Loan Agreement consisting of a Development Default or the Concessionaire's abandonment of the Project, all obligations of the TIFIA Lender with respect to the disbursement of any undisbursed amounts of the applicable TIFIA Loan will be deemed terminated.

Upon the occurrence of a TIFIA Parity Trigger Event, all obligations of the TIFIA Lender with respect to the disbursement of any undisbursed proceeds of a TIFIA Loan will automatically be deemed terminated, and the unpaid principal amount of such TIFIA Loan, together with all interest accrued thereon and all fees, costs, expenses, indemnities and other amounts payable under the applicable TIFIA Loan Agreement, the MSA, the related note and the Security Documents, will automatically become immediately due and payable, without presentment, demand, notice, declaration, protest or other requirements of any kind.

Upon the occurrence of any other event of default under a TIFIA Loan Agreement, the TIFIA Lender, by written notice to the Concessionaire, may, as applicable under each TIFIA Loan Agreement, (A) suspend or terminate all of its obligations under the Phase 2 TIFIA Loan Agreement with respect to the disbursement of any undisbursed amounts of the related TIFIA Loan and (B) declare the unpaid principal amount of such TIFIA Loan to be, and the same will thereupon become, immediately due and payable, together with the interest accrued thereon and all fees, costs, expenses, indemnities and other amounts payable under the related TIFIA Loan Agreement, the MSA, the related note and the Security Documents, all without presentment, demand, notice, protest or other requirements of any kind.

Whenever any event of default has occurred and is continuing, the TIFIA Lender will be entitled and empowered to institute any actions or proceedings at law or in equity for the collection of any sums due and unpaid under a TIFIA Loan Agreement or under the related TIFIA Note or the Security Documents, and may prosecute any such judgment or final decree against any Borrower Group Member and collect in the manner provided by law out of the property of such Borrower Group Member the monies adjudged or decreed to be payable, and the TIFIA Lender will have all of the rights and remedies of a secured creditor under the Uniform Commercial Code and may take such other actions at law or in equity as may appear necessary or desirable to collect all amounts payable by any Borrower Group Member under the TIFIA Loan Agreements then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of any Borrower Group Member under the related TIFIA Loan Agreement or the Security Documents. However, the exercise by the TIFIA Lender of certain foregoing remedies upon an event of default is subject to the provisions of the Intercreditor Agreement.

Whenever any event of default has occurred and is continuing, the TIFIA Lender may suspend or debar any Borrower Group Member from further participation in any Government program administered by the TIFIA Lender and to notify other departments and agencies of such default.

Subordinated Loan Agreements

General. Prior to the Closing Date, the Subordinated Lender, the Borrower Group, the Subordinated Agent and PGC US Finco GP Ltd. will enter into a Subordinated Loan Agreement pursuant

to which the Subordinated Lender will provide the Subordinated Loan to Borrower Finco in a principal amount not to exceed \$21,600,000. The proceeds of the Subordinated Loan are expected to be funded with multiple draws and are required to be applied to pay Project Costs. Pursuant to the Subordinated Loan Agreement, the Subordinated Loan will mature on July 1, 2050 as such date may be extended provided that in no event will the maturity date occur after the last January 1 or July 1 occurring no later than 35 years from such date of Substantial Completion.

Terms of the Subordinated Loan. Proceeds of the Subordinated Loan will be available for draws by Borrower Finco during the period commencing on the Effective Date and ending on the Full Services Commencement Longstop Date (the “**Availability Period**”). The conditions precedent to each draw under the Subordinated Loan Agreement include: (i) a written draw request from Borrower Finco; (ii) that so long as no default or event of default under the Subdebt Senior Funding Documents has occurred and is continuing, all proceeds of the 2014 Bonds and all amounts available under the Phase 2 TIFIA Loan have been fully spent and drawn, as applicable, and have been applied to the payment of the Project Costs, and (iii) if an event of default under any of the Subdebt Senior Funding Documents has occurred and is continuing, written confirmation from the Security Trustee that either (x) all amounts required to be funded under the Equity Contribution Agreement have been funded in cash or from a draw on the Equity Letter of Credit, or (y) the Security Trustee has used all commercially reasonable efforts to cause all amounts required to be funded under the Equity Contribution Agreement to have been funded. The Subordinated Loan Agreement permits draws on the Subordinated Loan even if there is a payment default with respect to the Subdebt Senior Obligations.

Borrower Finco’s payment obligations under the Subordinated Loan Agreement will be subordinate to the Subdebt Senior Obligations. See “PROJECT ACCOUNTS AND FLOW OF FUNDS – Project Proceeds Account – Monthly Transfers from Project Proceeds Account” for a priority of payments with respect to the Subdebt Senior Obligations and the Subordinated Loan. In certain cases specified in the Subordinated Loan Agreement, such as insufficiency of funds (including insufficiency of funds under the Secondary Subordinated Loan Agreement described below) to make the required payment when due, and upon meeting certain requirements (such as that no default or event of default under the Subordinated Loan has occurred and is continuing), interest on the Subordinated Loan may be deferred (the “**Deferred Interest**”). The Deferred Interest amount for each scheduled debt service payment may not exceed an amount set forth in the Subordinated Loan Agreement which varies from all of the interest due on such date to 50% of the aggregate interest payments due on two successive debt service payment dates. Borrower Finco may apply for the Deferred Interest until January 2, 2037. In addition, after December 31, 2021, upon meeting certain other requirements set forth in the Subordinated Loan Agreement (including, in certain cases, consent of the Subordinated Lender), Borrower Finco may defer additional amounts of interest (“**Additional Deferred Interest**”) and/or defer principal owing under the Subordinated Loan. Outstanding principal and interest on the Subordinated Loan accrue interest of 11% per annum, except for deferred principal and Additional Deferred Interest, which accrue interest at 12%.

Secondary Subordinated Loan. Prior to the Closing Date, the Subordinated Lender will enter into a separate credit agreement (the “**Secondary Subordinated Loan Agreement**” and, together with the Subordinated Loan Agreement, the “**Subordinated Loan Agreements**”) with the Concessionaire to make loans to the Concessionaire (the “**Secondary Subordinated Loan**” and collectively with the Subordinated Loan, the “**Subordinated Loans**”), which may be used by the Concessionaire only to make funds available to the Borrower Finco to pay interest on the Subordinated Loan that would otherwise qualify as the Deferred Interest under the Subordinated Loan. As such, while the Secondary Subordinated Loan is available to be drawn on, there may not be as much (or any) Deferred Interest under the Subordinated Loan (but there will be a corresponding debt at the Concessionaire level). The Secondary Subordinated Loan will be secured by the Collateral and paid on the same level of priority as the

Subordinated Loan on a pro rata basis. See “PROJECT ACCOUNTS AND FLOW OF FUNDS – Project Accounts and Subaccounts.”

A default on the Subordinated Loans, including a payment default, will not trigger a default on the 2014 Bonds or the TIFIA Loans.

Covenants. The Subordinated Loan Agreements contain covenants for the benefit of the Subordinated Lender which are substantially similar to the covenants contained in the Bond Proceeds Loan Agreement and TIFIA Loan Agreements, except for certain covenants that are either more restrictive or are in addition to those contained in such agreements. However, a default on a Subordinated Loan, including a covenant default, will not trigger a default on the 2014 Bonds or the TIFIA Loans. Moreover, the ability of the Subordinated Lender to exercise remedies against the Collateral upon an event of default under the Subordinated Loan Agreements is limited. Generally, the Subordinated Lender may not exercise any remedies under the Subordinated Loan Agreements (other than the EOD Change of Control Rights described under “INTERCREDITOR ARRANGEMENTS – Subordination Agreement”) while Borrower Finco’s obligations under the 2014 Bonds or the TIFIA Loans are not discharged and paid in full in cash. See “INTERCREDITOR ARRANGEMENTS – Subordination Agreement” below.

Supporting Letter of Credit. The obligations of the Subordinated Lender to fund an undrawn portion of the Subordinated Loan will be supported by a letter of credit (the “**Subordinated Loan Letter of Credit**”) to be issued on or prior to the Closing Date in favor of the Security Trustee by an Acceptable Letter of Credit Provider, which will initially be a U.S. branch of a Canadian Schedule 1 Chartered Bank. The MSA provides that the Security Trustee shall draw on the letter of credit during the Availability Period if (i) the Subordinated Lender defaults on its obligation to fund draws on the Subordinated Loan or (ii) an involuntary or voluntary bankruptcy or liquidation proceedings with respect to Borrower Finco have occurred and the aggregate amount of the Subordinated Loan disbursed by the Subordinated Lender is less than the full amount available to be drawn thereunder or (iii) the Subordinated Loan outstanding is less than the full amount available to be drawn and funds are otherwise not available under the 2014 Bonds, the TIFIA Loans or the Equity Contribution. Pursuant to the MSA, the amount which the Security Trustee is required to draw under the letter of credit upon occurrence of one of the foregoing events is the amount of the Subordinated Loan which has not been disbursed or payment which has not been made or, in certain cases (such as insolvency of a direct or indirect parent of the Subordinated Lender or a statement by the Subordinated Lender that it does not intend to comply with its obligations under the Subordinated Loan), the stated amount of the letter of credit less any amounts, if any, advanced by the Subordinated Lender under the Subordinated Loan. The letter of credit provides that it will expire approximately one year from its effective date subject to automatic one-year extensions without amendment to the letter of credit, unless the letter of credit provider sends a thirty-day notice prior to the current or any future expiration date of its intention not to extend the letter of credit. Upon receipt of such notice from the letter of credit provider, the Security Trustee will be entitled to draw any undrawn portion of the letter of credit.

Subordinated Lender’s Pledge of the Subordinated Loans. Prior to the Closing Date, the Subordinated Lender and the Security Trustee will enter into a Pledge Agreement and Limited Recourse Guaranty (the “**Subordinated Loans Pledge Agreement**”). In the Subordinated Loans Pledge Agreement, the Subordinate Lender will grant to the Security Trustee, for the ratable benefit of the Secured Parties, a security interest in all of the Subordinate Lender’s right, title and interest in and to the Subordinated Loan Agreements (the “**Pledged Debt**”). The Subordinated Loans Pledge Agreement secures, among other things, the payment of all of the Borrower Finco Senior Obligations and the Concessionaire Senior Guarantee Obligations, provided that the aggregate amount of such guaranteed obligations shall not at any time exceed the aggregate of principal, interest, and other obligations owing in respect of the Pledged Debt at such time.

Existing Master Indenture

HPTE's liabilities under the Existing Phase 1 TIFIA Loan Agreement are secured by the Existing Master Indenture. On or prior to the Closing Date, HPTE and the Master Trustee will enter into the Amended and Restated Master Indenture to suspend the operation of certain provisions relating to the ability of HPTE to issue additional debt secured by revenues pledged to the repayment of the Phase 1 TIFIA Loan and the ability to sell or transfer all or any part of the Phase 1 Project or the revenues pledged to the repayment of the Phase 1 TIFIA Loan until the Concession Agreement terminates pursuant to its terms prior to the occurrence of the Phase 1 Assumption Date. In addition, the Amended and Restated Master Indenture provides that during the period starting on the Commencement Date and ending on the date of termination of the Concession Agreement pursuant to its terms, a portion of the I-25 Toll Revenue which was available under the Existing Master Indenture to pay for operations and maintenance expenses of the Phase 1 Project in the event of a shortfall of revenues pledged under the Phase 1 TIFIA Loan, will not be available for deposit, and shall not be deposited, to any fund, account or subaccount established and maintained under the Amended and Restated Master Indenture. HPTE and the Master Trustee agree that neither of them will have any entitlement or claim at any time, whether during or after the I-25 Revenues Suspension Period, to any such I-25 Toll Revenue generated during such period. Upon the Phase 1 Assumption Date, the Amended and Restated Master Indenture will be terminated.

If the Concession Agreement terminates pursuant to its terms prior to the Phase 1 Assumption Date, the restrictions described above will no longer be in effect. See "PHASE 1 PROJECT – Assumption of Phase 1 TIFIA Loan" for a discussion of certain considerations relating to the Phase 1 Assumption Date. See also "CONCESSION AGREEMENT – Termination Events."

INTERCREDITOR ARRANGEMENTS

General

Prior to or concurrently with the Closing Date, two separate intercreditor agreements will be executed. The first covers the intercreditor relationships among the Owners of the 2014 Bonds, the TIFIA Lender (in its capacity as a subordinate lender under the Phase 2 TIFIA Loan Agreement) and the TIFIA Lender following the Phase 1 Assumption Date (in its capacity as a Senior Creditor pursuant to the Phase 1 TIFIA Loan Agreement). The second is an agreement between the Subordinated Lender on the one hand, and the TIFIA Lender and the Owners of the 2014 Bonds on the other hand.

Intercreditor Agreement

General. On or prior to the Closing Date, the Intercreditor Agent, the Bond Trustee, the TIFIA Lender and the Security Trustee will enter into a Subordination and Intercreditor Agreement (the "**Intercreditor Agreement**"). The Intercreditor Agreement generally sets forth the parties' rights and obligations with respect to: (i) intercreditor matters among the Senior Creditors; (ii) the exercise and enforcement of remedies against the Collateral including limits on the rights of the Owners of the 2014 Bonds and the TIFIA Lender to exercise remedies against the Collateral; (iii) subordination provisions relating to the Phase 2 TIFIA Loan in respect of right of payment and Lien on the Collateral (subject to certain limitations and conditions); (iv) the voting mechanics applicable to, among other things, certain modifications to the Funding Documents; and (v) certain protected rights of the Owners of the 2014 Bonds and the TIFIA Lender.

Priority of Claims. Each Senior Creditor agrees that the Liens securing each Class of Senior Obligations on any Shared Collateral will be of equal priority. The Senior Obligations of any Class may, subject to the limitations set forth in the then extant Funding Documents, be refinanced or otherwise

amended or modified from time to time, all without affecting the priorities set forth in the MSA or the provisions of the Intercreditor Agreement defining the relative rights of the Senior Creditors of any Class. The Senior Creditors generally agree not to accept any Liens on any Collateral except pursuant to the Funding Documents, and not to contest the perfection, priority, validity or enforceability of any Lien held on behalf of any of the Senior Creditors on all or any part of the Senior Creditor Shared Collateral or the provisions of the Intercreditor Agreement.

Segregated Collateral. Generally, the Collateral in which the holders of multiple Classes of Senior Obligations hold a security interest at any time is meant to be shared equally and ratably among the holders of the Senior Obligations. However, the Intercreditor Agreement provides for “**Segregated Collateral**” which is not shared among the holders of the Secured Obligations.

- Segregated Collateral held for the Senior Bond Obligations includes amounts deposited from time to time in the Bond Proceeds Subaccounts and the Bonds Debt Service Reserve Accounts under the MSA.
- Segregated Collateral held for the benefit of the TIFIA Lender (in its capacity as lender of the Phase 1 TIFIA Loan) means the amounts held in the TIFIA Phase 1 Debt Service Reserve Account under the MSA.
- Segregated Collateral held for the benefit of the TIFIA Lender (in its capacity as lender of the Phase 2 TIFIA Loan) means the proceeds of the Phase 2 TIFIA Loan and the amounts on deposit in the TIFIA Phase 2 Debt Service Reserve Account under the MSA.

Upon the occurrence of an Event of Default, monies constituting Segregated Collateral will be applied to pay the Senior Obligation or Subordinate Obligation to which these funds and accounts relate. However, any Segregated Collateral remaining following the payment in full of a Senior Obligation or a Subordinated Obligation (in each case) supported by such Segregated Collateral will be deposited in the Project Proceeds Account.

Subordination of Phase 2 TIFIA Loan.

General. The Phase 2 TIFIA Loan is being extended under the TIFIA Act. In accordance with the TIFIA Act, the TIFIA Phase 2 Obligations are subject and subordinate to the Senior Obligations, and any Lien on the TIFIA Phase 2 Shared Collateral securing the TIFIA Phase 2 Obligations is and will be subject and subordinate to any Lien on TIFIA Phase 2 Shared Collateral securing the Senior Obligation.

Exercise of Remedies Under Phase 2 TIFIA Loan. Whether or not any TIFIA Parity Trigger Event has occurred or is continuing, (i) the TIFIA Lender will not exercise or seek to exercise unilaterally any rights or remedies with respect to the TIFIA Phase 2 Obligations or the TIFIA Phase 2 Shared Collateral, or institute any action or proceeding with respect to such rights or remedies, whether against any Obligor, the Sponsor or otherwise, including (A) any action of foreclosure or proceeding, (B) the issuance of any notice directing the Security Trustee to exercise any Enforcement Actions, or (C) any contest or objection to any exercise by the Security Trustee or the Intercreditor Agent relating to the Secured Obligations or the Collateral (other than Segregated Collateral for the benefit of the TIFIA Lender), and (ii) the Intercreditor Agent (acting at the direction of the Required Senior Creditors) will have the exclusive right to enforce rights and exercise remedies, including directing the Security Trustee to exercise or refrain from exercising any Enforcement Actions against the Obligors or the Shared Collateral, without the consent of any Secured Party except the Required Senior Creditors.

Limits on Acceleration of TIFIA Phase 2 Obligations. Except in the case of the occurrence of a TIFIA Parity Trigger Event, the TIFIA Lender may not accelerate the TIFIA Phase 2 Obligations unless all of the Senior Obligations have been accelerated.

TIFIA Parity Trigger Event. Upon the occurrence and during the continuance of any TIFIA Parity Trigger Event: (i) the TIFIA Phase 2 Obligations then held by the TIFIA Lender (or any other federal Governmental Authority to which the TIFIA Phase 2 Obligations have been transferred) will automatically and without action on the part of the TIFIA Lender immediately become and be Senior Obligations, of equal rank and in parity with the other Senior Obligations and (ii) the TIFIA Phase 2 Shared Collateral will immediately become and be Senior Creditor Shared Collateral and the Liens in and on the TIFIA Phase 2 Shared Collateral will automatically and without action on the part of the TIFIA Lender become and be of equal rank and in parity with the Liens on the other Senior Creditor Shared Collateral securing the Senior Obligations. See “FINANCING AGREEMENTS – TIFIA Loan Agreements – TIFIA Parity Trigger Event.”

Defaults; Exercise and Enforcement of Remedies.

Notice of Default. The Intercreditor Agreement provides a “Designated Representative” for each secured party; at the execution of delivery of the Intercreditor Agreement, the TIFIA Lender will be the Designated Representative for the TIFIA Loans; and the Bond Trustee will be the Designated Representative for the Owners of the 2014 Bonds. Promptly after any Designated Representative obtains knowledge of the occurrence of any Default or Event of Default under any Funding Document to which it is a party, or that any Default or Event of Default under any Funding Document to which it is a party has ceased to exist or has been rescinded, such Designated Representative will notify the Intercreditor Agent in writing thereof (such notice, a “**Notice of Default**”). Each such Notice of Default must describe such Default or Event of Default (or its cessation or rescission) in reasonable detail (including the date of occurrence of the same). Upon receipt by the Intercreditor Agent of any such Notice of Default, it will promptly send copies thereof to each other Designated Representative.

Election to Pursue Remedies Following Events of Default. Upon the continuance of an Event of Default, any Designated Representative in respect of a Funding Document under which an Event of Default has occurred and is continuing may deliver a notice (such notice, a “**Remedies Initiation Notice**”) to the Intercreditor Agent. A Remedies Initiation Notice (i) describes such Event of Default, (ii) describes the Enforcement Action that such Designated Representative wishes the Security Trustee to pursue (the “**Proposed Enforcement Action**”) and (iii) identifies the proposed date for the commencement of the exercise of remedies (the “**Proposed Remedies Commencement Date**”). Generally, the Security Trustee may not commence or otherwise take any action to realize upon any or all of the Collateral (other than Segregated Collateral), unless and until the Intercreditor Agent, on behalf of the Required Secured Creditors, directs the Security Trustee to realize upon any or all of the Collateral in the manner specified in such written direction and otherwise in accordance with the terms of the MSA and the other Funding Documents.

Required Senior Creditors. Generally, the exercise of remedies against the Collateral will be directed by the “**Required Senior Creditors**,” which means Senior Creditors holding a majority of the aggregate principal amount of all Senior Obligations. If the 2014 Bonds are issued in the principal amount of \$20,360,000 and the Phase 1 TIFIA Loan, when assumed by Borrower Finco, is in the approximate principal amount of \$54,000,000, then the TIFIA Phase 1 Obligations will approximate 73% of all Senior Obligations. Consequently, the TIFIA Lender will decide whether or not to take Enforcement Actions against the Collateral and if so, the nature of any Enforcement Action taken.

Fundamental Senior Bonds Events of Default. Even though the 2014 Bonds will constitute a minority (i.e. approximately 27%) of the Senior Obligations following the Phase 1 Assumption Date, there are a certain set of Bond Proceeds Loan Events of Default that trigger the consultation process described below between the TIFIA Lender and the Bond Trustee. These “**Fundamental Senior Bond Events of Default**” include: failure to pay scheduled debt service under the Bond Proceeds Loan Agreement; a TIFIA Parity Trigger Event; a TIFIA Parity Trigger Event with respect to the Equity Member or the Sponsor prior to the termination of the Equity Contribution Agreement; the Concession Agreement expires or is terminated for any reason or for any reason ceases to be in full force and existence; the Concessionaire announces that it is abandoning the Project or voluntarily ceases the Phase 2 Construction Project and the Operating Project (unless such cessation occurs by reason of a Relief Event, a Compensation Event or a Force Majeure Event). If a Fundamental Senior Bond Event of Default Occurs, the Bond Trustee may deliver a Remedies Initiation Notice to the TIFIA Lender, and the two parties will consult with one another in good faith as to whether or not to pursue the proposed Enforcement Action or any other Enforcement Action. However, if no agreement is reached during this consultation period, then no Enforcement Action will occur.

Conversely, if the TIFIA Lender initiates an Enforcement Action, then the Enforcement Action may occur following the ten Business Day waiting period as described below. However, in this instance, the TIFIA Lender, as holder of the majority of the Senior Obligations, may elect to disregard the consultation period if, in its judgment, doing so is required to preserve or protect the interests of the Secured Creditors or that the Secured Creditors could be reasonably expected to be adversely affected by waiting, it may disregard the waiting period. If it does however, it must give a notice setting forth the reasons for disregarding the consultation period to the Intercreditor Agent, which is required in turn to deliver such notice the Bond Trustee.

In the case of a Fundamental Senior Bond Event of Default for failure to pay scheduled debt service under the Bond Proceeds Loan Agreement that arises from the failure to mandatorily prepay the Bond Proceeds Loan upon a Determination of Taxability, upon the failure of the Designated Representatives of the Required Senior Creditors and the Bond Trustee to reach agreement with respect to the exercise of an Enforcement Action, but in no event before the occurrence of such failure, the Security Trustee will transfer amounts to the Borrower Finco Senior Bonds Debt Service Account as described under “PROJECT ACCOUNTS AND FLOW OF FUNDS – Project Proceeds Account – Monthly Transfers from Project Proceeds Account” for the purpose of prepaying the Bond Proceeds Loan.

Remedies Consultation Period. Upon receipt of a Remedies Initiation Notice, the Intercreditor Agent is required promptly to provide each other Designated Representative with a copy of such notice and inform each of them of the date on which the Intercreditor Agent will direct the Security Trustee to commence the exercise of the Proposed Enforcement Action, which will take into account the Proposed Remedies Commencement Date, and the Decision Period for such Enforcement Action required in connection with any Intercreditor Vote (the “**Remedies Commencement Date**”).

- If the Remedies Initiation Notice is delivered by the Required Senior Creditors or by a designated representative representing more than 50% of the Exposure (i.e. from and after the Phase 1 Assumption Date, the TIFIA Lender) then generally an Enforcement Action against the Collateral may not take place for ten Business Days.
- If the Remedies Initiation Notice is delivered by the Bond Trustee in connection with a Fundamental Senior Bond Event of Default, then any Enforcement Action against the Collateral may not begin for at least 30 Business Days. In addition, the 30 Business Day period described in the preceding sentence may be extended for an additional ten Business Days on a one time basis only.

During the Consultation Period, the Designated Representatives for the Required Senior Creditors, upon request, may consult with one another and give good faith consideration of the views of the other Senior Creditor in determining whether or not to pursue a proposed Enforcement Action. In addition, if the Designated Representatives representing the Required Senior Creditors and the Bond Trustee collectively agree as to an appropriate Enforcement Action, then the Security Trustee is required to take that action. If no agreement is reached as to the appropriate Enforcement Action to be taken prior to the remedies commencement date, then the Security Trustee will not take any action. Once the Security Trustee begins to exercise remedies pursuant to a remedies initiation notice, the Required Senior Creditors may direct it to cease exercising those remedies or to exercise different remedies. Except in the case of a Remedies Initiation Notice for a Fundamental Senior Bond Event of Default, the Designated Representative of the Required Senior Creditors (from and after the Phase 1 Assumption Date, the TIFIA Lender) is not required to enter into consultations with the Bond Trustee. Finally, the Bond Trustee, as Designated Representative of the Owners of the 2014 Bonds may elect to pursue remedies against the Collateral if the majority of Senior Creditors elect to do so.

During the period prior to the Remedies Commencement Date, no Secured Creditor will be entitled to take any Enforcement Action in connection with such Event of Default, nor will any Secured Creditor instruct the Intercreditor Agent or direct the Security Trustee to take any Enforcement Action in connection with such Event of Default, except pursuant to a Remedies Initiation Notice above. For the avoidance of doubt, the limitations described above on directing the Security Trustee to realize against any and all of the Collateral does not prevent a Senior Creditor from taking an Acceleration Action with respect to its class of Senior Obligations. Moreover, nothing described above will limit the right of the Required Senior Creditors to direct the Security Trustee at any time following the occurrence of an Event of Default to cease making withdrawals from or transfers among the Project Accounts pursuant to the MSA.

Exercise of Remedies; Allocation of Collateral Proceeds. If, pursuant to a Direction Notice provided by the Intercreditor Agent, the Required Secured Creditors or the Bond Trustee elect to exercise any Enforcement Action as described above in “– Election to Pursue Remedies Following Events of Default,” then the Security Trustee will follow the written instructions regarding the exercise of Enforcement Action delivered by such entities (each, a “**Remedies Instruction**”) to the extent such Enforcement Action is permitted by the Security Documents. If, following the commencement of the exercise of any Enforcement Action by the Security Trustee hereunder on the basis of a Remedies Initiation Notice delivered by the Bond Trustee, the Required Senior Creditors provide directions to the Security Trustee to cease the exercise of such Enforcement Action or to exercise one or more Enforcement Actions that are different from those previously directed by the Bond Trustee, then the Security Trustee, to the extent practicable, will follow the directions of the Required Senior Creditors. Following the exercise of any Enforcement Action by the Security Trustee, the proceeds of any collection, recovery, receipt, appropriation, realization or sale of any or all of the Shared Collateral or the enforcement of any Security Document will be applied in accordance with the MSA.

Enforcement After TIFIA Parity Trigger Event. If a TIFIA Parity Trigger Event occurs and is continuing, the Designated Representatives will consult with each other prior to directing the Intercreditor Agent to issue any Direction Notice to the Security Trustee or to take any other Enforcement Action with respect to the Liens on the Collateral.

In any bankruptcy proceeding, (i) each Secured Creditor will have all rights of a creditor of the relevant Obligor including, without limitation, the right to file proofs or claims of debt with respect to such Secured Obligations to appear and be heard as a creditor in such proceeding, to serve as a member of a committee of creditors, to file a plan of reorganization, to vote its claims in respect of any proposed plan of reorganization, and to receive and retain any payment or distribution of assets or securities of such

Obligor of any kind or character, whether in cash, securities or other property, made in or as a result of such proceeding pursuant to any plan of reorganization or otherwise; (ii) the Intercreditor Agent (A) will use reasonable efforts to develop a plan for the course and conduct of any actions in any such proceeding, and (B) will agree to authorize or take such enforcement actions and to vote as a creditor in such proceeding on behalf of the Secured Creditors, and no Secured Party will take any enforcement or other action which is inconsistent with a written direction by the Required Senior Creditors; (iii) if the Intercreditor Agent requests that any Secured Creditor join in a Remedies Instruction in seeking a lifting of the automatic stay and in commencing and pursuing a foreclosure action with respect to the Collateral, such Secured Creditor will join in such Remedies Instruction and will not take any action that would hinder such action; and (iv) if the Required Senior Creditors provide any direction to the TIFIA Lender, such direction will be considered only advisory unless and until approved by the Department of Justice.

Amendment of Funding Documents.

Amendment of Funding Documents Relating to Senior Obligations. Any Senior Creditor may, without the consent of the other Secured Parties, enter into amendments with the Obligors, or grant such waivers or consents to the Obligors, as such Senior Creditor deems proper in connection with any Funding Document to which it is a party pursuant to the terms thereof. However, a Senior Creditor may not enter into any amendments with any Obligor, or grant any waivers or consents to any Obligor, in connection with any applicable Funding Document without the prior written consent of the TIFIA Lender and each other Senior Creditor, that would:

- increase the lending commitments of such Senior Creditor over the amounts permitted under an applicable Funding Document in effect as of the Effective Date or, with respect to any Additional Senior Obligations, such other date on which the relevant Funding Document will come into effect pursuant to the terms thereof (the “**Additional Senior Obligations Effective Date**”), or increase the principal amount of any Senior Obligations except, in each case, as permitted by the Funding Documents pursuant to which such Senior Obligation was made as in effect on such date, or increase the principal amount of any such Senior Obligations over the amount permitted under an applicable Funding Document (other than by capitalization of interest permitted thereunder), shorten the fixed maturity of such Senior Obligations, alter the prepayment or cash sweep provisions so as to accelerate the repayment of such Senior Obligations, or shorten the amortization schedule of such Senior Obligations;
- increase the rate of interest of, change the method of calculation of interest upon, or shorten the time for payment of interest on, such Senior Obligations except as permitted under the Funding Document in effect as of the Effective Date or the Additional Senior Obligations Effective Date, as applicable;
- increase any fees payable under such Funding Document, or shorten the scheduled date of any payment thereof, except in accordance with the terms of such Funding Document in effect as of the Effective Date or the Additional Senior Obligations Effective Date, as applicable;
- permit the amendment of any hedging arrangements for the Senior Obligations that affects any Obligor in any material adverse respect; or
- add any event of default for the benefit of such Senior Creditor or increase the debt service reserve requirement with respect to the applicable Senior Obligations, in each case, in a manner which is material and adverse to any other Senior Creditor or the TIFIA

Lender, without the consent of such other Senior Creditor or the TIFIA Lender, as applicable.

Amendment of TIFIA Phase 2 Loan Documents. The TIFIA Lender may, without the consent of the Intercreditor Agent, enter into such amendments with any Obligor, or grant such waivers or consents to any Obligor, as the TIFIA Lender deems proper in connection with any of the TIFIA Phase 2 Obligations or TIFIA Phase 2 Loan Documents to which such Obligor is a party; provided that the TIFIA Lender may not enter into any amendments with any Obligor, or grant any waivers or consents to any Obligor, in connection with any of the TIFIA Phase 2 Obligations or TIFIA Phase 2 Loan Documents without the prior written consent of the Senior Creditors that would:

- increase the lending commitments of the TIFIA Lender over the amount in effect as of the Closing Date (except in accordance with terms agreed to by the Intercreditor Agent), or increase the principal amount of any TIFIA Phase 2 Obligation (other than by capitalization of interest), shorten the fixed maturity of any TIFIA Phase 2 Obligation, alter the prepayment provisions so as to accelerate the repayment of any TIFIA Phase 2 Obligation, or shorten the amortization schedule of any TIFIA Phase 2 Obligation, to an amount greater than, or to a date earlier than that provided for in the TIFIA Phase 2 Loan Documents as in effect on the Closing Date;
- increase the rate of interest of, change the method of calculation of interest upon, or shorten the time for payment of interest on, any TIFIA Phase 2 Obligation, except in accordance with the terms of the Phase 2 TIFIA Loan Agreement in effect as of the Closing Date;
- increase any fees payable under the Phase 2 TIFIA Loan Agreement, or shorten the scheduled date of any payment thereof, except in accordance with the terms of the Phase 2 TIFIA Loan Agreement in effect as of the Closing Date;
- decrease or cancel the lending commitment under the Phase 2 TIFIA Loan Agreement except in accordance with the terms of the Phase 2 TIFIA Loan Agreement in effect as of the Closing Date or change the conditions to disbursement so as to materially increase the restrictions on the availability of disbursements from the terms in effect on the Closing Date; or
- add any event of default for the benefit of the TIFIA Lender or increase the TIFIA Phase 2 Debt Service Reserve Requirement, in each case, in a manner which is material and adverse to any Senior Creditor, without the consent of such Senior Creditor.

Procedures Relating to Owners' Votes on Amendments. In the event that any proposed amendment to the Funding Documents requires the consent of the Bond Trustee (each, a "**Proposed Amendment**"), the relevant Senior Creditor or the TIFIA Lender initiating the Proposed Amendment will deliver a notice of the Proposed Amendment (each, an "**Amendment Notice**") to the Bond Trustee specifying the nature of the Proposed Amendment in reasonable detail. Consent by the Bond Trustee (acting on behalf of the Owners of the 2014 Bonds) to the Proposed Amendment will be deemed to have been given if (i) Owners representing a majority in aggregate principal amount of the 2014 Bonds outstanding as of the date of the Amendment Notice have provided a vote with respect to the Proposed Amendment (such responding Owners, the "**Responding Owners**") and (ii) the Proposed Amendment has been approved by Responding Owners representing a majority in aggregate principal amount of the 2014 Bonds held by all Responding Owners.

Each Owner will have an initial period of 30 days following delivery of the relevant Amendment Notice to such Owner to provide its vote on the Proposed Amendment to the Bond Trustee. If Owners representing less than a majority in aggregate principal amount of the 2014 Bonds outstanding as of the date of the Amendment Notice have provided a vote after the expiry of such initial 30-day period, then the Bond Trustee will re-send the Amendment Notice to each Owner that has not provided a vote, in each case, requesting its vote with respect to the Proposed Amendment. If Owners representing 30% or less of the aggregate principal amount of the 2014 Bonds outstanding as of the date of the Amendment Notice have provided a vote on the Proposed Amendment within 30 days following delivery to each such Owner of the Amendment Notice so re-sent, then the Bond Trustee will be deemed to have consented to the Proposed Amendment.

Voting. If, in accordance with the Intercreditor Agreement or any other Funding Document, any Modification, direction or other decision of the Intercreditor Agent is requested or required, the granting or withholding of such Modification, the giving of such direction, or the making of such other decision by the Intercreditor Agent will be determined through an Intercreditor Vote. Each Designated Representative is entitled to vote in each Intercreditor Vote conducted under the Intercreditor Agreement.

Fundamental Actions. Although many actions under the Intercreditor Agreement are taken at the direction of the majority of the Senior Creditors, the Intercreditor Agreement sets out certain Fundamental Actions which may not be taken without approval of at least 90% of the principal amount of the Obligations covered by the Intercreditor Agreement. If a TIFIA Parity Trigger Event occurs, then the principal amount of the 2014 Bonds will be approximately 12% of the principal amount of the sum of the 2014 Bonds, the Phase 1 TIFIA Loan Agreement and the Phase 2 TIFIA Loan Agreement. This provision also serves to prevent the Senior Creditors (and specifically, the Owners of the 2014 Bonds prior to the Phase 1 Assumption Date) from exercising certain actions that may be deleterious to the TIFIA Lender.

“**Fundamental Actions**” include: modifications of Funding Documents to which the Intercreditor Agent is a party that have the effect of releasing Collateral from the Lien of the Security Documents; releasing funds held by the Security Trustee, other than as expressly permitted in accordance with the Funding Documents; with exceptions, modifications to provisions of the MSA (with exceptions) dealing with conditions to the Effective Date; conditions to the occurrence of the Phase 1 Assumption Date; provisions governing the establishment of the Project Proceeds Account and other Accounts under the MSA and the sequence of transfers from and among such Accounts; the limited liability provisions and the provisions governing defaults and remedies under the MSA; certain modifications to any other Funding Agreement; impermissible assignments by Obligor of rights under any funding agreements, and modification of defined terms in a Funding Agreement that would have an impact on other Fundamental Actions.

Subordination Agreement

General. On or prior to the Closing Date, the Bond Trustee, the TIFIA Lender, the Subordinated Lender, the Subordinated Agent, and the Security Trustee will enter into a Subordination and Intercreditor Agreement (the “**Subordination Agreement**”). Under the Subordination Agreement, each of the Subordinated Lender, the Subordinated Agent, any secured creditor providing Permitted Subordinated Debt and any secured creditor providing Subordinated Refinancing Debt (collectively, the “**Subordinated Creditors**”) will agree that the Subordination Agreement Subordinate Obligations are and will be subordinate to (i) the Subdebt Senior Obligations, (ii) the guarantee granted by the Concessionaire in favor of the Issuer pursuant to the Bond Proceeds Loan Agreement, and (iii) the guarantee granted by the Concessionaire in favor of the TIFIA Lender pursuant to the Phase 1 TIFIA Loan Agreement (from and after the Phase 1 Assumption Date) and pursuant to the Phase 2 TIFIA Loan Agreement (collectively, the “**Subordination Agreement Senior Obligations**”), at all times prior to the Discharge of the

Subordination Agreement Senior Obligations. In addition, the Subordinated Creditors will agree that during the period when the Secondary Subordinated Loan may be drawn upon pursuant to the Secondary Subordinated Loan Agreement, no funds shall be used to pay cash interest on the Subordinated Loan other than from the proceeds of the Secondary Subordinated Loan or amounts received by the Security Trustee in connection with the exercise of remedies under the MSA.

Priorities and Agreements With Respect to Collateral. Under the Subordination Agreement, the Subordinated Creditors will agree and acknowledge that (a) any Lien on the Shared Collateral securing any Subordination Agreement Senior Obligations will have priority over and be senior in all respects and prior to any Lien on the Shared Collateral securing any Subordination Agreement Subordinate Obligations; (b) any Lien on the Shared Collateral securing any Subordination Agreement Subordinate Obligations will be junior and subordinate in all respects to all Liens on the Shared Collateral securing any Subordination Agreement Senior Obligations; (c) the Subordinated Creditors shall not contest or otherwise challenge the validity, extent or enforceability of the Subordination Agreement Senior Obligations held by any Subdebt Senior Creditor or the Funding Documents relating to the Subordination Agreement Senior Obligations, or the Lien securing any Subordination Agreement Senior Obligations and (d) (i) the terms of the Funding Documents relating to the Subordination Agreement Senior Obligations may be amended, supplemented or otherwise modified; (ii) the Subordination Agreement Senior Obligations, or a portion thereof, may be refinanced from time to time; and (iii) the aggregate amount of the Subordination Agreement Senior Obligations may be increased, in each case, subject to the MSA and without notice to or consent by the Subordinated Creditors. In addition, the Subdebt Senior Creditors agreed not to contest or otherwise challenge the validity, extent or enforceability of the Subordinated Debt Documents or the Subordination Agreement Subordinate Obligations.

Exercise of Remedies. Prior to the Discharge of the Subordination Agreement Senior Obligations (i) no Subordinated Creditor will (A) take, sue for, ask or demand from any Obligor payment of all or any of the Subordinated Obligations (other than as expressly permitted pursuant to the Subordination Agreement), (B) exercise or seek to exercise any rights or remedies (including setoff) with respect to any Shared Collateral in respect of any Subordinated Obligations, or institute any action or proceeding with respect to such rights or remedies, (C) contest, protest or object to any foreclosure proceeding or action brought with respect to the Shared Collateral in respect of the Subordination Agreement Senior Obligations, the exercise of any right by any Subdebt Senior Creditor under any lockbox agreement, control agreement, landlord waiver or bailee's letter or similar agreement or arrangement to which such Subdebt Senior Creditor either is a party or may have rights as a third party beneficiary, or any other exercise by any such party of any rights and remedies relating to the Collateral in respect of the Subordination Agreement Senior Obligations, or (D) object to the forbearance by the Subdebt Senior Creditors from bringing or pursuing any foreclosure proceeding or action or any other exercise of any rights or remedies relating to the Shared Collateral in respect of the Subordination Agreement Senior Obligations and (ii) the Subdebt Senior Creditors have the exclusive right to enforce rights, exercise remedies and make determinations regarding the release, disposition or restrictions with respect to the Shared Collateral without any consultation with or the consent of any Subordinated Creditor, provided however, that the Subordinated Creditor is granted certain limited rights in connection with bankruptcy proceedings commenced by or against any Obligor in order to protect or preserve its rights in its Len on the Shared Collateral securing the Subordination Agreement Senior Obligations, provided that such actions are not materially adverse to the Subdebt Senior Creditors.

In addition, each Subordinated Creditor agreed that until the Discharge of the Subordination Agreement Senior Obligations, the Security Trustee, on behalf of the Subdebt Senior Creditors, has the exclusive right to exercise any right or remedy with respect to the Shared Collateral and has the exclusive right to determine and direct the time, method and place for exercising such right or remedy. The parties also agreed that so long as the Discharge of the Subordination Agreement Senior Obligations has not

occurred, any payments received by the Security Trustee or any Subdebt Senior Creditor from amounts on deposit in the Segregated Subordinated Loan Accounts shall be segregated and held in trust for the benefit of the Subordinated Creditors.

Amendments to the Subordinated Debt Documents. No Subordinated Debt Document may be amended, supplemented or otherwise modified to the extent such amendment, supplement or modification, or the terms of any new Subordinated Debt Document would be prohibited by or contravene any of the terms of the Subordination Agreement. The Subordination Agreement contains provisions allowing an amendment, waiver or consent in respect to the Subordinated Debt Documents (except for certain limited provisions) prior to the date on which all obligations of the Obligor under the TIFIA Loan Agreements have been paid in full and all obligations of the TIFIA Lender thereunder have been terminated (which is expected to occur after the Final Maturity Date for the 2014 Bonds) without the consent of the Subordinated Lender and without any action by the Subordinated Lender or any Obligor (provided that a written notice of such amendment is given to the Subordinated Lender within ten Business Days after the execution and delivery of such amendment, waiver or consent by each of the parties thereto and certain other conditions set forth in the Subordination Agreement are met), in the event that the Subdebt Senior Creditors enter into certain amendment, waiver or consent that is applicable to all Subdebt Senior Funding Documents.

The Subordination Agreement prohibits the Subordinated Lender from cancelling or otherwise discharging any obligations of the Borrower Finco or the Concessionaire under their respective Subordinated Loans or from converting or exchanging any of such obligations into or for any other indebtedness or equity interest, except in certain limited circumstances, such as when the Subordinated Loans are paid pursuant to the provisions of the MSA, when the interest is capitalized as permitted under the Subordinated Loan Agreements, or by application of proceeds of permitted refinancing debt or using equity securities of Borrower Finco or the Concessionaire, as the case may be, issued in exchange for the applicable Subordinated Loan. In addition, the Subordinated Lender may not sell, assign, pledge, encumber or otherwise dispose of any of the Borrower Finco's or Concessionaire's obligations under their respective Subordinated Loans unless such sale, assignment, pledge, encumbrance or disposition is made expressly subject to the Subordination Agreement. Any Additional Secured Creditor is required to become a party to the Subordination Agreement.

EOD Change of Control Rights. Under the Subordinated Loan Agreement, the Subordinated Lender may exercise temporary step-in rights (the “**EOD Change of Control Rights**”) if an event of default occurs under that agreement. However, the Subordination Agreement limits the Subordinated Lender's right to exercise such EOD Change of Control Rights until two years after the date on which the Substantial Completion is achieved, and only if a default or event of default has occurred under the Subordinated Loan Agreement but not under the Subdebt Senior Funding Documents. If the Subordinated Lender wishes to exercise any of its EOD Change of Control Rights, it must provide written notice to the Security Trustee. This notice must specify which EOD Change of Control Rights the Subordinated Lender proposes to exercise, certify that the exercise of such rights will not breach the Concession Agreement or result in a material breach of the Subdebt Senior Funding Documents or materially and adversely affect the validity, perfection or priority of the Liens on the Shared Collateral in favor of the Security Trustee and attach either a legal opinion or written confirmation from HPTE that the proposed exercise of EOD Change of Control Rights will not contravene or result in a breach or violation of the Concession Agreement. The Subordinated Lender must also certify that the proposed measures shall not include (i) a winding up of the Concessionaire or any other Obligor, (ii) a sale of all or substantially all of the assets of the Concessionaire or any other Obligor or (iii) a material change in the nature or scope of the Project.

The Subordination Agreement provides that the Subordinated Lender's request of the exercise of the EOD Change of Control Rights shall be considered by, and be subject to consent of, the TIFIA Lender, and, as applicable, each other Subdebt Senior Creditor in accordance with relevant change of control provisions set forth in the Subdebt Senior Funding Documents. Under the TIFIA Loan Agreements change of control provisions, TIFIA Lender may reject the proposed exercise of EOD Change of Control Rights only if the proposed exercise of EOD Change of Control Rights is prohibited by applicable law or the Subordinated Lender is, in the reasonable judgment of the TIFIA Lender, not capable of performing the obligations of the applicable Obligor under the Funding Documents, or, as to the Concessionaire, the covenants of the Concessionaire under the Concession Agreement, which determination may be based upon, or take into account, one or more of the following factors: (A) the financial strength and integrity of the Subordinated Lender, its direct or indirect beneficial owners, any proposed managers or operating partners and each of their respective Affiliates; (B) the experience of the Subordinated Lender or the operations and maintenance contractor proposed to be engaged by the Subordinated Lender in operating toll roads or highways and performing other projects; and/or (C) the background and reputation of the Subordinated Lender, its direct or indirect beneficial owners, any proposed managers or operating partners, each of their respective officers, directors and employees and each of their respective Affiliates. If the TIFIA Lender is not reasonably satisfied that the foregoing conditions are met, it may condition its consent on provision of reasonable additional security or other reasonable arrangements.

The Bond Proceeds Loan Agreement, in substance, permits the exercise of the EOD Change of Control Rights without consent of the Owners of the 2014 Bonds as long as (i) the provisions of the Subordination Agreement relating to the exercise of such rights described above are complied with and (ii) the Issuer and the Bond Trustee are provided with an opinion of nationally recognized municipal bond counsel in form and substance acceptable to them to the effect that the EOD Change of Control Rights the Subordinated Lender proposes to exercise would not have an adverse effect on the exemption of interest on the 2014 Bonds from Federal and State income taxes.

Under the Concession Agreement, HPTE has a right to approve any replacement of key personnel of the Concessionaire, which includes persons responsible for overall management of the Project, management and/or control of the Project's finances, Concessionaire's operations and maintenance and other areas. As such, HPTE's consent will be required if there are any changes in such key personnel in connection with the implementation of any remedial plan or other action taken by the Subordinated Lender pursuant to its EOD Change of Control Rights.

PROJECT ACCOUNTS AND FLOW OF FUNDS

Project Accounts and Subaccounts

Concessionaire Accounts. The following accounts are to be established and created under the MSA by the Concessionaire and will be maintained by the Security Trustee (such accounts, any sub-accounts thereof established and created from time to time as Project Accounts pursuant to the MSA, the "**Concessionaire Accounts**"):

(i) on or prior to the Effective Date, (A) the Project Proceeds Account and within such Project Account, the Bond Proceeds (Project Costs) Subaccount, the Bond Proceeds (Costs of Issuance) Subaccount, the TIFIA Phase 2 Loan Subaccount, the Project Revenue Subaccount, the Subordinated Debt Subaccount, the Equity Subaccount, the HPTE Capital Subaccount and the Termination Compensation Subaccount; (B) the Bonds Debt Service Reserve Account; (C) the TIFIA Phase 2 Debt Service Reserve Account; (D) the Rebate Account; (E) the Project O&M Account; (F) the Loss Proceeds Account; (G) the Joint Insurance Account; (H) the Bonds Redemption Account; (I) the Sinking Fund

Account; (J) the Concessionaire Cash Interest Subordinated Loan Proceeds Account; (K) the Concessionaire Cash Interest Subordinated Loan Debt Service Account; (L) the Concessionaire Cash Interest Subordinated Loan Prepayment Account; and (M) the Concessionaire Subordinated Loan Lock-Up Account;

(ii) on or prior to the Phase 1 Assumption Date, the TIFIA Phase 1 Debt Service Reserve Account;

(iii) on or prior to the Phase 2 Completion Date, (A) the HPTE Cashflow Sharing Account; (B) the Ramp Up Reserve Account; (C) the Cash Reserve Account; (D) the O&M Reserve Account; (E) the Major Maintenance Reserve Account; (F) the Equity Lock-up Account; and (G) the Concessionaire Distribution Account; and

(iv) on or prior to the date that is five years prior to the Expiration Date, the Handback Requirements Reserve Account.

Borrower Finco Accounts. The following accounts are to be established and created under the MSA by Borrower Finco and will be maintained by the Security Trustee (such accounts, any sub-accounts thereof established and created from time to time as Project Accounts pursuant to the MSA, the “**Borrower Finco Accounts**” and, together with the Concessionaire Accounts, the “**Project Accounts**”):

(i) on or prior to the Effective Date, (A) the Borrower Finco Senior Bonds Debt Service Account; (B) the Borrower Finco TIFIA Phase 1 Debt Service Account; (C) the Borrower Finco TIFIA Phase 2 Debt Service Account; (D) the Borrower Finco Subordinated Loan Debt Service Account; (E) the Borrower Finco Subordinated Loan Prepayment Account; and (F) the Borrower Finco Distribution Account;

(ii) on or prior to the Phase 1 Assumption Date, (A) the TIFIA Phase 1 Loan Prepayment Account; and (B) the TIFIA Phase 1 Revenue Share Account; and

(iii) on or prior to the Phase 2 Completion Date, (A) the TIFIA Phase 2 Loan Prepayment Account; and (B) the TIFIA Phase 2 Revenue Share Account.

Project Proceeds Account

Subaccounts. The following is a description of each of the Subaccounts within the Project Proceeds Account.

Project Revenue Subaccount. The Security Trustee will deposit into the Project Revenue Subaccount (A) all Project Revenues (other than any Interim Capital Payments), (B) all delay related liquidated damages and amounts payable on account of any Compensation Event and any other amounts received pursuant to or in connection with any Material Project Contract, including the Concession Agreement, (C) any interest or earnings on investments held in the Concessionaire Accounts (unless the MSA specifies that such interest is to be deposited into another Concessionaire Account) and (D) any other moneys received by the Security Trustee that are accompanied by written directions that such moneys are to be deposited into the Project Revenue Subaccount.

Bond Proceeds (Project Costs) Subaccount. The net proceeds of the Bond Proceeds Loan will be deposited into the Bond Proceeds (Project Costs) Subaccount in accordance with the terms of the Indenture and the MSA. Moneys on deposit in the Bond Proceeds (Project Costs) Subaccount will be utilized to pay for Project Costs relating to Phase 2 Work, subject to the provisions of the Tax

Regulatory Agreement. Any proceeds of the 2014 Bonds (and any earnings thereon) on deposit in the Bond Proceeds (Project Costs) Subaccount on the Phase 2 Completion Date will be transferred to the Borrower Finco Senior Bonds Debt Service Account and used to pay Debt Service on the Bond Proceeds Loan. Any proceeds of the 2014 Bonds (and any earnings thereon) on deposit in the Bond Proceeds (Project Costs) Subaccount five years and 30 days after the Closing Date will be transferred to the Borrower Finco Senior Bonds Debt Service Account and used to prepay all or a portion of the Bond Proceeds Loan.

Bond Proceeds (Costs of Issuance) Subaccount. A portion of the Bond Proceeds Loan will be deposited into the Bond Proceeds (Costs of Issuance) Subaccount in accordance with the terms of the MSA and the Indenture. Moneys on deposit in the Bond Proceeds (Costs of Issuance) Subaccount will be utilized only for the purpose of paying costs of issuing the 2014 Bonds. Interest and investment income earned on moneys on deposit in the Bond Proceeds (Costs of Issuance) Subaccount will be transferred to the Bond Proceeds (Project Costs) Subaccount. All amounts on deposit in the Bond Proceeds (Costs of Issuance) Subaccount on the date which is six months after the Closing Date will be transferred to the Bond Proceeds (Projects Costs) Subaccount.

TIFIA Phase 2 Loan Subaccount. The proceeds of each disbursement of the Phase 2 TIFIA Loan will be deposited into the TIFIA Phase 2 Loan Subaccount in accordance with the terms of the MSA and the Phase 2 TIFIA Loan Agreement. Moneys on deposit in the TIFIA Phase 2 Loan Subaccount will be used only for the purpose of paying Eligible Project Costs.

Subordinated Debt Subaccount. The proceeds of each disbursement of the Subordinated Loan and any draws on Subordinated Debt Letters of Credit will be deposited into the Subordinated Debt Subaccount in accordance with the terms of the MSA and the Subordinated Loan Agreement.

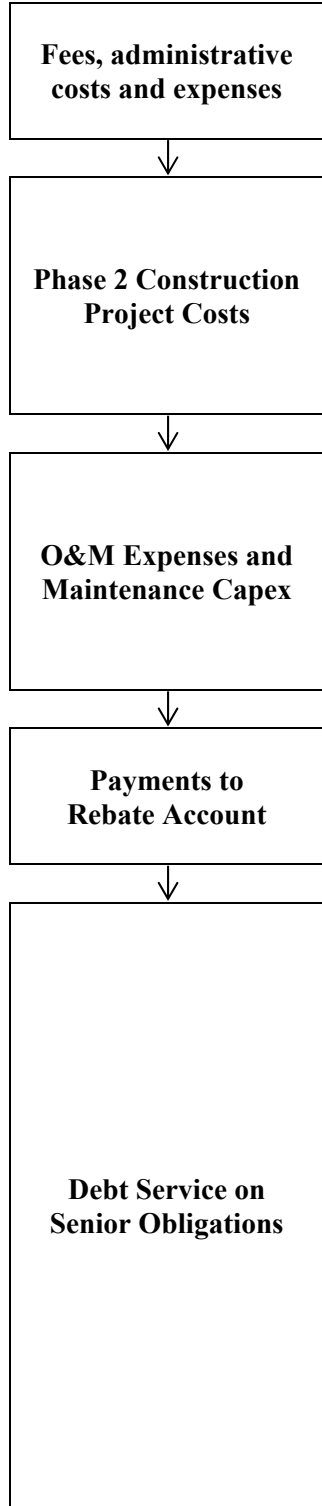
Equity Subaccount. The proceeds of the Equity Contribution (other than Subdebt Equity Cure Amounts) and the Permitted Affiliate Subordinated Debt, any draws on an Equity Letter of Credit and, on the Effective Date, the Supplemental Contribution Amount, will be deposited into the Equity Subaccount in accordance with the terms of the MSA.

HPTE Capital Subaccount. The proceeds of all Interim Capital Payments will be deposited into the HPTE Capital Subaccount in accordance with the terms of the MSA. Moneys in the HPTE Capital Subaccount will be utilized at the times contemplated in, and in the manner consistent with, the Concession Agreement.

Termination Compensation Subaccount. The proceeds of any payment of Termination Compensation or any other amounts received from HPTE under the Concession Agreement in respect of a termination of the Concession Agreement will be deposited into the Termination Compensation Subaccount.

Supplemental Contribution Amount. If on the Phase 2 Completion Date, all Reserve Accounts are fully funded as required under the Funding Documents, the Concessionaire may transfer from the Project Proceeds Account to the Concessionaire Distribution Account, an amount equal to the lesser of (i) the amount on deposit in the Project Proceeds Account at such time, and (ii) the Supplemental Contribution Amount.

Monthly Transfers from Project Proceeds Account. If an Event of Default under the MSA has not occurred and is continuing, the Security Trustee will transfer or disburse available moneys from the Project Proceeds Account on each Monthly Transfer Date (or, in the case of the transfers specified in clauses *fifth*, *seventh*, *tenth*, *twelfth* and *fifteenth*, on any other date that such amounts become due and payable) in the following order of priority:



first, to the Project O&M Account, in such amount as required to pay the fees, administrative costs and expenses then due and payable to the Security Trustee, the Bond Trustee, the Issuer, or any Nationally Recognized Rating Agency and the L/C Maintenance Fee;

second, prior to the Phase 2 Completion Date, to pay to the Design-Build Contractor any portion of the Contract Price (as defined in the Design-Build Contract) or other amounts then due and payable pursuant to the Design-Build Contract, and to pay any other Project Costs relating to Phase 2 Work (not including Debt Service) projected to be due and payable prior to the next Monthly Transfer Date (or to reimburse the Concessionaire for the payment of any such costs paid);

third, to the Project O&M Account, in an amount which (together with any amounts then on deposit in such Project Account) equals the sum of O&M Expenses and Maintenance Capex then due and payable or which are projected to become due and payable prior to the next Monthly Transfer Date (to the extent, in respect of Maintenance Capex, there are not sufficient funds on deposit in the Major Maintenance Reserve Account to make such payment);

fourth, to the Rebate Account in an amount which, together with any amounts then on deposit in such Project Account, equals the amount required to be on deposit in such Project Account pursuant to the MSA and any Tax Regulatory Agreement;

fifth,

(A) at all times prior to the Phase 2 Completion Date, if such Monthly Transfer Date is the Business Day immediately preceding a Debt Service Payment Date for the Concessionaire Bond Proceeds Loan to the Borrower Finco Senior Bonds Debt Service Account, an amount that equals the interest due and payable on the Concessionaire Bond Proceeds Loan on such Debt Service Payment Date;

(B) at all times from and after the Phase 2 Completion Date, on a pro rata basis:

(1) to the Borrower Finco Senior Bonds Debt Service Account, in an amount which equals the sum of (i) one-sixth of the interest due and payable on the Concessionaire Bond Proceeds Loan on the next Debt Service Payment Date for the Concessionaire Bond Proceeds Loan; and (ii) one-sixth of the principal of (including mandatory sinking fund payments) the Concessionaire Bond Proceeds Loan due and payable on the next Debt Service Payment Date on which principal on the Concessionaire Bond Proceeds Loan is payable; and

(2) from and after the Phase 1 Assumption Date, to the Borrower Finco TIFIA Phase 1 Debt Service Account in an amount which equals the sum of: (i) one-sixth of the interest due and payable on the Concessionaire TIFIA Phase 1 Loan on the next Debt Service Payment Date for the Concessionaire TIFIA Phase 1 Loan; and (ii) one-twelfth of the principal due and payable on the Concessionaire TIFIA Phase 1 Loan on the next Debt Service Payment Date on which principal on the Concessionaire TIFIA Phase 1 Loan is payable; and

(3) to the Applicable Senior Creditors, an amount equal to the sum of:

(i) (x) in the case of Additional Senior Obligations with semi-annual interest payment dates, one-sixth of the interest due and payable on such Additional Senior Obligations on the next Debt Service Payment Date in respect thereof after such Monthly Transfer Date and (y) in the case of Additional Senior Obligations with quarterly interest payment dates, one-third of the interest due and payable on such Additional Senior Obligations on the next Debt Service Payment Date in respect thereof; and

(ii) (x) in the case of Additional Senior Obligations with semi-annual principal payment dates, one-sixth of the principal due and payable on such Additional Senior Obligations on the next Debt Service Payment Date on which principal on such Additional Senior Obligations is payable, that occurs after such Monthly Transfer Date, (y) in the case of Additional Senior Obligations with quarterly principal payments, one-third of the amount of principal due and payable on such Additional Senior Obligations on the next Debt Service Payment Date on which principal on such Additional Senior Obligations is payable, that occurs after such Monthly Transfer Date, and (z) in the case of Additional Senior Obligations with annual principal payment dates, an amount equal to one-twelfth of the principal due and payable on such Additional Senior Obligations on the next Debt Service Payment Date on which principal on such Additional Senior Obligations is payable.

sixth, if the Bonds Debt Service Reserve Account contains less than the Bonds Debt Service Reserve Requirement applicable at such time, if any, or, at any time after the Phase 1 Assumption Date, the TIFIA Phase 1 Debt Service Reserve Account contains less than the TIFIA Phase 1 Debt Service Reserve Requirement applicable at such time, if any, to (A) the Bonds Debt Service Reserve Account in an amount equal to the amount required to satisfy any such deficiency and (B) the TIFIA Phase 1 Debt Service Reserve Account, in an amount equal to the amount required to satisfy any such deficiency, and if there are insufficient funds to make the transfers contemplated in (A) and (B) of this paragraph, to the Bonds Debt Service Reserve Account and the TIFIA Phase 1 Debt Service Reserve Account, on a *pro rata* basis (calculated based on the proportion that the relevant deficiency with respect to the Bonds Debt Service Reserve Account and the TIFIA Phase 1 Debt Service Reserve Account, respectively, on the relevant Monthly Transfer Date bears to the aggregate amount of such deficiency on such date);

**Senior
Debt Service
Reserve Accounts
Shortfalls**

**TIFIA Phase 2
Mandatory Debt
Service**



**O&M Reserve
Account Shortfalls**



**Major Maintenance
Reserve Account
Shortfalls**



**TIFIA Phase 2
Scheduled Debt
Service**



**TIFIA Phase 2 Debt
Service Reserve
Account Shortfalls**



**Cash Reserve
Account Shortfalls**



**Extraordinary
Mandatory
Redemption for
Determination of
Taxability**

seventh, commencing on the Monthly Transfer Date occurring six months and one day prior to the first Debt Service Payment Date for the Concessionaire TIFIA Phase 2 Loan to the Borrower Finco TIFIA Phase 2 Debt Service Account in an amount which equals the sum of: (A) one-sixth of the interest due and payable on the Concessionaire TIFIA Phase 2 Loan on the next Debt Service Payment Date with respect to TIFIA Phase 2 Mandatory Debt Service; and (B) an amount equal to one-sixth of the principal due and payable on the Concessionaire TIFIA Phase 2 Loan on the next Debt Service Payment Date on which TIFIA Phase 2 Mandatory Debt Service is payable;

eighth, if the O&M Reserve Account contains less than the O&M Reserve Requirement applicable at such time, if any, to the Project O&M Reserve Account in an amount equal to the amount required to satisfy any such deficiency;

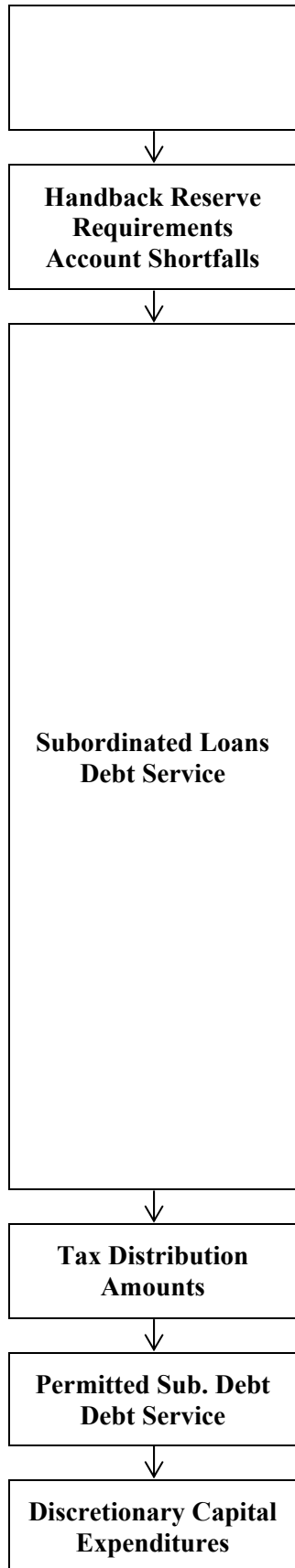
ninth, if the Major Maintenance Reserve Account contains less than the Major Maintenance Reserve Requirement applicable at such time, if any, to the Major Maintenance Reserve Account in an amount equal to the amount required to satisfy any such deficiency;

tenth, commencing on the Monthly Transfer Date occurring six months and one day prior to the first Debt Service Payment Date for the Concessionaire TIFIA Phase 2 Loan to the Borrower Finco TIFIA Phase 2 Debt Service Account in an amount which, together with any amounts deposited on such date to such Project Account pursuant to paragraph seven above, equals the sum of: (A) one-sixth of the interest due and payable on the Concessionaire TIFIA Phase 2 Loan on the next Debt Service Payment Date with respect to TIFIA Phase 2 Scheduled Debt Service; and (B) an amount equal to one-sixth of the principal due and payable on the Concessionaire TIFIA Phase 2 Loan on the next Debt Service Payment Date on which TIFIA Phase 2 Scheduled Debt Service is payable;

eleventh, if the TIFIA Phase 2 Debt Service Reserve Account contains less than the TIFIA Phase 2 Debt Service Reserve Requirement applicable at such time, if any, to the TIFIA Phase 2 Debt Service Reserve Account in an amount equal to the amount required to satisfy any such deficiency;

twelfth, if the Cash Reserve Account contains less than the Cash Reserve Requirement applicable at such time, if any, to the Cash Reserve Account in an amount equal to the amount required to satisfy any such deficiency;

thirteenth, to the Borrower Finco Senior Bonds Debt Service Account in an amount equal to the principal and interest due and payable on the Concessionaire Bond Proceeds Loan in connection with any extraordinary mandatory redemption of the 2014 Bonds in connection with a Determination of Taxability; provided that no such amount will be transferred pursuant to this clause unless the Bond Trustee has notified the Security Trustee that there has been a failure of the Bond Trustee and the Designated Representatives (as defined in the Intercreditor Agreement) representing the Required Senior Creditors to reach agreement pursuant to the Intercreditor Agreement with



respect to the exercise of an Enforcement Action by the Security Trustee following the occurrence of a Fundamental Senior Bond Event of Default, which has occurred as a result of the failure of the Borrower Finco to prepay the Bond Proceeds Loan following a Determination of Taxability;

fourteenth, if the Handback Reserve Requirements Account contains less than the amounts required to be on deposit therein pursuant to the MSA, at such time, if any, to the Handback Reserve Requirements Account in an amount equal to the amount required to satisfy any such deficiency;

fifteenth, commencing on the Monthly Transfer Date occurring six months and one day prior to the Subordinated Debt Service Payment Commencement Date, on a pro rata basis:

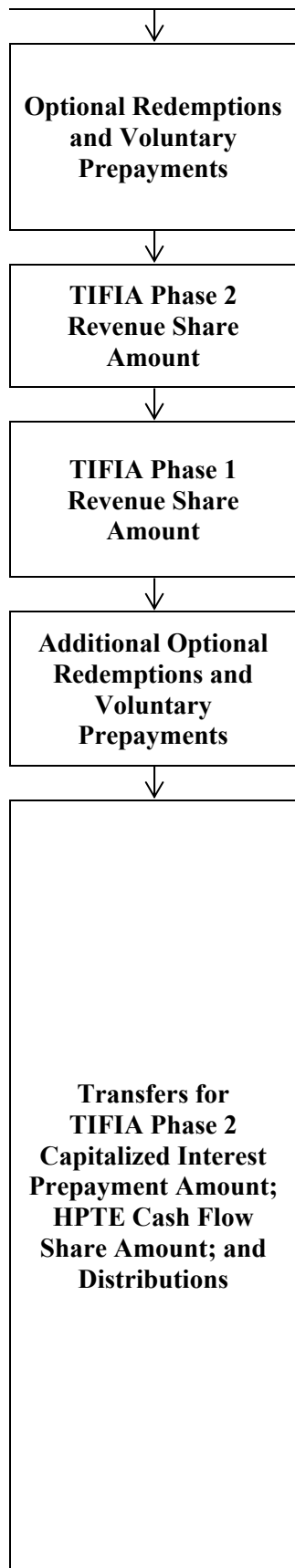
(A) to the Borrower Finco Subordinated Loan Debt Service Account in an amount which equals the sum of: (1) one-sixth of the interest due and payable on the Concessionaire Subordinated Loan on the next Debt Service Payment Date for the Concessionaire Subordinated Loan; (2) one-sixth of the principal due and payable on the Concessionaire Subordinated Loan on the next Debt Service Payment Date on which principal on the Concessionaire Subordinated Loan is payable; and (3) an amount which, when aggregated with all other amounts transferred for such purpose and currently on deposit in the Borrower Finco Subordinated Loan Debt Service Account, equals the Scheduled Subordinated Debt Service Catch-up Amount required to be paid on the next Debt Service Payment Date applicable to the Subordinated Loan; and

(B) to Concessionaire Cash Interest Subordinated Loan Debt Service Account in an amount which equals the sum of: (1) one-sixth of the interest due and payable on the Concessionaire Cash Interest Subordinated Loan on the next Debt Service Payment Date for the Concessionaire Cash Interest Subordinated Loan; (2) one-sixth of the principal due and payable on the Concessionaire Cash Interest Subordinated Loan on the next Debt Service Payment Date on which principal on the Concessionaire Cash Interest Subordinated Loan is payable; and (3) an amount which, when aggregated with all other amounts transferred for such purpose and currently on deposit in the Concessionaire Cash Interest Subordinated Loan Debt Service Account, equals the Scheduled Subordinated Debt Service Catch-up Amount required to be paid on the next Debt Service Payment Date applicable to the Secondary Subordinated Loan.

sixteenth, to the Equity Member in an amount equal to any Tax Distribution Amounts payable at such time to the Sponsor or its Affiliates in connection with the Project;

seventeenth, to pay any amounts of Debt Service owing in respect of Permitted Subordinated Debt, if any;

eighteenth, to pay Discretionary Capital Expenditures so long as the Restricted Payment Conditions have been satisfied;



nineteenth, optional redemptions and voluntary prepayments (other than in connection with the incurrence of Refinancing Indebtedness) of the Concessionaire Bond Proceeds Loan and the Phase 1 TIFIA Loan (on a *pro rata* basis), provided that the amount of any prepayment of the Phase 1 TIFIA Loan made pursuant to this paragraph will be considered available for purposes of paying the TIFIA Phase 1 Revenue Share Amount;

twentieth, to the TIFIA Phase 2 Revenue Share Account, in an amount which, together with any amounts then on deposit in such Project Account, equal the TIFIA Phase 2 Revenue Share Amount calculated at such time;

twenty-first, to the TIFIA Phase 1 Revenue Share Account, in an amount which, together with (A) any amounts then on deposit in such Project Account, and (B) any amounts of the Phase 1 TIFIA Loan prepaid pursuant to paragraph nineteen equal the TIFIA Phase 1 Revenue Share Amount calculated at such time;

twenty-second, optional redemptions and voluntary prepayments (other than in connection with the incurrence of Refinancing Indebtedness) of the Concessionaire Bond Proceeds Loan, the Phase 1 TIFIA Loan and the Phase 2 TIFIA Loan (other than as contemplated in paragraph nineteen above); and

twenty-third, from and after the TIFIA Debt Service Payment Commencement Date, on any Distribution Date, after the disbursements and transfers pursuant to paragraphs (i) through (xxii) above have been made:

(A) if the Restricted Payment Conditions are satisfied as of the Calculation Date occurring on or immediately preceding such Distribution Date, the balance in the Project Proceeds Account will be distributed as follows:

(1) on the first such Distribution Date only (if such Distribution Date falls within two years following the TIFIA Phase 2 Debt Service Payment Commencement Date), to the TIFIA Phase 2 Loan Prepayment Account, in an amount equal to the lesser of: (i) the TIFIA Phase 2 Capitalized Interest Prepayment Amount and (ii) 12.5% of the amount on deposit in the Project Proceeds Account at such time,

(2) thereafter, to the HPTE Cash Flow Sharing Account, the HPTE Cash Flow Share Amount;

(3) on the first such Distribution Date on or after the Subordinated Debt Service Payment Commencement Date, on a *pro rata* basis: (i) to the Borrower Finco Subordinated Loan Prepayment Account, in an amount equal to the greater of (A) that portion of the Subordinated Loan then required to be prepaid pursuant to the Subordinated Loan Agreement, and (B) the amount Borrower Finco expects, acting reasonably, to be due and payable under the Subordinated Loan Agreement on the next Subordinated Debt Service Payment Date; and (ii) to the Concessionaire Cash Interest Subordinated Loan Prepayment Account in an amount equal to the greater of (A) that portion of the Secondary Subordinated Loan then required to be prepaid pursuant to the Secondary Subordinated Loan Agreement and (B) the amount the

Concessionaire expects, acting reasonably, to be due and payable under the Secondary Subordinated Loan Agreement on the next Subordinated Debt Service Payment Date; and

(4) thereafter, if the Subordinated Loan Restricted Payment Conditions are satisfied as of the Calculation Date occurring on or immediately preceding such Distribution Date and such Distribution Date occurs on or after the Subordinated Debt Service Payment Commencement Date, the balance in the Project Proceeds Account will be (i) first, be applied to the payment of the Phase 2 Completion Success Fee and (ii) thereafter, transferred to the Concessionaire Distribution Account; provided that if the Subordinated Loan Restricted Payment Conditions are not satisfied as of such Calculation Date, the balance in the Project Proceeds Account will be transferred to the Concessionaire Subordinated Loan Lock-Up Account; and

(B) if the Restricted Payment Conditions are satisfied as of the Calculation Date occurring on or immediately preceding such Distribution Date or such Distribution Date occurs prior to the Subordinated Debt Service Payment Commencement Date, the balance in the Project Proceeds Account will be transferred to the Equity Lock-up Account.

Payment of Construction Costs from Project Proceeds Account. Prior to the Phase 2 Completion Date, moneys in the Bond Proceeds (Project Costs) Subaccount and the HPTE Capital Subaccount will be disbursed by the Security Trustee to the Concessionaire to pay, or reimburse for a prior payment of construction related Project Costs, subject to receipt by the Security Trustee of the following: (a) a Funds Transfer Certificate setting forth, among other things, the amount of Project Costs requested to be disbursed from the Project Proceeds Account; (b) a certificate of the Concessionaire stating that (i) the amount requested to be disbursed is in respect of construction related Project Costs due and owing or in reimbursement of construction related Project Costs that have not been paid with funds disbursed from the Project Proceeds Account pursuant to a prior Funds Transfer Certificate and such amount will not be used to pay costs of issuance, (ii) all the Concessionaire's representations and warranties set out in the Security Documents and in the Bond Proceeds Loan Agreement (in case of a transfer from the Bond Proceeds (Project Costs) Subaccount) are true and correct in all material respects on the date of the Funds Transfer Certificate (other than any representations and warranties that are made as at a specific date), (iii) no Event of Default has occurred and is continuing or occurs as a result of the disbursement of moneys requested in the Funds Transfer Certificate and (iv) the amounts requisitioned from the Bond Proceeds (Project Costs) Subaccount will be expended only in accordance with and subject to the limitations set forth in the Tax Regulatory Agreement; and (c) a certificate of the Independent Engineer stating that (i) sufficient funds are available to the Concessionaire to achieve Phase 2 Work Completion; (ii) there has not been an abandonment of the Phase 2 Work; (iii) there is reasonable evidence that Phase 2 Work Completion will occur on or prior to the Full Services Commencement Longstop Date; and (iv) the amounts being requested to be transferred out of the Project Proceeds Account in the applicable Funds Transfer Certificate are for the payment of Project Costs which have been incurred or for reimbursement of Project Costs that have been paid by, and are reimbursable to, the Concessionaire.

Use of Moneys Received from Exercise of Remedies

Upon the occurrence of any Event of Default, moneys received by the Security Trustee resulting from the exercise of remedies, including any Termination Compensation received following the termination of the Concession Agreement will be applied in the following order of priority subject to the terms of the Intercreditor Agreement:

- (i) *first*, to the payment of Trustee Fees and Expenses;

(ii) *second*, to the payment of other O&M Expenses and Maintenance Capex on the instructions of the Intercreditor Agent acting at the direction of the Required Senior Creditors;

(iii) *third*, moneys will be transferred to the Borrower Finco Senior Bonds Debt Service Account, the Borrower Finco TIFIA Phase 1 Debt Service Account (from and after the Phase 1 Assumption Date) and, if a TIFIA Parity Trigger Event has occurred, the Borrower Finco TIFIA Phase 2 Debt Service Account, for application to the payment of outstanding Borrower Finco Senior Bond Obligations, Borrower Finco TIFIA Phase 1 Obligations (from and after the Phase 1 Assumption Date), and, if a TIFIA Parity Trigger Event has occurred, Borrower Finco TIFIA Phase 2 Obligations on a *pro rata* basis based on the ratio of the outstanding amount of each of Borrower Finco Senior Bond Obligations, Borrower Finco TIFIA Phase 1 Obligations (from and after the Phase 1 Assumption Date), and, if a TIFIA Parity Trigger Event has occurred, Borrower Finco TIFIA Phase 2 Obligations respectively, to the sum of outstanding amounts of Borrower Finco Senior Bond Obligations, Borrower Finco TIFIA Phase 1 Obligations (from and after the Phase 1 Assumption Date) and, if a TIFIA Parity Trigger Event has occurred, Borrower Finco TIFIA Phase 2 Obligations on such date;

(iv) *fourth*, if no TIFIA Parity Trigger Event has occurred, moneys will be transferred to the Borrower Finco TIFIA Phase 2 Debt Service Account for application to the payment of outstanding Borrower Finco TIFIA Phase 2 Obligations (whether or not such amounts have become due and payable);

(v) *fifth*, moneys will be transferred on a pro rata basis, to the Concessionaire Cash Interest Subordinated Loan Debt Service Account and the Borrower Finco Subordinated Loan Debt Service Account, for application to the payment of outstanding Concessionaire Cash Interest Subordinated Loan Obligations and Borrower Finco Subordinated Loan Obligations (in each case, whether or not such amounts have become due and payable);

(vi) *sixth*, money will be transferred to the applicable Project Account, for application to the payment of Permitted Subordinated Debt, if any; and, following the transfers to the applicable Project Accounts described in clauses third through sixth above: (A) moneys in the Borrower Finco Senior Bonds Debt Service Account will be used to pay outstanding Borrower Finco Senior Bond Obligations; (B) moneys in the Borrower Finco TIFIA Phase 1 Debt Service Account will be used to pay outstanding Borrower Finco TIFIA Phase 1 Obligations; (C) moneys in the Borrower Finco TIFIA Phase 2 Loan Debt Service Account will be used to pay outstanding Borrower Finco TIFIA Phase 2 Obligations; (D) moneys in the Concessionaire Cash Interest Subordinated Loan Debt Service Account will be used to pay outstanding Concessionaire Cash Interest Subordinated Loan Obligations; (E) moneys in the Borrower Finco Subordinated Loan Debt Service Account will be used to pay outstanding Borrower Finco Subordinated Loan Obligations; and (F) moneys in the applicable Project Account with respect to Permitted Subordinated Debt will be used to pay outstanding Secured Obligations with respect to such Permitted Subordinated Debt; and

(vii) *seventh*, following the transfers set forth in clauses (i) through (vi) above taking place, and the payment in full of cash of all Secured Obligations, any remaining moneys held by the Security Trustee will be paid to each Obligor or to whomever may be lawfully entitled to receive the same.

If moneys that are available to pay Borrower Finco Secured Obligations or Concessionaire Secured Obligations, as the case may be, are not sufficient to pay 100% of a given class of Secured Obligations at the relevant level set forth above, such moneys will be used to pay portions of such obligations in the following order of priority:

(i) *First*, to pay interest due on such obligations. If the amount available is not sufficient to pay all of any particular instalment of interest due on such obligations, the amount available will be paid ratably, based on the ratio of the amount due to each payee to the total amount due to all payees.

(ii) *Second*, to pay principal due on such obligation. If the amount available is not sufficient to pay all of any particular installment of principal due on such obligations, the amount available will be paid ratably, based on the ratio of the amount due to each payee to the total amount due to all payees.

(iii) *Third*, to pay all such other obligations due. If the amount available is not sufficient to pay all such other obligations, the amount available will be paid ratably, based on the ratio of the amount due to each payee thereof to the total amount due to all such payees.

Debt Service Accounts

Deposits into Debt Service Accounts. Pursuant to the terms of the MSA, the Security Trustee will deposit into the appropriate Debt Service Account: (i) moneys transferred to such Debt Service Account from the Project Proceeds Account; (ii) any moneys transferred to such Debt Service Account as described in “– Extraordinary Deposits into Debt Service Accounts;” (iii) any moneys deposited into such Debt Service Account following an Event of Default under the MSA; and (iv) any other moneys received by the Security Trustee that are accompanied by written directions that such moneys are to be deposited into such Debt Service Account.

Extraordinary Deposits into Debt Service Accounts. If on any Debt Service Payment Date for the Bonds Proceeds Loan, the Phase 1 TIFIA Loan, the Phase 2 TIFIA Loan or the Subordinated Loans the amount on deposit in the applicable Debt Service Account, determined after taking into account all amounts transferred to such Debt Service Account on or prior to such date, is not sufficient to pay the Debt Service on the Bonds Proceeds Loan, Debt Service on the Phase 1 TIFIA Loan, the TIFIA Phase 2 Mandatory Debt Service, or Debt Service on the Subordinated Loans, as applicable due on such date, then the Security Trustee will transfer available moneys to such Debt Service Account (or to the Subordinated Agent, if applicable) from other Project Accounts and Subaccounts, to the extent moneys are available in such Project Accounts and Subaccounts in the manner and the order described below in an amount which, together with other moneys then on deposit in such Debt Service Account, is sufficient to pay the Debt Service on the Bonds Proceeds Loan, Debt Service on the Phase 1 TIFIA Loan, the TIFIA Phase 2 Mandatory Debt Service, or Debt Service on the Subordinated Loans, as applicable, due on such date:

(i) ***Transfers from Ramp Up Reserve Account for Senior Debt Service.*** Available moneys will be transferred to the Borrower Finco Senior Bonds Debt Service Account and, from and after the Phase 1 Assumption Date, the Borrower Finco TIFIA Phase 1 Debt Service Account, on a pro rata basis (calculated based on the proportion that the relevant deficiency with respect to the Bond Proceeds Loan and the Phase 1 TIFIA Loan, respectively, on the relevant Debt Service Payment Date bears to the aggregate amounts of the Bond Proceeds Loan deficiency and the Phase 1 TIFIA Loan deficiency on such date) from the Ramp Up Reserve Account;

(ii) ***Transfers to Borrower Finco Senior Bonds Debt Service Account.*** After application of moneys in the Ramp Up Reserve Account in accordance with paragraph (i) above, available moneys will be transferred to the Borrower Finco Senior Bonds Debt Service Account from the Bonds Debt Service Reserve Account;

(iii) ***Transfers to TIFIA Phase 1 Debt Service Account.*** After application of moneys in the Ramp Up Reserve Account in accordance with paragraph (i) above, available moneys will be transferred to the Borrower Finco TIFIA Phase 1 Debt Service Account, from and after the Phase 1 Assumption Date, from the TIFIA Phase 1 Debt Service Reserve Account.

(iv) ***Transfers from Ramp Up Reserve Account for TIFIA Phase 2 Loan Debt Service Account.*** After application of moneys in accordance with paragraphs (i), (ii) and (iii) above,

available moneys will be transferred to the Borrower Finco TIFIA Phase 2 Loan Debt Service Account from the Ramp Up Reserve Account.

(v) ***Transfers to the Borrower Finco TIFIA Phase 2 Debt Service Account.*** After application of moneys in the Ramp Up Reserve Account in accordance with paragraph (iv) above, available moneys will be transferred to the Borrower Finco TIFIA Phase 2 Debt Service Account from the TIFIA Phase 2 Debt Service Reserve Account.

(vi) ***Transfers to the Borrower Finco Senior Bonds Debt Service Account and the Borrower Finco TIFIA Phase 1 Debt Service Account.*** After application of moneys in accordance with paragraphs (i), (ii) and (iii) above, available moneys will be transferred to the Borrower Finco Senior Bonds Debt Service Account and, from and after the Phase 1 Assumption Date, the Borrower Finco TIFIA Phase 1 Debt Service Account, on a *pro-rata basis* (calculated based on the proportion that the relevant deficiency with respect to the Bond Proceeds Loan and the Phase 1 TIFIA Loan, respectively, on the relevant Debt Service Payment Date bears to the aggregate amount of the Bond Proceeds Loan deficiency and the TIFIA Phase 1 deficiency on such date) from the following sources in the order of priority and subject to the limitations set forth below: (A) *first*, from the Equity Lock-up Account; (B) *second*, from the Project O&M Account, provided that no such transfer will occur, or if transfers have been made such transfers will cease, when the remaining balance in the Project O&M Account is equal to or less than the amount budgeted to pay O&M Expenses for the two calendar months immediately following the Monthly Transfer Date immediately preceding such Debt Service Payment Date; (C) *third*, from the O&M Reserve Account; (D) *fourth*, from the Major Maintenance Reserve Account, provided that (i) no such transfer will occur if the balance in the Major Maintenance Reserve Account is equal to or less than, or (ii) if transfers have been made such transfers will cease, when the remaining balance in the Major Maintenance Reserve Account is (in case of either (i) or (ii)) equal to the aggregate of (1) the amounts budgeted to pay Maintenance Capex payable within the next following 12 months and (2) the amount budgeted for any Non-Separable Tasks; and (E) *fifth*, from the Concessionaire Distribution Account (only to the extent of moneys on deposit therein that have remained on deposit therein for five consecutive days or longer).

(vii) ***Transfers to the Borrower Finco TIFIA Phase 2 Debt Service Account.*** After application of moneys in accordance with paragraphs (iv) through (vi) above, available moneys will be transferred to the Borrower Finco TIFIA Phase 2 Debt Service Account from the following sources in the order of priority and subject to the limitations set forth below: (A) *first*, from the Equity Lock-up Account; (B) *second*, from the Project O&M Account, provided that no such transfer will occur, or if transfers have been made such transfers will cease, when the remaining balance in the Project O&M Account is equal to or less than the amount budgeted to pay O&M Expenses for the two calendar months immediately following the Monthly Transfer Date immediately preceding such Debt Service Payment Date; (C) *third*, from the O&M Reserve Account; (D) *fourth*, from the Major Maintenance Reserve Account, provided that (i) no such transfer will occur if the balance in the Major Maintenance Reserve Account is equal to or less than, or (ii) if transfers have been made such transfers will cease, when the remaining balance in the Major Maintenance Reserve Account is (in case of either (i) or (ii)) equal to the aggregate of (1) the amounts budgeted to pay Maintenance Capex payable within the next following 12 months and (2) the amount budgeted for any Non-Separable Tasks; and (E) *fifth*, from the Concessionaire Distribution Account (only to the extent of moneys on deposit therein that have remained on deposit therein for five consecutive days or longer).

(viii) ***Debt Service on Subordinated Loans.*** Available moneys will be paid from the Borrower Finco Subordinated Loan Debt Service Account to the Subordinated Agent in payment of Debt Service due and payable on the Secondary Subordinated Loan. Available moneys will be paid from the Concessionaire Cash Interest Subordinated Loan Debt Service Account to the Subordinated Agent in

payment of Debt Service due and payable on the Subordinated Loan. Available moneys will be paid from the Concessionaire Subordinated Loan Lock-up Account to (A) the Subordinated Agent on account of Debt Service then due and payable on the Secondary Subordinated Loan and (B) the Subordinated Agent on account of Debt Service then due and payable on the Subordinated Loan, on a pro rata basis, after application of moneys in accordance with the two previous sentences. After such transfer from the Subordinated Loan Lock-up Account, available moneys will be transferred to such Debt Service Accounts on a pro rata basis from: (A) first, at any time after the discharge of Senior Obligations, from the Equity Lock-up Account; and (B) second, from the Concessionaire Distribution Account (only to the extent of moneys on deposit therein that have remained on deposit therein for five consecutive days or longer).

Use of Moneys in Debt Service Accounts. Available moneys in each Debt Service Account will be used, subject to any restrictions on the use of such moneys set forth in any Tax Regulatory Agreement (in case of the Borrower Finco Senior Bonds Debt Service Account) and provided that moneys held in a Debt Service Account following an Event of Default under the MSA will be used as described under “– Use of Moneys Received From Exercise of Remedies” above, solely for the payment of: (i) in the case of the Borrower Finco Senior Bonds Debt Service Account, the Debt Service on the Bond Proceeds Loan; (ii) in the case of the Borrower Finco TIFIA Phase 1 Debt Service Account, the Debt Service on the Phase 1 TIFIA Loan; (iii) in the case of the Borrower Finco TIFIA Phase 2 Debt Service Account, the Debt Service on the Phase 2 TIFIA Loan; (iv) in the case of the Borrower Finco Subordinated Loan Debt Service Account, the Debt Service on the Subordinated Loan and the Debt Service on the Secondary Subordinated Loan; and (v) in the case of the Concessionaire Cash Interest Subordinated Loan Debt Service Account, the Debt Service on the Secondary Subordinated Loan.

Debt Service Reserve Accounts

Bonds Debt Service Reserve Account

Deposits into Bonds Debt Service Reserve Account. The following funds will be deposited into the Bonds Debt Service Reserve Account: (i) on the Monthly Transfer Date immediately preceding the Planned Full Services Commencement Date (as such date may be extended pursuant to the Concession Agreement), an amount equal to the projected amount of interest due and payable on the Bond Proceeds Loan during the twelve month period thereafter; and (ii) thereafter on each subsequent Monthly Transfer Date, to the extent moneys are available therefor after application of funds in the Project Proceeds Account, moneys transferred from the Project Proceeds Account in sufficient amounts such that the amount on deposit in the Bond Debt Service Reserve Account is equal to the projected amount of interest due and payable on the Bond Proceeds Loan during the 12 month period thereafter (together, the “**Bonds Debt Service Reserve Requirement**”).

Use of Moneys in Bonds Debt Service Reserve Account. Available moneys in the Bonds Debt Service Reserve Account will be used as follows: (i) if no Event of Default has occurred and is continuing, (A) moneys on deposit in such Project Account will be transferred to the Borrower Finco Senior Bonds Debt Service Account; (B) upon a redemption of Senior Bonds, moneys on deposit in such Project Account attributable to such series of Senior Bonds will be released to pay the Redemption Price for such series of Senior Bonds to the extent of a deficiency in funding the Bonds Debt Service Account up to the Bonds Debt Service Reserve Requirement applicable at such time; and (C) any amount on deposit in the Bonds Debt Service Reserve Account that exceeds the Bonds Debt Service Reserve Requirement at any time will be transferred to the Project Revenue Subaccount of the Project Proceeds Account; and (ii) if an Event of Default has occurred and is continuing, moneys in the Bonds Debt Service Reserve Account will be used as provided under “SECURITY AND SOURCES OF PAYMENT FOR 2014 BONDS – MSA – Use of Moneys Received from Exercise of Remedies.”

TIFIA Phase 1 Debt Service Reserve Account

Deposits into TIFIA Phase 1 Debt Service Reserve Account. The following funds will be deposited into the TIFIA Phase 1 Debt Service Reserve Account: (i) on the Phase 1 Assumption Date, HPTE will direct the Master Trustee to transfer from amounts then on deposit in the debt service reserve account under the Amended and Restated Master Indenture to the TIFIA Phase 1 Debt Service Reserve Account an amount equal to \$1,595,000; and (ii) thereafter on each Monthly Transfer Date, to the extent moneys are available therefor after application of funds in the Project Proceeds Account, moneys transferred from the Project Proceeds Account up to an amount equal to the maximum amount of principal and interest due and payable on the Phase 1 TIFIA Loan during any fiscal 12 month period occurring in the four-year period thereafter (the amount required to be on deposit in the TIFIA Phase 1 Debt Service Reserve Account pursuant to subsections (i) or (ii) above, as applicable referred to in each case as the “**TIFIA Phase 1 Debt Service Reserve Requirement**”).

Use of Moneys in TIFIA Phase 1 Debt Service Reserve Account. Available moneys in the TIFIA Phase 1 Debt Service Reserve Account will be used as follows: (i) if no Event of Default has occurred and is continuing, (A) moneys on deposit in such Project Account will be transferred to the Borrower Finco TIFIA Phase 1 Debt Service Account; and (B) any amount on deposit in the TIFIA Phase 1 Debt Service Reserve Account that exceeds the TIFIA Phase 1 Debt Service Reserve Requirement at any time will be transferred to the Project Revenue Subaccount of the Project Proceeds Account; and (ii) if an Event of Default has occurred and is continuing, moneys in the TIFIA Phase 1 Debt Service Reserve Account will be used as provided under “SECURITY AND SOURCES OF PAYMENT FOR 2014 BONDS – MSA – Use of Moneys Received from Exercise of Remedies.”

TIFIA Phase 2 Debt Service Reserve Account

Deposits into TIFIA Phase 2 Debt Service Reserve Account. The following funds will be deposited into the TIFIA Phase 2 Debt Service Reserve Account: (i) on the TIFIA Phase 2 Debt Service Payment Commencement Date, the TIFIA Phase 2 Debt Service Reserve Account will be funded by way of transfer of moneys on deposit in the Ramp Up Reserve Account up to an amount equal to the TIFIA Phase 2 Debt Service Reserve Requirement applicable at such time or, to the extent there are insufficient funds on deposit therein, by way of transfer of moneys from the Equity Lock-Up Account; and (ii) thereafter on each Monthly Transfer Date, to the extent moneys are available therefor after application of funds in the Project Proceeds Account moneys transferred from the Project Proceeds Account up to an amount equal to the TIFIA Phase 2 Debt Service Reserve Requirement applicable at such time.

Use of Moneys in TIFIA Phase 2 Debt Service Reserve Account. Available moneys in the TIFIA Phase 2 Debt Service Reserve Account will be used as follows: (i) if no Event of Default has occurred and is continuing, (A) moneys on deposit in such Project Account will be transferred to the Borrower Finco TIFIA Phase 2 Debt Service Account; and (B) any amount on deposit in the TIFIA Phase 2 Debt Service Reserve Account that exceeds the TIFIA Phase 2 Debt Service Reserve Requirement at any time will be transferred to the Project Revenue Subaccount of the Project Proceeds Account; and (ii) if an Event of Default has occurred and is continuing, moneys in the TIFIA Phase 2 Debt Service Reserve Account will be used as provided under “SECURITY AND SOURCES OF PAYMENT FOR 2014 BONDS – MSA – Use of Moneys Received from Exercise of Remedies.”

Sinking Fund Account

Deposits into Sinking Fund Account. The following funds will be deposited into the Sinking Fund Account:

(i) No later than 30 days after any Calculation Date from and after the fifth anniversary of the Phase 2 Completion Date, the Concessionaire will furnish to the Security Trustee a certificate of an Authorized Officer of the Concessionaire as to the Loan Life Coverage Ratio as of such Calculation Date and for each future Calculation Date through the latest Final Maturity Date (based on a revenue forecast determined in accordance with the most recent Base Case Financial Model), together with reasonably detailed information and calculations attached thereto supporting such certification (the “**Sinking Fund Certificate**”).

(ii) If any such Sinking Fund Certificate shows that the Loan Life Coverage Ratio as of the applicable Calculation Date or any such future Calculation Date is less than 1.30:1.00, the Concessionaire will, within one Business Day following the date of delivery of the Sinking Fund Certificate (each such date, a “**Sinking Fund Transfer Date**”), cause to be transferred from the Equity Lock-up Account to the Sinking Fund Account such amounts which, when applied to prepay the Borrower Finco Senior Obligations will cause the Loan Life Coverage Ratio as of such Calculation Date and each future Calculation Date through the latest Final Maturity Date to be greater than or equal to 1.30:1.00 (each, a “**Sinking Fund Amount**”). On each Sinking Fund Transfer Date occurring thereafter until (and excluding) the first Sinking Fund Transfer Date as of which the Loan Life Coverage Ratio for such Calculation Date and all future Calculation Dates is 1.30:1.00 or greater, the Concessionaire will continue to deposit additional Sinking Fund Amounts into the Sinking Fund Account in accordance with the immediately preceding sentence.

Use of Moneys in Sinking Fund Account. Available moneys in the Sinking Account will be used as follows:

(i) If, following the deposit of any Sinking Fund Amount into the Sinking Fund Account, the Loan Life Coverage Ratio is less than 1.30:1.00 for six consecutive Calculation Dates, Borrower Finco will instruct the Security Trustee to withdraw funds equal to such Sinking Fund Amount (but not any Sinking Fund Amount subsequently deposited into the Sinking Fund Account) from the Sinking Fund Account and apply such funds to the prepayment of Borrower Finco Senior Obligations and Borrower Finco TIFIA Phase 2 Obligations as follows: (i) first, to the payment of outstanding Borrower Finco Senior Bond Obligations and Borrower Finco TIFIA Phase 1 Obligations on a pro rata basis (based on outstanding amounts) and (ii) second, to the payment of outstanding Borrower Finco TIFIA Phase 2 Obligations. Any such amounts to be applied to the prepayment of Borrower Finco TIFIA Phase 1 Obligations or Borrower Finco TIFIA Phase 2 Obligations will be transferred to the TIFIA Phase 1 Prepayment Account or the TIFIA Phase 2 Prepayment Account, as applicable. Any such amounts to be applied to the prepayment of Borrower Finco Senior Bond Obligations will be transferred to the Bonds Redemption Account.

(ii) If, as of any Calculation Date, the Concessionaire certifies in the Sinking Fund Certificate that the Loan Life Coverage Ratio as of such Calculation Date and for each future Calculation Date through the latest Final Maturity Date is 1.30:1.00 or greater, the Security Trustee will transfer all amounts on deposit in the Sinking Fund Account to the Equity Lock-up Account.

Rebate Account

The Rebate Account will be held and administered by the Security Trustee in accordance with the MSA and will not form part of the Collateral. The Rebate Account will be established as a special

account for the sole benefit of the United States of America, for the purpose of complying with Section 148 of the Code and the Treasury Regulations promulgated pursuant thereto. The Security Trustee, at the direction of and on behalf of the Concessionaire, will use moneys in the Rebate Account to make rebate payments to the United States in accordance with the Tax Regulatory Agreement. If the amount on deposit in the Rebate Account at any time is greater than the amount required under the Tax Regulatory Agreement, the excess will be transferred to the Project Revenue Subaccount of the Project Proceeds Account.

Project O&M Account

The Project O&M Account will be held and administered by the Security Trustee in accordance with the MSA and will form part of the Concessionaire Collateral. The Project O&M Account will be funded (a) on Financial Close, and (b) on each Monthly Transfer Date thereafter, in each case, in an amount equal to O&M Expenses projected to be due and payable over the immediately succeeding month, and in the case of clause (b), by way of transfer from the Project Proceeds Account. Available moneys in the Project O&M Account will be disbursed by the Security Trustee to the Concessionaire to pay O&M Expenses. Amounts retained by the Concessionaire in accordance with the terms of the Operating Contract from amounts payable to the Operating Contractor (including in respect of any non-compliance deductions anticipated to be incurred by Operating Contractor), will be retained in the Project O&M Account until allocated for payment on each Monthly Transfer Date in accordance with the Operating Contract.

Reserve Accounts

O&M Reserve Account. The O&M Reserve Account will be held and administered by the Security Trustee in accordance with the MSA and will form part of the Concessionaire Collateral. The O&M Reserve Account will be funded (i) by way of transfer from the Ramp Up Reserve Account up to an amount equal to an amount equal to 25% of the actual O&M Expenses expended during the immediately preceding fiscal year (the “**O&M Reserve Requirement**”) applicable at the time of such transfer; and (ii) thereafter, on each Monthly Transfer Date, to the extent moneys are available therefor after application of funds in the Project Proceeds Account pursuant, moneys transferred from the Project Proceeds Account up to an amount equal to the O&M Reserve Requirement applicable at the time. Available moneys in the O&M Reserve Account will be used to pay O&M Expenses.

Ramp Up Reserve Account. The Ramp Up Reserve Account will be held and administered by the Security Trustee in accordance with the MSA and will form part of the Concessionaire Collateral. The Ramp Up Reserve Account will be funded on the Phase 2 Completion Date in an amount equal to \$6,000,000 (the “**Ramp Up Reserve Requirement**”) from moneys on deposit in the Project Proceeds Account (other than from the Bonds Proceeds (Project Costs) Subaccount or the Bonds Proceeds (Costs of Issuance) Subaccount). Moneys in the Ramp Up Reserve Account will be released as follows:

(i) Moneys on deposit in the Ramp Up Reserve Account will be transferred to the Project O&M Account, from time to time prior to the fifth anniversary of the Phase 2 Completion Date, in such amounts as are required to enable the payment of any O&M Expenses then due and payable to the extent there are not sufficient funds for the payment thereof in the Project Proceeds Account.

(ii) On the fifth anniversary of the Phase 2 Completion Date, the Security Trustee will transfer funds on deposit in the Ramp Up Reserve Account (A) first, to the O&M Reserve Account, in an amount equal to the O&M Reserve Requirement applicable on such date, (B) second, to the Borrower Finco Senior Bonds Debt Service Account and the Borrower Finco TIFIA Phase 1 Debt Service Account on a pro rata basis in such amount as required to ensure that the balance on deposit in such Debt Service Accounts is sufficient to pay Debt Service on the Borrower Finco Senior Obligations, (C) third to the

Bonds Debt Service Reserve Account and the TIFIA Phase 1 Debt Service Reserve Account on a pro rata basis in such amounts as required to ensure that the balance on deposit in such Reserve Account is at least equal to the Bonds Debt Service Reserve Requirement and the TIFIA Phase 1 Debt Service Reserve Requirement, as applicable, (D) fourth, to the Cash Reserve Account, in such amount as required to ensure that the balance on deposit in the Cash Reserve Account is at least equal to the Cash Reserve Requirement, (E) fifth, to the TIFIA Phase 2 Debt Service Reserve Account, in an amount equal to the TIFIA Phase 2 Debt Service Reserve Requirement applicable on such date and (F) sixth, to each other Reserve Account (other than the Ramp Up Reserve Account) the relevant reserve requirement of which has not been met on such date, such Project Accounts to be funded in the order set forth in “– Project Proceeds Account – Monthly Transfers from Project Proceeds Account.”

(iii) Following the fifth anniversary of the Phase 2 Completion Date, any funds on deposit in the Ramp Up Reserve Account remaining after the transfers described in clause (ii) above will be maintained in the Ramp Up Reserve Account unless the Concessionaire delivers to the Security Trustee, a certificate of an Authorized Officer of the Concessionaire confirming that any of the following requirements have been satisfied: (A) the Total DSCR, as of the Calculation Dates occurring on the last day of each of the three most recently ended Calculation Periods is not less than 1.40:1.00; or (B) the Total DSCR, as of the Calculation Dates occurring on the last day of each of the two most recently ended Calculation Periods is not less than 1.50:1.00; or (C) the Total DSCR, as of the Calculation Date occurring on the last day of the most recently ended Calculation Period is not less than 1.60:1.00.

(iv) If the Concessionaire satisfies any of the requirements set forth in clause (iii) above, all remaining funds on deposit in the Ramp Up Reserve Account will be transferred (x) first, in the order described in subclauses (A) through (D) of clause (ii) above and (y) second, to the Project Revenue Subaccount of the Project Proceeds Account.

Major Maintenance Reserve Account. The Major Maintenance Reserve Account will be held and administered by the Security Trustee in accordance with the MSA and will form part of Concessionaire Collateral. There will be deposited into the Major Maintenance Reserve Account from moneys on deposit in the Project Proceeds Account (other than from the Bonds Proceeds (Project Costs) Subaccount or the Bonds Proceeds (Costs of Issuance) Subaccount: (i) on the Phase 2 Completion Date, an amount equal to the Maintenance Capex projected to be due and payable from Phase 2 Completion Date until the first Monthly Transfer Date after the Phase 2 Completion Date, plus such amount as is required to cause the balance of the Major Maintenance Reserve Account to be no less than the Major Maintenance Reserve Requirement (as calculated on the first Monthly Transfer Date after the Phase 2 Completion Date); and (ii) thereafter, on each Monthly Transfer Date, by way of transfer from the Project Proceeds Account, such amount as required so that the balance on deposit in the Major Maintenance Reserve Account is no less than the Major Maintenance Reserve Requirement.

The “**Major Maintenance Reserve Requirement**” will be calculated from and after the Full Services Commencement Date as follows: at the start of year “N,” the Major Maintenance Reserve Requirement will be the sum of the following amounts (excluding Maintenance Capex projected to be expended to satisfy the Handback Requirements):

- (A) 100% of projected Maintenance Capex for Year “N;”
- (B) 80% of projected Maintenance Capex for Year “N” plus one;
- (C) 60% of projected Maintenance Capex for Year “N” plus two;
- (D) 40% of projected Maintenance Capex for Year “N” plus three; and

(E) 20% of projected Maintenance Capex for Year “N” plus four.

Cash Reserve Account. The Cash Reserve Account will be held and administered by the Security Trustee in accordance with the MSA and will form part of the Concessionaire Collateral. On the Phase 2 Completion Date, the Security Trustee will deposit from the Project Proceeds Account, an amount equal to \$4,200,000 into the Cash Reserve Account. On each Monthly Transfer Date, the Security Trustee will also transfer from the Project Proceeds Account, such amount as is required to cause the balance on deposit in the Cash Reserve Account to be no less than the required minimum balance specified within the MSA (the “**Cash Reserve Requirement**”) at such time.

Handback Requirements Reserve Account. The Handback Requirements Reserve Account will be held and administered by the Security Trustee in accordance with the MSA and the Concession Agreement and will not form part of the Collateral. The Handback Requirements Reserve Account will be deemed to be the “**Handback Reserve Fund**” as defined in the Concession Agreement. The Concessionaire will deposit funds in the Handback Requirements Reserve Account at the times and in the amounts required under the Concession Agreement.

Loss Proceeds Account; Joint Insurance Account

Administration. Each of the Loss Proceeds Account and the Joint Insurance Account will be held and administered by the Security Trustee in accordance with the MSA. The Loss Proceeds Account will form part of the Concessionaire Collateral, but the Joint Insurance Account will not form part of the Collateral. The Joint Insurance Account will jointly be held in the names of the Concessionaire and HPTE.

Deposits into Loss Proceeds Account. All Net Loss Proceeds received by the Concessionaire or to its order and all condemnation proceeds will be deposited directly into the Loss Proceeds Account; *provided* that such amounts will be deposited directly into the Joint Insurance Account to the extent required pursuant to the terms of the Concession Agreement.

Use of Moneys in Loss Proceeds Account. Unless an Event of Default has occurred and is continuing, amounts on deposit in the Loss Proceeds Account will be withdrawn and paid in the following order of priority:

(i) *First*, until all required amounts have been utilized as contemplated in this clause (i), such amounts will be applied by the Concessionaire to pay the costs of any restoration of the Project or any portion thereof, to the extent required in accordance with the terms of the Concession Agreement;

(ii) *Second*, until all required amounts have been utilized as contemplated in this clause (ii), to the extent required pursuant to the terms of the applicable Funding Documents, such amounts will be transferred to the Borrower Finco Senior Bonds Debt Service Account and the Borrower Finco TIFIA Phase 1 Loan Prepayment Account, for application to the payment of outstanding Borrower Finco Senior Bond Obligations and outstanding Borrower Finco TIFIA Phase 1 Obligations, on a *pro rata* basis based on the ratio of the outstanding amount of each of Borrower Finco Senior Bond Obligations and Borrower Finco TIFIA Phase 1 Obligations, then due and owing, respectively, to the sum of the outstanding amounts of Borrower Finco Senior Bond Obligations and Borrower Finco TIFIA Phase 1 Obligations on the date of such transfer;

(iii) *Third*, until all required amounts have been utilized as contemplated in this clause (iii), to the extent required pursuant to the terms of the Phase 2 TIFIA Loan Agreement, such amounts moneys will be transferred to the Borrower Finco TIFIA Phase 2 Loan Prepayment Account, for application to the payment of outstanding Borrower Finco TIFIA Phase 2 Obligations; and

(iv) *Fourth*, in the case of any remaining moneys, to the Project Revenue Subaccount of the Project Proceeds Account.

Use of Moneys in Joint Insurance Account. Any amounts on deposit in the Joint Insurance Account will be applied to the restoration of the Project in accordance with the terms of the Concession Agreement. Following the release of any funds from the Joint Insurance Account, such funds will be transferred to the Loss Proceeds Account and applied as described above.

Subordinated Loan Accounts

Concessionaire Cash Interest Subordinated Loan Proceeds Account. The Concessionaire Cash Interest Subordinated Loan Proceeds Account will be held and administered by the Security Trustee and will form part of the Concessionaire Collateral. The Security Trustee will deposit the net proceeds of the Secondary Subordinated Loan into such Project Account. Moneys in the Concessionaire Cash Interest Subordinated Loan Proceeds Account will be applied as follows: (i) on each Debt Service Payment Date in respect of the Subordinated Loan on which interest is payable on the Subordinated Loan up to but excluding the Subordinated Debt Service Payment Commencement Date, an amount in cash equal to the interest then due and payable on the Subordinated Loan will be transferred from the Concessionaire Cash Interest Subordinated Loan Proceeds Account directly to the Subordinated Lender on account of interest due and payable on the Subordinated Loan.

Concessionaire Subordinated Loan Lock-up Account. The Concessionaire Subordinated Loan Lock-up Account will be held and administered by the Security Trustee and will form part of the Concessionaire Collateral. The Security Trustee will deposit moneys from the Project Proceeds Account as described under “– Project Proceeds Account – Monthly Transfers from Project Proceeds Account.” If on any Calculation Date the Subordinated Loan Restricted Payment Conditions are met, all moneys on deposit in the Concessionaire Subordinated Loan Lock-up Account shall be transferred to the Concessionaire Distribution Account.

Borrower Finco Subordinated Loan Prepayment Account. The Borrower Finco Subordinated Loan Prepayment Account will be held and administered by the Security Trustee and will form part of the Borrower Finco Collateral. The Security Trustee will deposit into such Project Account certain moneys from the Project Proceeds Account. Moneys in such Project Account will be applied solely to prepay the Subordinated Loan prior to its scheduled maturity, on the dates and at the times required pursuant to the Subordinated Loan Agreement and, if no such date or time is specified therein, immediately upon deposit of such funds into such Project Account.
Concessionaire Cash Interest Subordinated Loan Prepayment Account. The Concessionaire Cash Interest Subordinated Loan Prepayment Account will be held and administered by the Security Trustee and will form part of the Concessionaire Collateral. The Security Trustee will deposit into such Project Account certain moneys from the Project Proceeds Account. Moneys in such Project Account will be applied solely to prepay the Secondary Subordinated Loan prior to its scheduled maturity, on the dates and at the times required pursuant to the Secondary Subordinated Loan Agreement and, if no such date or time is specified therein, immediately upon deposit of such funds into such Project Account.

Other Project Accounts

Equity Lock-up Account. The Equity Lock-up Account will be held and administered by the Security Trustee in accordance with the MSA, and will form part of the Concessionaire Collateral. If the Restricted Payment Conditions have not been met, moneys from the Project Proceeds Account will be deposited into the Equity Lock-up Account. So long as no Event of Default under the MSA has occurred and is continuing, available moneys in the Equity Lock-up Account will be used in the following manner: (i) subject to the funding of Debt Service on the Senior Obligations, to fund the TIFIA Phase 2 Debt

Service Reserve Account; (ii) transferred to the Concessionaire Distribution Account on each Distribution Date if the Restricted Payment Conditions have been met on each Monthly Transfer Date occurring in the two consecutive fiscal quarters most recently ended, provided that if the Restricted Payment Conditions have been met on each such Monthly Transfer Date but the Subordinated Loan Restricted Payment Conditions have not been met on such Distribution Date moneys in the Equity Lock-up Account will be transferred to the Concessionaire Subordinated Loan Lock-up Account and will be maintained therein and disbursed therefrom; (iii) transferred to the TIFIA Phase 2 Loan Prepayment Account in respect of a prepayment under the Phase 2 TIFIA Loan Agreement; (iv) transferred to Sinking Fund Account; and (v) to fund a shortfall in payments required to be made out of the Project Proceeds Account. If an Event of Default has occurred and is continuing, moneys in the Equity Lock-up Account will be used as provided under “SECURITY AND SOURCES OF PAYMENT FOR 2014 BONDS – MSA – Use of Moneys Received from Exercise of Remedies.”

Concessionaire Distribution Account. The Concessionaire Distribution Account will be held and administered by the Security Trustee in accordance with the MSA, and will not form part of the Concessionaire Collateral. If the Restricted Payment Conditions are met, the Security Trustee will transfer moneys from the Project Proceeds Account to the Concessionaire Distribution Account. Moneys in the Concessionaire Distribution Account will be utilized and transferred out of such Project Account at such times and in such manner as will be directed to the Security Trustee by the Concessionaire at the Concessionaire’s sole discretion.

Borrower Finco Distribution Account. The Borrower Finco Distribution Account will be held and administered by the Security Trustee in accordance with the MSA, and will form part of the Collateral. The Security Trustee will transfer moneys from the Borrower Finco Debt Service Accounts to the Borrower Finco Distribution Account. Moneys in the Borrower Finco Distribution Account will be utilized and transferred out of such Project Account, at such times and in such manner as will be directed to the Security Trustee by the Borrower Finco at Borrower Finco’s sole discretion.

TIFIA Prepayment Accounts and Revenue Share Accounts. The TIFIA Phase 1 Loan Prepayment Account and the TIFIA Phase 2 Loan Prepayment Account (together, the “**TIFIA Prepayment Accounts**”), the TIFIA Phase 1 Revenue Share Account and the TIFIA Phase 2 Revenue Share Accounts (together, the “**TIFIA Revenue Share Accounts**”) will each be held and administered by the Security Trustee in accordance with the MSA, and will form part of the Borrower Finco Collateral. The Security Trustee will deposit moneys required to be applied to the prepayment of each TIFIA Loan pursuant to its respective TIFIA Loan Agreement into its respective the TIFIA Prepayment Account. Such moneys will be applied solely to prepay the applicable TIFIA Loan prior to its scheduled maturity on the dates and at the times required under the applicable TIFIA Loan Agreement and, if no such date or time is specified therein, immediately upon deposit of such funds in the respective TIFIA Prepayment Account. The Security Trustee will deposit moneys from the Project Proceeds Account into each TIFIA Revenue Share Account as described under “PROJECT ACCOUNTS AND FLOW OF FUNDS – Project Proceeds Account – Monthly Transfers from Project Proceeds Account” and such moneys will be used solely to prepay the applicable TIFIA Loan prior to its scheduled maturity in accordance with the terms of the applicable TIFIA Loan Agreement.

Bonds Redemption Account. The Bonds Redemption Account will be held and administered by the Security Trustee in accordance with the MSA, and will form part of the Concessionaire Collateral. There will be deposited into the Bonds Redemption Account (i) certain moneys transferred from the Sinking Fund Account, and (ii) moneys to be applied to the redemption of outstanding 2014 Bonds (on a pro rata basis with the Phase 2 TIFIA Loan) in the amount of Equity Contributions, if any, made to comply with the Maximum Debt to Equity Ratio. Moneys in the Bonds Redemption Account will be used to prepay the Bonds Proceeds Loan on the first optional redemption date for the Senior Bonds,

which is January 1, 2024 for the 2014 Bonds. In the event that Borrower Finco does not optionally redeem the 2014 Bonds on January 1, 2024, monies in the Bonds Redemption Account will be transferred to the Borrower Finco Senior Bonds Debt Service Account and applied to pay the next principal payment of the 2014 Bonds.

Moneys in the Bonds Redemption Account will be used to prepay the Bond Proceeds Loan prior to its scheduled maturity on the first optional redemption date for the 2014 Bonds. In the event that Borrower Finco does not exercise its option to redeem the 2014 Bonds on the first optional redemption date in respect thereof, (i) to the extent (A) moneys in the Bonds Redemption Account were deposited into the Bonds Redemption Account from the Equity Lock-up Account and (B) the Senior DSCR for the next subsequent Calculation Period is not less than 1.75:1.00, then moneys in the Bonds Redemption Account will be deposited into the Project Revenue Subaccount, and otherwise, moneys in the Bonds Redemption Account will be transferred to the Borrower Finco Senior Bonds Debt Service Account and applied to pay the next principal payment on the Bonds Proceeds Loan.

HPTE Cash Flow Sharing Account. The HPTE Cash Flow Sharing Account will be held and administered by the Security Trustee in accordance with the MSA, and will form part of the Concessionaire Collateral. The Security Trustee will transfer moneys from the Project Proceeds Account to the HPTE Cash Flow Sharing Account and such moneys will be used solely to pay to HPTE amounts payable under the Concession Agreement.

Acceptable Letter of Credit

Notwithstanding any provision under a Funding Document, so long as no Default or Event of Default has occurred and is continuing, each Reserve Account established under the MSA may be funded with, and any cash, Permitted Investments or other funding vehicle on deposit in any such Reserve Account may be withdrawn and replaced by, an Acceptable Letter or Credit that is issued by an Acceptable Letter of Credit Provider. Any such Acceptable Letter of Credit provided to fund the Handback Requirements Reserve Account must also satisfy the relevant requirements therefor under the Concession Agreement.

In the event that the sum of (i) the aggregate amounts available to be drawn under any Acceptable Letters of Credit credited to any Reserve Account and (ii) the funds then on deposit in or credited to such Reserve Account is greater than the applicable reserve requirement for such Reserve Account required hereunder, the Concessionaire may direct the Security Trustee to transfer an amount of funds up to such excess amount from the relevant Reserve Account to the Project Proceeds Account or, if the account party to the relevant letter of credit is not the Concessionaire, to such Person as directed in writing by such account party.

Withdrawal and Application of Funds; Priority of Transfers from Project Accounts

Each withdrawal or transfer of funds from the Project Accounts by the Security Trustee on behalf of the Concessionaire or Borrower Finco, as applicable, will be made pursuant to an executed Funds Transfer Certificate. Unless a shorter period is acceptable to the Security Trustee and the Intercreditor Agreement, such Funds Transfer Certificate relating to each applicable Project Account will be delivered to the Security Trustee no later than two Business Days prior to each date on which funds are proposed to be withdrawn or transferred. The Security Trustee is required to comply with any Funds Transfer Certificate unless the Intercreditor Agent notifies the Security Trustee and the Concessionaire that any such withdrawal or transfer of funds is not in compliance with the MSA or the other Funding Documents. Upon any such non-compliance, the Concessionaire will not be entitled to cause such proposed withdrawal or transfer until such time as it has submitted a revised Funds Transfer Certificate which complies with the terms of the MSA and the other Funding Documents.

Notwithstanding anything to the contrary contained herein, upon receipt of a notice of an Event of Default, the Intercreditor Agent may, following the taking of an Enforcement Action, without consent of the Concessionaire, instruct the Security Trustee to pay the proceeds of the Project Accounts (other than the Excluded Accounts) to the payment of Secured Obligations in accordance with the terms of the Intercreditor Agreement and in the order set forth under “SECURITY AND SOURCES OF PAYMENT FOR 2014 BONDS – MSA – Use of Moneys Received from Exercise of Remedies,” so long as such payments are on account of amounts due under the Funding Documents.

CONCESSION AGREEMENT

The following is a summary of selected provisions of the Concession Agreement and is not a full statement of the terms of such agreement. Accordingly, the following summaries are qualified in their entirety by reference to the Concession Agreement and are subject to the full text thereof. Unless otherwise stated, any reference in this Official Statement to the Concession Agreement means such agreement and all schedules, exhibits and attachments thereto.

Effective June 27, 2013, the Concessionaire and HPTE entered into the Concession Agreement to undertake the Project. The Concession Agreement was subsequently amended on October 4, 2013 and December 27, 2013 and is expected to be amended and restated prior to the Closing Date. See APPENDIX B for a more complete description of certain provisions of the Concession Agreement.

Concession and License; Term

Pursuant to the Concession Agreement, commencing from the dates described in the next sentence and under “—Principal Rights and Responsibilities of the Concessionaire” below and during the Term (as defined herein), HPTE granted to the Concessionaire a non-exclusive license for the Project for the purpose of providing the Concessionaire with the right of access necessary to construct, operate and maintain the Project as provided in the Concession Agreement. With respect to the Phase 2 Work the access to the Site commences on the Commencement Date in accordance with more detailed rights of access to different parts of the Site set forth in the technical schedules to the Concession Agreement. With respect to the I-25 Managed Lanes, the license period commences on the Commencement Date, with respect to the Phase 1 Lanes, the license period commences on the Phase 1 Services Commencement Date and with respect to the Phase 2 Lanes, the license period commences on the Full Services Commencement Date. See Sections 1.3 and 1.4 of APPENDIX B.

The Concession Agreement term ends on the earlier of (i) 50 years from the Planned Full Service Commencement Date (currently expected to occur on December 31, 2015, unless extended pursuant to the Concession Agreement) (the “**Expiration Date**”) or (ii) the date of early termination of the Concession Agreement (the “**Termination Date**”). The “**Contract Period**” or “**Term**” starts on the Commencement Date and ends on the Expiration Date, or if earlier, the Termination Date.

Principal Rights and Responsibilities of the Concessionaire

In the Concession Agreement, the Concessionaire agrees, among other things, (i) not to carry out any business or other activities other than those solely related to the Project unless otherwise expressly approved to do so by HPTE in its sole discretion, (ii) to obtain in a timely manner all Necessary Consents to perform its obligations under the Concession Agreement, and (iii) not to commit any fraudulent act or make a false statement pertaining to the Concession Agreement or other Prohibited Acts.

Commencement of Phase 2 Work, Delivery of Services and Snow and Ice Control Services and Collection of Toll Revenues. 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. For a description of each such point in time see Section 2.1 of APPENDIX B.

Project Financing. The Concessionaire is solely responsible for obtaining and repaying all financing necessary to develop, design, construct, maintain and operate the Project at its own cost and risk and without recourse to HPTE, except to the extent that those obligations are not funded by the HPTE Capital Payment or the payments of the Maintenance Fees. See “PLAN OF FINANCE.” No payments of capital or interest in respect of the Phase 1 TIFIA Loan is due prior to the Phase 1 Assumption Date. See “PHASE 1 PROJECT – Financing of the Phase 1 Project; Assumption of Phase 1 TIFIA Loan.”

Design and Construction. The Concessionaire will carry out and complete the Phase 2 Work in accordance with the Concession Agreement, the HPTE Phase 2 Work Requirements, the Concessionaire’s Phase 2 Work Proposals, Good Industry Practice, all Necessary Consents and all applicable Law. The Phase 2 Construction Work will be undertaken by the Design-Build Contractor pursuant to the Design-Build Contract. See “PHASE 2 CONSTRUCTION PROJECT” and Section 6 of APPENDIX B for a description of the Phase 2 Construction Project.

Access to the Site; Inspection; Monitoring. During the Construction Period, the Concessionaire is required to allow employees of CDOT and any Utility that need to perform work on the Site or areas adjacent to the Site to come onto the Site for such purposes. The Concessionaire also is required to make available to HPTE facilities and equipment required by HPTE to exercise its inspection rights and other rights under the Concession Agreement. HPTE may appoint a technical representative to monitor the construction progress and compliance of the Phase 2 Construction Work with the terms of the Concession Agreement. The Concessionaire has agreed to provide to HPTE monthly progress reports and certain other information and documentation specified in the Concession Agreement designed to assist HPTE in monitoring the Phase 2 Construction Work and compliance by the Concessionaire with the Concession Agreement. If HPTE discovers any material defects in the Phase 2 Construction Work or that the Concessionaire has materially failed to comply with HPTE’s Requirement or the Concessionaire’s Proposals, HPTE may increase the level of its monitoring of the Concessionaire until HPTE is satisfied that the Concessionaire is able to perform its obligations under the Concession Agreement. See Section 6.6 of APPENDIX B.

Punch List. Simultaneously with the issuance of the notice of the completion of the Phase 2 Construction Work, HPTE also will issue to the Concessionaire a list of minor defects, deficiencies or omissions from the Phase 2 Construction Work which have no adverse effect on the safety or operability of the Phase 2 Construction Work (the “**Punch List**”). Within five Business Days, the Concessionaire will provide a reasonable program for fixing each of the Punch List items. If the Concessionaire fails to make such repairs within the time required by the Punch List program, then HPTE will be entitled to make such repairs as may be necessary, and the Concessionaire will be required to pay to HPTE an amount equivalent to the actual costs of doing such repairs.

Liquidated Damages and Share of Toll Revenues. HPTE may assess daily liquidated damages against the Concessionaire and to receive a share of Toll Revenues from the Concessionaire for failure by the Concessionaire to achieve the Phase 2 Work Completion by the Planned Full Services Commencement Date (currently expected to occur on December 31, 2015, as it may be changed by HPTE and the Concessionaire in accordance with the Concession Agreement). 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.

HPTE’s share of the I-25 Toll Revenues and the Phase 1 Toll Revenues 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. See Section 6.10 in APPENDIX B.

Services and Snow and Ice Control Services. The Concessionaire agreed that throughout the Term, it will provide (i) the Services for the Managed Lanes, the I-25 Shared Bridge Decks and the U.S. 36 GP Lanes; and (ii) the Snow and Ice Control Services. These undertakings are required to commence at three different points in time as described in Sections 7.1 and 8.1 of APPENDIX B. The Concessionaire is required to provide such Services and the Snow and Ice Control Services in accordance with the Concession Agreement, HPTE Service Requirements (with respect to Services), HPTE Snow and Ice Control Service Requirements (with respect to the Snow and Ice Control Services), applicable Law, Good Industry Practice and other requirements summarized in Section 7.2 of APPENDIX B. See “OPERATIONS PROJECT” and Sections 7 and 8 of APPENDIX B for a more detailed description of the Services and the Snow and Ice Control Services.

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 serious risk exists to the health or safety of persons or property or to the environment.

The Concessionaire is not entitled to receive from HPTE any compensation, return on investment or other profit for providing the Services and the Snow and Ice Control Services under the Concession Agreement other than the right to receive Toll Revenues, Maintenance Fees and to receive other payments expressly specified in the Concession Agreement. See “TOLLING ON THE MANAGED LANES.”

The Concessionaire is required to pay to HPTE an annual HPTE Cost Reimbursement Amount of \$375,000 (as adjusted for inflation).

Base Case Financial Model

In connection with the Concessionaire’s proposal submitted to HPTE as part of HPTE’s procurement process for the Project, the Concessionaire submitted the financial model which set forth assumptions and information including (but not limited to) projections and calculations with respect to revenues, expenses, and the repayment of debt (the “**Base Case Financial Model**”). Upon implementation of the financial plan at Financial Close, such financial model will be amended to incorporate the Concessionaire’s financial plan implemented at the Financial Close and the Financial Close Adjustment (the “**Adjusted Financial Model**”). Within ten Business Days after the Adjusted Financial Model has been agreed to and determined under the Dispute Resolution Procedure, the Concessionaire is required to place the Adjusted Financial Model in escrow with an escrow agent approved by HPTE and the Concessionaire. The Adjusted Financial Model as placed into escrow in this form will become the first version of the Base Case Financial Model for purposes of the Concession Agreement.

The Base Case Financial Model is required to be annually updated to reflect audited historical cash flows for the most recently audited year. In addition, the Base Case Financial Model may be revised upon occurrence of any Relevant Event with a view to determine whether a payment should be made, and if so, what size that payment should be, to keep the Concessionaire in a no better and no worse position as described in Section 17.3 of APPENDIX B. A revision to the Base Case Financial Model is also required if any Funding Agreements are amended in connection with a refinancing. See Section 17 of APPENDIX B for additional provisions regarding revisions to the Base Case Financial Model.

The Concessionaire is required to deliver to HPTE an audit letter from an independent, nationally recognized auditor acceptable to HPTE that, among other things, confirms that the Base Case Financial

Model reflects the terms of, and is materially consistent with, the Concession Agreement and is suitable for use as envisioned by the Concession Agreement.

Environmental Requirements

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.

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 generated 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.

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 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.

Insurance Requirements

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 (i) the Commencement Date (for Services to be provided with respect to the I-25 Managed Lanes), (ii) the Phase 1 Services Commencement Date (for Services to be provided with respect to the Phase 1 Lanes) and (iii) 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.

The following insurance policies are required to be obtained by the Concessionaire:

- 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;
- 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;
- commercial automobile liability insurance with a minimum \$1 million combined single limit for bodily injury and property damage;
- umbrella/excess liability insurance covering operations with a minimum \$5 million limit for each occurrence and in the aggregate; and
- 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.

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.

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. 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. 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.

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.

For a discussion about certain provisions of the Concession Agreement relating to uninsurable risks and unavailable terms in insurance policies, see Section 14 of APPENDIX B.

Reinstatement

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. See Section 13.8(a) of APPENDIX 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.

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. 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.

Relevant Events; Relief and Force Majeure Events

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 Longstop Date, monetary compensation from HPTE or 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. Certain Relevant Events entitle the Concessionaire to claim monetary compensation from HPTE, while a Relief Event or a Force Majeure Event entitle the Concessionaire to claim relief from certain of its obligations under the Concession Agreement. If any such Relief Event, a Compensation Event or a Qualifying Change in Law affects the performance of the Phase 2 Work, the Concessionaire is entitled to obtain an extension to the Planned Full Services Commencement Date and/or Longstop Date in accordance with the same process which

applies to Change Orders for the Phase 2 Work. See Section 16 of APPENDIX B for a description of Change Orders.

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.

Relevant Events. “**Relevant Events**,” are an HPTE Change, a Compensation Event, a Qualifying Change in Law, 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. Following a Relevant Event, subject to complying with the procedures in the Concession Agreement and the provision of appropriate evidence, the Concessionaire may claim monetary compensation from HPTE in respect of a Change in Costs. A “**Change in Costs**” generally means the effect that a Relevant Event has on the actual or anticipated costs, revenues or liabilities of the Concessionaire, whether the one off or recurring nature and whether positive or negative.

HPTE Change. For a discussion of HPTE Change and effect thereof on the Concessionaire's obligations under the Concession Agreement, see Section 16 of APPENDIX B for a description of Change Procedure and HPTE Changes.

Compensation Events. 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 achieve the Full Services Commencement Date on or before the Planned Full Services Commencement Date or, following the Planned Full Services Commencement Date, before the Full Services Commencement Longstop 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. Further, 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. For a complete list of the Compensation Events, see Section 15.3 of APPENDIX B.

Pursuant to the Concession Agreement, subject to the satisfaction of the requirements described above, (a) 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; (b) 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 (c) 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 Longstop Date. See Section 17 of APPENDIX B for a description of Revenue Compensation Payments.

Revenue Compensation Payments may be agreed or determined through a revision to the Base Case Financial Model as described under “—Base Case Financial Model” above.

Qualifying Change in Law. 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 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. 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. If HPTE and the Concessionaire agree that a Qualifying Change in Law would result in a loss of Toll Revenues, then the parties agreed that any financial consequences of such loss will be addressed through a Revenue Compensation Payment regular payment from HPTE to the Concessionaire, or otherwise will be facilitated by a Payments may be agreed or determined through a revision to the Base Case Financial Model as described under “—Base Case Financial Model” above. See “—Base Case Financial Model” above. For a definition of Qualifying Change in Law, see APPENDIX A.

Relief Events. In the event of the occurrence of a Relief Event under the Concession Agreement 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, 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. In addition, to the extent that a Relief Event prevents or diminishes the performance of the Snow and Ice Control 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. See “OPERATIONS PROJECT—Operations and Maintenance – Maintenance Fees” above. For a complete list of the Relief Events, see Section 15.4 of APPENDIX B.

Force Majeure Events. 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 Control 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 by the agreed upon amount. For a complete list of the Relief Events, see Section 15.5 of APPENDIX B.

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 Revenues 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. 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 and (ii) HPTE may require the Concessionaire to transfer its title, interest and rights in and to any Assets or part thereof to HPTE or CDOT. See “—Termination Events” below.

Cash Flow Sharing

As additional consideration for the rights acquired pursuant to the Concession Agreement, the Concession Agreement requires the Concessionaire to pay to HPTE a portion of the cash flow generated by the Concessionaire from the operation of the Project. See Section 18 of APPENDIX B regarding certain cash flow sharing provisions. If any amounts are due to HPTE as a result of cash flow sharing provisions, such amounts will be deposited into HPTE Cash Flow Sharing Account created under the MSA in accordance with the payment priority provisions described under “PROJECT ACCOUNTS AND FLOW OF FUNDS – Project Proceeds Account – Monthly Transfers from Project Proceeds Account.”

Monitoring of Performance of Services; Noncompliance Points

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.

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.

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.

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.

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.

If the level of unexpired or uncured Noncompliance Points allocated to the Concessionaire exceeds the amounts set forth in Row #1 of 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.

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

Noncompliance Points

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 |

Termination Events and Termination Compensation

Termination at the End of the Contract Term. Unless earlier terminated in accordance with the terms of the Concession Agreement, all the rights and obligations of the parties under the Concession Agreement will terminate 50 years from the Planned Full Service Commencement Date (currently December 31, 2015, unless changed by HPTE and the Concessionaire pursuant to the Concession Agreement).

Voluntary Termination by HPTE. 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 date of receipt of the notice and (ii) providing to the Concessionaire evidence of its ability to fund the HPTE Default Termination Sum.

The “**HPTE Default Termination Sum**” is an amount equal to the aggregate of:

- (i) the Base Senior Debt Termination Amount;
- (ii) the Phase 2 TIFIA Debt Termination Amount;
- (iii) the Subordinated Debt Termination Amount
- (iv) any Demobilization Costs; and
- (v) an amount which when taken together with Distributions paid by the Concessionaire on its share capital on or before the Termination Date taking account of the actual timing of all such payments, given an internal rate of return set forth in the Concession Agreement which approximates the internal rate of return as set forth in the Base Case Financial Model.

The amount of the HPTE Default Termination Sum 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.

Termination for HPTE Default. 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**").

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.

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 may be adjusted for certain acts of the Concessionaire as described under "Voluntary Termination by HPTE" above, provided that the amount of HPTE Default Termination Sum can never be less than the Base Senior Debt Termination Amount.

Termination for Concessionaire Default. 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 (each of the foregoing events, a "**Concessionaire Default**").

If a Concessionaire Default has occurred and HPTE wishes to terminate the Concession Agreement, HPTE must serve a termination notice to 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 ability to propose the implementation of a rectification plan.

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

- (A) 80% of the Phase 2 TIFIA Debt Termination Amount,
- (B) 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
- (C) from the time when the Concessionaire is substituted for HPTE as the borrower under the Phase 1 TIFIA Loan, 80% of the part of the Base Senior Debt Termination Amount attributable to the TIFIA Lender in respect of the Phase 1 TIFIA Loan.

In substance, upon a termination of the Concession Agreement due to a Concessionaire Default, HPTE will only pay 80% of the principal amount of 2014 Bonds outstanding.

The Estimated Fair Value of the Contract is determined by an independent third-party appraiser jointly appointed by HPTE and the Concessionaire 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. The Adjusted Estimated Fair Value of the Contract is determined by deducting from the Estimated Fair Value of the Contract the aggregate of (a) the reasonable and proper costs which HPTE incurred and anticipated to be incurred in retendering the Concession Agreement and (b) amounts that HPTE is entitled to set off or deduct under the Concession Agreement plus an amount equal to the aggregate of (i) all credit balances on any bank accounts held by or on behalf of the Concessionaire on the date that the Estimated Fair Value of the Contract is calculated; and (ii) any insurance proceeds and other amounts owing to the Concessionaire to the extent not included in (i) above; save to the extent that: (1) (i) and (ii) have not been directly taken into account in calculating the Estimated Fair Value of the Contract; and (2) HPTE has received such amounts in accordance with the Concession Agreement or such amounts are standing to the credit of the Joint Insurance Account. See Section 20.4 of APPENDIX B for a description of the amount of the termination payment due to the Concessionaire upon termination for a Concessionaire Default.

HPTE is required to pay the termination amount referenced above (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 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.

Termination for Significant Force Majeure Event or Uninsurability. Either HPTE or the Concessionaire may elect to terminate the Concession Agreement if a Force Majeure Event occurs or if there is an uninsurable risk and the parties cannot agree as to how to manage the risk. See “—Relevant Events; Relief and Force Majeure Events” above. See also Sections 16 and 20.5 of APPENDIX B. Upon such termination, HPTE is required to pay to the Concessionaire the “**Force Majeure Termination Sum**” which is an amount equal to the aggregate of:

- (i) the Base Senior Debt Termination Amount;
- (ii) the Phase 2 TIFIA Debt Termination Amount;
- (iii) the Subordinated Debt Termination Amount;
- (iv) any Demobilization Costs; and
- (vi) all amounts paid to the Concessionaire by way of subscription for shares in the capital of the Concessionaire less Distributions paid to the shareholders of the Concessionaire (provided that if such amounts are less than zero, then they will be deemed to be zero).

The amount of the Force Majeure Termination Sum 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 Force Majeure Termination Sum can never be less than the Base Senior Debt Termination Amount and the Phase 2 TIFIA Debt Termination Amount.

Termination for Persistent Breach. 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. 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. See "—Termination for Concessionaire Default" above.

Termination for Commission of Prohibited Act. 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 Material Project Contract, 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. 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).

Termination Following Non-Assumption of the Phase 1 TIFIA Loan. HPTE, at its option, may elect to terminate the Concession Agreement if, following the delivery by HPTE of the Phase 1 Acceptance Notice: (a) a Phase 1 Assumption Plan is not presented within 60 Business Days of the Phase 1 Acceptance Notice; (b) a Phase 1 Assumption Plan is presented within 60 Business Days but (i) the parties cannot agree on the terms of the Phase 1 Assumption Plan prior to the Full Services Commencement Longstop Date; or (ii) the Phase 1 Assumption Date does not occur prior to the Full Services Commencement Longstop Date; or (c) other material conditions included in an agreed Phase 1 Assumption Plan are not met at all or by such deadlines as may be prescribed by the Phase 1 Assumption Plan. If HPTE elects to terminate the Concession Agreement then it will be required to pay Termination Compensation, the amount of which depends upon the nature of the unfulfilled condition precedent to the Phase 1 Assumption Date.

Concessionaire Risk CPs. If the Concession Agreement is terminated because the Concessionaire has failed to meet certain conditions precedent to the Phase 1 Assumption Date including: establishing Project Accounts required under the MSA; funding the TIFIA Phase 1 Debt Service Reserve

Account to the requisite levels as required under the Phase 1 TIFIA Loan Agreement; the release of certain amounts by the Master Trustee under the Amended and Restated Master Indenture (subject to a specific exception); the reaffirmation by each Borrower Group Member of its grant of security for the benefit of the Secured Creditors; and the delivery of promissory notes and certain documents, certificates, opinions and warranties (the “**Concessionaire Risk CPs**”), then the amount of the termination payable will be equal to the Adjusted Estimated Fair Value of the Contract to the extent that is no greater than the sum of the Base Senior Debt Termination Amount and the Phase 2 TIFIA Debt Termination Amount. See “– Adjusted Estimated Fair Value of the Contract” below. However, if the Concessionaire establishes, as between itself and HPTE, that (a) the Concessionaire has made all deliveries and taken all other necessary steps and as a result the relevant Concessionaire Risk CPs have been satisfied in accordance with the Phase 1 TIFIA Loan Agreement but the TIFIA Lender refused to accept that the relevant Concessionaire Risk CPs have been satisfied, or (b) the TIFIA Lender had imposed additional conditions or requirements not contemplated by the Phase 1 Loan Agreement, then the amount of termination to be paid will be calculated as if the termination had arisen out of a Force Majeure Event. See “– Termination for Significant Force Majeure Event or Uninsurability.”

Certificate Confirming that Certain Representations Remain True. In the case of the Concessionaire Risk CP, which is a certificate confirming that certain representations remain true, if that certificate cannot be given because of litigation which has been threatened or is pending then the amount of the Termination Compensation payable shall be as follows:

(a) if the litigation principally relates to acts or omissions or alleged acts or omissions of the Concessionaire and at the date of termination the litigation has been successful, or is unlikely to fail, then the amount of the Termination Compensation shall be the Adjusted Estimated Fair Value of the Contract capped at the sum of the Base Senior Debt Termination Amount and the Phase 2 TIFIA Debt Termination Amount;

(b) if the litigation principally relates to acts or omissions or alleged acts or omissions of CDOT or HPTE and at the date of termination the litigation has been successful, or is unlikely to fail, then the amount of the Termination Compensation shall be the amount which would have been paid on Force Majeure termination; and

(c) in all other cases the compensation payment shall be the amount which would have been paid on Force Majeure termination.

Failure to Enter into Project Tolling Services Agreement. If the Concession Agreement is terminated because of a failure to enter into the Project Tolling Services Agreement (and if applicable, a direct agreement in respect of the Project Tolling Services Agreement and, if applicable, a trademark license agreement), the amount of termination will be paid as if the termination had arisen out of a Force Majeure Event if: (i) the Concessionaire agrees on a form of Project Tolling Services Agreement (and, if applicable, a Trademark License Agreement) with the Tolling Services Provider which is on terms substantially consistent with the Project Tolling Services Agreement and Trademark License Agreement subject to amendments in accordance with the memorandum of understanding attached to the I-25 Tolling Services Agreement; and (ii) the Concessionaire provides that form of Tolling Services Agreement (and if applicable, a Trademark License Agreement) to the TIFIA Lender 180 days or more before the then currently expected date for acceptance of the Phase 1 Managed Lanes, but the TIFIA Lender and/or the Required Senior Creditors refuse to accept that those documents were in form and substance satisfactory to them. See “– Termination for Significant Force Majeure Event or Uninsurability.”

Except as described in the preceding paragraph, if the Concessionaire, HPTE and the Tolling Services Provider fail to enter into a Project Tolling Services Agreement (and if applicable a Trademark License Agreement and the related direct agreement among such parties and the Security

Trustee) in form and substance satisfactory to the TIFIA Lender and/or the required Senior Creditors, acting reasonably, then the amount of termination to be paid will be equal to the Adjusted Estimated Fair Value of the Contract.

Updated Rating; Material Adverse Effect. If the Concession Agreement is terminated due to a failure by the Concessionaire to receive an Updated Rating no lower than the Existing Rating or due to the existence of a Material Adverse Effect or due to failure by the Concessionaire to deliver an Updated Rating within ten Business Days prior to the Phase 1 Assumption Date to satisfy the Material Adverse Effect condition precedent, then the amount of termination to be paid will be equal to the Adjusted Estimated Fair Value of the Contract. However, if the Concessionaire has obtained an Existing Rating under the Phase 2 TIFIA Loan Agreement within four weeks prior to the expected date for acceptance of the Phase 1 Design-Build Contract and the Phase 1 ETCS but subsequent notices from HPTE indicate a later expected date for acceptance of the Phase 1 Design-Build Contract and the Phase 1 ETCS, then the amount of termination to be paid will be calculated as if the termination had arisen out of a Force Majeure Event. See “– Termination for Significant Force Majeure Event or Uninsurability.”

HPTE Risk CPs. If the Concession Agreement is terminated because the Phase 1 TIFIA Loan has not been fully advanced to HPTE by the TIFIA Lender or because HPTE has not directed the Master Trustee to release certain funds under the Amended and Restated Master Indenture to the Concessionaire, then the Termination Compensation to be paid will be calculated as if the termination had arisen out of HPTE Default. See “– Termination for HPTE Default.”

Adjusted Estimated Fair Value of the Contract. If the amount of the termination payment following non-assumption of the Phase 1 TIFIA Loan will be the Adjusted Estimated Fair Value of the Contract then the Termination Compensation will be assessed on the following assumptions: (a) the entire Project, including the Phase 1 Lanes, the Phase 2 Lanes and the I-25 Managed Lanes will be valued for purposes of calculating the Termination Compensation; (b) the Phase 1 Assumption would have occurred when the other conditions precedent for the Phase 1 Services Commencement Date were satisfied; (c) that the Phase 2 Work will be completed at (i) the then-projected date for the Full Services Commencement Date; and (ii) for the price which would have been payable under that contract by the Concessionaire; (d) if clause (c) does not apply, then the assumption will be that HPTE will complete the Phase 2 Construction Project by other means available to it and that a reasonable assessment of the likely cost of doing so will be carried out and taken into account when reaching the Adjusted Estimated Fair Value of the Contract. See Section 2.6 of APPENDIX B for a description of how the Adjusted Estimated Fair Value of the Contract is calculated with respect to a termination following non-assumption of the Phase 1 TIFIA Loan and see Section 21.4 of APPENDIX B for a description of how the Adjusted Estimated Fair Value of the Contract is calculated without reference to the assumptions described above.

Method of Payment of Compensation on Termination; Interest on Termination Sum. Any termination payment required to be paid by HPTE to the Concessionaire due to a termination of the Concession Agreement is payable on the date falling on 40 Business Days after the Notice Date (being the later of (i) the Termination Date and (ii) the date when the adjusted Estimated Fair Value of the Contract is agreed between the parties). However, HPTE may defer payment of all or part of termination payment amount 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. From the Notice Date until the date of payment, interest will accrue on any unpaid element of the Termination Sum at a rate which, in the case of termination compensation payable for any termination other than Concessionaire Default, as follows:

(i) in relation to any element of the Termination Sum corresponding to the Base Senior Debt Termination Amount (excluding the Phase 1 TIFIA Loan), at a rate equal to the Senior Debt Rate;

(ii) in relation to any element of the Termination Sum corresponding to the Phase 1 TIFIA Loan, at a rate equal to the non-default interest rate as defined in the Phase 1 TIFIA Loan Agreement or such lower rate as the TIFIA Lender and the Concessionaire may agree;

(iii) in relation to any element of the Termination Sum corresponding to the Phase 2 TIFIA Debt Termination Amount, at a rate equal to the non-default interest rate as defined in the Phase 2 TIFIA Loan Agreement or such lower rate as the TIFIA Lender and the Concessionaire may agree;

(iv) in relation to any element of the Termination Sum not dealt with by clauses (i) through (iii), at a rate equal to the prime rate of interest announced publicly by the Wall Street Journal (or its successor) as the “prime rate”;

In the case of termination compensation due as a result of a Concessionaire Default, at the rate specified from time to time by the Colorado Department of Treasury for the purpose of its Time Deposit Program for 182 day deposits.

Transfer Restrictions

During the period expiring on the date that is three years after the Full Services Commencement Date (the “**Lock-Up Period**”) or during any period in which a Concessionaire Default that has not been remedied or a period when an event has occurred that with the lapse of time, the giving of notice or otherwise would constitute an event of Concessionaire Default, the Concessionaire may not do any of the following without HPTE’s prior written approval (which may be given subject to conditions): (i) sell or transfer or otherwise dispose of any direct or indirect legal, beneficial, equitable or other ownership interest in the Concessionaire, which, subject to certain limitations, gives rise to a Change of Control; (ii) grant any security interest, lien or other encumbrance over any legal, beneficial, equitable or other direct or indirect ownership interest in the Concessionaire, except as required by any Funding Agreement; (iii) enter into any agreement in respect of any legal, beneficial, equitable or other direct or indirect ownership interest in the Concessionaire or in respect of any votes attached to any such shares held by such Person in the Concessionaire (other than customary partnership or organizational agreements among the Equity Member as of the Commencement Date solely with respect to the governance and management of the Concessionaire) or (iv) enter into any agreement to do any of the foregoing.

During the Lock-Up Period, the Concessionaire may engage in bona fide open market transactions in securities effected on a public stock exchange (except for transactions involving initial public offering), grant a security interest pursuant to the Senior Funding Agreements in accordance with the Concession Agreement or permit the exercise of remedies by the Security Trustee or the Senior Lenders thereunder, including foreclosure, and may engage into certain other enumerated transactions or activities.

During any other period, the Concessionaire is required to ensure that there will be no Change of Control of the Concessionaire, unless HPTE has approved such Change of Control. HPTE’s approval of a Change of Control may be withheld or made subject to conditions or the provision of reasonable additional security or other reasonable arrangements if HPTE determines that the proposed transaction bringing about the Change of Control is prohibited by law or that after such Change of Control the Concessionaire’s ability to perform its obligations and covenants pursuant to the Concession Agreement will be materially adversely affected. In making such determination, HPTE may take into account the financial strength and integrity of those who will exercise Control over the Concessionaire after the Change of Control and the experience of the same in operating toll roads or highways and performing other projects.

For a summary of the principal provisions of the Concession Agreement, see APPENDIX B – Summary of Certain Provisions of the Concession Agreement.

OTHER PROJECT AGREEMENTS

The following is a summary of selected provisions of certain principal Material Project Contracts relating to the Project and is not a full statement of the terms of each such agreement. Accordingly, the following summaries are qualified in their entirety by reference to such agreements and are subject to the full text of such agreements. Unless otherwise stated, any reference in this Official Statement to any agreement means such agreement and all schedules, exhibits and attachments thereto.

Design-Build Contract

Design and construction work for the Project will be undertaken by the Design-Build Contractor pursuant to the Design-Build Contract. The Design-Build Contract includes, on a lump-sum, fixed-price, “turn-key basis,” any and all work and services required or appropriate in connection with the design and construction of the Phase 2 Construction Project, except to the extent expressly excluded by the Design-Build Contract. The Design-Build Contract will automatically become effective when the Concession Agreement becomes effective, other than with respect to certain sections identified in the Design-Build Contract, which will become effective on the Commencement Date.

Scope of Work. The scope of work of the Design-Build Contractor under the Design-Build Contract includes, without limitation:

- (i) design, engineering, site investigation, procurement, construction, commissioning, start-up, demonstration, testing and completion of the Phase 2 Construction Project, including provision of all materials, equipment, machinery, tools, labor, supervision, transportation, administration, training and other services and items required to complete and deliver to the Concessionaire the fully integrated and operational Project, in accordance with the Design-Build Contract requirement;
- (ii) obtaining and maintaining in full force and effect throughout the term of the Design-Build Contract all Necessary Consents for the Phase 2 Construction Work and for arranging any necessary amendments to any Necessary Consents required for the completion of the Phase 2 Construction Work; and
- (iii) acquiring any additional property rights beyond those which the Design-Build Contractor has in relation to any part of the Site for access to or an interest in any land which does not form part of the Site or the Managed Lanes, as necessary in connection with the construction of the Project.

Compensation Events. If, as a result of the occurrence of a Compensation Event, the Design-Build Contractor is unable to achieve Phase 2 Work Completion on or before the Planned Full Services Commencement Date or, following the Planned Full Services Commencement Date, before the Full Services Commencement Sunset Date, the Design-Build Contractor is unable to comply with any of its obligations under the Design-Build Contract, and/or the Design-Build Contractor incurs costs or loses revenue, unless such Compensation Event has been caused solely by the Design-Build Contractor or any Design-Build Contractor Related Party, then the Design-Build Contractor is entitled to apply for relief from its obligations and/or relief from any right which the Concessionaire would otherwise have to assert that circumstances amounted to a Design-Build Contractor Default and/or claim compensation under and in accordance with the Design-Build Contract. Except to the extent the Compensation Event is caused solely by and act or omission of the Concessionaire, the Concessionaire’s obligation to pay any amount or grant any relief on account of a Compensation Event will be subject to actually receiving a corresponding amount or relief or partial relief from HPTE pursuant to the Concession Agreement.

Relief Events. If and to the extent that a Relief Event is the direct cause of a delay in achieving Phase 2 Work Completion on or before the Planned Full Services Commencement Date, and/or such

Relief Event adversely affects the ability of the Design-Build Contractor to perform any of its obligations under the Design-Build Contract, the Design-Build Contractor is entitled to apply for relief from its obligations and/or from any rights which the Concessionaire would otherwise have to assert that circumstances amounted to a Design-Build Contractor default (unless such Relief Event has been caused solely by the Design-Build Contractor or any Design-Build Contractor related party). Except to the extent the Relief Event is caused solely by an act or omission of the Concessionaire, the Concessionaire's obligation to grant any relief on account of a Relief Event will be subject to actually receiving corresponding relief or partial relief from HPTE pursuant to the Concession Agreement.

Contract Price. The Design-Build Contract provides for a fixed, lump-sum price in the amount of \$120,600,000 (the "**Contract Price**"). The Contract Price includes all design fees and costs, insurance, construction costs, Necessary Consents, applicable taxes, utilities costs, development and building permits. The Contract Price is payable in monthly installments in the amounts and on the dates established in the Drawdown Schedule and according to the payment submission and certification process set out in the Design-Build Contract.

The Concessionaire will have sufficient committed funding from and after Financial Close to pay the Contract Price and all other budgeted development expenses. The Security Trustee will hold funds from the Funding Agreements and allocated towards construction of the Project in the Project Proceeds Account and will disburse the Design-Build Contractor Payments directly to or on behalf of the Design-Build Contractor in accordance with the Drawdown Schedule and payment certification process set out in the Design-Build Contract and in the MSA.

The Concessionaire may retain amounts that are reasonably necessary, in the discretion of the Concessionaire, to protect the Concessionaire from monetary claims alleging Design-Build Contractor's failure to make payment of amounts owed pursuant to the terms of any subcontract or purchase order which arises out of the Phase 2 Work performed or undertaken and which may be the subject matter of a claim against HPTE and/or the Concessionaire. Such Retention Amount may not at any time exceed, in the aggregate, the lesser of (A) the amounts claimed and (B) five percent of the total payments made to the Design-Build Contractor, and will be deposited in the Retention Account in accordance with the provisions of the Design-Build Contract.

The Design-Build Contractor's Phase 2 Construction Work proposal includes provisions for the performance of certain critical design work after execution of the Concession Agreement but before Financial Close (the "**Early Design Work**"). But for the performance of the Early Design Work, the Contract Price would have included amounts for payment of liquidated damages by the Design-Build Contractor and for scheduled acceleration, which amounts have not been included as a consequence of the inclusion of the following provisions.

If the Design-Build Contractor has performed the Early Design Work in accordance with the terms of the Design-Build Contractor's Phase 2 Work Proposal and if the Concessionaire is unable to achieve Financial Close as a consequence solely of an act or omission of the Concessionaire or a Concessionaire Related Party, and the Design-Build Contractor is not issued a notice to proceed to begin the Phase 2 Construction Work, the Concessionaire will pay the Design-Build Contractor upon termination of the Concession Agreement the amount of the Design-Build Contractor's actual and properly invoiced out of pocket costs and expenses that have been paid by the Design-Build Contractor to the third party that has prepared the design documents in respect of the Project, subject to a maximum amount of \$3,000,000. If the Concessionaire is unable to achieve Financial Close as a consequence solely of an act or omission of the Design-Build Contractor or a Design-Build Contractor Related Party, the Design-Build Contractor will pay the Concessionaire an amount equal to its actual and properly invoiced

out of pocket expenses and costs that have been paid by the Concessionaire to third parties in respect of the Project, subject to a maximum amount of \$3,000,000.

Contractor Guarantees. Ames Construction will provide a guaranty of its obligation under the Design-Build Contract. Granite Construction Incorporated will provide a guarantee of Granite Construction's obligations under the Design-Build Contract. As required by the Design-Build Contract, the guarantees will cover all liquidated damages and losses caused by the Design-Build Contractor's performance which become payable by the Design-Build Contractor under the Design-Build Contract and will continue through the expiry of the Design-Build Contractor's obligations under the Design-Build Contract with respect to all claims arising prior to such date. The liability of each Design-Build Guarantor cannot exceed the liability of the Design-Build Contractor under the Design-Build Contract. The Concessionaire's rights and interests under the guarantees are assignable by the Concessionaire to HPTE pursuant to the terms of the Concession Agreement, and to the Senior Lenders as security pursuant to the terms of the Funding Agreements.

Performance Bond. The Design-Build Contractor will provide the Concessionaire on or before the Financial Close, a Performance Bond which will name HPTE, Senior Lenders and the Concessionaire as multiple obligees, in an amount equal to the Contract Price, from a surety with a credit rating at, or better than, the Ratings Standard or that is rated VIII or better according the A.M. Best's Financial Strength Rating and Financial Size to ensure the completion of the Phase 2 Construction Work by the Design-Build Contractor.

Liquidated Damages. If the Design-Build Contractor fails to achieve substantial completion by the deadline specified in the Design-Build Contract, to the extent such failure is not directly attributable to an act or omission of the Concessionaire, Concessionaire Related Parties or others for whom the Concessionaire is responsible at law, the Design-Build Contractor is obligated to pay to the Concessionaire liquidated damages as determined in the Design-Build Contract from the Planned Full Services Commencement Date until Phase 2 Work Completion to a maximum amount of \$1,011,989.

In addition to the liquidated damages described above, if the Design-Build Contractor fails to achieve Phase 2 Work Completion by the Planned Full Services Commencement Date, the Design-Build Contractor agrees to pay the Concessionaire the liquidated damages of (i) \$3,000 per day (or portion of a day) for each day from the Planned Full Services Commencement Date until the date of the Phase 2 Work Completion, up to a maximum of \$1,095,000, and (ii) \$15,000 per day (or portion of a day) in addition to the amount described in (i) above, for each day from the Planned Full Services Commencement Date until the date of the Phase 2 Work Completion on account of payments the Concessionaire makes to HPTE pursuant to the Concession Agreement, up to a maximum of \$5,475,000. For a discussion of the amounts of liquidated damages that the Design-Build Contractor would be obligated to pay to the Concessionaire, see "APPENDIX C – SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Liquidated Damages."

Retention. Where the Design-Build Contractor has not completed the Phase 2 Construction Work in accordance with the drawdown schedule prescribed under the Design-Build Contract or if the Phase 2 Construction Work outstanding does not meet the remaining contract value test defined in the Design-Build Contract any shortfall amount will be retained in a deferred payment account. Where the Design-Build Contract Payment Certifier certifies a continuing delay in excess of 30 days compared to the current approved CPM Schedule, the Concessionaire may withhold as retention an amount equal to 10% of the amount so deposited to the deferred payment account (the "**Additional Retention**"). In addition, if within the period of 11 months prior to Planned Full Services Commencement Date, the Design-Build Contract Payment Certifier reasonably determines that Phase 2 Work Completion is unlikely to be achieved by the Planned Full Services Commencement Date the Concessionaire is entitled to retain the

amount of liquidated damages calculated to be payable during such delay period taking into account any Additional Retention.

Warranties; No Limitation of Liability. The Design-Build Contractor warrants that all design work furnished pursuant to the Design-Build Contract, the completed Phase 2 GP Lanes, materials and equipment furnished under the Design-Build Contract and the specifications and/or drawings selected or prepared for use during the construction of the Project will be in accordance with the requirements of the Design-Build Contract. The warranty term for each element of the Project will remain in effect until one year after Phase 2 Work Completion.

The warranties specified in the Design-Build Contract are in addition to all rights and remedies available under the Design-Build Contract or applicable law, and will not limit the Design-Build Contractor's liability or responsibility imposed by the Design-Build Contract or applicable law with respect to the work, including liability for design defects, latent construction defects, strict liability, negligence or fraud; provided, however, that, upon expiration of the Phase 2 Warranty Period, the Design-Build Contractor will have no further liability to the Concessionaire for patent construction defects in the Phase 2 Lanes.

For a more detailed summary of the principal provisions of the Design-Build Contract, see APPENDIX C – Summary of Certain Provisions of the Design-Build Contract.

Operating Contract

The Concessionaire has selected Transfield Services Infrastructure Inc. as the Operating Contractor to perform operations, maintenance, management, administration and related obligations under the Concession Agreement and certain other specified services pursuant to the Operating Contract.

The Operating Contract will automatically become effective when the Concession Agreement becomes effective, other than with respect to certain sections identified in the Operating Contract, which will become effective on the Commencement Date. The Operating Contract will commence on the Commencement Date and will run through the earlier of: (i) early termination date or (ii) 20 years from the Full Services Commencement Date, unless extended pursuant to the Operating Contract.

Scope of Services. From the Commencement Date and thereafter throughout the Operating Contract Period in relation to the 1-25 Managed Lanes and the 1-25 Shared Bridge Decks; from the Phase 1 Services Commencement Date and thereafter throughout the Operating Contract Period in relation to the Phase 1 Managed Lanes and the Phase 1 GP Lanes; and from the Full Services Commencement Date and thereafter throughout the Services Period in relation to the Managed Lanes and the US 36 General Purpose Lanes as an integrated system, the Operating Contractor makes the Managed Lanes available for use by vehicles and provides the Services and the Snow and Ice Control Services in accordance with the Operating Contract.

Performance Standards. The Operating Contractor will make the Managed Lanes available for use by vehicles and will provide the Services and the Snow and Ice Control Services in accordance with the Operating Contract, Good Industry Practice, the terms and requirements of any Necessary Consents and all applicable law, and in the case of the Services, in accordance with the HPTE Service Requirements and the Operating Contractor's Service Proposals, and in the case of the Snow and Ice Control Services, in accordance with the HPTE Snow and Ice Control Service Requirements and the Operating Contractor's Snow and Ice Control Service Proposals. The Operating Contractor will maintain the Maintained Elements in a manner that provides a safe and reliable transportation system for improved mobility at current CDOT standards or better.

In addition to its other obligations in relation to the performance of the Services, the Operating Contractor will perform the Services in accordance with the Maintenance Management Plan, the Operations Management Plan and the Safety Plan from time to time accepted by HPTE and the Concessionaire.

Site Investigation. Except as otherwise provided for in the Operating Contract, the condition of the Site will be the sole responsibility of the Operating Contractor and accordingly (but without prejudice to any other obligation of the Operating Contractor under the Operating Contract), the Operating Contractor will be 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, the risk of injury or damage to property adjacent to or affecting the Site and to occupiers of such property, the nature of the materials to be excavated, the nature of the design, work, plant and materials necessary for the Project, the adequacy of the means and rights of access to and through the Site and any accommodation it may require for the purposes of fulfilling its obligations under the Operating Contract.

The Operating Contractor will not be entitled to make any claim in relation to the conditions of the Site against HPTE or the Concessionaire on any grounds, including the fact that incorrect or insufficient information on any matter relating to the Site was given to it by any person, whether or not HPTE, the Concessionaire, or their respective contractors or agents, except as expressly set out in the Operating Contract.

Operation and Maintenance

Management and Operation of Managed Lanes. The Operating Contractor will manage and operate the Managed Lanes in accordance with all applicable laws, Good Industry Practice, all governmental approvals and the terms, conditions and standards set forth in the Concession Agreement and the Operating Contract, including the monitoring, management and control of traffic on the Managed Lanes, the maintenance, inspection and repair of the Managed Lanes and all systems and components thereof, the operation of the Managed Lanes and the Electronic Toll Collection System Infrastructure, including the toll gantries, electrical systems to the “plug and play” ETCS equipment on the I-25 Managed Lanes and the Phase 1 Corridor, all ancillary components within the Managed Lanes and the automatic gate equipment, and otherwise carrying out the collection and enforcement of Tolls and other incidental charges in respect of the Managed Lanes in accordance with the Concession Agreement, the maintenance, compliance with and renewal of governmental approvals necessary and incidental to the foregoing activities, and traffic management.

Life Cycle Maintenance and Renewal of Maintained Elements. The Operating Contractor will perform all life cycle maintenance on all Maintained Elements and as well as reconstruction, rehabilitation, restoration, renewal or replacement of each Maintained Element (or, in the case of the pavement of the roadway, the surface of the pavement and the roadway substructure separately) when it reaches the end of its serviceable life. All renewed Maintained Elements (or, in the case of the pavement of the roadway, the surface of the pavement and the roadway substructure separately) will meet all applicable code requirements and industry design standards at the time of the work of reconstruction, rehabilitation, restoration, renewal or replacement.

Other Services. The Operating Contractor will also provide courtesy patrol service for the Managed Lanes and the U.S. 36 GP Lanes, oversee and address any hazardous materials and spills, and provide customer relations services, and implement a computer based maintenance management information system to record inventory, failures, repairs, maintenance activities and inspections performed.

Hazardous Substances. Operating Contractor will be responsible for all claims, proceedings, suits, demands or similar process, damages, losses, liabilities, costs and expenses and any other obligations whatsoever from any Hazardous Substances, other than HPTE Hazardous Substances Circumstances, except to the extent directly attributable to the gross negligence of the Concessionaire.

Ground Contamination. Except as expressly set out in the Operating Contract, the Operating Contractor will be responsible for, and will compensate the Concessionaire for any Losses that it may incur in relation to, cleaning up and otherwise dealing with any ground contamination at or from the Site so that it will at all times comply with its obligations under the Operating Contract including (without limitation) complying with, at its own cost, any applicable law and any Necessary Consents, orders, notices or directions of any Governmental Authority (whether made against HPTE, the Concessionaire or the Operating Contractor).

Compensation for Services. Commencing on the Payment Commencement Date, the Concessionaire will compensate the Operating Contractor for the performance of all services monthly in arrears with the all-inclusive Monthly Operating Contractor Payments calculated pursuant to the Operating Contract. The Monthly Operating Contractor Payment is the sum of the Monthly Base Operating Contractor Payment, the Monthly Operating Contractor Lifecycle Payment, the Phase 1 Routine Maintenance Service Fee, the GP Routine Maintenance Service Fee and the GP Snow and Ice Control Services Fee, less any deductions for payments made to HPTE by the Concessionaire and less the sum of estimated Toll Revenues not collected due to all or a portion of the Managed Lanes being unavailable, other than during scheduled maintenance agreed in advance in writing by the Concessionaire, as a consequence of acts or omissions of the Operating Contractor.

The Operating Contractor has delivered to the Concessionaire a budget of Lifecycle Costs for all Life Cycle Maintenance and all replacement, refreshment and/or refurbishment of the Assets to be completed in accordance with the Operating Contract (collectively, the “**Lifecycle Work**”). On an annual basis, the Concessionaire and the Operating Contractor will meet to review the Lifecycle Work completed in the prior year, the Lifecycle Costs incurred in the prior year, the Monthly Operating Contractor Lifecycle Payments paid to the Operating Contractor in the prior year and to review and approve a Lifecycle Replacement Schedule for the next calendar year. The Operating Contractor will undertake all necessary Lifecycle Work to ensure that the Concessionaire is complying with its lifecycle obligations under the Concession Agreement. In the event that the Monthly Operating Contractor Lifecycle Payments are not sufficient to cover the Lifecycle Costs incurred, the Operating Contractor will be liable to provide all required additional capital necessary to pay such costs and the Operating Contractor will not be entitled to be reimbursed for such additional Lifecycle Costs from the Concessionaire or HPTE at any time. The foregoing will not apply to any change to Lifecycle Costs arising from any alteration, change, variation, extension or reduction in the Managed Lanes (whether before or after the Full Services Commencement Date) and/or the Services which has been requested by the Operating Contractor, the Concessionaire or HPTE in accordance with the Operating Contractor and/or any matter or circumstance deemed to be a Concessionaire Change by virtue of an express provision of the Operating Contract or the Concession Agreement (a change initiated by HPTE under the Concession Agreement, a change initiated by the Concessionaire, a material Phase 1 Change Order or a qualifying change in law).

The Phase 1 Routine Maintenance Service Fee, the GP Routine Maintenance Service Fee and the GP Snow and Ice Control Services Fee will each be paid on a flow-through basis to the Operating Contractor when received by the Concessionaire from HPTE.

In the event that the actual Toll Revenues collected by the Concessionaire are projected to be materially less than the amount anticipated by the Concessionaire, as determined by the Concessionaire acting reasonably, the Concessionaire may request by notice to the Operating Contractor, that the

Monthly Operating Contractor Payment be reduced to an amount that takes account of such reduction in Toll Revenues and is satisfactory to the Concessionaire, acting reasonably and in good faith. In the event that a reduction in the Monthly Operating Contractor Payment that is satisfactory to Concessionaire cannot be agreed upon, Concessionaire and Operating Contractor cooperates in an effort to change the HPTE Services Requirements in order to facilitate a reduction in Monthly Operating Contractor Payments under the Operating Contract. In the event that such agreement is not achieved within 30 days of Concessionaire commencing discussions with HPTE with respect to such changes in the HPTE Services Requirements, Concessionaire may terminate the Operating Contract.

Security and Guarantee

Letter of Credit. On or before the Financial Close, the Operating Contractor will deliver to the Concessionaire a letter of credit from a permitted letter of credit provider addressed to and in favor of the Concessionaire and the Security Trustee (for the benefit of the Senior Lenders) in an amount from time to time equal to the average Monthly Operating Contractor Payment (indexed) and the average Monthly Operating Contractor Lifecycle Payment (indexed) projected to be payable in the then current month and the next following two months, subject to any amendments. The Letter of Credit will be irrevocable, unconditional and provide for partial drawdowns. The Operating Contractor may at any time deliver U.S. dollars in immediately available funds delivered to (or held back by) the Concessionaire and deposited by the Concessionaire in an account of the Concessionaire subject to the control and management of the Security Trustee for the benefit of the Senior Lenders on terms reasonably acceptable to the Concessionaire and the Security Trustee in substitution for or replacement of any Letter of Credit.

Operating Guarantee. The Operating Contractor will cause its parent company, Transfield Services Limited, to deliver the Operating Guarantee in favor of the Concessionaire of all obligations of the Operating Contractor under the Operating Contract and the Interface Agreement. The Operating Guarantor's maximum liability under the Operating Guarantee will be \$18,000,000 (indexed).

Assignment of Security. The letter of credit and the Operating Guarantee will be assignable by the Concessionaire in connection with the assignment by the Concessionaire of its interest in the Operating Contract and to the Security Trustee on behalf of the Senior Lender or to any trustees or agents of the Senior Lenders.

Termination Rights

Non-Occurrence of Commencement Date. If the Commencement Date does not occur before the Financial Close Deadline Date (as extended pursuant to the Concession Agreement) the Operating Contract will automatically terminate unless otherwise agreed by Concessionaire and Operating Contractor.

Operating Contractor Default. Subject to applicable cure and notice periods, the Concessionaire is entitled to terminate the Operating Contract for a number of reasons, including, but not limited to: (i) a breach by the Operating Contractor of any of its obligations under the Operating Contract which materially and adversely affects the performance of the Services; (ii) insolvency of the Operating Contractor or the Operating Guarantor; (iii) assignment of the Operating Contractor's interest in the Operating Contract without the Concessionaire's consent; (iv) change in ownership or change of control of the Operating Contractor without Concessionaire's consent; (v) a breach by the Operating Contractor of its obligations to take out and maintain any of the Required Insurances; (vi) failure by the Operating Contractor to pay an undisputed amount in excess of \$500,000 (indexed) for a period of 30 Business Days following delivery of a written demand of the Concessionaire; (vii) if an Operating Contractor Default arises in relation to the number of uncured or unexpired Noncompliance Points; (viii) failure to provide any Performance Security when due; (ix) any default under any Performance Security; or (x) the

Operating Guarantor taking the position that the Operating Guarantee is invalid or unenforceable or if the liability of the Operating Guarantor under the Operating Guarantee (in the aggregate in respect of all claims thereunder) exceeds the maximum liability under the Operating Guarantee and the Operating Guarantee is not replaced.

On termination of the Operating Contract as a result of an Operating Contractor Default, Operating Contractor will be responsible for all costs incurred by the Concessionaire associated with the appointment of a replacement operating contractor, including without limitation, increases to the cost of performing the Services.

Termination for Continuing Breach of Operating Contract. If a particular breach of the Operating Contract continues for more than 14 days or occurred more than three times in any six month period, then the Concessionaire may serve a warning notice on the Operating Contractor. If, following service of a warning notice, the breach specified has continued beyond 30 days or recurred two or more times in the six month period after the date the warning notice was served, the Concessionaire may serve a final warning notice on the Operating Contractor which notice may state that the Concessionaire may terminate the Operating Contract if the breach continues, or recurs, for more than 14 days or recurs two or more times within six months of the Operating Contractor receiving a final warning notice. If the Operating Contract is terminated under the provision above, the Operating Contractor will be entitled to the Demobilization Costs attributable to the Services but Concessionaire's obligation to make such payment to Operating Contractor will arise only upon receipt of a corresponding amount from HPTE.

Prohibited Act. Subject to applicable cure periods, the Concessionaire may terminate the Operating Contract if the Operating Contractor or an employee not acting independently of the Operating Contractor commits a Prohibited Act.

Concessionaire Default. Subject to the applicable cure and notice periods and all cure rights of the Concessionaire under the Concession Agreement and of the Security Trustee pursuant to its direct agreement with the Concessionaire and the Operating Contractor, the Operating Contractor is entitled to terminate the Operating Contract for the following reasons: (i) 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 the Concessionaire to make payment of any amount of money exceeding \$500,000 (indexed) that is due and payable by the Concessionaire under the Operating Contract within 30 Business Days of service of a formal written demand by the Operating Contractor, where that amount fell due and payable prior to the date of service of the written demand; (ii) insolvency of the Concessionaire; or (iii) a breach by the Concessionaire of its obligations under the Operating Contract except to the extent caused or contributed to by the Operating Contractor, which substantially frustrates or renders it impossible for the Operating Contractor to perform its obligations for a continuous period of two months.

The Concessionaire will reimburse the Operating Contractor for all reasonable costs properly incurred by the Operating Contractor in exercising its termination rights. Notwithstanding the foregoing, where a Concessionaire Default is attributable to a default by HPTE of its obligations under the Concession Agreement, the Concessionaire will take all commercially reasonable steps to obtain reimbursement from HPTE and any reimbursement made by the Concessionaire to Design-Build Contractor will only be made when and to the extent that the Concessionaire receives reimbursement for such costs from HPTE under the Concession Agreement.

Termination of Concession Agreement. The Concessionaire may terminate the Operating Contract in whole or in part upon any termination of the Concession Agreement for any reason, without liability of the Concessionaire or HPTE for Operating Contractor's lost profits or business opportunity, other than in accordance with the express provisions of the Concession Agreement.

If the Concession Agreement is terminated by HPTE as a result of a Concessionaire Default, which is not a default for which Operating Contractor is responsible, then the termination under the Operating Contract will be the same as if the Operating Contract was terminated by the Operating Contractor as a result of a Concessionaire Default. If the Concession Agreement is terminated as a result of an Operating Contractor Default, then the termination of the Operating Contract will be the same as if the Operating Contract was terminated as a result of an Operating Contractor Default. If the Concession Agreement is terminated partly as a result of a Concessionaire Default and partly as a result of an Operating Contractor Default, there will be a fair and equitable share of the amounts due to each party based on their respective contributions to the events of default with any disputes to be resolved pursuant to the Dispute Resolution Procedure.

Voluntary Termination by HPTE. If HPTE terminates the Concession Agreement in accordance with the Concession Agreement, the Operating Contract will automatically terminate on the date that the Concession Agreement terminates. Operating Contractor will be entitled to be paid the Demobilization Costs but Concessionaire's obligation to make such payment to Operating Contractor will arise only upon receipt of a corresponding amount from HPTE.

Force Majeure. Either party may terminate the Operating Contract if a Force Majeure Event is continuing or its consequence remains such that the affected party is unable to comply with its obligations under the Operating Contract for more than 120 days and if the Concession Agreement is terminated for the same Force Majeure Event. In the event of a termination, the Operating Contractor will be entitled to the Demobilization Costs attributable to the Services but the Concessionaire's obligation to make such payment to Operating Contractor will arise only upon receipt of a corresponding amount from HPTE.

For a more detailed summary of the principal provisions of the Operating Contract, see APPENDIX D – Summary of Certain Provisions of the Operating Contract.

Tolling Services Agreement

On or prior to the Closing Date, the Concessionaire, HPTE and the E-470 Authority will enter into the I-25 Tolling Services Agreement pursuant to which, among other things, the Concessionaire will be entitled to receive Tolls collected on the I-25 Managed Lanes and the E-470 Authority will provide tolling collection services, back-office services and toll collection/toll evasion adjudication services for the Concessionaire for the I-25 Managed Lanes. Tolls are read on the I-25 Managed Lanes through transponders or by taking photographs of license plates. Generally, only the E-470 Authority and its authorized vendors may provide transponders for the I-25 Managed Lanes and only those transponders may be used to process tolls collected on the I-25 Managed Lanes.

The Concessionaire is required to reimburse the E-470 Authority for applicable transponder costs and certain other out-of-pocket expenses incurred by the E-470 Authority on the Concessionaire's behalf. The E-470 Authority agrees to remit applicable Toll Revenue and Other Revenue within three Business Days after a transponder transaction is successfully posted to the toll account and within three days after receipt of cash sufficient to pay the bill for a license plate account, violation or transaction pursuit through collection, adjudication or other form of delinquent processing. "**Other Revenue**," which includes multi-position transponder revenue, HPTE's portion of collected civil penalties and such other revenues as the E-470 Authority may agree to collect for HPTE and remit to Concessionaire, collected by the E-470 Authority will be deposited on the tenth Business Day following receipt of the applicable reporting under the ETCS.

The Concessionaire must avoid using toll system technology for the I-25 Managed Lanes that adversely affects the reliability of the toll lane equipment and components, cameras and other capture

equipment currently used to process Tolls. Concurrently with the execution of the I-25 Tolling Services Agreement, the Concessionaire, HPTE and the E-470 Authority are entering into a Trademark License Agreement in which the E-470 Authority grants to HPTE and the Concessionaire a fully-paid up, royalty free, license to use E-470 Authority's servicemarks in connection with highway toll collection services and electronic toll collection services.

Concessionaire defaults under the I-25 Tolling Services Agreement include, among other things: failure to make payments or to perform material nonmonetary obligations (subject to a grace period); certain bankruptcy events; an invalid assignment by the Concessionaire of its rights and obligations under the I-25 Tolling Services Agreement. E-470 Authority defaults under the I-25 Tolling Services Agreement include, among other things: failure to process or collect Tolls as required under the Toll Services Agreement and to remit Toll Revenue and Other Revenue to the Concessionaire (with a grace period); failure to perform material nonmonetary obligations (with a grace period); certain bankruptcy events; and an improper assignment of its rights under the I-25 Tolling Services Agreement.

Concurrently with the execution and delivery of the I-25 Tolling Services Agreement, in a Memorandum of Understanding, the E-470 Authority, the Concessionaire and HPTE express their respective commitment to negotiate in good faith toward entering into the Project Toll Services Agreement covering the I-25 Managed Lanes and the U.S. 36 Managed Lanes and have set out principles to guide the negotiations. It is not possible at this point to determine whether a Project Toll Services Agreement will be entered into by the E-470 Authority, the Concessionaire and HPTE or what provisions a Project Toll Services Agreement may contain. During the term of the I-25 Tolling Services Agreement, the Concessionaire agrees it will not contract in any manner with another tolling services provider to provide the tolling services contemplated in I-25 Tolling Services Agreement and in the Project Toll Services Agreement. In addition, HPTE agrees that it will not contract in any manner with any tolling services provider other than the E-470 Authority to provide the tolling services contemplated in the I-25 Tolling Services Agreement and in the Project Toll Services Agreement.

Currently, the I-25 Tolling Services Agreement is scheduled to terminate on the earlier to occur of: (1) January 1, 2016, (2) the commencement of tolling operations on the Phase 1 Managed Lanes, and (3) the Concessionaire and HPTE entering into the Project Tolling Services Agreement. The I-25 Tolling Services Agreement also may be terminated upon a default by either party, or if the Concession Agreement is terminated. In addition, the I-25 Tolling Services Agreement provides that, if negotiations for a Project Toll Services Agreement are not concluded by February 14, 2014, then the E-470 Authority will be relieved of its obligations to negotiate a Project Toll Services Agreement and of its (and HPTE's) obligations described in the last two sentences of the preceding paragraph. However, the other obligations of the E-470 Authority under the I-25 Toll Services Agreement (i.e., providing tolling collection and back-office services and giving the Concessionaire the right to collect Tolls on the I-25 Managed Lanes) will remain in full force and effect until terminated as described above.

In the Phase 2 TIFIA Loan Agreement, the Concessionaire has agreed to enter into the Project Tolling Services Agreement with respect to each segment of the Managed Lanes in form and subject reasonably satisfactory to the TIFIA Lender within four months following the Effective Date or, if sooner, the complete termination of the I-25 Tolling Services Agreement. The Concessionaire also has agreed to enter into a direct agreement with any tolling services provider, HPTE and the Security Trustee on terms substantially similar to the direct agreement being entered into in connection with the I-25 Tolling Services Agreement or otherwise on terms reasonably satisfactory to the TIFIA Lender.

Toll Enforcement Agreement

The Colorado Department of Public Safety, Division of Colorado State Patrol (the "CSP") currently provides tolling enforcement services on the I-25 Managed Lanes pursuant to a State of

Colorado, Colorado Department of Transportation Interagency Agreement dated July 26, 2011 between HPTE and the CSP. Under the I-25 Toll Enforcement Agreement, the CSP provides specified toll enforcement services and HPTE pays fees for those services. The I-25 Toll Enforcement Agreement has a term that ends on July 26, 2016. The Concessionaire currently intends to enter into the System Toll Enforcement Agreement for the I-25 Managed Lanes and the US 36 Managed Lanes and has begun discussions with that end with the CSP. Although the terms of a System Toll Enforcement Agreement have yet to be finalized, the Concessionaire believes that its final terms will be similar to those set forth in the I-25 Toll Enforcement Agreement with HPTE. The Concessionaire also believes that its costs under a System Toll Enforcement Agreement will be reasonable and within its projected operating costs.

Interface Agreement

The Interface Agreement to be entered into among the Design-Build Contractor, the Operating Contractor and the Concessionaire on or prior to the Closing Date (the “**Interface Agreement**”) will provide that the Design-Build Contractor, the Operating Contractor and the Concessionaire will interact with each other and work together cooperatively, including: (i) acting reasonably and promptly in the performance of its respective obligations and to minimize any interference with, or delay to, the other parties, (ii) not to unreasonably withhold or delay any approval, consent or response required by the other parties, (iii) sharing information with the other parties, (iv) not to knowingly commit any act or omission that will contribute to, cause or constitute a breach by the other parties. Pursuant to the Interface Agreement, the Design-Build Contractor grants non-exclusive access rights to the Site to the Operating Contractor prior to the Full Services Commencement Date. The Interface Agreement also sets out, as between the Design-Build Contractor and the Operating Contractor, responsibility for Defects and provides a dispute resolution process for the allocation of responsibility between the Design-Build Contractor and the Operating Contractor.

Management Services Agreement; Finance Services Agreement

The Concessionaire and Plenary Group USA Ltd. (the “**Plenary Manager**”) are entering into a Management Services Agreement pursuant to which the Plenary Manager will be responsible for monitoring and managing, on behalf of the Concessionaire, certain of the obligations of the Concessionaire under the Concession Agreement including attending meetings with HPTE and CDOT, training and hiring employees, preparing reports and records and performing general management functions necessary to enable the Concessionaire to perform its obligations under the Concession Agreement. In consideration of such management services, the Concessionaire will pay to the Plenary Manager the following fees: (i) prior to the Full Services Commencement Date, annual management fees of approximately \$250,000; (ii) during the Services Period, yearly management fees of \$352,600 (indexed); and (iii) upon the successful achievement of Phase 2 Completion, the Phase 2 Completion Success Fee and the Supplemental Contribution Amount.

The Concessionaire and the Plenary Manager are also entering into a Finance Services Agreement pursuant to which the Plenary Manager will be responsible for monitoring, administering and managing, on behalf of the Borrower Group Members, certain financial services of the Borrower Group Members and certain of the Borrower Group Members' obligations under the Funding Documents, including managing bank accounts, providing and receiving notices and maintaining and keeping the security granted under the Security Documents. In consideration of such financial services, the Concessionaire will pay to the Plenary Manager yearly fees of \$45,000 during the Construction Period and \$40,000 during the Services Period (indexed).

The fees paid to the Plenary Manager pursuant to these agreements will be paid as part of the O&M Expenses prior to Debt Service on the Senior Obligations. See “PROJECT ACCOUNTS AND FLOW OF FUNDS – Project Proceeds Account – Monthly Transfers from Project Proceeds Account.”

Intergovernmental Agreements

HPTE-CDOT Agreement. In the Concession Agreement, HPTE has agreed to provide periodic payments to the Concessionaire, including payments relating to the HPTE Capital Payment, the Maintenance Fees, Compensation Events, and certain payments related to Non-Separable Tasks.

Pursuant to the HPTE-CDOT Agreement, CDOT has agreed to provide funds to HPTE relating to (i) Snow and Ice Control Services for the U.S. 36 GP Lanes, (ii) routine maintenance on the U.S. 36 GP Lanes and (iii) HPTE's obligations relating to Non-Separable Tasks (collectively, the "**CDOT Service Funding Obligations**"). The CDOT Service Funding Obligations are subject to annual allocation by the Transportation Commission. See "PROJECT PARTICIPANTS – CDOT – Appropriations and Budgetary Process" for a description of the allocation process for the CDOT Service Funding Obligations.

In the HPTE-CDOT Agreement, CDOT also has agreed to make available to HPTE amounts due to CDOT from various intergovernmental agreements and a federal funds grant awarded by DRCOG. These amounts will be used by HPTE to fund the HPTE Capital Payment. The Transportation Commission has budgeted these local and federal funds, making them available for the HPTE Capital Payment. See "PLAN OF FINANCE – HPTE Capital Payment."

The HPTE-CDOT Agreement also sets forth procedures for HPTE to obtain a loan from CDOT for funding any other payments required to be made by HPTE to the Concessionaire under the Concession Agreement. In order to obtain a loan, HPTE is required to notify the Executive Director of CDOT in writing as to the estimated maximum amount, if any, that is expected to be payable in the succeeding fiscal year, and such maximum amount (the "**CDOT Backup Loan Set Aside**") is required to be included in the budget request to the Transportation Commission for an allocation of moneys in the State Highway Fund for such purpose. Any amounts to be loaned by CDOT to HPTE are subject to allocation by the Transportation Commission. HPTE may also, at any time during any fiscal year, request CDOT to make a loan to HPTE in an amount that exceeds any CDOT Backup Loan Set Aside that the Transportation Commission has previously allocated for such fiscal year. In such event, the Executive Director of CDOT is required to submit a supplemental budget request to the Transportation Commission at its next regularly scheduled meeting for an allocation or supplemental allocation of moneys in the State Highway Fund for the purposes of making a loan or loans to HPTE in such fiscal year in an amount set forth in the HPTE's request. See "PROJECT PARTICIPANTS – CDOT – Appropriations and Budgetary Process."

Moneys allocated by the Transportation Commission to make loans to HPTE are required to be transferred to the HPTE's operating account within the department's accounting system and to be used by HPTE to satisfy its monetary obligations under the Concession Agreement as they become due. The HPTE-CDOT Agreement provides that, unless HPTE has funds from any other legally available source to enable it to prepay the loans, the loans will be repaid from the revenues generated by the Project after the Concession Agreement has terminated and that no repayment of any loan will fall due before the later of (a) the date when Services Period ends and (b) the date on which HPTE has fully paid all amounts under or in connection with the Concession Agreement.

Finally, in the HPTE-CDOT Agreement, CDOT granted to HPTE for the Contract Period a non-exclusive license over, under, upon and in the Site and the Managed Lanes for the same duration as the period of the license granted by HPTE for the Site and the Managed Lanes to the Concessionaire under the Concession Agreement. Further CDOT acknowledged and agreed that both HPTE and the Concessionaire may sublicense the license granted by CDOT to any other party as may be permitted by, and in accordance with, the Concession Agreement.

U.S. 36 Concession Project IGA. HPTE, CDOT and the RTD entered into the U.S. 36 Concession Project IGA dated June 13, 2013, to govern certain elements of the Phase 1 Project and the

Project related to the construction, installation and maintenance of the Bus Rapid Transit (“BRT”) improvements, tolling of the Managed Lanes, and operations and maintenance of the Managed Lanes, GP Lanes and other improvements. The term of the U.S. 36 Concession Project IGA is the later of (i) 50 years or (ii) termination or expiration of the Concession Agreement, as the same may be modified, restated, or extended.

BRT improvements are being or will be constructed in the U.S. 36 Corridor and generally will include new electronic signage, bus improvements at ramps, improvements to RTD stations along the U.S. 36 Corridor, including new canopies with enhanced weather protection, and other improvements described in the U.S. 36 Concession Project IGA (together, the “**BRT Improvements**”). RTD has agreed to be responsible for the operation and maintenance of all BRT Improvements after they are constructed and installed.

The U.S. 36 Concession Project IGA amends, restates and replaces an Intergovernmental Agreement entered into by the parties on August 30, 2011 (the “**Phase 1 U.S. 36 IGA**”), except for limited provisions regarding the delivery of certain BRT infrastructure for the Phase 1 Project and RTD’s financial contribution towards the construction of the Phase 1 Project. In addition, the Phase 1 U.S. 36 IGA will continue to govern the Phase 1 Construction Work until the Phase 1 Services Commencement Date.

In the U.S. 36 Concession Project IGA, RTD agrees that certain provisions of the Concession Agreement, such as provisions relating to construction, project documentation, operations and maintenance, life cycle work, handback and tolling (provided that any subsequent revisions, modifications or extensions with respect to such provisions are required to be approved by the RTD), will govern in the event of any conflict between such provisions and prior intergovernmental agreements among HPTE, CDOT and RTD.

HPTE, CDOT and RTD also agreed on the tolling-related requirements described in “TOLLING ON THE MANAGED LANES – Minimum Tolls, Maximum Tolls; – Non-Tolled Vehicles; – Managed Lanes Speeds”. The parties agreed that in the event the posted speed limits on the Managed Lanes are ever reduced, they will agree to reduce the Managed Lanes Goals (which relate to the minimum speeds in the Managed Lanes) and the tolling and HOV requirements described in the U.S. 36 Concession Project IGA to address such reduction so long as it does not cause HOV performance in the Managed Lanes to fall below certain previously established standards for minimum travel time. See “TOLLING ON THE MANAGED LANES – Managed Lanes Speeds.” Further, RTD agreed not to require HPTE to revise the minimum Tolls during the Peak Periods described in the U.S. 36 Concession Project IGA more than once per 12 calendar months commencing on July 1 and ending on June 30 of the following calendar year and to provide advance 45-day notice to HPTE prior to fare changes for which RTD will require a toll adjustment. See “TOLLING – Establishment of Tolls and Penalties.”

REPORTS

This section includes brief summaries of the U.S. 36/I-25 Managed Lanes Traffic and Revenue Study (the “**Traffic and Revenue Study**”) dated February 4, 2014 prepared for the Concessionaire by Buro Happold Limited (“**Buro Happold**”) and the Lenders’ Technical Advisor Report (the “**Technical Report**”) dated February 8, 2014 prepared for the Concessionaire by BTY Group (“**BTY**”) contained in APPENDICES H and I, respectively. *The Traffic and Revenue Study and the Technical Report are referred to collectively as the “**Reports**,” and Buro Happold and BTY are referred to collectively as the “**Advisors**”. References to the Reports are qualified in their entirety by the Reports themselves. Readers are directed to read each Report in its entirety and to pay careful attention to the disclaimers and limitations on liability described below or within the Reports themselves.*

Investors may not rely upon the summaries of the Reports but only upon the full Reports and subject to the limitations and disclaimers in such Reports. The Reports are expressly subject to the qualifications, assumptions made, procedures followed, matters considered and any limitations on the scope of work contained therein. These summaries and the Reports in APPENDICES H and I are provided only as of the date set forth therein and do not include any event circumstances or changes with respect to the Project or otherwise after such date.

Each of the Reports includes “forward-looking statements.” These statements relate to the respective Advisor’s expectations, beliefs, and forecasts regarding future events and trends, and may be affected by unforeseen events that are beyond such Advisor’s control and that could not have been reasonably anticipated. These statements may be identified by the use of words such as “anticipate,” “believe,” “estimate,” “expect,” “intend,” “plan,” “projected,” “will,” “should,” “anticipate,” “seek,” and similar expressions. The “forward-looking statements” reflect such Advisor’s views and assumptions with respect to future events as of the date of its respective Report and are subject to future economic conditions and other risks and uncertainties such as future traffic levels, government funding levels, construction delays, and changes in law. Actual and future results and trends could differ materially from those set forth in such statements due to various factors, including, without limitations, those discussed herein and in the respective Reports. See “CERTAIN RISK FACTORS—Uncertainties of Forecasts and Assumptions.”

Traffic and Revenue Study

Buro Happold produced the Traffic and Revenue Study in APPENDIX H. It provides traffic and revenue projections for the Managed Lanes. The Traffic and Revenue Study includes the collection and review of traffic data and patterns and of economic data in the Managed Lanes corridor and an analysis of socio-economic trends in the area affected by the Project for the purposes of developing a forecasting model and preparing the Managed Lanes traffic and revenue forecasts.

The Traffic and Revenue Study was prepared, in accordance with the requirements, instructions and at the direction of Plenary Group and, accordingly, without the benefit of any instructions from any purchaser of the 2014 Bonds. The Traffic and Revenue Study does not constitute a recommendation to any prospective purchaser of the 2014 Bonds whether it should purchase any of the 2014 Bonds.

The Traffic and Revenue Study assesses the traffic trends in the wider Denver area as well as historic occupancy data on the I-25 Managed Lanes from their opening to June 2013. It reviews historic revenues for the I-25 Managed Lanes, as well as tolling levels for different times of the day. Then, using information taken from the Denver Regional Council of Governments (“**DRCOG**”) and other sources, it develops a network model using factors such as: the highway network and its characteristics; vehicle types and time slices; and predicted flow and network characteristics. The consequent projections of traffic and revenue (the “**Sponsor Base Case**”) represent Buro Happold’s best estimates of the most likely outcomes of traffic and revenue for the Project. Buro Happold believes that the projections set forth in the Sponsor Base Case, while not a precise forecast, are a reasonable expectation for the future, based on credible information available to it as of the date of the Traffic and Revenue Study. However, Buro Happold strongly cautions that the Sponsor Base Case relies on numerous assumptions and judgment and is influenced by external circumstances, all of which can change quickly. In addition, some of its analysis is based on data collected by CDOT, DRCOG and other parties and Buro Happold specifically does not guarantee the accuracy of any such data.

The Traffic and Revenue Study sets out (in Table 5-5 thereof) transaction forecasts through 2061 for the Sponsor Base Case, including gantry transactions for vehicles that will be tolled through license plate readings and trip transactions for vehicles equipped with transponders. Appendix A of the Traffic and Revenue Study sets forth projections of toll rates by year, time of day, and gantry for the I-25 and

U.S. 36 Managed Lanes portions of the Project. Appendix B of the Traffic and Revenue Study contains the Sponsor Base Case and sets forth revenue projections for the I-25 Managed Lanes and U.S. 36 Managed Lanes assuming that an HOV3+ restriction (i.e., non-exempt vehicles with less than three occupants will be charged a toll) will be in effect. Appendix C to the Traffic and Revenue Study sets forth the Sponsor Base Case revenue projections separately for (i) the I-25 Managed Lanes and the Phase 1 Managed Lanes and (ii) for all Managed Lanes, assuming that an HOV2+ toll policy will be in effect.

Buro Happold also undertook a number of sensitivity analyses to address the potential increase and decrease in revenues that could arise due to changes in value of time forecast, toll level forecast and traffic growth rates. It also ran different scenarios assuming different toll capture rates, as well as benchmarking the Sponsor Base Case against other managed lane projects.

In the year ending June 2016, I-25 Toll Revenues represents 74% of total Toll Revenues, and declines over time to 66% of total Toll Revenues by year ending June 2036. Phase 2 Toll Revenues is expected to account for 2% of total Toll Revenues.

Buro Happold used the following, among other, assumptions to develop the Sponsor Base Case:

- All revenue calculations were undertaken with a 2010 dollar price base and assume all Tolls (and hence revenues) increase in line with inflation, in addition to any increase as a consequence of real toll increases assumed by the forecast.
- The values of time are in 2010 dollar values plus an assumption that real values of time increase by 1% a year from 2010 due to growth in real incomes.
- Employment in the Denver-Aurora-Broomfield-Boulder region has averaged 1.78% growth a year from 1990 to 2012. The latest forecast for 2013 is for at least 2% growth as a result of the Denver Metropolitan area being expected to achieve full economic recovery in 2013 – which means that all jobs lost during the recent recession are expected to be regained. Given the recent employment recovery in the region, Buro Happold assumed traffic growth rate of 1.7% a year through 2035.
- Buro Happold anticipates that the full network of Managed Lanes operating under a HOV3+ regime (i.e. non-exempt vehicles with two or fewer occupants pay a toll) will be in operation for the longest period of time and, therefore, it adopted the HOV3+ regime for the majority of the model runs and then looked at how alternative scenarios in terms of phasing and HOV policy would impact the Toll Revenues in the early year forecasts.
- Certain current temporary constraints including the construction on the Denver Union Station exit ramps and the Phase 1 Project are removed.

Buro Happold noted the following characteristics, among others, of the U.S. 36 Corridor area as important in developing the assumptions and forecasts included in the Traffic and Revenue Study:

- “Geographical” benefits of the Denver region, combined with an attractive lifestyle, appear to be the reasons why people and businesses have, and continue, to move to the region, and the local labor markets are currently faring much better than many other locations.
- Colorado ranked among 12 states that are expected to return to their peak pre-recession job levels by 2013, according to a recent analysis.

- Three different forecasts of population and employment growth in the Denver area show population growth at compound annual growth rates of anywhere from 1.35% to 1.60%, and employment growth rates of 1.47% to 2.01%. Employment growing faster than population is viewed as a positive as employment growth is an important driver of peak traffic growth.
- The existing I-25 Toll Revenues have grown steadily since opening in June 2006, except for a small decline due to the recession in 2009. Since 2009, the revenues grew at 6% per year, even though the Tolls for all time periods (except for 1 hour in the morning and 1.5 hours in the evening) have remained constant since the HOV lanes opened.

The Traffic and Revenue Study should be read in its entirety. See APPENDIX H – Traffic and Revenue Study for more information.

Technical Report

General. BTY prepared the Technical Report in APPENDIX I. The Technical Report includes an assessment of the capabilities and experience of the Concessionaire and its sponsors, the Design-Build Contractor, its members and the entity providing design services in respect of the Phase 2 Construction Project, and the Operating Contractor. It also provides a commercial commentary on provisions of the Concession Agreement that is focused solely on potential areas of technical risk and their mitigation, as well as similar technical and commercial commentary on the provisions of the Design-Build Contract and the Operating Contract. It reviews and assesses the environmental permits and approvals for the Phase 2 Construction Project and the Concessionaire’s plans to acquire those permits and to address any existing site conditions. It also reviews the proposed design of the Phase 2 Construction Project, the projected schedule, the projected capital costs, and the projected operating costs of the Project prepared by the Concessionaire. It also assesses requirements for routine operation and maintenance, life cycle replacements, snow and ice control services and reviews the Concession Agreement provisions imposing increased oversight and financial payments for operations and maintenance shortfalls.

Consortium. BTY assessed the Concessionaire’s team credentials and ability to undertake the Project, including individual member’s highway and transportation project experience. BTY concluded that each team member is a major construction firm in its own right, with extensive highway and transportation experience and other experience in large civil projects across North America, and that each possesses the financial resources and technical capabilities to individually complete the Project.

Concession Agreement. BTY reviewed the Concession Agreement, specifically provisions relating to the contract period, conditions precedent, financial close requirements, undertakings, representations and warranties of parties, ownership and use of property, environmental requirements, scope of construction, site responsibilities and site conditions, monitoring and inspection regime, operation and maintenance requirements, Phase 1 interface, scope of managing, reporting and implementing life cycle maintenance work, emergency actions as a result of serious risk to health and safety, tolling, self-monitoring provisions, compensation events, relief events, change procedures, handback provisions, termination terms and processes and dispute resolution. BTY concluded that such provisions are standard, appropriate and in-line with similar agreements in North America.

Design-Build Contract. BTY reviewed a draft of the Design-Build Contract, specifically:

- the Design-Build Contractor’s back-to-back design and construction obligations,
- provisions relating to the contract period, conditions precedent and financial close requirements, undertakings, representations and warranties of the parties,

- the Design-Build Contractor’s responsibility for the performance of the Phase 2 Construction Work and the adequacy of the design,
- the Design-Build Contractor’s security coverage and performance and payment guarantees,
- ownership and use of property, environmental responsibilities and requirements,
- scope of construction, site responsibilities and site conditions,
- the Design–Build Contractor’s obligations to obtain all Necessary Consents,
- supervision and reporting requirements,
- the Design-Build Contractor’s obligations in the event of a delay of Phase 2 Construction Work,
- the Design-Build Contractor’s obligations to complete the Phase 2 Construction Work,
- liquidated damages, contract price payment mechanisms, and
- compensation and relief events and dispute resolution provisions.

BTY concluded that such provisions are standard, appropriate and in-line with similar agreements in North America.

Operating Contract. BTY reviewed a draft of the Operating Contract, specifically the Operating Contractor’s back-to-back operation and maintenance obligations, provisions relating to the contract period, conditions precedent and financial close requirements, undertakings, representations and warranties of the parties, the Operating Contractor’s responsibility for the performance of the Services and Snow and Ice Control Services and the adequacy of the design, the Operating Contractor’s security coverage and performance and payment guarantees, ownership and use of property, environmental responsibilities and requirements, scope of construction, site responsibilities and site conditions, the operation and maintenance requirements, transitional requirements with respect to I-25 Managed Lanes, procedures relating to managing, reporting and implementing Life Cycle Maintenance Work, step-in provisions in the event of an emergency action as a result of a serious risk to health and safety, invoicing structure and payment arrangements, compensation and relief events, handback requirements, termination terms and processes and dispute resolution provisions. BTY concluded that such provisions are standard, appropriate and in-line with similar agreements in North America.

Regulatory Approvals. BTY concluded that the major environmental approvals, the acquisition of which is the responsibility of the Design-Build Contractor, are typical environmental plans required for any large civil infrastructure project including sediment and erosion, contamination containment and storm water discharge permits. BTY does not anticipate that the permits to be acquired by the Design-Build Contractor in a timely manner should cause significant difficulty to the Design-Build Contractor members or delay the construction schedule.

Design Review. BTY concluded that pavement design, bridge design and structures, noise attenuation, drainage design and installation of intelligent transport system and electronic toll collection hardware represent a low risk to the Phase 2 Construction Project.

Schedule Review. Based on review of a then-current version of the construction schedule and a comparison of the schedule with the schedule for five other projects in BTY's database, BTY is of the opinion that (i) the duration and lead-in times for the pre-construction work appear to be satisfactory and (ii) the construction schedule contains sufficient logic, float and activities to allow the Phase 2 Construction Project to be designed and constructed as intended and provides appropriate sequence and timing to achieve the target dates.

Project Cost Review. BTY concluded as follows:

- **Concessionaire's Costs.** The level of detail provided by the Concessionaire is sufficient to give confidence in the Concessionaire's construction and operating period cost projections and BTY has no concerns with the level of expenditures provided. Personnel expenditures, technical advisory services and other expenditures are in line with anticipated staffing levels, salary assumptions appropriate for the required professional categories and other office expenditures seem suitable. In addition, the level of contingency is in line with normal industry practice.
- **Capital Costs.** The Design-Build Contractor's breakdown of capital costs is sufficiently detailed to allow it to carry out the Phase 2 Construction Project as required. The Phase 2 Construction Project costs per linear kilometer of a single lane are appropriate and in line with expectations for a project of this type and scope and the indicated costs are sufficient to complete the Phase 2 Construction Project. The Design-Build Contractor's method of arriving at the construction contingency is sound and the contingency value of approximately four percent of the total capital costs, not including the Design-Build Contractor's profit, is above market norms. The Design-Build Contractor's approach to preparing of the capital costs estimate, which included preparing three full independent estimates and reconciling them to arrive at the final estimate, is thorough and should result in accurate quantitative analysis and associated pricing.
- **Project Cash Flow.** BTY reviewed project cash flow provided by the Design-Build Contractor and reconciled the cumulative and monthly draw values for each scenario against BTY's own cash flow and S-Curve analysis. Based on such review, the project cash flow appears reasonable and in line with what would be expected for a similar project with similar construction activity restraints.
- **Operating Expenditure.** BTY reviewed a cost model from the Concessionaire that clearly outlines operational expenditure for each component of the Project, such as pavements, drainage, traffic services, snow and ice control, land bridge maintenance and routine inspections. The operating expenditure cost model provides significant detail within each Project component, providing detailed costs for all activities and material required for preventative maintenance for all aspects of the Project within the operation and maintenance limits. The level of detail and respective pricing are robust and will enable the Concessionaire to operate and maintain the Project within the required operation and maintenance limits. It should be noted that the cost model does not include any general contingency or profit margin at this stage.
- **Rehabilitation Capital Expenditure.** The Concessionaire provided a detailed cost model for rehabilitation capital expenditure over the term of the Project. The level of detail is adequate to accurately identify the pricing against each component of the Project. The cost and timing attributed to the rehabilitation works is appropriate for the intended scope of work.

Operation & Maintenance Review

- ***Scope of Work.*** The operation and maintenance work as prescribed by the Concession Agreement is in line with BTY's expectations for a project of this size and nature. A reasonable operating and maintenance regime managed by competent and experienced personnel, as proposed by the Concessionaire for the Project, should be able to meet the requirements with minimal costs premiums.
- ***Routine Maintenance and Life Cycle Plan.*** The Concessionaire's approach to maintenance appears to be specific to the contractual needs of the Project. The Lifecycle Maintenance Plan proposed by the Concessionaire will be a comprehensive and robust base for the Operations and Maintenance Plan and identifies appropriate tasks to be completed during the Services Period.
- ***Electronic Toll Collection System Maintenance.*** The Concessionaire has proposed a comprehensive program of monitoring and controlling of the tolling system that will support developing accurate and appropriate maintenance activities that is consistent with good industry practice.
- ***Periodic Maintenance.*** The Concessionaire has proposed a comprehensive program of inspection and assessment that will support developing an accurate and appropriate periodic maintenance schedule that is consistent with good industry practice.
- ***Winter Maintenance Operations.*** The requirements for winter maintenance activities are standard for a project of this nature. The Concessionaire's maintenance plan for a winter season should result in no monetary penalties or events of default if implemented correctly.
- ***Emergency Response.*** The Concessionaire has developed an approach to emergency response and disaster across the entire toll collection system that adequately addresses emergency response requirements.
- ***Snow and Ice Control Services.*** The Concessionaire has developed a comprehensive snow and ice plan to provide for safe movement of traffic on Project routes during periods of frozen precipitation. The Concessionaire's approach to providing snow and ice control services is appropriate for the Concessionaire to perform the operation and maintenance work of the Project.
- ***Concessionaire Staffing and Resourcing During Services Period.*** The Concessionaire has developed a resource structure that will be implemented to carry out the operations and maintenance of the Project. The Concessionaire's approach to staffing is appropriate for the Concessionaire to perform the operation and maintenance work of the Project.

Revenue Analysis. The Toll Revenues to be received by the Concessionaire after the respective commencement dates is subject to various payment adjustments specified in the Concession Agreement. The adjustment regime is structured to provide a financial incentive to the Concessionaire to meet the quality, performance and operation and maintenance requirements during the Services Period and includes the Noncompliance Point System, which awards Noncompliance Points for each Noncompliance Event. BTY assessed the Noncompliance Point System and the likely level of accumulated points and associated revenue deduction value. According to BTY's probability analysis, the risk to the Concessionaire in incurring the Noncompliance remedies is low because (i) the Concessionaire would need to incur Noncompliance deductions at a failure rate of over 10%, which is highly unlikely, (ii) the

Concessionaire has significant experience managing, maintaining and operating large P3 projects throughout North America and Australia, and (iii) there is an allowance for a staged transition as the Concessionaire takes on more scope of the required operation and maintenance and toll collection work, which will allow the Operating Contractor and the E-470 Authority to implement their procedures efficiently.

The Technical Report should be read in its entirety. BTY cautions that any advice, opinions or recommendations within the Technical Report should be read and relied upon only in the context of the entire Due Diligence Report as a whole. It also specifies that the contents of the Technical Report do not provide legal, insurance or tax advice or opinion.

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ANNUAL SENIOR DEBT SERVICE REQUIREMENTS

The following table sets forth, for each of the periods indicated, the estimated amount required in such period to be made available for debt service on the 2014 Bonds and the Phase 1 TIFIA Loan after the issuance of the 2014 Bonds.

| Fiscal Year Ending (12/31) | <u>Senior Debt Service</u>⁽¹⁾ | | | |
|---|---|------------------------|---|---|
| | 2014 Bonds <u>Principal</u> | <u>Interest</u> | Phase 1 TIFIA Loan <u>Debt Service</u> | <u>Total Senior Debt Service</u> |
| 2014 | - | - | - | |
| 2015 | - | \$ 991,843 | - | \$ 991,843 |
| 2016 | - | 1,170,700 | - | 1,170,700 |
| 2017 | - | 1,170,700 | \$ 783,896 | 1,954,596 |
| 2018 | - | 1,170,700 | 1,578,332 | 2,749,032 |
| 2019 | - | 1,170,700 | 1,592,490 | 2,763,190 |
| 2020 | - | 1,170,700 | 1,606,775 | 2,777,475 |
| 2021 | - | 1,170,700 | 1,891,988 | 3,062,688 |
| 2022 | - | 1,170,700 | 2,606,409 | 3,777,109 |
| 2023 | - | 1,170,700 | 2,640,657 | 3,811,357 |
| 2024 | - | 1,170,700 | 2,678,115 | 3,848,815 |
| 2025 | - | 1,170,700 | 2,718,604 | 3,889,304 |
| 2026 | - | 1,170,700 | 2,751,945 | 3,922,645 |
| 2027 | - | 1,170,700 | 3,728,317 | 4,899,017 |
| 2028 | - | 1,170,700 | 3,728,889 | 4,899,589 |
| 2029 | - | 1,170,700 | 3,727,313 | 4,898,013 |
| 2030 | - | 1,170,700 | 3,728,589 | 4,899,289 |
| 2031 | - | 1,170,700 | 3,727,539 | 4,898,239 |
| 2032 | - | 1,170,700 | 3,729,160 | 4,899,860 |
| 2033 | - | 1,170,700 | 3,728,276 | 4,898,976 |
| 2034 | - | 1,170,700 | 3,729,886 | 4,900,586 |
| 2035 | - | 1,170,700 | 3,728,811 | 4,899,511 |
| 2036 | - | 1,170,700 | 3,730,051 | 4,900,751 |
| 2037 | \$2,070,000 | 1,140,944 | 3,728,427 | 6,939,371 |
| 2038 | 2,190,000 | 1,020,338 | 3,728,939 | 6,939,276 |
| 2039 | 2,320,000 | 892,400 | 3,731,408 | 6,943,808 |
| 2040 | 2,455,000 | 756,988 | 3,730,655 | 6,942,642 |
| 2041 | 2,595,000 | 613,956 | 3,726,680 | 6,935,636 |
| 2042 | 2,745,000 | 462,588 | 3,729,483 | 6,937,070 |
| 2043 | 2,910,000 | 302,306 | 3,728,706 | 6,941,012 |
| 2044 | <u>3,075,000</u> | <u>132,681</u> | <u>3,729,349</u> | <u>6,937,030</u> |
| TOTAL | \$20,360,000 | \$30,898,743 | \$87,969,686 | \$139,228,429 |

⁽¹⁾ Numbers may not total exactly due to rounding.

PROJECTED FINANCIAL INFORMATION

The following tables set forth the Concessionaire’s projected sources and uses of funds and cash flow based on the financing plan for the Project as of the Closing Date, before and after the Full Services Commencement Date. The tables were compiled by the Concessionaire based upon information, assumptions and projections furnished by or to the Concessionaire and upon information, assumptions and projections derived from the Reports. If future events and information differ from those assumed, actual results may differ from those shown in the tables and the differences may be material. See “CERTAIN RISK FACTORS—Uncertainties of Forecasts and Assumptions.”

Projected Cash Flow Up to the Full Services Commencement Date (in thousands)⁽¹⁾

| SOURCES | Jun. 2014 | Dec. 2014 | Jun. 2015 | Dec. 2015 | TOTAL |
|---|-----------------|-----------------|-----------------|-----------------|------------------|
| HPTE Capital Payment ⁽²⁾ | \$19,598 | \$ - | \$21,216 | \$ - | \$40,814 |
| 2014 Bond Proceeds ⁽³⁾ | 20,002 | - | - | - | \$20,002 |
| Phase 2 TIFIA Loan ⁽⁴⁾ | 18,995 | 35,177 | 3,651 | 2,176 | \$60,000 |
| Subordinated Loan ⁽⁵⁾ | - | - | - | 20,554 | \$20,554 |
| Equity Contribution ⁽⁶⁾ | 20,554 | 0 | - | - | \$20,554 |
| Net Revenues During Construction ⁽⁷⁾ | (200) | 403 | 1,150 | 592 | \$1,945 |
| TOTAL | \$78,950 | \$35,580 | \$26,017 | \$23,323 | \$163,869 |
| USES: | | | | | |
| Design-Build Contract Price ⁽⁸⁾ | \$48,214 | \$33,400 | \$21,550 | \$8,600 | \$111,764 |
| McCaslin Underpass | 300 | - | 550 | - | \$850 |
| Development Fees and Transaction Costs ⁽⁹⁾ | 29,848 | 1,693 | 1,521 | 1,864 | \$34,927 |
| Interest During Construction | 406 | 585 | 585 | 585 | \$2,163 |
| Bonds Debt Service Reserve Accounts ⁽¹⁰⁾ | - | - | - | 1,171 | \$1,171 |
| TIFIA Phase 1 Debt Service Reserve Accounts ⁽¹⁰⁾ | - | - | 1,595 | - | \$1,595 |
| Ramp Up Reserve Account ⁽¹¹⁾ | - | - | - | 6,000 | \$6,000 |
| Major Maintenance Reserve Account ⁽¹²⁾ | - | - | - | 310 | \$310 |
| Cash Reserves and Contingency ⁽¹³⁾ | 181 | (98) | 215 | 4,793 | \$5,091 |
| TOTAL | \$78,950 | \$35,580 | \$26,017 | \$23,323 | \$163,869 |

⁽¹⁾ Numbers may not total exactly due to rounding.

⁽²⁾ HPTE is required to make the HPTE Capital Payment to the Concessionaire to fund a portion of the Phase 2 Construction Project. The amount of the HPTE Capital Payment may be increased or decreased at or prior to the Closing Date. The HPTE Capital Payment reflects the maximum HPTE Capital Payment of \$49,650,000 less \$8,836,000 which the Concessionaire currently expects to be paid for the Early Works and less \$850,000 representing the costs of construction of McCaslin Underpass. See “PHASE 2 CONSTRUCTION PROJECT – Early Works” and “PLAN OF FINANCE – HPTE Capital Payment.”

⁽³⁾ Represents expected draws from the proceeds of the 2014 Bonds.

⁽⁴⁾ Represents expected draws from the Phase 2 TIFIA Loan. See APPENDIX F.

⁽⁵⁾ The proceeds of the Subordinated Loan will be made available to the Concessionaire pursuant to certain Intercompany Loan Agreements relating to the Subordinated Loan and used by the Concessionaire to pay Project Costs. See “PLAN OF FINANCE – Subordinated Loan.”

⁽⁶⁾ The Plenary Parties, as applicable, will fund the Equity Contribution by making cash equity contributions or subordinated loans to the Concessionaire on the Closing Date and/or delivering to the Security Trustee the Equity Letter of Credit in an aggregate amount equal to the contribution required under the Equity Contribution Agreement. See “PLAN OF FINANCE – Equity Contribution.”

⁽⁷⁾ Includes I-25 Toll Revenues and Phase 1 Toll Revenues following the Phase 1 Services Commencement Date less O&M expenses.

⁽⁸⁾ Reflects the Design-Build contract price of \$120.6 million less \$8,836,000 which the Concessionaire currently expects to be paid for the Early Works. See “PHASE 2 CONSTRUCTION PROJECT – Early Works.”

⁽⁹⁾ Includes costs to be incurred during construction, certain transition costs and costs of issuance including Underwriter’s discount, legal, advisory, rating agency fees and other costs of issuance.

⁽¹⁰⁾ Includes the Bonds Debt Service Reserve Account, the TIFIA Phase 1 Debt Service Reserve Account and the TIFIA Phase 2 Debt Service Reserve Account. It is currently contemplated that the Debt Service Reserve Accounts will be funded with a portion of the Equity Contribution and Project Revenues with the expectation that it will be fully funded by the Full Services Commencement Date. See “SECURITY AND SOURCES OF PAYMENT FOR 2014 BONDS — Bonds Debt Service Reserve Account.”

⁽¹¹⁾ The Ramp Up Reserve Account will be funded on the Phase 2 Completion Date in an amount equal to \$6.0 million from monies on deposit in the Project Proceeds Account and other sources available including the Equity Contribution and/or the proceeds of the Phase 2 TIFIA Loan. See “PROJECT ACCOUNTS AND FLOW OF FUNDS – Ramp Up Reserve Account.”

⁽¹²⁾ On the Full Services Commencement Date, an amount equal to the Maintenance Capex projected to be due and payable from Full Services Commencement Date until the first Monthly Transfer Date, plus such amount as is required to cause the balance of the Major Maintenance Reserve Account to be no less than the Major Maintenance Reserve Requirement will be transferred to the Major Maintenance Reserve Account. See “PROJECT ACCOUNTS AND FLOW OF FUNDS – Major Maintenance Reserve Account.”

⁽¹³⁾ Includes start-up cash and operating accounts.

Source: Concessionaire

Projected Project Net Revenues (in thousands)⁽¹⁾

| Year⁽²⁾ | Revenues⁽³⁾ | O&M⁽⁴⁾ | Net Change in Reserve Accounts Out/(In)⁽⁵⁾ | Net Cash Flow⁽⁶⁾ |
|---------------------------|-------------------------------|------------------------------|--|------------------------------------|
| 2016 | \$ 8,607 | (\$8,479) | \$2,411 | \$ 2,538 |
| 2017 | 12,664 | (9,154) | 660 | 4,170 |
| 2018 | 16,756 | (10,511) | (479) | 5,766 |
| 2019 | 18,322 | (11,045) | (384) | 6,893 |
| 2020 | 19,853 | (11,713) | 733 | 8,873 |
| 2021 | 21,393 | (12,196) | 374 | 9,571 |
| 2022 | 23,037 | (12,682) | (86) | 10,269 |
| 2023 | 24,743 | (13,183) | (658) | 10,902 |
| 2024 | 26,506 | (13,858) | (359) | 12,290 |
| 2025 | 28,327 | (14,392) | (1,466) | 12,468 |
| 2026 | 30,355 | (14,845) | (1,485) | 14,025 |
| 2027 | 32,610 | (15,489) | (1,235) | 15,885 |
| 2028 | 34,950 | (16,153) | (1,162) | 17,635 |
| 2029 | 37,373 | (16,837) | (1,291) | 19,245 |
| 2030 | 39,871 | (17,542) | (790) | 21,538 |
| 2031 | 42,446 | (18,269) | (1,147) | 23,030 |
| 2032 | 45,122 | (19,017) | (1,335) | 24,769 |
| 2033 | 47,893 | (19,789) | (1,336) | 26,768 |
| 2034 | 50,751 | (20,583) | (1,475) | 28,693 |
| 2035 | 53,704 | (21,402) | (2,517) | 29,785 |
| 2036 | 55,861 | (22,046) | (2,075) | 31,741 |
| 2037 | 58,079 | (22,712) | (1,888) | 33,480 |
| 2038 | 60,394 | (23,400) | (2,271) | 34,723 |
| 2039 | 62,802 | (24,111) | (3,012) | 35,679 |
| 2040 | 65,293 | (24,847) | (3,327) | 37,119 |
| 2041 | 67,885 | (25,607) | (4,072) | 38,206 |
| 2042 | 70,602 | (26,393) | (4,158) | 40,051 |
| 2043 | 73,427 | (27,206) | (6,516) | 39,705 |
| 2044 | 76,356 | (28,047) | (7,645) | 40,664 |
| 2045 | 79,399 | (28,917) | (6,362) | 44,121 |
| 2046 | 82,558 | (29,817) | (6,065) | 46,677 |
| 2047 | 85,862 | (30,747) | (6,789) | 48,326 |
| 2048 | 89,282 | (31,710) | (4,460) | 53,112 |
| 2049 | 92,792 | (32,706) | (2,744) | 57,342 |
| 2050 | 96,452 | (33,736) | (3,483) | 59,233 |
| 2051 | 100,302 | (34,802) | (4,221) | 61,279 |
| 2052 | 104,307 | (35,906) | (3,414) | 64,987 |
| 2053 | 108,471 | (37,048) | (3,291) | 68,133 |
| 2054 | 112,807 | (38,230) | (2,875) | 71,703 |
| 2055 | 117,306 | (39,453) | (6,436) | 71,417 |
| 2056 | 121,990 | (40,719) | (5,563) | 75,708 |
| 2057 | 126,872 | (42,030) | (5,564) | 79,278 |
| 2058 | 131,965 | (43,388) | (11,334) | 77,244 |
| 2059 | 137,288 | (44,793) | (11,567) | 80,928 |
| 2060 | 142,776 | (46,248) | (7,331) | 89,197 |
| 2061 | 148,449 | (47,755) | (6,838) | 93,856 |
| 2062 | 154,410 | (49,315) | (6,840) | 98,255 |
| 2063 | 160,548 | (50,931) | (789) | 108,828 |
| 2064 | 166,890 | (52,605) | (559) | 113,726 |
| 2065 | 177,944 | (54,339) | 4,001 | 127,606 |
| Total | \$3,744,654 | (\$1,366,702) | (\$150,514) | \$2,227,438 |

⁽¹⁾ Numbers may not total exactly due to rounding.

⁽²⁾ After Planned Full Services Commencement Date.

⁽³⁾ Revenue from Traffic & Revenue Study, shown in 2010 dollars inflated at 2.0%. The Concessionaire assumes 8% leakage in license plate toll revenue collection.

⁽⁴⁾ Projected by the Concessionaire with input from the Operating Contractor.

⁽⁵⁾ Includes changes in the operating accounts, major maintenance accounts and cash reserves.

⁽⁶⁾ Net Cash Flow as defined in the MSA.

Source: Concessionaire

Projected Debt Service Coverage (in thousands)⁽¹⁾

| Year | Senior Debt Service ⁽³⁾ | | | | TIFIA 2 Subordinated Debt Service ⁽³⁾ | | | | DSCR ⁽⁵⁾ | | | | |
|--------------|-------------------------------------|------------------|-------------------|--|--|--|---|---|---|------------------------|---|-----------------------------------|----------------------------|
| | Net Cash Flow ⁽²⁾ (a) | TIFIA 1 (b) | 2014 Bonds (c) | Total Senior Debt Service (b)+(c)=(d) | TIFIA 2 Mandatory (e) | TIFIA 2 Scheduled, Net of Mandatory (f) | TIFIA 2 Total Debt Service (e)+(f)=(g) | Subordinated Loan Debt Service ⁽³⁾⁽⁴⁾ (h) | Total Aggregate Debt Service (d)+(g)+(h)=(i) | Senior Only (a)/(d) | Senior & TIFIA 2 Mandatory (a)/(d)+(e) | Senior & TIFIA 2 Total (a)/(g) | Total Aggregate (a)/(i) |
| 2016 | \$2,538 | \$ - | \$1,171 | \$1,171 | \$ - | \$ - | \$ - | \$ - | \$ 1,171 | 2.17 x | 2.17 x | 2.17 x | 2.17 x |
| 2017 | 4,170 | 784 | 1,171 | 1,955 | - | - | - | - | 1,955 | 2.13 x | 2.13 x | 2.13 x | 2.13 x |
| 2018 | 5,766 | 1,578 | 1,171 | 2,749 | - | - | - | - | 2,749 | 2.10 x | 2.10 x | 2.10 x | 2.10 x |
| 2019 | 6,893 | 1,592 | 1,171 | 2,763 | - | - | - | - | 2,763 | 2.49 x | 2.49 x | 2.49 x | 2.49 x |
| 2020 | 8,873 | 1,607 | 1,171 | 2,777 | 134 | 1,209 | 1,344 | - | 4,121 | 3.19 x | 3.05 x | 2.15 x | 2.15 x |
| 2021 | 9,571 | 1,892 | 1,171 | 3,063 | 277 | 2,374 | 2,651 | 2,148 | 7,862 | 3.13 x | 2.87 x | 1.67 x | 1.22 x |
| 2022 | 10,269 | 2,606 | 1,171 | 3,777 | 375 | 2,277 | 2,651 | 1,991 | 8,420 | 2.72 x | 2.47 x | 1.60 x | 1.22 x |
| 2023 | 10,902 | 2,641 | 1,171 | 3,811 | 604 | 2,047 | 2,651 | 1,737 | 8,200 | 2.86 x | 2.47 x | 1.69 x | 1.33 x |
| 2024 | 12,290 | 2,678 | 1,171 | 3,849 | 683 | 1,972 | 2,655 | 2,696 | 9,200 | 3.19 x | 2.71 x | 1.89 x | 1.34 x |
| 2025 | 12,468 | 2,719 | 1,171 | 3,889 | 925 | 2,005 | 2,930 | 3,026 | 9,846 | 3.21 x | 2.59 x | 1.83 x | 1.27 x |
| 2026 | 14,025 | 2,752 | 1,171 | 3,923 | 1,101 | 2,137 | 3,237 | 3,065 | 10,225 | 3.58 x | 2.79 x | 1.96 x | 1.37 x |
| 2027 | 15,885 | 3,728 | 1,171 | 4,899 | 1,190 | 2,084 | 3,274 | 3,403 | 11,576 | 3.24 x | 2.61 x | 1.94 x | 1.37 x |
| 2028 | 17,635 | 3,729 | 1,171 | 4,900 | 1,566 | 1,748 | 3,313 | 4,293 | 12,506 | 3.60 x | 2.73 x | 2.15 x | 1.41 x |
| 2029 | 19,245 | 3,727 | 1,171 | 4,898 | 2,096 | 1,251 | 3,347 | 5,190 | 13,435 | 3.93 x | 2.75 x | 2.33 x | 1.43 x |
| 2030 | 21,538 | 3,729 | 1,171 | 4,899 | 2,510 | 873 | 3,383 | 5,993 | 14,275 | 4.40 x | 2.91 x | 2.60 x | 1.51 x |
| 2031 | 23,030 | 3,728 | 1,171 | 4,898 | 2,499 | 920 | 3,419 | 7,137 | 15,453 | 4.70 x | 3.11 x | 2.77 x | 1.49 x |
| 2032 | 24,769 | 3,729 | 1,171 | 4,900 | 2,658 | 1,550 | 4,208 | 7,510 | 16,617 | 5.06 x | 3.28 x | 2.72 x | 1.49 x |
| 2033 | 26,768 | 3,728 | 1,171 | 4,899 | 3,022 | 2,120 | 5,142 | 7,934 | 17,975 | 5.46 x | 3.38 x | 2.67 x | 1.49 x |
| 2034 | 28,693 | 3,730 | 1,171 | 4,901 | 3,108 | 2,388 | 5,496 | 4,902 | 15,298 | 5.86 x | 3.58 x | 2.76 x | 1.88 x |
| 2035 | 29,785 | 3,729 | 1,171 | 4,900 | 2,914 | 1,818 | 4,732 | 1,866 | 11,497 | 6.08 x | 3.81 x | 3.09 x | 2.59 x |
| 2036 | 31,741 | 3,730 | 3,211 | 6,941 | 3,053 | 1,664 | 4,718 | 1,824 | 13,483 | 4.57 x | 3.18 x | 2.72 x | 2.35 x |
| 2037 | 33,480 | 3,728 | 3,210 | 6,939 | 3,332 | 1,367 | 4,699 | 1,931 | 13,569 | 4.83 x | 3.26 x | 2.88 x | 2.47 x |
| 2038 | 34,723 | 3,729 | 3,212 | 6,941 | 3,347 | 2,000 | 5,347 | 2,034 | 14,322 | 5.00 x | 3.38 x | 2.83 x | 2.42 x |
| 2039 | 35,679 | 3,731 | 3,212 | 6,943 | 3,402 | 2,007 | 5,409 | 2,146 | 14,499 | 5.14 x | 3.45 x | 2.89 x | 2.46 x |
| 2040 | 37,119 | 3,731 | 3,209 | 6,940 | 3,407 | 1,853 | 5,260 | 2,252 | 14,451 | 5.35 x | 3.59 x | 3.04 x | 2.57 x |
| 2041 | 38,206 | 3,727 | 3,208 | 6,934 | 3,444 | 1,631 | 5,075 | 2,405 | 14,414 | 5.51 x | 3.68 x | 3.18 x | 2.65 x |
| 2042 | 40,051 | 3,729 | 3,212 | 6,942 | 3,160 | 1,914 | 5,075 | 2,510 | 14,526 | 5.77 x | 3.96 x | 3.33 x | 2.76 x |
| 2043 | 39,705 | 3,729 | 3,208 | 6,936 | 3,117 | 1,958 | 5,075 | 2,685 | 14,696 | 5.72 x | 3.95 x | 3.31 x | 2.70 x |
| 2044 | 40,664 | 3,729 | - | 3,729 | 3,759 | 1,317 | 5,076 | 2,938 | 11,744 | 10.90 x | 5.43 x | 4.62 x | 3.46 x |
| 2045 | 44,121 | 3,731 | - | 3,731 | 4,478 | 596 | 5,075 | 3,045 | 11,851 | 11.82 x | 5.37 x | 5.01 x | 3.72 x |
| 2046 | 46,677 | 3,729 | - | 3,729 | 5,075 | - | 5,075 | 3,367 | 12,171 | 12.52 x | 5.30 x | 5.30 x | 3.84 x |
| 2047 | 48,326 | 3,728 | - | 3,728 | 5,075 | - | 5,075 | 3,608 | 12,411 | 12.96 x | 5.49 x | 5.49 x | 3.89 x |
| 2048 | 53,112 | 3,728 | - | 3,728 | 5,075 | - | 5,075 | 3,765 | 12,569 | 14.25 x | 6.03 x | 6.03 x | 4.23 x |
| 2049 | 57,342 | 3,723 | - | 3,723 | 5,075 | - | 5,075 | 4,552 | 13,350 | 15.40 x | 6.52 x | 6.52 x | 4.30 x |
| 2050 | 59,233 | - | - | - | 2,538 | - | 2,538 | 3,994 | 6,532 | - | 23.34 x | 23.34 x | 9.07 x |
| 2051 | 61,279 | - | - | - | - | - | - | - | - | - | - | - | - |
| 2052 | 64,987 | - | - | - | - | - | - | - | - | - | - | - | - |
| 2053 | 68,133 | - | - | - | - | - | - | - | - | - | - | - | - |
| 2054 | 71,703 | - | - | - | - | - | - | - | - | - | - | - | - |
| 2055 | 71,417 | - | - | - | - | - | - | - | - | - | - | - | - |
| 2056 | 75,708 | - | - | - | - | - | - | - | - | - | - | - | - |
| Total | \$2,227,438 | \$106,609 | \$49,096 | \$155,705 | \$82,997 | \$45,080 | \$128,077 | \$105,948 | \$389,731 | | | | |

⁽¹⁾ Numbers may not total exactly due to rounding.

⁽²⁾ Net Cash Flows are calculated pursuant to the MSA.

Source: Concessionaire

⁽³⁾ Debt Service on the Phase 2 TIFIA Loan is shown assuming a 3.70% rate. The actual TIFIA interest rate will be determined prior to the Closing Date.

⁽⁴⁾ See "FINANCING AGREEMENTS – SUBORDINATED LOAN AGREEMENTS" for a description of terms of the Subordinated Loan.

⁽⁵⁾ Net Cash Flow divided by Debt Service in each annual period.

CERTAIN RISK FACTORS

Investing in the 2014 Bonds is subject to numerous risks including, but not limited to, those set forth below. Investors should consider carefully the information set forth in this section along with all of the other information provided in this Official Statement before deciding whether to invest in the 2014 Bonds. The occurrence of any of the following risks could materially and adversely affect the Concessionaire's business, financial condition and results of operations and the financial condition of the Intercompany Loan Subsidiaries. In any such event, Borrower Finco may not have sufficient revenues, after paying fees and expenses and operations and maintenance expenses, to make payments pursuant to the Bond Proceeds Loan Agreement and, in turn, there may be insufficient monies under the Indenture to be able to pay debt service on the 2014 Bonds. In any such event, the market price for the 2014 Bonds could decline and investors could lose all or part of their investment.

Limited Obligation of the Issuer

The 2014 Bonds are special, limited obligations of the Issuer, payable solely from and secured by the Trust Estate. The 2014 Bonds do not constitute an obligation, moral or otherwise, of CDOT or the State, any other agency, instrumentality or political subdivision of the State, or any official, board member, director, officer, employee, agent or representative of any of the foregoing, and neither the full faith and credit of the Issuer, CDOT or the State nor the taxing power of the State or any other agency, instrumentality or political subdivision of the State is pledged to the payment of the principal of and interest or premium, if any, on the 2014 Bonds. The Owners of the 2014 Bonds may not look to any revenues of the Issuer, CDOT or the State for repayment of the 2014 Bonds and the only source of repayment of the 2014 Bonds is the Trust Estate. The payment of the 2014 Bonds shall not be secured by any encumbrance, mortgage, or other pledge of property of the Issuer, CDOT or the State, other than the Trust Estate. The Issuer has no taxing powers.

Concessionaire is a Special Purpose Entity

The Concessionaire was formed for the purpose of entering into the Concession Agreement and does not expect to own any material assets other than its rights under the Concession Agreement, the other Material Project Contracts, property, materials and equipment necessary for the Concessionaire to meet its specific obligations under the Material Project Contracts, and cash on hand. The Concessionaire's primary source of revenues will be derived from the collection of Tolls and from fees paid by CDOT for certain maintenance services. Its ability to make payments pursuant to the Concessionaire Bond Proceeds Loan Agreement depends upon the successful construction and operation of the Project, including the successful construction of the Phase 1 Project by HPTE, and the receipt of sufficient revenues from Tolls to pay operations and maintenance expenses, required capital expenses and other obligations under the Concession Agreement and debt service on other Project indebtedness. Revenue may vary depending upon a number of factors, including many that are outside of the control of the Concessionaire, such as prevailing adverse economic conditions and the occurrence of other adverse events. If, due to lower than projected traffic use of the Managed Lanes by toll payers, delays in toll collection or other reasons, Toll Revenues are lower than expected or delayed, the Concessionaire may not be able to generate funds sufficient, after the payment of fees and operations and maintenance expenses, to make payments pursuant to the Concessionaire Bond Proceeds Loan Agreement in the amounts sufficient to make monthly deposits in respect of debt service on the 2014 Bonds under the MSA to enable Borrower Finco to pay debt service on the 2014 Bonds or other payments required under the Indenture with respect to the 2014 Bonds.

The obligations of the Equity Member and the Sponsor are limited to their obligations to make the Capital Contributions required by the Equity Contribution Agreement. The obligations of the

Operating Guarantor and the Design-Build Guarantor are limited to their obligations under their respective guarantees. Neither the Equity Member nor the Sponsor, nor any direct or indirect owner thereof, nor any officer, director, member, agent or employee thereof, is obligated to make any payments in connection with, and none of such parties is guaranteeing the 2014 Bonds, Borrower Finco's obligation to repay the TIFIA Loans, the Subordinated Loan or any other agreement entered into by the Concessionaire or by any other party in connection with the 2014 Bonds, the TIFIA Loans, the Subordinated Loan or the Project.

Completion of the Phase 1 Project

As described above in "PHASE 1 PROJECT," on the Phase 1 Services Commencement Date, which is currently scheduled to occur on January 1, 2015, HPTE and the Concessionaire currently expect that the Concessionaire will commence operations and maintenance of the Phase 1 Lanes and toll collection on the Phase 1 Managed Lanes and thereafter will be entitled to receive all Phase 1 Toll Revenues. The occurrence of the Phase 1 Services Commencement Date is subject to conditions precedent set forth in the Concession Agreement, such as procurement by the Concessionaire of all Required Insurance policies with respect to the Phase 1 Project, receipt of all necessary consents required by the Concessionaire to commence the Services for the Phase 1 Project, absence of a Concessionaire Default or court order which restrains, challenges or delays the delivery of the Services. The completion of the Phase 1 Project is the responsibility of HPTE and the Phase 1 Project is currently being constructed by the Phase 1 Design-Build Contractor pursuant to the Phase 1 Design-Build Contract.

Delay in the construction of the Phase 1 Project (unless such condition is waived by HPTE) would delay the receipt of the Phase 1 Toll Revenues, which could negatively affect the ability of the Concessionaire to make payments on the Concessionaire Bond Proceeds Loan Agreement and, ultimately, Borrower Finco's ability to make payments on the Bond Proceeds Loan Agreement. CDOT received a letter from the Phase 1 Design-Build Contractor dated September 16, 2013 stating that weather events, including above normal rainfall and severe flooding, have the potential to cause delays relative to the completion of work under the Phase 1 Design-Build Contract. CDOT and the Phase 1 Design-Build Contractor have had verbal discussions about potential impacts to the schedule, but as of February 24, 2014, CDOT has not received a formal request from the Phase 1 Design-Build Contractor to extend the completion date for any of the work under the Phase 1 Design-Build Contract. HPTE currently believes there is the possibility that delivery of the Phase 1 Managed Lanes could be delayed past January 1, 2015, but is unable at the time of this Official Statement to determine the length of any such delay, if there is to be a delay. HPTE currently does not anticipate that any such delay would exceed 180 days.

A portion of the costs of financing the construction of the Phase 1 Project is being financed with the Existing Phase 1 TIFIA Loan Agreement. See "PHASE 1 PROJECT – Financing of the Phase 1 Project; Assumption of Phase 1 TIFIA Loan." The Existing Master Indenture entered into at the time that financing arrangements for the Phase 1 Project were finalized contemplated that HPTE could assign its rights and obligations under the Phase 1 TIFIA Loan to a private entity such as the Concessionaire. The Existing Phase 1 TIFIA Loan Agreement currently provides that HPTE may not assign its rights in and to the Phase 1 Project or its rights and obligations under the Existing Phase 1 TIFIA Loan Agreement except upon terms and conditions approved in writing by the TIFIA Lender in its sole discretion. However, the Phase 1 TIFIA Loan Agreement contains a set of conditions that, if satisfied, would permit HPTE to be released from its obligations under the Existing Phase 1 TIFIA Loan Agreement (except for some specified obligations which are assumed only to the extent they arise from facts or matters existing after the Phase 1 Assumption Date) and for those obligations to be assumed (through the Intercompany Loan Agreements) by Borrower Finco and the Concessionaire. See "– Risks Associated with Phase 1 Assumption" below.

Risks Associated with Phase 1 Assumption

Satisfaction of Conditions. Currently, HPTE is responsible for the construction of the Phase 1 Project; a portion of the costs of constructing the Phase 1 Project is being paid with the proceeds of the Phase 1 TIFIA Loan which HPTE currently is obligated to repay out of the revenues generated by the Phase 1 Managed Lanes, which are pledged to the Master Trustee in connection with the Phase 1 Project. However, both HPTE and the Concessionaire have as an objective that the I-25 Managed Lanes, the Phase 1 Managed Lanes and the Phase 2 Managed Lanes be operated as an integrated managed lane toll facility system. The Concession Agreement contemplates that the Concessionaire will be responsible for operating, maintaining and tolling the Managed Lanes and the U.S. 36 GP Lanes as an integrated project and that Borrower Finco (through the Intercompany Loan Agreements) will be liable for the repayment of the debt associated with the Project, including the 2014 Bonds, the Phase 2 TIFIA Loan, the Phase 1 TIFIA Loan and the Subordinated Loan. To that end, both the Concessionaire and HPTE provide in the Concession Agreement that the Concessionaire will begin operating and maintaining the Phase 1 Lanes and will receive all Phase 1 Toll Revenues once the Phase 1 Services Commencement Date occurs (which is to occur concurrently with Phase 1 Assumption Date). See “PHASE 1 PROJECT – Phase 1 Services Commencement Date” for a listing of the Conditions Precedent to the Phase 1 Services Commencement Date.

The Phase 1 Assumption Date occurs on a date on which a set of conditions set forth in the Phase 1 TIFIA Loan Agreement is satisfied. Those conditions include: the funding in full of the TIFIA Phase 1 Debt Service Reserve Account; the release of certain monies currently held by the Master Trustee in connection with the Phase 1 Project to HPTE; the execution and delivery of the Project Toll Services Agreement; the delivery of certain promissory notes, certificates and opinions; and a reaffirmation of the grant of security given to the TIFIA Lender by the Concessionaire and the other Obligors. The Concessionaire, the TIFIA Lender and HPTE intend that the Phase 1 Services Commencement Date, the Effective Date of the Phase 1 Loan Agreement, and the effective date of HPTE’s release from obligations under the Existing Phase 1 TIFIA Loan Agreement (pursuant to the Assignment Agreement among HPTE, Borrower Finco and the TIFIA Lender) occur simultaneously. A listing of the conditions precedent to the Phase 1 Assumption Date is set forth in “PHASE 1 TIFIA LOAN – Assumption of Phase 1 TIFIA Loan.”

The Concessionaire is delivering many of the certificates and other materials described above for the occurrence of the Phase 1 Assumption Date into escrow with the Security Trustee, including executed copies of necessary promissory notes, certificates and forms of opinion. However, one condition to the occurrence of the Phase 1 Assumption Date is an affirmation to the effect that no Material Adverse Effect (or event which it could reasonably be expected to result in a Material Adverse Effect) has occurred and is continuing. In order to provide a more objective basis for meeting this condition, the TIFIA Lender, the Concessionaire and HPTE have agreed that the no Material Adverse Effect requirement will be deemed satisfied if an Updated Rating is delivered to the TIFIA Lender within ten Business Days prior to the Phase 1 Assumption Date.

Assuming that the conditions to the effectiveness of the Phase 1 Assumption set forth in the Phase 1 TIFIA Loan Agreement are satisfied (or waived by the TIFIA Lender), HPTE will assign and delegate its obligations under the Existing Phase 1 TIFIA Loan Agreement to Borrower Finco (which will use the same intercompany loan structure being used for the Bond Proceeds Loan, the Phase 2 TIFIA Loan and the Subordinated Loan); Borrower Finco will assume those assigned obligations of HPTE, (except for some specified obligations, which are assumed only to the extent they arise from facts or matters existing after the Phase 1 Assumption Date); HPTE will be released from its obligations (except as described above) under the Existing Phase 1 TIFIA Loan Agreement; and the provisions of the Phase 1 TIFIA Loan Agreement will become effective.

Although the Concessionaire believes that the delivery of documents and certificates into escrow on the Closing Date and the Updated Rating provision will help assure that the conditions to the Phase 1 Assumption Date will be satisfied in a timely manner, no assurances can be given that all of the conditions to the Phase 1 Assumption Date can be satisfied and no assurances can be given that the TIFIA Lender would waive compliance with any of such conditions if they were unable to be met.

Failure of Phase 1 Assumption Date to Occur. If the Phase 1 Assumption Date does not occur, then the Phase 1 Services Commencement Date will not occur and HPTE will be responsible for operating and maintaining the Phase 1 Managed Lanes and the Phase 1 Toll Revenues would remain pledged to secure the Phase 1 TIFIA Loan. In that case, there would not be an integrated system of Managed Lanes operated and maintained by a single entity that (i) has the right to collect and retain Toll Revenues, and (ii) would be obligated to repay the debt associated with the entire Project.

If the Phase 1 Assumption Date does not occur, then HPTE and the Concessionaire can give notice to the other party requiring either: (a) the outstanding conditions precedent to be fulfilled or waived; or (b) the Phase 1 Assumption Plan, in each case within 30 Business Days. If the Phase 1 Assumption Plan cannot be implemented within 30 Business Days after the Phase 1 Acceptance Notice, then HPTE may commence interim operations of the Phase 1 Managed Lanes. The Phase 1 Toll Revenues will be retained by HPTE and dealt with in accordance with the Amended and Restated Master Indenture.

One possible Phase 1 Assumption Plan is for the Concessionaire to be responsible for operating the Phase 1 Project as if it had become part of an integrated managed lane toll facility as contemplated in the Concession Agreement, while HPTE remains obligated on the Phase 1 TIFIA Loan. The Concessionaire would pay for the operating and maintenance costs of the Phase 1 Project from I-25 Toll Revenues and Phase 2 Toll Revenues. Although HPTE would be primarily responsible for making payments in respect of the Phase 1 TIFIA Loan, the Concessionaire would agree to comply with covenants in the Existing Phase 1 TIFIA Loan Agreement related to the operation and maintenance of the Phase 1 Lanes. In addition, to the extent that Phase 1 Toll Revenues are available to HPTE after payment of its obligations on the Phase 1 TIFIA Loan, HPTE would pay those revenues over to the Security Trustee for deposit in the Project Proceeds Account under the MSA. The MSA also may need to be amended to adjust the flow of Project Revenues as well as possible amendments to the Phase 1 TIFIA Loan and the Concession Agreement.

The Phase 1 Assumption Plan described above is only one method of attempting to synthetically replicate a single integrated managed lane toll facility to the entire corridor. None of HPTE, the TIFIA Lender or the Concessionaire have agreed to the Phase 1 Assumption Plan outlined above or to any other Phase 1 Assumption Plan. Therefore, no assurances can be given that HPTE and the Concessionaire would be able to agree to implement arrangements like the ones described above or any other arrangements, or that the TIFIA Lender would permit any such arrangements to remain in place for any significant period of time.

If following the delivery by HPTE of the Phase 1 Acceptance Notice: (a) a Phase 1 Assumption Plan is not presented within 60 Business Days; (b) a Phase 1 Assumption Plan is presented within 60 Business Days but (i) the parties cannot agree on the terms of the Phase 1 Assumption Plan prior to the Full Services Commencement Longstop Date; or (ii) the Phase 1 Assumption Date does not occur prior to the Full Services Commencement Longstop Date; or (c) if other material conditions included in the Phase 1 Assumption Plan are not met at all or by such deadlines as may be prescribed by the Phase 1 Assumption Plan, then HPTE, at its option, may elect to terminate the Concession Agreement. The amount of Termination Compensation that HPTE would be required to pay upon a termination of the Concession Agreement arising out of a failure to meet the conditions precedent to the Phase 1

Assumption Date depends on the nature of the condition precedent to the Phase 1 Assumption Date that was not satisfied. In some instances, the Termination Compensation may be sufficient to repay the 2014 Bonds in full. However, in other situations, the amount of Termination Compensation payable may be materially less than 100% of the principal amount of the 2014 Bonds. See “CONCESSION AGREEMENT – Termination Events – Termination Following Non-Assumption of the Phase 1 TIFIA Loan.”

Annual Allocation and Budgetary Process

HPTE agrees in the Concession Agreement to pay to the Concessionaire: the HPTE Capital Payment; annual fees for Snow and Ice Control Services and other routine maintenance services for the U.S. 36 GP Lanes and the I-25 Shared Bridge Decks; compensation upon the occurrence of certain events; and to make certain other payments. As described in “PLAN OF FINANCE – HPTE Capital Payment,” the HPTE Capital Payment is expected to be funded by monies CDOT receives and makes available to HPTE pursuant to the HPTE-CDOT Agreement. Such funding has been authorized by the Transportation Commission. However, HPTE’s obligations under the HPTE-CDOT Agreement to fund other monetary obligations of HPTE under the Concession Agreement, whether such funding is done through CDOT loans to HPTE or through direct payments to the Concessionaire, are not currently subject to annual appropriation by the Colorado legislature, but are subject to an annual allocation by the Transportation Commission from the State Highway Fund.

The Transportation Commission has discretion in each fiscal year whether or not to allocate funds from the State Highway Fund to make payments or to fund loans under the HPTE-CDOT Agreement to satisfy HPTE’s obligations under the Concession Agreement. Although the CDOT Executive Director has agreed in the HPTE-CDOT Agreement to include in the annual budget requests submitted to the Transportation Commission the amounts necessary to make such payments or to fund such loans, the Transportation Commission has complete discretion as to whether or not to allocate such amounts for such purposes. See “PROJECT PARTICIPANTS – CDOT – Appropriations and Budgetary Process.” If for any fiscal year the Transportation Commission exercises its discretion not to allocate funds, HPTE may not be able to meet its monetary obligations to the Concessionaire under the Concession Agreement.

Any failure of HPTE to make payments under the Concession Agreement could result in a shortfall of monies to finish the Phase 2 Construction Project (if the Concessionaire cannot or does not raise additional funds from the Equity Member or from the issuance (including by Borrower Finco) of additional debt) and/or could result in a shortfall of monies to pay for operations and maintenance expenses. In addition, a failure by HPTE to pay an undisputed amount of money exceeding \$375,000 (indexed) following a Concessionaire demand is an HPTE Default under the Concession Agreement, giving the Concessionaire the ability to terminate the Concession Agreement. No assurances can be given that any termination payment made in these circumstances will be sufficient to pay the principal of and interest on the 2014 Bonds and other parity debt.

Political, Litigation and Community Risks

As is the case with the development of many major infrastructure projects, the Project may prompt community and/or political reaction. Various constituencies, including possibly political and community leaders, may publicly oppose the Project for any number of reasons, including construction of the Project, tolling of the Project, ability to construct non-tolled roads in the vicinity of the Project, and perceived increased congestion on the general purpose lanes or on nearby streets and highways. According to recent media reports, Drive SunShine Institute, a clean energy advocacy group, has been gathering signatures on a petition asking the Colorado State legislature for, among other things, a review of the Concession Agreement. CDOT received a letter dated January 30, 2014 signed by fourteen

Colorado State legislators asking that they be given a 60-day review period before the Concession Agreement is signed. See “LEGISLATIVE REQUEST” for additional information about the letter from the State legislators and CDOT’s response to the letter. In addition, according to a recent newspaper report and the website for the DriveSunShine Institute, DriveSunShine Institute plans to sue CDOT and HPTE on the environmental related grounds. See “NO LITIGATION – HPTE” for additional information regarding the threatened lawsuit.

There may be future opposition to the Project and no assurance can be given that any future efforts to oppose the Project will not be successful, and if successful, that such efforts would not materially delay, impair or preclude the Concessionaire’s ability to make payments pursuant to the Intercompany Loan Agreements in the amounts and at the times required to pay debt service on the Concessionaire Bond Proceeds Loan so as to enable Borrower Finco to pay debt service on the 2014 Bonds or other payments required under the Indenture with respect to the 2014 Bonds.

Under the Concession Agreement, HPTE is obligated to make Compensation Event payments to the Concessionaire among other events, if (i) a Governmental Authority or judicial authority having jurisdiction over the Project issues an order preventing the Concessionaire or HPTE from performing its obligations or exercising its rights under the Concession Agreement; (ii) a Change in Law comes 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 the Concession Agreement; (iii) a Change in Law that results in the imposition of new or added federal, State or local taxes on Tolls and gross Toll receipts save to the extent that, at the time such Change in Law comes into effect the Concessionaire has achieved the 3rd Cash Flow Sharing Threshold; and (iv) certain other circumstances described in the Concession Agreement occur. To the extent HPTE’s obligation to make such compensation payments is funded with proceeds of CDOT loans to HPTE, such loan amounts are not subject to annual appropriation by the Colorado legislature but are subject to allocation by the Transportation Commission. See “– Annual Allocation and Budgetary Process” above. There can be no assurance that any amounts that HPTE may be required to pay would be sufficient, after the payment of fees and operations and maintenance expenses, to pay debt service on outstanding 2014 Bonds, and during the period the Concessionaire is pursuing its remedies for such Compensation Events, its revenues may not be sufficient after payments of fees and operating and maintenance expenses to pay such principal and interest.

Although the Managed Lanes will not be the first managed toll lanes in Colorado, managed toll lanes are still relatively new and public resistance or antagonism at having to pay what could be a relatively high toll to avoid heavy congestion on the general purpose lanes or other routes could lead to public opposition and political pressure. Managed Lanes represent one side of competing public policies with respect to urban transportation and related environmental, quality-of-life and other issues. CDOT, HPTE and RTD have agreed, and may be required to agree in the future, to construct a number of additional park-and-ride, bus and other transit facilities to address traffic, environmental and other concerns. In addition, the construction of competing highways or other forms of transportation improvements may reduce the number of vehicles on the Managed Lanes and may have an adverse effect on Toll Revenues and Borrower Finco’s ability to repay its obligations under the Bond Proceeds Loan Agreement.

Construction of the Project could have considerable local business and community impacts, in particular, noise, dust, vibrations and significantly increased local traffic throughout the construction period. The Concessionaire and HPTE have agreed to address these impacts, but no assurance can be given that the process of addressing impacts to the satisfaction of local residents and businesses will not result in schedule delays and increased costs and impact the Concessionaire’s ability to make payments pursuant to the Intercompany Loan Agreements in the amounts and at the times required to pay debt

service on the 2014 Bonds or other payments required under the Indenture with respect to the 2014 Bonds.

In addition to political and community actions or pressures that could have a direct effect on the Project or on the Concessionaire, political pressure affecting the State in general or CDOT or HPTE or the U.S. Department of Transportation or FHWA in particular could have an effect on the Concessionaire's ability to make payments pursuant to the Intercompany Loan Agreements in the amounts and at the times required to enable Borrower Finco to pay debt service on the 2014 Bonds or other payments required under the Indenture with respect to the 2014 Bonds. For example, future state and/or federal budget, tax or expenditure limitations or otherwise could have direct and substantial effects on the amount of funds available to HPTE or for any particular project. No assurance can be given that HPTE will always have sufficient resources to perform its monetary and other obligations under the Concession Agreement.

Control-Related Risks

As in any commercial arrangement, the parties may disagree about the appropriate course of action to be taken, particularly if adverse events, conditions or circumstances occur. The Concessionaire and HPTE have different priorities and interests and may have difficulty resolving disputes. Similarly, the Security Trustee, the TIFIA Lender, the Subordinated Lender and the Bond Trustee on behalf of the Owners of the 2014 Bonds, may have different interests and priorities following an adverse event or a termination of the Concession Agreement, and no assurance can be given that the Security Trustee, the TIFIA Lender, the Subordinated Lender, the Bond Trustee or such other parties will be willing or able to take into account the interests of the Owners of the 2014 Bonds if an event of default, a Compensation Event, Relief Event, Force Majeure Event, a termination or another adverse event occurs.

HPTE and CDOT intend to maintain an active role in overseeing the construction and operation of the Project, and the Concession Agreement and the other Material Project Contracts contain a number of reserved rights of HPTE and require or permit HPTE's consent or direction in a number of circumstances. As the State agency responsible for the construction, maintenance and efficiency of the State's roads, bridges and tunnels, CDOT's first priorities are safety and efficient transportation and may not always coincide with the interests and priorities of the Concessionaire or the Owners of the 2014 Bonds. Under certain circumstances, some of which require HPTE to pay compensation to the Concessionaire, HPTE has the right to require changes in design and construction, to approve or disapprove qualifications and performance of contractors and to require additional approvals and inspections even if delays may result. See "PHASE 2 CONSTRUCTION PROJECT — Change Orders; Directive Letters." Under most circumstances, the provisions of the Concession Agreement are to govern in the event of any conflict with the provisions of any of the other Material Project Contracts. Such disagreements among the parties may negatively impact the ability of the Concessionaire to make payments pursuant to the Intercompany Loan Agreements in the amounts and at the times required to enable Borrower Finco to pay debt service on the 2014 Bonds or other payments required under the Indenture with respect to the 2014 Bonds.

Early Termination at HPTE'S Option

HPTE may terminate the Concession Agreement at any time prior to the expiration date upon providing the Concessionaire with evidence of its ability to fund the amount required to be paid upon such a termination and giving notice to the Concessionaire stating that HPTE is terminating the Concession Agreement and that the termination date will occur 40 Business Days after the Concessionaire receives the notice. In addition, upon a termination at HPTE's option, HPTE also may require the Concessionaire to transfer all of its right, title an interest in and to any "Transferable Assets," i.e., assets other than land, buildings, plant, machinery, equipment, stair parts, tools and other assets (together with

warranties) that are not owned or operated by a subcontractor exclusively for the purpose of the Project. Generally, if the Concession Agreement is terminated at HPTE's option or following an HPTE Default thereunder, HPTE is obligated to pay an amount equal to 100% of the principal amount of the 2014 Bonds and the Phase 1 TIFIA Loan, plus interest accrued to the date of termination, less any cash held as security for the Senior Obligations. However, as described in greater detail below under "– Other Termination and Offset Risks", HPTE's obligations to make payments in certain circumstances may be subject to allocation by the Transportation Commission and may be subject to withholdings, reductions and other offsets.

Other Termination and Offset Risks

The Concessionaire's principal asset is the exclusive legal right that it has pursuant to the Concession Agreement to develop, design, finance, construct, operate and maintain the Project, and charge, collect, use and enforce payment of Tolls and related charges, in each case, for a term of 50 years from the Planned Full Services Commencement Date, unless terminated earlier pursuant to the terms of the Concession Agreement.

The Concession Agreement may be terminated early at the election of the Concessionaire or of HPTE, subject to HPTE's rights in certain circumstances to require the Concessionaire to continue to perform under the Concession Agreement, following the occurrence of a Force Majeure Event; at the election of HPTE after the occurrence and continuance of certain Concessionaire Defaults, for persistent breaches of covenants in the Concession Agreement by the Concessionaire or if the Concessionaire or its employee or sub-contractor commits a Prohibited Act; at the election of the Concessionaire following an HPTE Default or the Concession Agreement is cancelled, rescinded, or voided during its term.

The Concession Agreement provides that HPTE would be required to pay the Concessionaire certain Termination Compensation amounts in the event the Concession Agreement is terminated early following any of these events. The amounts of Termination Compensation is set forth in the Concession Agreement and may not be sufficient to enable the Concessionaire to make payments pursuant to the Intercompany Loan Agreements in the amounts and at the times required to enable Borrower Finco to pay debt service on the 2014 Bonds or other payments required under the Indenture with respect to the 2014 Bonds.

In particular, upon a termination of the Concession Agreement due to a Concessionaire Default, HPTE 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 (A) 80% of the Phase 2 TIFIA Debt Termination Amount, (B) 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 (C) from the time when the Concessionaire is substituted for HPTE as the borrower under the Phase 1 TIFIA Loan, 80% of the part of the Base Senior Debt Termination Amount attributable to the TIFIA Lender in respect of the Phase 1 TIFIA Loan. In substance, upon a termination of the Concession Agreement due to a Concessionaire Default, HPTE will only pay 80% of the principal amount of 2014 Bonds outstanding. See "CONCESSION AGREEMENT—Termination Events" and APPENDIX B — SUMMARY OF CERTAIN PROVISIONS OF THE CONCESSION AGREEMENT—Termination.

In the event of a Concessionaire Default prior to the Full Services Commencement Date, the risk of a funding shortfall may, under certain circumstances, be mitigated by the potential assessment of liquidated damages against the Design-Build Contractor under the Design-Build Contract and/or by the Concessionaire's ability to exercise any of its other rights and remedies provided under the Design-Build Contract, but no assurances can be given that such mitigation will be available or sufficient to enable the Concessionaire to make payments pursuant to the Intercompany Loan Agreements in the amounts and at

the times required to enable Borrower Finco to pay debt service on the 2014 Bonds or other payments required under the Indenture with respect to the 2014 Bonds.

Termination payments would be subject to withholding, reduction or offset for any amounts owed by the Concessionaire, by the amount of any credit balances and any insurance proceeds available for such purpose, and in the case of any termination because of a Concessionaire Default, Termination Compensation would be subject to reduction and offset for damages due to HPTE arising from a default by the Concessionaire pursuant to the Concession Agreement. There can be no assurance that if HPTE were to assert its set-off rights under the Concession Agreement, there will be sufficient funds to pay principal and interest on the 2014 Bonds or any other amounts payable under the Indenture. See APPENDIX B — SUMMARY OF CERTAIN PROVISIONS OF THE CONCESSION AGREEMENT— Termination. In addition, to the extent the amount of Termination Compensation payable by HPTE to the Concessionaire is funded with loan proceeds from CDOT loans to HPTE, such loan amounts are subject to the sole discretion of CDOT and to allocation by the Transportation Commission and may not be sufficient to repay 100% of the then outstanding principal amount of the 2014 Bonds and interest and premiums, if any. CDOT has no obligation to make such payments and any such payments are at CDOT's sole discretion. See "CERTAIN RISK FACTORS— Annual Allocation and Budgetary Process" and "Force Majeure and Insurance Limitations."

Construction Risks

Pursuant to the terms and conditions of the Concession Agreement, the Concessionaire is obligated to achieve Phase 2 Work Completion by the Planned Full Services Commencement Date of December 31, 2015, which may be extended under certain circumstances in accordance with the Concession Agreement. If the Phase 2 Work is not completed by the Planned Full Service Commencement Date (as it may be extended pursuant to the Concession Agreement), then the Concession Agreement provides that the Concessionaire must pay: (1) daily liquidated damages of \$3,000 until the date of Phase 2 Work Completion; and (2) must pay over to HPTE a portion of the I-25 Toll Revenues and the Phase 1 Toll Revenues (\$15,000 per day) until the date of the Phase 2 Work Completion. The total aggregate amount of the damages payable as described in (1) and (2) in the preceding sentence is capped \$1.095 million and \$5.475 million respectively. Moreover, if the Concessionaire fails to achieve the Full Services Commencement Date by one year after the Planned Full Services Commencement Date, then a Concessionaire Default under the Concession Agreement will occur and HPTE may exercise its remedies, which include an ability to terminate the Concession Agreement (subject to the Security Trustee's cure and step-in rights in the HPTE Direct Agreement). See "SECURITY AND SOURCES OF PAYMENT FOR 2014 BONDS – HPTE Direct Agreement."

Pursuant to the Design-Build Contract, the Design-Build Contractor has agreed to comply with such deadlines as they relate to the Phase 2 Construction Work required to be undertaken by the Design-Build Contractor under the Design-Build Contract. See APPENDIX C for a detailed description of the Design-Build Contract. Further, pursuant to the terms of the Phase 1 Design-Build Contract, the Design-Build Contractor is obligated to complete the Phase 1 Project by certain designated deadlines, as they may be extended under certain circumstances. See "– Completion of the Phase 1 Project" above.

As with any major construction effort, the Phase 1 Project and the Phase 2 Construction Project involves many risks that could result in cost overruns, in delays or in a failure to complete the Phase 1 Project or the Phase 2 Construction Project at all. Certain of the risks to achieving Phase 1 Services Commencement Date and the Planned Full Services Commencement Date on time and within budget include shortages of materials and labor, work stoppages, labor disputes, bad weather, floods, earthquakes, hurricanes and other casualties, delays in achieving utility relocations, unforeseen engineering, environmental or geological problems, changes in law, discovery of unidentified hazardous

materials, historical artifacts or unidentified utilities, third-party litigation or protests (including protests or litigation about noise or vibrations or traffic delays in adjacent lanes resulting from construction), difficulties in obtaining or renewing permits or other federal, state or local government approvals, changes in federal and state or local design or building requirements and permit conditions, and interference with or by military operations, any of which could increase the cost and delay of the Phase 1 Project or the Phase 2 Construction Project. In addition, lack of coordination among the Concessionaire, the Design-Build Contractor, CDOT, HPTE, RTD, utility owners, or permitting agencies or the failure of any of them to complete their portions of the work or their inspections or approvals on schedule could also result in delays and/or cost overruns or in a failure to complete the Phase 1 Project or the Phase 2 Construction Project.

The Design-Build Contract is a fixed-price contract and a number of these risks – such as the risks related to Compensation Events, Relief Events and Force Majeure Events under the Concession Agreement and, except under certain circumstances, the risks related to completion of the Construction Work on schedule and on budget and without unauthorized lane closures – have been contractually allocated to the Design-Build Contractor under the Design-Build Contract. Not all of these risks, however, have been shifted or can be insured against, and there can be no assurance that HPTE (with respect to the Phase 1 Project) or the Concessionaire (with respect to the Phase 2 Construction Work) will have or will be able to obtain sufficient funds, if necessary, to cause the Design-Build Contractor to complete the Construction Work within the projected time table or in line with the budget and other assumptions described in this Official Statement.

The Design-Build Contractor has not waived its rights to contest a demand for payment of liquidated damages, and the Design-Build Guarantor may assert as a defense for payment any defenses available to the Design-Build Contractor, and neither the Design-Build Contractor nor the Design-Build Guarantor nor the issuer of any performance bond or other security is guaranteeing performance by the Design-Build Contractor under all circumstances. No assurance can be given that contingency funds, insurance, and/or other funds will be available or sufficient should delays occur or should the Concessionaire have payment obligations that are not satisfied by or the responsibility of the Design-Build Contractor under the Design-Build Contract.

Any delay in achieving the Full Services Commencement Date for which the Concessionaire does not have sufficient remedy against the Design-Build Contractor under the Design-Build Contract, or for which the Concessionaire does not have a right to claim a Relief Event or Compensation Event under the Concession Agreement, likely would result in lower than expected Toll Revenues because of the delayed commencement of toll operations and from the damages payments described above, limiting the Concessionaire's ability to make payments pursuant to the Intercompany Loan Agreements in the amounts and at the times required to enable Borrower Finco to pay debt service on the 2014 Bonds or other payments required under the Indenture with respect to the 2014 Bonds. In the event of a termination of the Concession Agreement, the amount of Termination Compensation payable by HPTE to the Concessionaire may not, or if such termination occurs as a result of a Concessionaire Default prior to the Full Services Commencement Date, would not, be sufficient to pay 100% of the then outstanding repayment obligations of Borrower Finco under the 2014 Bonds. See "CONCESSION AGREEMENT—Termination Events."

Permits and Approvals

Construction and operation require a number of permits and approvals from federal, state and local agencies. Some of these permits already have been obtained. See "PHASE 2 CONSTRUCTION PROJECT – Governmental Consents and Approvals." Those that have not yet been obtained are the Concessionaire's responsibility under the Concession Agreement. The Design-Build Contractor will

assume this responsibility under the Design-Build Contract (other than for such permits expressly specified in the Design-Build Contract to be the responsibility of HPTE (with respect to the Phase 1 Project) or the Concessionaire (with respect to the Phase 2 Construction Project) or those for which HPTE is responsible under the Concession Agreement). Delay or failure to obtain or to maintain all required permits could cause substantial delays in completing the Project or in operations. Permitting requirements can change over time, and such changes are uninsured risks. The Concessionaire may not have a source of additional funds in the event changes in permit requirements or conditions increase costs or cause delays. See “—Governmental Approvals.”

Concessionaire’s Risk Relating to Phase 1 Project and the I-25 Managed Lanes

The Concessionaire did not build the I-25 Managed Lanes and the Phase 1 Project is being built by HPTE pursuant to the Phase 1 Design-Build Contract. Under the Concession Agreement, the Concessionaire has the right to participate in the acceptance process of the Phase 1 Construction Work under the Phase 1 Design-Build Contract and the Phase 1 ETCS Installation Contract. If the Concessionaire encounters any defect in the Phase 1 Managed Lanes or the Phase 1 ETCS which existed, but was not discovered 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 Phase 1 Managed Lanes or the Phase 1 ETCS under the applicable contract (“**Phase 1 Latent Defect**”), then such Phase 1 Latent Defect will be treated as a Compensation Event. See “PHASE 1 PROJECT – Concessionaire’s Participation in the Acceptance of the Phase 1 Project” and “CONCESSION AGREEMENT – Relevant Events; Relief and Force Majeure Events.” However, a defect in the Phase 1 Managed Lanes or the Phase 1 ETCS which is not treated as a Phase 1 Latent Defect will not entitle the Concessionaire to compensation or any other relief. Presence of such defects may increase operations and maintenance expenses of the Concessionaire and reduce the amount of Toll Revenues available to pay debt service on the 2014 Bonds.

Ramp Up Risk

The Traffic and Revenue Study assumes that the Operations Project will undergo a ramp up period for Toll Revenues to reach the levels projected in the Traffic and Revenue Study based on various factors. See “REPORTS – Traffic and Revenue Study,” “– Uncertainties of Forecasts and Assumptions” and APPENDIX H – Traffic and Revenue Study for a discussion of the assumptions made in the Reports. Historically, some toll roads or tolled lanes have had longer ramp up periods than initially projected, which can lead to a reduction in the projected Toll Revenues for the early years of the Services Period. In addition, the projected Toll Revenues in the Traffic and Revenue Study assume that construction on the Phase 1 Project and the Denver Union Station project have been completed. It is possible that such construction may not be completed prior to the beginning of the Services Period. In addition, it is possible that such construction may have altered the commuting patterns of drivers on the I-25 Corridor or the U.S. 36 Corridor, which could have a negative impact Toll Revenues during the early years of the Services Period.

Technology and Operational Risks

The operation and maintenance of the Project involves various operational risks. The quality of the operation and maintenance of the Project, as well as events outside of the Concessionaire’s control, could reduce the Toll Revenues generated or could increase the expense of operating and maintaining the Project and make it difficult or impossible for the Concessionaire to make payments pursuant to the Intercompany Loan Agreements in the amounts and at the times required to enable Borrower Finco to pay debt service on the 2014 Bonds or other payments required under the Indenture with respect to the 2014 Bonds. In addition, any such events could cause the Concessionaire to be in violation of its obligations under the Concession Agreement and, to the extent not otherwise cured or resolved, could result in

HPTE's having the right to terminate the Concession Agreement for a Concessionaire Default. In the event of a termination of the Concession Agreement, the amount of Termination Compensation payable by HPTE to the Concessionaire may not, or if such termination occurs as a result of a Concessionaire Default prior to the Full Services Commencement Date, would not, be sufficient to pay 100% of the then outstanding repayment obligations under the 2014 Bonds.

The Project will include a fully electronic toll collection system, with no cash payments and no toll booths. The Phase 1 ETCS and the Phase 2 ETCS will be interoperable with the I-25 ETCS. Although the I-25 ETCS has been operating successfully for many years, the addition of the Phase 1 ETCS and the Phase 2 ETCS may result in interoperability issues. The Concessionaire's ability to ensure that traffic speeds on the Managed Lanes meet the minimum requirements under the Concession Agreement and under federal law also requires that the ETCS function as designed. The Concessionaire is also taking the risk that the ETCS is operational. In addition, any such events could cause the Concessionaire to be in violation of its obligations under the Concession Agreement and, to the extent not otherwise cured or resolved, could result in HPTE's having the right to terminate the Concession Agreement for a Concessionaire Default. In the event of a termination of the Concession Agreement, the amount of Termination Compensation payable by HPTE to the Concessionaire may not, or if such termination occurs as a result of a Concessionaire Default prior to the Full Services Commencement Date, would not, be sufficient to pay 100% of the then outstanding repayment obligations under the 2014 Bonds.

The Project will incorporate certain hardware and software systems, including the ETCS, for the processing of transponder transactions and the monitoring and identification and reporting of violators. In the event the design of such systems proves to be inadequate, a significant malfunction of, or error with respect to, such systems or a failure to operate such systems properly occurs or in the event the E-470 Authority as the contractor under the Project Tolling Services Agreement fails to coordinate properly with the Concessionaire, the Concessionaire may suffer a reduction in Toll Revenues, or require significant time and incur significant expenses in identifying and implementing new or improved systems, for which insurance coverage would not be available or for which the Concessionaire may not be entitled to claim a Relief Event or Compensation Event under the Concession Agreement. Although the design and installation of the ETCS is covered under the warranty provided in the Design-Build Contract, and the systems will have been through a rigorous series of tests, not all of these events would be compensable and no assurance can be given that a defect or malfunctioning of the ETCS or any portion thereof will not result in delays to the completion of the Project or difficulties in the operations of the Project that could lead to a reduction in Toll Revenues, to the incurrence by the Concessionaire of increased costs and expenses or to violations of the federal minimum-speed requirements or the minimum operating-speed requirements under the Concession Agreement.

All tolling operations, toll collections and violations enforcement work will be outsourced by the Concessionaire; therefore there can be no assurances that the contract counterparties will perform their obligations under the relevant agreements. The Concessionaire's recourse will be limited to contractual claims under the agreements subject to the liability caps and limitations described therein, and a dispute or termination of such agreements could lead to disruptions in collection of the Toll Revenues. See "OTHER PROJECT AGREEMENTS — Tolling Services Agreement." Any disruption in the Concessionaire's ability to collect Toll Revenues could negatively impact the ability of the Concessionaire to make payments pursuant to the Intercompany Loan Agreements in the amounts and at the times required to enable Borrower Finco to pay debt service on the 2014 Bonds or other payments required under the Indenture with respect to the 2014 Bonds.

The costs of operating and maintaining the Project will be paid before payments with respect to the 2014 Bonds and the funding and replenishment from time to time of the Debt Service Reserve

Account. If the actual operations and maintenance costs and other payments significantly exceed the costs and payments assumed in the Base Case Financial Model for the Project, the Concessionaire may not have sufficient cash flow to make payments pursuant to the Intercompany Loan Agreements in the amounts and at the times required to pay debt service on the 2014 Bonds or other payments required under the Indenture with respect to the 2014 Bonds.

Risks Relating to Tolling Services Agreement

Currently, the I-25 Tolling Services Agreement is scheduled to terminate on the earlier to occur of: (1) January 1, 2016, (2) the commencement of tolling operations on the Phase 1 Managed Lanes, and (3) the Concessionaire and HPTE entering into the Project Tolling Services Agreement. The I-25 Tolling Services Agreement also provides that it may be terminated in part if the parties are unable to reach agreement as to the provisions of a Project Tolling Services Agreement. See “OTHER PROJECT AGREEMENTS – Tolling Services Agreement.” However, if there is a partial termination of the I-25 Tolling Services Agreement, the obligations of the E-470 Authority to provide tolling collection and back-office services to the Concessionaire and the right of the Concessionaire to collect Tolls on the I-25 Managed Lanes will remain in effect until the Concessionaire enters into a tolling services agreement for the Phase 1 Managed Lanes with a tolling services provider other than the E-470 Authority. Although the Concessionaire expects to enter into the Project Tolling Services Agreement that will cover all of the Managed Lanes, it is not possible at this time to predict what the terms of such a Project Tolling Services Agreement would contain.

Enforcement Risk

As described above under “OTHER PROJECT AGREEMENTS – Toll Enforcement Agreement,” although the terms of a System Toll Enforcement Agreement have yet to be finalized, the Concessionaire believes that its final terms will be similar to those set forth in the I-25 Toll Enforcement Agreement with HPTE. The Concessionaire also believes that its costs under a System Toll Enforcement Agreement will be reasonable and within its projected operating costs. The risk of enforcement and collection of Tolls and related charges remains with the Concessionaire under the Concession Agreement. Although the Concessionaire is entering into toll enforcement agreements with the Colorado State Patrol and local police, the State has limited means of enforcing toll requirements for out-of-state registered vehicles. The Concessionaire is pursuing several mitigation measures in place to help address this risk. The E-470 Authority has arrangements in place with other state agencies and will pursue out-of-state violators through those agencies or third party collection agencies. See “OTHER PROJECT AGREEMENTS — Toll Enforcement Agreement.”

Uncertainties of Forecasts and Assumptions

The Tolls collected from the operation of the Project will be the Concessionaire’s primary source of revenue for the payment of its obligations (via the Intercompany Loan Agreements) of debt service on the 2014 Bonds and other amounts due under the Indenture. The Traffic and Revenue Study and the Lenders’ Technical Advisor Report (together, the “**Reports**”) and the projected financial information set forth in “PROJECTED FINANCIAL INFORMATION” contain certain assumptions and projections, including projections of the traffic flows, but actual results may differ materially from those included in the Reports and in such projected financial information. Demonstration of compliance with certain of the covenants contained in the Concession Agreement, the Bond Proceeds Loan Agreement, the MSA and the TIFIA Loan Agreements also may be based upon assumptions and projections. Furthermore, although the Borrower Group has covenanted to maintain Toll rates at levels sufficient to comply with the Rate Covenant, the minimum speed requirements of the Managed Lanes Goals could prevent the Borrower Group from complying with the Rate Covenant.

The assumptions, forecasts and projections contained in the Reports, and the projections that may be contained in any future certificate of the Concessionaire or of a consultant required under the Concession Agreement, the Bond Proceeds Loan Agreement, the TIFIA Loan Agreements or the MSA, are not necessarily indicative of future performance. Neither the Concessionaire nor any Advisor can give any assurances that the events assumed will materialize or that actual results will match those projected and any such differences may be material. Managed Lane facilities are relatively new in the United States and, as a result, traffic projections are subject to a high degree of uncertainty and volatility. Preparing traffic and revenue projections on Managed Lane projects is a complex exercise due in part to the existence of a free alternative (in the form of general purpose lanes) right next to the Managed Lanes.

In addition, the future policy, business, operations and financing decisions of HPTE and/or the Concessionaire may not be the same as those assumed. No representation is made or intended, nor should any representation be inferred, with respect to the likely existence of any particular future set of facts or circumstances, and prospective purchasers of the 2014 Bonds are cautioned not to place undue reliance upon the projections in the Reports or upon any other projections or requirements for projections. If actual results are less favorable than the results projected or if the assumptions used in preparing such projections prove to be incorrect, the Concessionaire's ability, after payment of operating and maintenance expenses, to make payments pursuant to the Intercompany Loan Agreements in the amounts and at the times required to pay debt service on the 2014 Bonds or other payments required under the Indenture with respect to the 2014 Bonds, may be materially and adversely affected.

In the Reports, the Concessionaire made assumptions about employment, population, housing and income growth rates, and noted that the value of time and drivers' willingness to pay a toll depend significantly on such economic and demographic factors. Efforts to reduce federal spending, and thus, federal employment, cultural shifts in attitudes towards public transportation, casual and arranged carpools and telecommuting, governmental or employer incentive programs or subsidies and other trends that are hard to predict could affect the number of commuters willing and able to pay a toll on the Managed Lanes and affect Toll Revenues.

Other risks that are impossible to predict and thus are not taken into account in the long-term forecasts included in the Reports or in the projected financial information, but that could affect the number of toll payers and revenues in the shorter term, include malfunctions of the tolling system, unusual weather, casualty events and other emergencies. No Advisor and no other party can guarantee that the projected results set forth in the Reports will reflect actual results and the differences may be material.

Force Majeure and Insurance Limitations

Construction and operation of the Project are at risk from events of *force majeure*, such as damaging storms, winds and floods, fires and explosions, earthquakes, strikes and lockouts, sabotage, wars, blockades, riots and spills of hazardous substances, among other events. Construction and operations also may be stopped or delayed by non-casualty events such as changes in law, delays in obtaining or renewing permits, revocation or revision of permit requirements and litigation, among other things.

Although the Design-Build Contactor will be required to provide insurance during the Phase 2 Construction Work period and the Concessionaire and the Operating Contractor will be required to provide insurance after the Phase 2 Construction Work is completed, the required policies do not cover damage and delay from all events that potentially could interrupt construction or operations. Insurance policies may not be maintained or be obtainable in amounts that would be sufficient or be paid on time in all events to pay all of the costs required to be paid in connection with the Project, including fees and operating and maintenance expenses and debt service on the 2014 Bonds. As recommended by insurance

consultants, for major road projects such as the Project, policy limits (and delayed opening or business interruption coverage) will be based upon “maximum probable loss” scenarios and not on replacement value, but no assurance can be given that proceeds of such insurance would be sufficient if an extraordinary event with extraordinary losses occurred.

Risks that are not insurable or that may not be insurable include a nuclear event, war, terrorism, unforeseeable environmental or geological conditions, discovery of archeological artifacts, criminal or intentional acts by the insured, bankruptcy, strikes, riot and civil commotion and insurer insolvency. In addition, changes in federal, state or local design, construction and environmental requirements and other changes in law are risks that generally are not insurable. There can be no assurance that sufficient insurance coverage will be available to cover such risks. In addition, there can be no assurance that any use by the Design-Build Contractor, the Concessionaire or the Operating Contractor of insurance proceeds would not be challenged by other creditors, that the Concessionaire could repair any damage if insurance proceeds were not available or that the insurance proceeds could be used to pay debt service if damaged facilities cannot be repaired, replaced or restored.

Change in Law

The Project is subject to various laws and regulations, including, among others, laws governing environmental protection and laws governing tolling, which may change from time to time. The Project and the Concessionaire’s business, financial condition and results of operations may be adversely affected by changes in such laws or regulations. Under the Concession Agreement, however, only (i) a Change in Law coming into effect after the Commencement Date which permits vehicles for which Tolls could be charged prior to the Change in Law to travel on the Managed Lanes without paying the full Tolls established in accordance with the Concession Agreement; and (ii) a Change in Law that results in the imposition of new or added federal, State or local taxes on Tolls and gross Toll receipts that take effect before the Concessionaire reached a specified return on equity, qualify as Compensation Events that would entitle the Concessionaire to compensation. In addition, if HPTE and the Concessionaire agree that a Qualifying Change in Law would result in a loss of Toll Revenues, then the financial consequences of such event would be addressed through a compensation payment by HPTE to the Concessionaire or a revision to the Base Case Financial Model. There is no assurance that these compensation payments by HPTE or a revision to the Base Case Financial Model in this circumstance would be sufficient to ensure that the Concessionaire would be able, after the payment of O&M Expenses, to pay debt service (via the Intercompany Loan Agreements) on the 2014 Bonds or other payments required under the Indenture with respect to the 2014 Bonds.

To the extent that the Concessionaire is required to expend additional funds not contemplated in the Base Case Financial Model to comply with any new or amended regulations or laws, particularly if the Concessionaire is not entitled to compensation under the Concession Agreement, such amended or new law or regulation could have a negative impact on the Concessionaire’s cash flow. Although certain unanticipated changes in law that materially and adversely impact the Phase 2 Construction Work or the performance of Services may entitle the Concessionaire to relief from obligations under the Concession Agreement that it is prevented from performing, such relief may be insufficient. If the Concessionaire requires additional time to comply with any new or amended regulations or laws, and if the Project is delayed and no or limited schedule relief is provided by HPTE under the Concession Agreement, operations and commencement of Toll Revenues generation could also be delayed. Depending upon the extent of the delay, this delay, under certain circumstances, could result in a breach of the Concessionaire’s obligations under the Concession Agreement and could give HPTE a right to terminate the Concession Agreement. To the extent that any of the foregoing occurs, the Concessionaire may have a limited ability, or no ability, to make payments pursuant to the Intercompany Loan Agreements, even if

HPTE is required to pay Termination Compensation to the Concessionaire. See “CONCESSION AGREEMENT – Relevant Events; Relief and Force Majeure Events.”

Governmental Approvals

Pursuant to the Concession Agreement, the Concessionaire is responsible for obtaining, furnishing, paying the cost of, and maintaining in full force and effect, all Necessary Consents (including environmental permits) required for the construction and operation of the Project (including any required future capital improvements as those requirements change from time to time), and HPTE agreed to use reasonable endeavors to assist the Concessionaire in obtaining any Necessary Consents. With respect to the construction of the Project, some of these permits have been obtained; obtaining those that remain is the Concessionaire’s responsibility under the Concession Agreement, and that responsibility has been assumed by the Design-Build Contractor pursuant to the Design-Build Contract and by the Operating Contractor pursuant to the Operating Contract, as applicable. See "PHASE 2 CONSTRUCTION PROJECT – Governmental Consents and Approvals." No assurance can be given that the Concessionaire or the Design-Build Contractor will be able to obtain and maintain the applicable Necessary Consents. Although 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 Consent is a Compensation Event, not all delays or failures are covered and the compensation payment or other relief provided under the Concession Agreement may not be sufficient to overcome the effects of such a delay or failure. A failure to obtain and maintain any Necessary Consents, especially if the schedule, cost or revenue impact on the Project as a result of such failure is not accommodated under the Concession Agreement, could have an adverse effect on the Project, including, but not limited to, preventing or delaying commencement of the tolling operations on the Project or the construction of future capital improvements, imposing additional costs on the Concessionaire, requiring the Concessionaire to pay liquidated damages to HPTE and/or providing HPTE with the right to terminate the Concession Agreement. The occurrence of any such event could adversely affect the Concessionaire’s ability to make payments pursuant to the Intercompany Loan Agreements and, in turn, adversely impacting Borrower Finco’s ability to make payments of debt service on the 2014 Bonds or other payments required under the Indenture with respect to the 2014 Bonds.

Environmental Risks

The Concessionaire’s operations will be subject to all applicable federal and state environmental laws and regulations. Subject to certain conditions, HPTE has agreed to reimburse the Concessionaire for certain of its costs for remedial actions with respect to certain Hazardous Substances that are unknown and existing as of the time of the execution of the Concession Agreement and HPTE also assumes responsibility for third party claims because of any such unknown and pre-existing Hazardous Substances. The Concessionaire, however, is responsible for all other costs and expenses relating to Hazardous Substances, including third party claims, costs, and expenses of preparing and complying with any remedial action plan, complying with all environmental laws applicable to the Project, obtaining and complying with governmental approvals pertaining to Hazardous Substances and otherwise carrying out remedial actions.

Other than to the extent directly attributable to the negligence of the Concessionaire or a Concessionaire Related Party, the Design-Build Contract has been structured to allocate to the Design-Build Contractor responsibility for all claims, proceedings, suits, demands or similar process, damages, losses, liabilities, costs and expenses and any other obligations whatsoever from any Hazardous Substances that are retained by the Concessionaire under the Concession Agreement and the Design-Build Contractor bears the risk for mispricing the cost of remediation. No assurance can be given, however, that all of these risks have been shifted to the Design-Build Contractor. In addition, the costs

and expenses of remedial actions required in connection with such Hazardous Substances that are not included in the Concessionaire's environmental management plan, new releases of hazardous substances for which the Concessionaire is responsible under the Concession Agreement, or more stringent future environmental requirements (or stricter enforcement of existing requirements) for which the Concessionaire is not entitled to claim compensation or schedule relief from HPTE could result in expenditures or liabilities (including third party indemnification liabilities) which could have an adverse effect on the business or financial condition of the Concessionaire, thereby adversely affecting the ability of the Concessionaire to satisfy its payment obligations under the Bond Proceeds Loan Agreement and, in turn, adversely impacting Borrower Finco's ability to make payments of debt service on the 2014 Bonds or other payments required under the Indenture with respect to the 2014 Bonds.

Third Party Actions Affecting the Project

Maintenance of the roadways that connect to the Managed Lanes or otherwise directly or indirectly feed traffic flow into the Managed Lanes is expected to be performed by CDOT/ or local or state agencies (including CDOT). The quality of maintenance and the accessibility of such roadways are not within the Concessionaire's control. If such agencies do not properly maintain, or limit access to, such roadways, or if such maintenance requires lane closures, the Project may experience a decrease in traffic volume, which could adversely affect Toll Revenues and limit the Concessionaire's ability to satisfy its payment obligations under the Intercompany Loan Agreements, thereby adversely impacting Borrower Finco's ability to make payments of debt service on the 2014 Bonds or other payments required under the Indenture with respect to the 2014 Bonds.

Failure of major participants in the Project (including the Sponsor, the Equity Member, HPTE, the Subordinated Lender, the Design-Build Contractor or the Operating Contractor) to meet their obligations under the various agreements relating to the Project, or the bankruptcy or insolvency of any of such major participants (to the extent they are eligible for bankruptcy relief), could have a material adverse effect on the ability of the Concessionaire to complete the Phase 2 Construction Project in a timely manner or to operate the Project.

Incurrence of Additional Senior Obligations

The Bond Proceeds Loan Agreement and the TIFIA Loan Agreements permit the Concessionaire to incur, in specific circumstances and provided that any applicable financial criteria are satisfied, certain Additional Senior Obligations. Any Additional Senior Obligations incurred would be payable (indirectly through the Intercompany Loan Subsidiaries) from the Concessionaire's revenues on a pari passu basis with the 2014 Bonds and also would share on an equal basis in the Collateral, including certain Termination Compensation payments payable, subject to appropriation, by HPTE pursuant to the Concession Agreement following a termination thereof. During any foreclosure action with respect to the Collateral, or in the case of an early termination of the Concession Agreement, to the extent that the Concessionaire has incurred Additional Senior Obligations, Owners of the 2014 Bonds will be required to share the proceeds of the Collateral and, potentially, any Termination Compensation payable by HPTE, as applicable and as adjusted for the incurrence of Additional Senior Obligations, with a larger group of senior debt holders, proportionally reducing any claim that the Owners of the 2014 Bonds may have to such proceeds or Termination Compensation amount. See "FINANCING AGREEMENTS – Bond Proceeds Loan Agreement – Additional Senior Obligations" and "FINANCING AGREEMENTS – TIFIA Loan Agreements – Additional Senior Obligations" for a description of the conditions.

Intercreditor Arrangements

Although the 2014 Bonds will be the only Senior Obligations as of the Closing Date, from and after the Phase 1 Assumption Date, the Phase 1 TIFIA Loan also will be a Senior Obligation and at that

point, the Phase 1 TIFIA Loan will constitute approximately 73% of the aggregate principal amount of outstanding Senior Obligations. In any event, there are limitations on the ability of Owners of the 2014 Bonds to direct the exercise of remedies against the Collateral and to take other actions as provided in the Intercreditor Agreement. See “INTERCREDITOR ARRANGEMENTS – Intercreditor Agreement.”

The Intercreditor Agreement provides generally that any exercise of remedies against the Collateral must be approved by the holders of a majority in principal amount of the Senior Obligations which means that, as a practical matter, the TIFIA Lender (in its capacity as TIFIA Lender for the Phase 1 TIFIA Loan) will control the exercise of any such remedies. The Intercreditor Agreement provides that the Bond Trustee (as representative of the Owners of the 2014 Bonds), may initiate a consultation procedure with the TIFIA Lender if specified Fundamental Senior Bonds Events of Default (e.g., failure to pay scheduled debt service, the Concession Agreement expires before its termination) occur, during which the Bond Trustee and the TIFIA Lender must consult in good faith. However, as a practical matter, any Enforcement Action against the Collateral must be approved by the TIFIA Lender. Generally, the TIFIA Lender must give notice to the Intercreditor Agent (who will then give it to the Bond Trustee) at least ten Business Days before taking an Enforcement Action against the Collateral. This waiting period may be disregarded by the TIFIA Lender if, in its judgment, doing so is necessary to preserve or protect the interests of the Secured Creditors. If the TIFIA Lender disregards the ten Business Day waiting period, it must provide notice describing the reasons it did so.

However, nothing in the Intercreditor Agreement prevents the maturity of the 2014 Bonds from being accelerated, and the 2014 Bonds may join the TIFIA Lender if it initiates Enforcement Actions against the Collateral. Moreover, the Intercreditor Agreement provides that the Bonds Debt Service Reserve Account will be held as Segregated Collateral available only to the Owners of the 2014 Bonds. Similar Segregated Collateral status applies to the TIFIA Phase 1 Debt Service Reserve Account and the TIFIA Phase 2 Debt Service Reserve Account.

In the Intercreditor Agreement, the Senior Creditors agree that they will not amend or grant waivers to any Obligor under any Funding Document that would have the effect of increasing interest, increasing fees, changing amortization, increasing lending commitments, adding events of default or increasing the debt service reserve requirements without the prior written consent of each Senior Lender. Similar restrictions apply to specified amendments to the Phase 2 TIFIA Loan Agreement. See “INTERCREDITOR ARRANGEMENTS – Intercreditor Agreement – Amendment of Funding Documents.”

Finally, while the Lien of the Phase 2 TIFIA Loan is subordinate to the Lien of the Senior Obligations, the TIFIA Lender does have protections protecting its status and preventing Fundamental Actions from being taken without its consent. See “INTERCREDITOR ARRANGEMENTS – Intercreditor Agreement – Subordination of Phase 2 TIFIA Loan.” The Intercreditor Agreement contains limits on the ability of the holders of the Senior Obligations to take certain “Fundamental Actions,” such as releasing Collateral from the lien of the Security Documents, which effectively prevents any holders of Senior Obligations from taking certain actions that may be deleterious to the TIFIA Lender. See “INTERCREDITOR ARRANGEMENTS – Intercreditor Agreement – Amendment of Funding Documents” above for a listing of the Fundamental Actions. Moreover, if a TIFIA Parity Trigger Event occurs, (generally, the occurrence of bankruptcy-related actions with respect to any of the Obligors or failure to pay Mandatory Debt Service on the Phase 2 TIFIA Loan for twelve months), then the Lien of the Phase 2 TIFIA Loan Agreement automatically will spring to be on a parity with the Lien granted to the holders of the Senior Obligations.

In the event that any Proposed Amendment to the Funding Documents, the relevant Senior Creditor or the TIFIA Lender initiating the Proposed Amendment will deliver an Amendment

Notice to the Bond Trustee. Consent by the Bond Trustee to the Proposed Amendment will be deemed to have been given if (i) Owners representing a majority in aggregate principal amount of the 2014 Bonds outstanding as of the date of the Amendment Notice have provided a vote and (ii) the Proposed Amendment has been approved by a majority in aggregate principal amount of the 2014 Bonds held by all Responding Owners. Each Owner will have an initial period of 30 days to provide its vote on the Proposed Amendment to the Bond Trustee. If Owners representing less than a majority in aggregate principal amount of the 2014 Bonds outstanding as of the date of the Amendment Notice have provided a vote after the expiry of such initial 30-day period, then the Bond Trustee will re-send the Amendment Notice to each Owner that has not provided a vote, in each case, requesting its vote with respect to the Proposed Amendment. If Owners representing 30% or less of the aggregate principal amount of the 2014 Bonds outstanding as of the date of the Amendment Notice have provided a vote on the Proposed Amendment within 30 days following delivery to each such Owner of the Amendment Notice so re-sent, then the Bond Trustee will be deemed to have consented to the Proposed Amendment.

Risks Relating to Collateral

It may be difficult to realize the value of the Collateral, and the proceeds received from a sale of the Collateral may be insufficient to repay the 2014 Bonds. Foreclosure on the Collateral on the Holders' of the 2014 Bonds behalf may be subject to perfection and priority issues, the need for third-party approvals and consents and to practical problems associated with the realization of the Owners' security interest in the Collateral. The enforcement of the security interest with respect to the Collateral may not provide sufficient funds to repay all amounts due on the 2014 Bonds.

Limitations on Enforceability

Upon a default under the Concession Agreement, the Bond Proceeds Loan Agreement, the Indenture, the Design-Build Contract, the Operating Agreement, any of the Guarantees, the Equity Contribution Agreement or under the MSA or any of the other Security Documents, the remedies available to the Concessionaire, HPTE, the Bond Trustee or the Security Trustee may depend upon judicial actions that may be subject to substantial discretion and delay. Some of these remedies in fact may turn out not to be enforceable at all. The rights of the Owners of the 2014 Bonds and the enforceability of the Concessionaire's, the Equity Member's, the Design-Build Contractor's, the Operating Contractor and their respective Guarantors' obligations may be subject to the exercise of judicial discretion under a variety of circumstances in various jurisdictions. The enforceability of governmental obligations also is subject to constitutional, statutory and public policy limitations and to other considerations that do not limit enforcement of obligations of private parties. HPTE makes a number of agreements in the Concession Agreement that are for the benefit of lenders such as the Owners of the 2014 Bonds, but no assurances can be given that a court exercising its judicial discretion will always enforce such provisions. The opinions of various counsel relating to the enforceability of the above agreements will be qualified as to bankruptcy, insolvency and such other legal events.

Bankruptcy-Related Risks

If an Intercompany Loan Subsidiary or the Concessionaire or a contractor or its guarantor were to enter bankruptcy, HPTE, the Bond Trustee, the Owners of the 2014 Bonds, the TIFIA Lender and the Security Trustee could be prohibited from taking any action to enforce the Concession Agreement, the Bond Proceeds Loan Agreement, the TIFIA Loan Agreements, the MSA, and the other Material Project Contracts, or any other applicable transaction document against the Concessionaire or such contractor or guarantor without the permission of the bankruptcy court.

In addition, with the authorization of the bankruptcy court, the Concessionaire or the contractor guarantor may be able to reject any transaction document to which it is a party. That rejection would

excuse the Concessionaire or the contractor or a guarantor from performing its obligations (including payment obligations) under the applicable transaction document, and any right under that document that has been assigned to the Security Trustee or the Bond Trustee may be limited or terminated. That rejection also could excuse the other parties to the applicable transaction document from performing their obligations. The Senior Lenders (including Owners of the 2014 Bonds) may be required to return payments already received if the Concessionaire were to become a debtor in a bankruptcy case, and the Concessionaire as a debtor in possession or the bankruptcy trustee of the Concessionaire may be able to restructure its obligations under the Concessionaire Bond Proceeds Loan Agreement.

Regardless of the terms of the Indenture, the MSA or any other applicable transaction document, and regardless of the instructions of those authorized to direct HPTE's or the Bond Trustee's or the Security Trustee's actions, the filing of a bankruptcy petition creates an "automatic stay" that enjoins litigation against the bankrupt Concessionaire or contractor or Guarantor and other efforts by creditors to enforce their claims or to enforce their lien on the assets of the bankrupt party, pending further order of the bankruptcy court. As a secured creditor, however, the Senior Lenders would nonetheless be entitled to "adequate protection" of their security interest against a decrease in the value of the Collateral or any proposed use of or priming lien on the Collateral. Such adequate protection may take the form of (among other things) periodic cash payments, additional liens, or such other relief as will result in the realization of the "indubitable equivalent" of the Senior Lenders' interests in the Collateral.

The bankruptcy court could authorize the Concessionaire or an Intercompany Loan Subsidiary to obtain credit secured by a senior, priming lien on property of the bankruptcy estate already encumbered by existing liens, but only if the bankruptcy court determines that there is adequate protection of the interests of the holders of those existing liens on the property of the estate on which the senior or equal lien is proposed to be granted. Similarly, although the Concessionaire may be able to confirm a plan that modifies the terms of the Senior Obligations, if the Senior Lenders, as a class, vote to reject a plan and object to confirmation of a plan, the plan cannot be confirmed unless the plan: (1) allows the Senior Lenders to retain their lien on the assets that secure their claim and makes payments to the Senior Lenders equal to the total value of such assets that secure their claim, as of the effective date of the plan; or (2) proposes to sell the assets that secure the Senior Lenders, subject to the Senior Lenders' rights, if any, to bid on their claim at the sale, and provided that the lien of the Senior Lenders will attach to the proceeds of the sale; or (3) provides for the Senior Lender to receive what the bankruptcy court determines to be the indubitable equivalent of their claim.

Regardless of any decision made by a court, the fact that a bankruptcy case has been commenced by or against the Concessionaire, an Intercompany Loan Subsidiary or a contractor or Guarantor could have an adverse effect on the liquidity and value of the 2014 Bonds.

There are additional bankruptcy risks arising from the Intercompany Loan structure. These risks include that after the proceeds of an Intercompany Loan are advanced, the commencement of a bankruptcy case by any of the Intercompany Loan Subsidiaries while such entity held the proceeds of such Intercompany Loan or payments on account of such Intercompany Loan could result in a delay or disruption to the flow of funds. This could delay the advance of proceeds of the Intercompany Loan to the Concessionaire and result in financial difficulty for the Concessionaire until the proceeds of the Intercompany Loan become available. Likewise as payments on account of an Intercompany Loan work their way through the Intercompany Loan structure there is a risk that a bankruptcy by an Intercompany Loan Subsidiary could delay or disrupt the repayment of such Intercompany Loan and cause the Concessionaire to default.

In addition, creditors of the applicable Intercompany Loan Subsidiary could attempt to disrupt the flow of cash through the Intercompany Loan Subsidiaries on account of the Intercompany Loan by

asserting, among other things, that the transfer of the proceeds of such Intercompany Loan is subject to equitable subordination, avoidance as a fraudulent or preferential transfer, or that the Intercompany Loans among the Intercompany Loan Subsidiaries should be recharacterized as equity. These risks may be mitigated by (1) the guarantee by each Intercompany Loan Subsidiary of the indebtedness owed by the Concessionaire to the Bond Trustee (2) the grant of a security interest in the proceeds of the Intercompany Loans and (3) the fact that the Bond Trustee will retain control and possession of the cash. Furthermore, each of the Intercompany Loan Subsidiaries has been formed as a special-purpose entity such that there are restrictions on the amount and kind of indebtedness that each Intercompany Loan Subsidiary may have. Provided that the Intercompany Loan Subsidiaries abide by the special-purpose covenants, the risk that a creditor of the Intercompany Loan Subsidiaries would assert claims that could disrupt the flow of the proceeds of the Intercompany Loan or payments on account of the Intercompany Loan on a temporary or permanent basis may be diminished.

Potential Insufficiency of Funding Sources

The Concessionaire plans to finance a portion of the Phase 2 Construction Project using funding from a variety of sources other than the 2014 Bonds, including: the Equity Contribution pursuant to the Equity Contribution Agreement, the proceeds (indirectly) from the Phase 2 TIFIA Loan, the proceeds (indirectly) from the Subordinated Loan, the HPTE Capital Payment and I-25 Toll Revenues during the Construction Period. To the extent that all or a portion of the funds expected to be received from such sources is not received by the Concessionaire or to the extent that the Concessionaire receives all or a portion of such funds on a date later than is currently contemplated or, to the extent that the TIFIA Lender, the Sponsor or Equity Member, or the Subordinated Lender (and, in the case of the Subordinated Lender, the provider or the letter of credit supporting the obligations of the Subordinated Lender to fund the Subordinated Loan) withholds funding of the Phase 2 TIFIA Loan, the Equity Contribution or the Subordinated Loan, respectively, as a result of the Concessionaire being unable to satisfy draw conditions under such loans or if the I-25 Toll Revenues are lower than projected, the Concessionaire's ability to complete the Phase 2 Construction Work may be limited or delayed, potentially adversely impacting the Concessionaire's ability to satisfy its payment obligations pursuant to the Intercompany Loan Agreements. The Concessionaire's delay or inability to complete the construction of the Phase 2 Construction Project may give HPTE the right to terminate the Concession Agreement, which would adversely affect the Concessionaire's ability to make payments pursuant to the Intercompany Loan Agreements in the amounts and at the times required to enable Borrower Finco to pay debt service on the 2014 Bonds or other payments required under the Indenture with respect to the 2014 Bonds.

Rating Risks

Fitch Ratings has been engaged to assign a credit rating to the 2014 Bonds. A rating is not a recommendation to purchase, hold or sell the 2014 Bonds, and does not address the market price or suitability of the 2014 Bonds for a particular investor. A rating of the 2014 Bonds may not remain in effect or at a specified level for any given period of time; it may be lowered, suspended or withdrawn depending on, among other things, the rating agency's rating methodology, views and assessment of the Concessionaire's financial strength.

Risks Relating to Market Liquidity for the 2014 Bonds

Prior to this offering of the 2014 Bonds, no market existed for the 2014 Bonds. The Concessionaire has been informed by the Underwriter that it currently intends to make a market in the 2014 Bonds after the completion of this offering; however, the Underwriter is not required to make a market in the 2014 Bonds, and it may cease market-making at any time without notice. The Concessionaire cannot assure potential investors that an active market for the 2014 Bonds will develop. Even if a market for the 2014 Bonds does develop, depending on prevailing interest rates and market

conditions generally, the 2014 Bonds could trade at a discount from their initial offering price. Owners of the 2014 Bonds may not be able to sell their 2014 Bonds in the future or such sale may not be at a price equal to or greater than the initial offering price of the 2014 Bonds. As a result, Owners of the 2014 Bonds may not be able to liquidate their investment quickly or to liquidate it at an attractive price or at all.

Risks Relating to Tax Matters

As discussed under the caption “TAX MATTERS,” interest on the 2014 Bonds could be, or become, includable in gross income for federal income tax purposes retroactive to the Closing Date as a result of a failure of the Issuer or Borrower Finco or the Concessionaire to comply with certain provisions of the Code, the Treasury regulations promulgated thereunder, and certain other guidance issued by the IRS and courts. In addition, the law relating to the 2014 Bonds is subject to change by legislation and judicial or administrative decision, in each case, possibly with retroactive effect. No ruling has been sought or obtained from the IRS with respect to the treatment of the 2014 Bonds or the property financed or refinanced with proceeds of the 2014 Bonds under current law, and there can be no assurance that interest on the 2014 Bonds is or will continue to be exempt from tax for federal income tax purposes. Potential investors should consult their tax advisors concerning the tax implications of the purchase, ownership or disposition of the 2014 Bonds.

LEGAL MATTERS

Certain legal matters relating to the authorization and validity of the issuance of the 2014 Bonds will be subject to the approving opinion of Kutak Rock LLP, Denver, Colorado, Bond Counsel to the Issuer, which will be furnished at the expense of the Concessionaire upon delivery of the 2014 Bonds, in substantially the form set forth as APPENDIX J (the “**Bond Counsel Opinion**”). The Bond Counsel Opinion will be limited to matters relating to authorization and validity of the 2014 Bonds and to the tax-exempt status of interest on the 2014 Bonds as described in “TAX MATTERS.” Bond Counsel undertakes no responsibility for the accuracy, completeness or fairness of this Official Statement. Bond Counsel has not been engaged to investigate the financial resources of the Concessionaire or its ability to provide for payment of the 2014 Bonds. Certain legal matters will be passed upon for the Concessionaire and the Intercompany Loan Subsidiaries by their counsel, Fasken Martineau DuMoulin LLP, Toronto, Canada and Thompson Coburn LLP, Los Angeles, California, for the Concessionaire by its counsel Spencer Fane Britt & Browne LLP, Denver, Colorado, for Borrower Finco and Finco 2 by its counsel Mayer Brown LLP, Chicago, Illinois, for Finco 1 by its counsel Gowling Lafleur Henderson LLP, Vancouver, British Columbia, for the Underwriter by its counsel, Ballard Spahr LLP, Denver, Colorado, and for the Issuer and HPTE by its counsel, Hogan Lovells US LLP, Denver, Colorado and the Colorado State Attorney General’s office.

The various legal opinions to be delivered concurrently with the delivery of the 2014 Bonds express the professional judgment of the attorneys rendering the opinions as to the legal issues explicitly addressed therein. In rendering a legal opinion, the attorney does not become an insurer or guarantor of the expression of professional judgment, of the transaction opined upon, or of the future performance of the parties to the transaction, nor does the rendering of an opinion guarantee the outcome of any legal dispute that may arise out of the transaction.

TAX MATTERS

General

In the opinion of Kutak Rock LLP, Bond Counsel to the Issuer, under existing laws, regulations, rulings and judicial decisions, interest on the 2014 Bonds is excluded from gross income for federal income tax purposes, except for interest on any 2014 Bond for any period during which such 2014 Bond

is held by a “substantial user” of the facilities financed or refinanced by the 2014 Bonds or by a “related person” within the meaning of Section 147(a) of the Internal Revenue Code of 1986, as amended (the “Code”). Bond Counsel is further of the opinion that interest on the 2014 Bonds is a specific preference item for purposes of the federal alternative minimum tax. The opinions described in the preceding sentences assume the accuracy of certain representations and compliance by Borrower Finco and the Concessionaire with covenants designed to satisfy the requirements of the Code that must be met subsequent to the issuance of the 2014 Bonds. Failure to comply with such requirements could cause interest on the 2014 Bonds to be included in gross income for federal income tax purposes retroactive to the Closing Date. Borrower Finco and the Concessionaire will covenant to comply with such requirements. Bond Counsel has expressed no opinion regarding other federal tax consequences arising with respect to the 2014 Bonds.

Bond Counsel is also of the opinion that, under existing State of Colorado statutes, the 2014 Bonds and the transfer of and the income from the 2014 Bonds is exempt from all taxation and assessments in the State of Colorado.

Special Considerations With Respect to the 2014 Bonds

The accrual or receipt of interest on the 2014 Bonds may otherwise affect the federal income tax liability of the owners of the 2014 Bonds. The extent of these other tax consequences will depend upon such owner’s particular tax status and other items of income or deduction. Bond Counsel has expressed no opinion regarding any such consequences. Purchasers of the 2014 Bonds, particularly purchasers that are corporations (including S corporations and foreign corporations operating branches in the United States), property or casualty insurance companies, banks, thrifts or other financial institutions, certain recipients of social security or railroad retirement benefits, taxpayers otherwise entitled to claim the earned income credit, taxpayers entitled to claim the refundable credit in Section 36B of the Code for coverage under a qualified health plan or taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry tax-exempt obligations, should consult their tax advisors as to the tax consequences of purchasing or owning the 2014 Bonds.

Backup Withholding

As a result of the enactment of the Tax Increase Prevention and Reconciliation Act of 2005, interest on tax-exempt obligations such as the 2014 Bonds is subject to information reporting in a manner similar to interest paid on taxable obligations. Backup withholding may be imposed on payments made to any bondholder who fails to provide certain required information including an accurate taxpayer identification number to any person required to collect such information pursuant to Section 6049 of the Code. The reporting requirement does not in and of itself affect or alter the excludability of interest on the 2014 Bonds from gross income for federal income tax purposes or any other federal tax consequence of purchasing, holding or selling tax-exempt obligations.

Changes in Federal and State Tax Law

From time to time, there are legislative proposals in the Congress and in the various state legislatures that, if enacted, could alter or amend federal and state tax matters referred to above or adversely affect the market value of the 2014 Bonds. It cannot be predicted whether or in what form any such proposal might be enacted or whether if enacted it would apply to bonds issued prior to enactment.

In addition, regulatory actions are from time to time announced or proposed and litigation is threatened or commenced which, if implemented or concluded in a particular manner, could adversely affect the market value of the 2014 Bonds. It cannot be predicted whether any such regulatory action will be implemented, how any particular litigation or judicial action will be resolved, or whether the 2014

Bonds or the market value thereof would be impacted thereby. Purchasers of the 2014 Bonds should consult their tax advisors regarding any pending or proposed legislation, regulatory initiatives or litigation. The opinions expressed by Bond Counsel are based upon existing legislation and regulations as interpreted by relevant judicial and regulatory authorities as of the Closing Date and delivery of the 2014 Bonds and Bond Counsel has expressed no opinion as of any date subsequent thereto or with respect to any pending legislation, regulatory initiatives or litigation.

Tax Treatment of Original Issue Discount

The 2014 Bonds are being sold at an original issue discount. The difference between the initial public offering price of the 2014 Bonds and their stated amount to be paid at maturity constitutes original issue discount treated in the same manner for federal income tax purposes as interest, as described under “—General” above.

The amount of original issue discount which is treated as having accrued with respect to a 2014 Bond is added to the cost basis of the owner in determining, for federal income tax purposes, gain or loss upon disposition of such 2014 Bond (including its sale, redemption or payment at maturity). Amounts received upon disposition of a 2014 Bond which are attributable to accrued original issue discount will be treated as tax-exempt interest, rather than as taxable gain, for federal income tax purposes.

Original issue discount is treated as compounding semiannually, at a rate determined by reference to the yield to maturity of each individual 2014 Bond, on days which are determined by reference to the maturity date of such 2014 Bond. The amount treated as original issue discount on such 2014 Bond for a particular semiannual accrual period is equal to the product of (i) the yield to maturity for such 2014 Bond (determined by compounding at the close of each accrual period) and (ii) the amount which would have been the tax basis of such 2014 Bond at the beginning of the particular accrual period if held by the original purchaser, less the amount of any interest payable for such 2014 Bond during the accrual period. The tax basis is determined by adding to the initial public offering price on such 2014 Bond the sum of the amounts which have been treated as original issue discount for such purposes during all prior periods. If such 2014 Bond is sold between semiannual compounding dates, original issue discount which would have been accrued for that semiannual compounding period for federal income tax purposes is to be apportioned in equal amounts among the days in such compounding period.

Owners of the 2014 Bonds should consult their tax advisors with respect to the determination and treatment of original issue discount accrued as of any date and with respect to the state and local tax consequences of owning a 2014 Bond.

NO LITIGATION

Issuer. As of the date hereof, there is no litigation or proceeding pending, or, to the best knowledge of the Issuer, threatened, which would affect the right of the Issuer to execute, deliver or perform its obligations under the Indenture or to issue, execute, deliver or perform its obligations under the 2014 Bonds.

Concessionaire. There is no litigation or other proceeding of any nature now pending or to the best knowledge of the Concessionaire, threatened against or adversely affecting the Concessionaire seeking to restrain or enjoin the issuance, sale, execution or delivery of the 2014 Bonds or in any way contesting or affecting the validity of the 2014 Bonds or the resolutions adopted by the Concessionaire to authorize the transaction, the Concessionaire’s obligation and agreement to provide certain continuing disclosure as set forth in the Continuing Disclosure Agreement, or any actions of the Concessionaire taken with respect to the issuance or sale of the 2014 Bonds, or the pledge, collection or application of

any monies or security provided for the payment of the 2014 Bonds, or the existence, powers or operations of the Concessionaire, or contesting the completeness or accuracy of this Official Statement.

HPTE. On February 18, 2014 the Denver Post carried a report that a group called the “Drive SunShine Institute” plan to sue CDOT to stop the Project from going ahead. A spokesman was quoted as saying that the suit's main contention will be that the environmental assessment of the U.S. 36 Managed Lanes project was flawed. The report also quoted the spokesman as saying that the lawsuit would likely be filed on February 18 or February 19. A press release dated February 18, 2014 on the website for the Drive SunShine Institute states “While CDOT and HPTE meet on Weds Feb 19th ... a lawsuit will be filed against US 36 privatization on the grounds that a full Environmental Impact Assessment was never completed for the transportation project making the US 36 privatization deal ineligible to receive federal tax dollars” and that the institute “... is launching a lawsuit against the Colorado Department of Transportation (CDOT) and the state privatization board, the HPTE. The suit documents how the 50-year secret financial arrangement will dramatically increase pollution and traffic congestion on US 36 and I-25....”

On February 23, 2014, HPTE was informed that an attorney representing the Drive SunShine Institute called a Colorado State Senator and said that she would be filing suit on February 24, 2014 against the HPTE Board for violating Colorado’s Open Meetings Law in respect of its meeting on February 19, 2014 which passed resolutions approving the US 36 transaction, and the issuance of the 2014 Bonds. The senator understood the main crux of the complaint to relate to changes to the agenda and notice requirements. He also understood the attorney to state that the lawsuit will seek to render the full meeting, and all resolutions approved, null and void and that it will also seek an injunction to prevent closing of the transaction.

The following material was added to the Drive SunShine Institute’s website on February 24, 2014:

“Colorado’s Best Hope – pending lawsuit from the Drive SunShine Institute

Short of rapid action by state lawmakers to defend Colorado’s fiscal and policy interests, a pending lawsuit from the pro-business Drive SunShine Institute is Colorado’s best hope to prevent financial close on the Plenary/Goldman Sachs deal.

A court’s 60 day injunction pausing HPTE signing of the fifty-year US 36 contract will allow a contract review that will safeguard financial and policy public interests. Contract language released Feb 14th by CDOT reveals that to protect Wall Street and Australian investors financial close can not proceed if the HPTE is involved in legal action.

...

Based on the hard evidence of process failures by the HPTE documented by DSI attorney Karen Hammer of Hammer-Law, it is anticipated that the judicial system will move swiftly to grant a rapid injunction that defends the public interest prior to this week’s US 36 contract signing. ...”

As of 5:00 PM Mountain Standard Time on February 24, 2014, neither HPTE nor CDOT have received any notification of any suit of any description in relation to the Project, and searches of the dockets at the US District Court for the District of Colorado and the Colorado State District Courts have not revealed that any such suit has been filed.

The work in relation to the environmental assessment for the Project was summarized at page 8 of this Official Statement as follows:

“The Project has undergone all of the planning stages as required by the National Environmental Policy Act (“NEPA”). In December 2009, the Federal Highway Administration (the “FHWA”) issued a Record of Decision (the “ROD”) for the US 36 Corridor Final Environmental Impact Statement/Section 4(f) Evaluation (the “FEIS”).

Subsequently, reevaluations were conducted as required by NEPA, due to changes in the scope of the Project as HPTE advanced the engineering design of the Project to an approximate 30% level of design. The U.S. 36 Phase 1 NEPA Reevaluation was approved in July 2012 and the U.S. 36 Phase 2 NEPA Reevaluation was approved in March 2013 (together, the “NEPA Reevaluations”). The NEPA Reevaluations provided an updated ROD granting approval to the current proposals based on further refinement of the design since the 2009 decision. The NEPA Reevaluations conclude that none of the changes result in new significant impacts that were not identified in the FEIS or the ROD. The NEPA Reevaluations also state that they are final and no additional studies or other requirements are needed for the proposed action.”

CDOT is highly confident that all of the work described in these paragraphs was properly carried out in accordance with all applicable requirements. Moreover, 23 U.S.C. § 139(l) applicable as of the time of the issuance of the 2009 and updated ROD states that “a claim arising under Federal law seeking judicial review of a permit, license, or approval issued by a Federal agency for a highway or public transportation capital project shall be barred unless it is filed within 180 days after publication of a notice in the Federal Register announcing that the permit, license, or approval is final pursuant to the law under which the agency action is taken”. The 180-day time limit has expired in relation to the ROD and the updated ROD.

HPTE and CDOT are also satisfied that there were no procedural flaws either in the notice of the HPTE Board meeting of February 19 or in the conduct of that meeting.

Accordingly, HPTE and CDOT would expect to mount a vigorous defense to any such suit and would expect to prevail. HPTE and CDOT currently expect to proceed with the Project as described in this Official Statement.

LEGISLATIVE REQUEST

On January 30, 2014, CDOT received a letter signed by fourteen Colorado State legislators (the “**Letter**”) asking that they be given a “60-day review period before the [Concession Agreement] is signed.” The Letter states that the legislators are “...not trying to derail the project” but that a simple review of the Concession Agreement “... by the legislature and the public is not too much to ask.” According to CDOT, it held meetings with the legislators during the week of February 10th and took steps to inform the legislators and to hold public meetings about the Project and the terms of the Concession Agreement. On January 31, 2014, CDOT posted on its website a “Summary of Certain Provisions of the Concession Agreement (January 24, 2014)” (which is materially the same summary as attached to this Official Statement as Appendix B) and distributed a “US 36 Public Private Partnership, Frequently Asked Questions” addressing, among other things, questions about the nature of public-private partnership transactions, why such transactions are valuable for Colorado, the respective roles of CDOT, HPTE and the Concessionaire in the Project, the tolling of the Managed Lanes and the procedure for establishing tolls. On February 14, 2014, CDOT posted on its website a full copy of the February 14, 2014 draft version of the Amended and Restated Concession Agreement, including all schedules thereto, except for

the three schedules which were summarized at the request of the Concessionaire due to the proprietary information.

The Concession Agreement was originally executed on June 27, 2013, and, as amended to date, constitutes an agreement between the parties that is currently enforceable in accordance with its terms. Although the Concession Agreement will be amended and restated to incorporate certain matters required in connection with the funding of the Project, it may not be otherwise amended without the consent of the parties thereto. In addition, the Concessionaire will covenant in the Bond Proceeds Loan Agreement not to amend the Concession Agreement in any material respect or terminate the Concession Agreement without the prior written consent of the Bond Trustee (at the direction of the Owners of a majority in aggregate principal amount of the then outstanding Senior Bonds). See “FINANCING AGREEMENTS – Bond Proceeds Loan Agreement – Covenants.”

Although it is not possible at this time to assess the impact of a 60-day review period as requested in the Letter on the timing of the consummation of the transactions contemplated in the Concession Agreement, HPTE currently anticipates that the process of providing additional information to the State lawmakers and the public about the Project and the Concession Agreement will not delay the consummation of the transactions contemplated in the Concession Agreement.

RELATED PARTY TRANSACTIONS

The Bank of New York Mellon Trust Company, N.A. is acting as the Bond Trustee under the Indenture and The Bank of New York Mellon is acting as the Security Trustee under the MSA and Intercreditor Agent under the Intercreditor Agreement.

RATING

The 2014 Bonds are expected to be assigned a rating of “BBB-” with by Fitch Ratings (“**Fitch**”). The rating reflects only the views of Fitch and any desired explanation of the significance of such rating should be obtained from Fitch furnishing the same at the following address: One State Street Plaza, New York, New York 10004. Generally, a rating agency bases its ratings on information and on independent investigations, studies, and assumptions made by that rating agency. Investors have no assurance that a rating will continue for any given period of time or that it will not be revised downward or withdrawn entirely by a rating agency if, in the judgment of that rating agency, circumstances warrant the revision or withdrawal. Those circumstances may include, among other things, changes in or unavailability of information relating to the Issuer, the Concessionaire, the Project or the 2014 Bonds being offered. Any downward revision or withdrawal of a rating may have an adverse effect on the market price of the 2014 Bonds. The Underwriter, the Issuer and the Concessionaire undertake no responsibility either to bring to the attention of the owners of the 2014 Bonds any downward revision or withdrawal of any rating obtained or to oppose any such revision or withdrawal.

UNDERWRITING

Goldman, Sachs & Co. (the “**Underwriter**”) has agreed to purchase the 2014 Bonds at an aggregate purchase price of \$20,001,867.60 (representing the aggregate principal amount of the 2014 Bonds minus original issue discount of \$358,132.40) pursuant to a bond purchase agreement entered into by and among the Issuer, Borrower Finco, the Concessionaire and the Underwriter. On or prior to the Closing Date, the Concessionaire shall pay to the Underwriter an Underwriter’s discount in the amount of \$162,774.55 from a portion of the proceeds of the 2014 Bonds and from moneys of the Concessionaire available therefor. The Underwriter will be obligated to purchase all of the 2014 Bonds if any 2014 Bonds are purchased. The Underwriter reserves the right to join with dealers and other underwriters in offering the 2014 Bonds to the public. The obligations of the Underwriter to accept delivery of the 2014

Bonds are subject to various conditions of the bond purchase agreement. Pursuant to the bond purchase agreement, HPTE has agreed to indemnify the Underwriter and the Issuer against certain liabilities based on claims under the federal securities laws.

The Underwriter and its affiliates are full service financial institutions engaged in various activities, which may include sales and trading, commercial and investment banking, advisory, investment management, investment research, principal investment, hedging, market making, brokerage and other financial and non-financial activities and services. The Underwriter and its affiliates have provided a variety of these services to persons and related entities with relationships with HPTE, and may in the future provide, a variety of these services to the Issuer and to persons and entities with relationships with HPTE, for which they received or will receive customary fees and expenses. Goldman, Sachs & Co. (“**Goldman Sachs**”), the sole Underwriter of the 2014 Bonds, currently serves as an advisor to a consortium that includes the Concessionaire, Plenary Group USA and other affiliates of the Concessionaire in connection the consortium’s acquisition of a long-term concession to design, build and finance the Phase 2 Construction Project and to operate and maintain the Operations Project as described in “PHASE 2 CONSTRUCTION PROJECT” and “OPERATIONS PROJECT,” respectively, for which Goldman Sachs received or will receive customary fees and expenses. Goldman Sachs is not acting as an advisor to HPTE in connection with the Concession Agreement or in connection with the offering of the 2014 Bonds.

In the ordinary course of its various business activities, the Underwriter and its affiliates, officers, directors and employees may purchase, sell or hold a broad array of investments and actively traded securities, derivatives, loans, commodities, currencies, credit default swaps and other financial instruments for its own account and for the accounts of its customers, and such investment and trading activities may involve or relate to assets, securities and/or instruments of HPTE (directly, as collateral securing other obligations or otherwise) and/or persons and entities with relationships with HPTE. The Underwriter and its affiliates may also communicate independent investment recommendations, market color or trading ideas and/or publish or express independent research views in respect of such assets, securities or instruments and may at any time hold, or recommend to clients that they should acquire, long and/or short positions in such assets, securities and instruments.

OTHER PROFESSIONALS

KPMG Corporate Finance LLC (“**KPMG**”) is serving as advisor to HPTE with respect to the Project and the negotiation of the Concession Agreement. KPMG is not acting as a financial advisor to HPTE in connection with the offering of the 2014 Bonds. KPMG is an advisory and consulting organization and is not engaged in the underwriting, marketing or trading of municipal securities or other negotiable instruments.

CONTINUING DISCLOSURE

The Concessionaire and Borrower Finco have covenanted for the benefit of the owners of the 2014 Bonds to provide annually certain financial information and operating data concerning the Concessionaire to the Electronic Municipal Market Access (“**EMMA**”) of the Municipal Securities Rulemaking Board (the “**MSRB**”) pursuant to the requirements of Rule 15c2-12 (the “**Rule**”) of the Securities and Exchange Commission (“**SEC**”). The Issuer will not undertake any responsibility for continuing disclosure and no financial or operating information concerning the Issuer will be provided.

The Concessionaire and Borrower Finco are entering into a Continuing Disclosure Agreement with the Bank of New York Mellon Trust Company, N.A., acting as the dissemination agent (the “**Continuing Disclosure Agreement**”) for the benefit of the Owners of the 2014 Bonds to provide certain financial information and operating data concerning the Concessionaire, Borrower Finco, Finco 1 and Finco 2 to the MSRB pursuant to the requirements of the Rule. See APPENDIX G for the form of

Continuing Disclosure Agreement. A failure by the Concessionaire to provide any information required thereunder on behalf of itself and Borrower Finco will not constitute an Event of Default under the Indenture, the Bond Proceeds Loan Agreement and any other Material Project Contract. The failure of the Concessionaire to file information required by the Continuing Disclosure Agreement on behalf of itself and Borrower Finco, however, is a reportable event pursuant to the Continuing Disclosure Agreement. The Concessionaire and Borrower Finco are newly formed entities and have not undertaken any prior continuing disclosure obligations.

MISCELLANEOUS

The Appendices are integral parts of this Official Statement and must be read together with all other parts of this Official Statement. The descriptions of the Indenture, the Bond Proceeds Loan Agreement, the MSA, the TIFIA Loan Agreements and the other Funding Agreements as well as the Concession Agreement and the other Material Project Contracts do not purport to be comprehensive or definitive, and prospective purchasers of the 2014 Bonds are referred to such documents for the complete terms thereof. So far as any statements made in this Official Statement involve matters of opinion, forecasts or estimates, whether or not expressly stated, they are set forth as such and not as representations of fact.

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The Issuer and Concessionaire have authorized the distribution of this Official Statement. This Official Statement has been duly executed and delivered on behalf of the Concessionaire.

PLENARY ROADS DENVER LLC

By: /s/ Phil Dreaver
Vice President and Director

By: /s/ Brian Clark
Vice President

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APPENDIX A

DEFINITIONS OF CERTAIN TERMS

“**2014 Bonds**” is defined in “INTRODUCTION” in the front part of the Official Statement.

“**Acceleration Action**” means, with respect to any Secured Obligations, the giving by the relevant Secured Creditor of a notice to the relevant Obligor declaring such Secured Obligations or such part of the Secured Obligations as is specified in such notice (with accrued interest thereon) to be due and payable forthwith.

“**Acceptable Letter of Credit**” means a letter of credit which is issued by an Acceptable Letter of Credit Provider, which letter of credit (i) is non-recourse to any Borrower Group Member and (ii) is otherwise in form and substance reasonably satisfactory to the Security Trustee and meets the requirements under the MSA.

“**Acceptable Letter of Credit Provider**” means any bank or trust company authorized to engage in the banking business, which is organized under or licensed as a branch or agency under the laws of the United States or any state thereof, which has a rating of its unsecured, un-credit enhanced senior long-term indebtedness (or, if such Person has no such rating, then its issuer rating or corporate credit rating) that is no lower than (a) at the time such Person executes, delivers or issues an Acceptable Letter of Credit, “A+”, “A1” or the equivalent rating from any Nationally Recognized Rating Agency, and (b) at any time thereafter, “A”, “A2” or the equivalent rating from any Nationally Recognized Rating Agency.

“**Additional Deferred Interest**” is defined in “FINANCING AGREEMENTS – Subordinated Loan Agreements – Terms of the Subordinated Loan” in the front part of the Official Statement.

“**Additional Retention**” is defined in “OTHER PROJECT AGREEMENTS – Design-Build Contract – Retention” in the front part of the Official Statement.

“**Additional Secured Creditor**” means (i) Additional Senior Creditors and (ii) any assignee of all or a portion of the Phase 1 TIFIA Loan or the Phase 2 TIFIA Loan pursuant to the terms of the Phase 1 TIFIA Loan Agreement or the Phase 2 TIFIA Loan Agreement, in each case, that have become a party to the MSA as contemplated in the Intercreditor Agreement.

“**Additional Senior Bonds**” means Senior Bonds issued in connection with the incurrence of Additional Senior Obligations pursuant to the Indenture and the Bond Proceeds Loan Agreement.

“**Additional Senior Creditor**” means any holder of any Additional Senior Obligations incurred by Borrower Finco and any trustee or agent therefor under the related Funding Documents.

“**Additional Senior Obligation**” means indebtedness of Borrower Finco, ranking on parity with, and secured on a pari passu basis, with Borrower Finco Senior Obligations which is permitted to be incurred under and meets the requirements of (i) the Phase 1 TIFIA Loan Agreement, at all times from and after the Phase 1 Assumption Date, (ii) the Phase 2 TIFIA Loan Agreement, (iii) the Bond Proceeds Loan Agreement and (iv) the Subordinated Loan Agreements (provided that, prior to the Discharge of Senior Obligations, clause (iv) will not apply if an Event of Default has occurred and is continuing), in each case prior to the termination of each such Funding Document. Additional Senior Obligations may be incurred by Borrower Finco, from time to time, for one or more of the following purposes: (i) to complete the Phase 2 Construction Project, (ii) to comply with obligations under the Material Project Contracts, (iii) to refurbish, upgrade, modify, expand or add to the U.S. 36 Project, (iv) to refinance, replace or refund all or part of any then outstanding Indebtedness of Borrower Finco, (v) to fund any debt service reserves with

respect to such Additional Senior Obligations, (vi) to pay the costs of issuance of such Additional Senior Obligations, and (vii) for any combination of such purposes.

“**Additional Senior Obligations Effective Date**” is defined in “INTERCREDITOR ARRANGEMENTS – Intercreditor Agreement – Amendment of Funding Documents – Amendment of Funding Documents Relating to Senior Obligations” in the front part of the Official Statement.

“**Adjusted Estimated Fair Value of the Contract**” means the Estimated Fair Value of the Contract, less an amount equal to the aggregate of: (a) the tender costs; and (b) amounts that HPTE is entitled to set off or deduct under the Concession Agreement, plus an amount equal to the aggregate of: (i) all credit balances on any bank accounts held by or on behalf of the Concessionaire on the date that the Estimated Fair Value of the Contract is calculated; and (ii) any insurance proceeds and other amounts owing to the Concessionaire to the extent not included in (i) above; save to the extent that: (1) (i) and (ii) have not been directly taken into account in calculating the Estimated Fair Value of the Contract; and (2) HPTE has received such amounts in accordance with the Concession Agreement or such amounts are standing to the credit of the joint insurance account.

“**Adjusted Financial Model**” is defined in “CONCESSION AGREEMENT – Base Case Financial Model” in the front part of the Official Statement.

“**Advance Fulfillment CPs**” is defined in “PHASE 1 PROJECT – Assumption of Phase 1 TIFIA Loan” in the front part of the Official Statement.

“**Adverse Tax Event**” means, with respect to a Tax-Exempt Senior Bond, an event that would cause interest on such Tax-Exempt Senior Bond to be included in gross income for federal income tax purposes.

“**Advisors**” is defined in “REPORTS” in the front part of the Official Statement.

“**Affiliate**” of a particular Person means, at any time, (a) any other Person directly or indirectly Controlling, Controlled by, or under common Control with, such Person and (b) any Person beneficially owning or holding, directly or indirectly, ten percent (10%) or more of any class of securities having ordinary voting power for the election of directors or other members of the governing body of a corporation or other Person, or ten percent (10%) or more of any partnership or other equity interests having ordinary voting power for the election of directors or other members of the governing body of a corporation or any other Person.

“**Amended and Restated Master Indenture**” is defined in “PHASE 1 PROJECT – Financing of the Phase 1 Project” in the front part of the Official Statement.

“**Amendment Notice**” is defined in “INTERCREDITOR ARRANGEMENTS – Intercreditor Agreement - Amendment of Funding Documents – Procedures Relating to Owners’ Votes on Amendments” in the front part of the Official Statement.

“**Ames Construction**” means Ames Construction, Inc., a Minnesota corporation.

“**Ames/Granite JV**” means Ames-Granite, a joint venture formed by its members Ames Construction and Granite Construction.

“**Annual Operating Budget**” means a budget on a cash flow basis of projected traffic, Project Revenues, O&M Expenses and Maintenance Capex, in each case, with respect to the U.S. 36 Project, Senior Debt Service (including TIFIA Phase 1 Debt Service), TIFIA Phase 2 Debt Service, Subordinated Debt Service, Discretionary Capital Expenditures, TIFIA Revenue Share Amount, Sinking Fund Amounts,

required reserve account deposits, and other costs, any projected distributions and a pro forma balance sheet for the next Fiscal Year.

“Assigned Agreements” means all agreements, contracts and documents, including the Equity Contribution Agreement and each Material Project Contract to which the each Obligor is a party (including all exhibits and schedules thereto), as each such agreement, contract and document may be amended, supplemented or modified and in effect from time to time, including (a) all rights of each Obligor to receive moneys due and to become due under or pursuant to the Assigned Agreements, (b) all rights of each Obligor to receive proceeds of any insurance, bond, indemnity, warranty, letter of credit or guaranty with respect to the Assigned Agreements, (c) all claims of each Obligor for damages arising out of or for breach of or default under the Assigned Agreements and (d) all rights of each Obligor to terminate, amend, supplement, modify or waive performance under the Assigned Agreements, to perform thereunder and to compel performance and otherwise to exercise all remedies thereunder.

“Assigned Rights” is defined in “SECURITY AND SOURCES OF PAYMENT FOR 2014 BONDS – HPTE Direct Agreement” in the front part of the Official Statement.

“Assignment Agreement” is defined in “FINANCING AGREEMENTS – TIFIA Loan Agreements – Phase 1 TIFIA Loan” in the front part of the Official Statement.

“Authorized Denominations” means \$5,000 in principal amount and any integral multiple thereof.

“Availability Period” means the period commencing on Financial Close and ending on the earlier to occur of the Maturity Date of the Subordinated Loan and the Full Services Commencement Long Stop Date.

“Base Case Financial Model” is defined in “CONCESSION AGREEMENT – Base Case Financial Model” in the front part of the Official Statement.

“Base Senior Debt Termination Amount” means:

- (a) all amounts outstanding at the Termination Date, including interest and default interest accrued as at that date, from the Concessionaire to the Senior Lenders and in respect of Permitted Borrowing; and
- (b) all amounts payable by the Concessionaire to the Senior Lenders (including costs of early termination of interest rate hedging arrangements and other breakage costs) as a result of a prepayment in respect of Permitted Borrowing, or in the case of early termination of interest rate hedging arrangements only (subject to the definition of Permitted Borrowing), as a result of termination of the Concession Agreement, subject to the Concessionaire and the Senior Lenders mitigating all such costs to the extent reasonably possible,

less, to the extent it is a positive amount, the aggregate of (without double counting in relation to the calculation of the Base Senior Debt Termination Amount or the amounts below):

- (i) all credit balances on any bank accounts (but excluding the Joint Insurance Account) held by or on behalf of the Concessionaire on the Termination Date which are pledged as security for payment of Senior Obligations;
- (ii) any amounts lawfully recoverable on or after the Termination Date in respect of Contingent Funding Liabilities;

- (iii) all amounts payable by the Senior Lenders to the Concessionaire (including, subject to the definition of Permitted Borrowing, sums arising as a result of early termination of interest rate hedging arrangements and other breakage amounts) as a result of prepayment of amounts outstanding in respect of Permitted Borrowing, or in the case of early termination of interest rate hedging arrangements only, as a result of termination of the Concession Agreement; and
- (iv) all other amounts received by the Senior Lenders on or after the Termination Date and before the date on which any compensation is payable by HPTE to the Concessionaire as a result of enforcing any other rights they may have.

“**Bond Counsel**” means, as of the Closing Date, Kutak Rock LLP, Denver, Colorado, and thereafter, other attorneys selected by the issuer who have nationally recognized expertise in the issuance of municipal securities, the interest on which is excluded from gross income for federal income tax purposes.

“**Bond Counsel Opinion**” is defined in “LEGAL MATTERS” in the front part of the Official Statement.

“**Bond Proceeds (Costs of Issuance) Subaccount**” means the Subaccount of the Project Proceeds Account created pursuant to and designated as such in the MSA.

“**Bond Proceeds (Project Costs) Subaccount**” means the Subaccount of the Project Proceeds Account created pursuant to and designated as such in the MSA.

“**Bond Proceeds Loan Event of Default**” is defined in “FINANCING AGREEMENTS – Bond Proceeds Loan Agreement – Bond Proceeds Loan Events of Default” in the front part of the Official Statement.

“**Bond Proceeds Loan**” is defined in “PLAN OF FINANCE – Intercompany Loans” in the front part of the Official Statement.

“**Bond Proceeds Loan Agreement**” is defined in “INTRODUCTION – General” in the front part of the Official Statement.

“**Bond Proceeds Subaccounts**” is defined in “PLAN OF FINANCE – 2014 Bonds” in the front part of the Official Statement.

“**Bond Trustee**” means The Bank of New York Mellon Trust Company, N.A., acting in its capacity as trustee under the Indenture, and any successor appointed under the Indenture.

“**Bonds Debt Service Reserve Account**” means the Project Account of the Concessionaire created and designated as such in the MSA.

“**Bonds Debt Service Reserve Requirement**” is defined in “PROJECT ACCOUNTS AND FLOW OF FUNDS - Debt Service Reserve Accounts – Bonds Debt Service Reserve Account - Deposits into Bonds Debt Service Reserve Account” in the front part of the Official Statement.

“**Bonds Redemption Account**” means the Bonds Redemption Account established and created in the name of the Concessionaire pursuant to the MSA.

“**Borrower Finco**” means Plenary Roads Finco LP, a limited partnership organized under the laws of the State of Delaware.

“Borrower Finco Accounts” is defined in “PROJECT ACCOUNTS AND FLOW OF FUNDS – Project Accounts and Subaccounts – Borrower Finco Accounts” in the front part of the Official Statement.

“Borrower Finco Collateral” is defined in “SECURITY AND SOURCES OF PAYMENT FOR 2014 BONDS – Collateral Pledged Under the MSA” in the front part of the Official Statement.

“Borrower Finco Debt Service Accounts” means the Borrower Finco Senior Bonds Debt Service Account, the Borrower Finco TIFIA Phase 1 Debt Service Account, the Borrower Finco TIFIA Phase 2 Debt Service Account, and the Borrower Finco Subordinated Loan Debt Service Account.

“Borrower Finco Distribution Account” means the Project Account of Borrower Finco created pursuant to and designated as such in the MSA.

“Borrower Finco Senior Bonds Debt Service Account” means the Project Account of Borrower Finco created pursuant to and designated as such in the MSA.

“Borrower Finco Senior Bonds Obligations” means (a) all present and future indebtedness and other obligations of Borrower Finco incurred pursuant to the Bond Proceeds Loan Agreement, including principal (including any mandatory sinking fund payments and any extraordinary mandatory redemption payments), interest (including interest incurred after the commencement of a bankruptcy proceeding by or against Borrower Finco), fees, premiums, reimbursement obligations, collection costs and expenses and all other amounts, liabilities and obligations of Borrower Finco arising thereunder, and (b) all amounts owed under any modifications, renewals or extensions of any of the foregoing obligations, in each case, whether fixed or contingent, matured or unmatured, liquidated or unliquidated or joint or owed jointly or severally or in any other capacity whatsoever.

“Borrower Finco Senior Obligations” means collectively, Borrower Finco Senior Bond Obligations, all Obligations of Borrower Finco in respect of Additional Senior Obligations incurred in accordance with the terms of the Funding Documents, from and after the Phase 1 Assumption Date, Borrower Finco TIFIA Phase 1 Obligations and, if the circumstances described in the MSA are applicable, Borrower Finco TIFIA Phase 2 Obligations.

“Borrower Finco Subordinated Loan Debt Service Account” means the Project Account of Borrower Finco created pursuant to and designated as such in the MSA.

“Borrower Finco Subordinated Loan Obligations” means (a) all present and future indebtedness and other obligations of Borrower Finco incurred pursuant to the Subordinated Loan Agreement, including principal, interest (including interest incurred after the commencement of a bankruptcy proceeding by or against Borrower Finco), fees, premiums, reimbursement obligations, collection costs and expenses and all other amounts, liabilities and obligations of Borrower Finco arising thereunder, and (b) all amounts owed under any modifications, renewals or extensions of any of the foregoing obligations, in each case, whether fixed or contingent, matured or unmatured, liquidated or unliquidated or joint or owed jointly or severally or in any other capacity whatsoever.

“Borrower Finco Subordinated Loan Prepayment Account” means the Project Account of Borrower Finco created pursuant to and designated as such in the MSA.

“Borrower Finco TIFIA Phase 1 Debt Service Account” means the Project Account of Borrower Finco created pursuant to and designated as such in the MSA.

“Borrower Finco TIFIA Phase 1 Obligations” means (a) all present and future indebtedness and other obligations of Borrower Finco incurred pursuant to the Phase 1 TIFIA Loan Agreement, including

principal, interest (including interest incurred after the commencement of a bankruptcy proceeding by or against Borrower Finco), fees, premiums, reimbursement obligations, collection costs and expenses and all other amounts, liabilities and obligations of Borrower Finco arising thereunder, and (b) all amounts owed under any modifications, renewals or extensions of any of the foregoing obligations, in each case, whether fixed or contingent, matured or unmatured, liquidated or unliquidated or joint or owed jointly or severally or in any other capacity whatsoever.

“**Borrower Finco TIFIA Phase 2 Debt Service Account**” means the Project Account of Borrower Finco created pursuant to and designated as such in the MSA.

“**Borrower Finco TIFIA Phase 2 Obligations**” means (a) all present and future indebtedness and other obligations of Borrower Finco incurred pursuant to the Phase 2 TIFIA Loan Agreement, including principal, interest (including interest incurred after the commencement of a bankruptcy proceeding by or against Borrower Finco), fees, premiums, reimbursement obligations, collection costs and expenses and all other amounts, liabilities and obligations of Borrower Finco arising thereunder, and (b) all amounts owed under any modifications, renewals or extensions of any of the foregoing obligations, in each case, whether fixed or contingent, matured or unmatured, liquidated or unliquidated or joint or owed jointly or severally or in any other capacity whatsoever.

“**Borrower Group**” means the Concessionaire, Borrower Finco, Finco 1, and Finco 2.

“**Borrower Group Member**” means individually, the Concessionaire, Borrower Finco, Finco 1, and Finco 2.

“**BRT**” means Bus Rapid Transit.

“**BRT Improvements**” is defined in “OTHER PROJECT AGREEMENTS – Intergovernmental Agreements – U.S. 36 Concession Project IGA” in the front part of the Official Statement.

“**BTY**” means BTY Group, in its capacity as the author of the Technical Report.

“**Buro Happold**” means Buro Happold Limited, in its capacity as the author of the Traffic and Revenue Study.

“**Bus Delay Event**” is defined in “TOLLING ON THE MANAGED LANES – Managed Lanes Speeds” in the front part of the Official Statement.

“**Business Day**” means any day other than a Saturday, a Sunday or a day on which offices of the Government or the State are authorized to be closed or on which commercial banks are authorized or required by law, regulation or executive order to be closed in New York, New York.

“**Calculation Date**” means (i) with respect to the TIFIA Loan Agreements and the MSA, each January 1 and July 1 occurring after the Effective Date, and (ii) with respect to the Bond Proceeds Loan Agreement, each January 1 occurring after the Closing Date except that Calculation Date means each January 1 and July 1 occurring after the Closing Date for purposes of certain provisions of the Bond Proceeds Loan Agreement.

“**Calculation Period**” means a twelve month period ending on the date that is one day prior to a Calculation Date.

“**Capital Contribution**” means one or more cash equity contributions by the Equity Member to the Concessionaire in exchange for membership interests in the Concessionaire.

“**Capital Expenditures**” means expenditures made or liabilities incurred for the acquisition of any fixed assets or improvements, replacements, substitutions or additions thereto that have a useful life of more than one year and which are capitalized in accordance with generally accepted accounting principles.

“**Capitalized Interest Period**” means the period beginning on the Effective Date and ending on the first day of the Payment Period immediately preceding the TIFIA Phase 2 Debt Service Payment Commencement Date.

“**Cash Reserve Account**” means the Cash Reserve Account established and created in the name of the Concessionaire pursuant to the MSA.

“**Cash Reserve Requirement**” is defined in “PROJECT ACCOUNTS AND FLOW OF FUNDS - Reserve Accounts - Cash Reserve Account” in the front part of the Official Statement.

“**CDOT**” means the Colorado Department of Transportation.

“**CDOT Backup Loan Set Aside**” is defined in “OTHER PROJECT AGREEMENTS – Intergovernmental Agreements – HPTE-CDOT Agreement” in the front part of the Official Statement.

“**CDOT Service Funding Obligations**” is defined in “OTHER PROJECT AGREEMENTS – Intergovernmental Agreements – HPTE-CDOT Agreement” in the front part of the Official Statement.

“**CDPHE**” mean the Colorado Department of Public Health and Environment.

“**Change**” is defined in “PHASE 2 CONSTRUCTION PROJECT – Change Orders; Directive Letters” of the front part of the Official Statement.

“**Change in Costs**” is defined in “PHASE 2 CONSTRUCTION PROJECT - Relevant Events; Relief and Force Majeure Events” in the front part of the Official Statement.

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

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

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

“**Change of Control**” means any assignment, sale, transfer of interest or other transaction of any type or description, including by or through voting securities, asset transfer, contract, merger, acquisition, succession, dissolution, liquidation or otherwise, that results, directly or indirectly, in a change in possession of the power to direct or Control or cause the direction or Control of the management of any Borrower Group Member or a significant aspect of its business; provided that the following will not constitute a Change of Control:

- (a) A change in possession of the power to direct or Control the management of such Borrower Group Member or a material aspect of its business due solely to bona fide open market transactions in securities effected on a recognized public stock exchange, including such transactions involving an initial public offering; or

- (b) An upstream reorganization or transfer of direct or indirect interests in such Borrower Group Member; or
- (c) The exercise of preferred or minority equity holder veto or voting rights (whether provided by applicable law or by such Borrower Group Member's organizational documents) over major business decisions of such Borrower Group Member; or
- (d) The grant of any Liens to the Security Trustee or the exercise of remedies, including foreclosure, by the Security Trustee; or
- (e) Transfers of direct or indirect ownership interests in such Borrower Group Member between or among Persons that are under common Control or between or among any members of a fund or entity constituted as a limited partnership so long as there is no Change of Control of the general partner of that partnership; or
- (f) A transfer of interests between managed funds that are under common ownership or Control;

provided, further, that, at all times, (i) the Member will continue to hold directly 100% of the membership interests in the Concessionaire, and (ii) unless otherwise consented to the by the TIFIA Lender, acting reasonably, (A) on or prior to the Substantial Completion Date, the Sponsor will continue hold a 100% indirect economic interest in, a 100% indirect voting interest in, and will Control, each Borrower Group Member and (B) following the Substantial Completion Date, the Sponsor will continue hold at least a 51% indirect economic interest in, a 51% indirect voting interest in, and will Control, each Borrower Group Member.

“**Change Order**” means any agreement between the Concessionaire and any of the Construction Contractors to adjust the applicable price, schedule for completion, scope of work or other terms of the relevant Construction Agreement in accordance with the terms thereof.

“**Change Procedures**” is defined in “PHASE 2 CONSTRUCTION PROJECT - Change Orders; Directive Letters” in the front part of the Official Statement.

“**Class**” means, with respect to the Senior Obligations, each of (a) the Borrower Finco Senior Bond Obligations, (b) from and after the Phase 1 Assumption Date, Borrower Finco TIFIA Phase 1 Obligations, (c) following the occurrence of a TIFIA Parity Trigger Event, Borrower Finco TIFIA Phase 2 Obligations, (d) all obligations of Borrower Finco in respect of Additional Senior Obligations incurred in accordance with the terms of the Funding Documents, (e) Concessionaire Senior Bond Guarantee Obligations, (f) from and after the Phase 1 Assumption Date, Concessionaire TIFIA Phase 1 Guarantee Obligations, and (g) following the occurrence of a TIFIA Parity Trigger Event, Concessionaire TIFIA Phase 2 Guarantee Obligations.

“**Closing Date**” means the date of issuance of the 2014 Bonds.

“**Collateral**” is defined in “SECURITY AND SOURCES OF PAYMENT FOR 2014 BONDS – Collateral Pledged Under the MSA” in the front part of the Official Statement.

“**Commencement Date**” is defined in “PHASE 2 CONSTRUCTION PROJECT - Conditions Precedent to Commencement Date; Notice to Proceed” in the front part of the Official Statement.

“Committed Standby Facility” means a standby facility committed to by the Senior Lenders at the date of the Concession Agreement for the purposes of funding any unforeseen cost overruns, increased expenses or loss of revenues to be incurred by the Concessionaire.

“Compensation Event” means:

- (a) a breach by HPTE of any provision of the Concession Agreement;
- (b) the existence of any Encumbrance affecting the Site or the Managed Lanes apart from:
 - (i) those Encumbrances held by third parties as disclosed in the Disclosed Data;
 - (ii) the Permitted Encumbrances; and
 - (iii) rights of third parties as required by Law;
- (c) the lack of availability of the Site in certain circumstances described in the Concession Agreement;
- (d) the exercise by HPTE of a right to open up work which does not reveal defective work;
- (e) 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;
- (f) a Phase 1 Latent Defect;
- (g) the deferral of a non-separable task;
- (h) the deferral of non-separable reinstatement work;
- (i) a Change in Law coming into effect after the Commencement Date which permits vehicles for which Tolls could be charged prior to the Change in Law to travel on the Managed Lanes without paying the full Tolls established in accordance with the Concession Agreement (to avoid doubt, including increasing beyond 2,000 the number of permits for low emission vehicles to use the Managed Lanes without payment of Tolls);
- (j) a Change in Law that results in the imposition of new or added federal, State or local taxes on Tolls and gross Toll receipts save to the extent that, at the time such Change in Law comes into effect the Concessionaire has achieved a specified level of internal rate of return;
- (k) the construction and operation of an unplanned revenue impacting facility;
- (l) the construction of an interchange or interchanges in the vicinity of where the Northwest Parkway terminates near U.S. 36 directly related to a highway connection to Northwest Parkway on the north of U.S. 36 and/or a highway connection south of U.S. 36, including access ramps flyovers, and highways to, from and over U.S. 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 U.S. 36 Managed Lanes or the U.S. 36 GP Lanes by such construction;

- (m) any law, rule, regulation, order, decree, judgment or administrative decision issued by a Governmental Authority or judicial authority having jurisdiction over the Project preventing the Concessionaire or HPTE from performing its obligations or exercising its rights under the Concession Agreement;
- (n) any delay in the timely issuance of a Necessary Consent that is caused by the imposition of a moratorium by or on the issuing Governmental Authority relating to the acceptance or processing of applications or the issuance of Necessary Consents generally; and
- (o) any other matter which 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.

“Completion and Warranties Provisions” is defined in “PHASE 1 PROJECT - Concessionaire’s Participation in the Acceptance of the Phase 1 Project” in the front part of the Official Statement.

“Concession Agreement” is defined in “INTRODUCTION” in the front part of the Official Statement.

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

“Concessionaire Accounts” is defined in “PROJECT ACCOUNTS AND FLOW OF FUNDS – Project Accounts and Subaccounts – Concessionaire Accounts” in the front part of the Official Statement.

“Concessionaire Bond Proceeds Loan” means the loan provided by Finco 2 to Concessionaire pursuant to the Concessionaire Bond Proceeds Loan Agreement.

“Concessionaire Bond Proceeds Loan Agreement” means the loan agreement dated the Closing Date between Finco 2 as lender and the Concessionaire as borrower, in the amount of the Bond Proceeds Loan, pursuant to which Finco 2 on-lends to Concessionaire the proceeds of the Bond Proceeds Loan, and includes a promissory note executed and delivered by the Concessionaire in connection therewith.

“Concessionaire Cash Interest Subordinated Loan Debt Service Account” means the Project Account of the Concessionaire created and designated as such in the MSA.

“Concessionaire Cash Interest Subordinated Loan Obligations” means (a) all present and future indebtedness and other obligations of the Concessionaire incurred pursuant to the Secondary Subordinated Loan Agreement, including principal, interest (including interest incurred after the commencement of a bankruptcy proceeding by or against the Concessionaire), fees, premiums, reimbursement obligations, collection costs and expenses and all other amounts, liabilities and obligations of the Concessionaire arising thereunder, and (b) all amounts owed under any modifications, renewals or extensions of any of the foregoing obligations, in each case, whether fixed or contingent, matured or unmatured, liquidated or unliquidated or joint or owed jointly or severally or in any other capacity whatsoever.

“Concessionaire Cash Interest Subordinated Loan Prepayment Account” means the Project Account of the Concessionaire created and designated as such in the MSA.

“Concessionaire Cash Interest Subordinated Loan Proceeds Account” means the Project Account of the Concessionaire created and designated as such in the MSA.

“Concessionaire Collateral” is defined in “SECURITY AND SOURCES OF PAYMENT FOR 2014 BONDS – Collateral Pledged Under the MSA” in the front part of the Official Statement.

“Concessionaire Default” is defined in “CONCESSION AGREEMENT – Termination Events – Termination for Concessionaire Default” in the front part of the Official Statement.

“Concessionaire Distribution Account” means the Distribution Account established and created in the name of the Concessionaire pursuant to the MSA.

“Concessionaire Loan Agreements” is defined in “PLAN OF FINANCE – Intercompany Loans” in the front part of the Official Statement.

“Concessionaire Loans” is defined in “PLAN OF FINANCE – Intercompany Loans” in the front part of the Official Statement.

“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 Remedial Plan” is defined in “FINANCING AGREEMENTS – Subordinated Loan Agreements – Step-In Rights” in the front part of the Official Statement.

“Concessionaire Risk CPs” is defined in “CONCESSION AGREEMENT – Termination Events - Termination Following Non-Assumption of the Phase 1 TIFIA Loan” in the front part of the Official Statement.

“Concessionaire Subordinated Loan Lock-up Account” means the Project Account of the Concessionaire created and designated as such in the MSA.

“Concessionaire Senior Bond Guarantee Obligations” means the obligations of the Concessionaire pursuant to the guarantee granted by it in favor of the Issuer pursuant to the Bond Proceeds Loan Agreement, guaranteeing the obligations of Borrower Finco to the Issuer thereunder.

“Concessionaire Senior Bond Obligations” means (a) all present and future indebtedness and other obligations of the Concessionaire incurred pursuant to the Bond Proceeds Loan Agreement, including principal, interest (including interest incurred after the commencement of a bankruptcy proceeding by or against the Concessionaire), fees, premiums, reimbursement obligations, collection costs and expenses and all other amounts, liabilities and obligations of the Concessionaire arising thereunder, and (b) all amounts owed under any modifications, renewals or extensions of any of the foregoing obligations, in each case, whether fixed or contingent, matured or unmatured, liquidated or unliquidated or joint or owed jointly or severally or in any other capacity whatsoever.

“Concessionaire Senior Obligations” means the Concessionaire Senior Bond Obligations, any obligations of Concessionaire in respect of Additional Senior Obligations incurred in accordance with the terms of the MSA, from and after the Phase 1 Assumption Date, the Concessionaire TIFIA Phase 1 Obligations and, if the circumstances described in the MSA are applicable, Concessionaire TIFIA Phase 2 Obligations.

“Concessionaire Senior Guarantee Obligations” means the Concessionaire Senior Bond Guarantee Obligations, any obligations of Concessionaire pursuant to a guarantee of any Additional Senior Obligations incurred in accordance with the terms of the MSA, from and after the Phase 1 Assumption Date, the Concessionaire TIFIA Phase 1 Guarantee Obligations and, upon TIFIA Parity Trigger Event, the Concessionaire TIFIA Phase 2 Guarantee Obligations.

“Concessionaire Subordinated Loan” means the loan made available by Finco 2 to Concessionaire pursuant to the Concessionaire Subordinated Loan Agreement.

“Concessionaire Subordinated Loan Agreement” means the loan agreement pursuant to which Finco 2, as lender, makes available to the Concessionaire, as borrower, a loan in the amount of the Subordinated Loan (by way of on lending the proceeds of the Subordinated Loan), and includes the Promissory Note executed and delivered by the Concessionaire in connection therewith.

“Concessionaire Subordinated Loan Obligations” means (a) all present and future indebtedness and other obligations of the Concessionaire incurred pursuant to the Concessionaire Subordinated Loan Agreement, including principal, interest, fees, premiums, reimbursement obligations, collection costs and expenses and all other amounts, liabilities and obligations of Concessionaire arising thereunder, and (b) all amounts owed under any modifications, renewals or extensions of any of the foregoing obligations, in each case, whether fixed or contingent, matured or unmatured, liquidated or unliquidated or joint or owed jointly or severally or in any other capacity whatsoever.

“Concessionaire TIFIA Phase 1 Guarantee Obligations” means the obligations of the Concessionaire under the Guarantee granted by it in favor of the TIFIA Lender pursuant to the Phase 1 TIFIA Loan Agreement, guaranteeing the obligations of Borrower Finco to the TIFIA Lender thereunder.

“Concessionaire TIFIA Phase 1 Loan” means the loan made available by Finco 2 to the Concessionaire pursuant to the Phase 1 TIFIA Loan Agreement.

“Concessionaire TIFIA Phase 1 Obligations” means (a) all present and future indebtedness and other obligations of Concessionaire incurred pursuant to the Phase 1 TIFIA Loan Agreement, including principal, interest (including interest incurred after the commencement of a bankruptcy proceeding by or against Concessionaire), fees, premiums, reimbursement obligations, collection costs and expenses and all other amounts, liabilities and obligations of Concessionaire arising thereunder, and (b) all amounts owed under any modifications, renewals or extensions of any of the foregoing obligations, in each case, whether fixed or contingent, matured or unmatured, liquidated or unliquidated or joint or owed jointly or severally or in any other capacity whatsoever.

“Concessionaire TIFIA Phase 2 Guarantee Obligations” means the obligations of the Concessionaire under the Guarantee granted by it in favor of the TIFIA Lender pursuant to the Phase 2 TIFIA Loan Agreement, guaranteeing the obligations of Borrower Finco to the TIFIA Lender thereunder.

“Concessionaire TIFIA Phase 2 Loan” means the loan made available by Finco 2 to the Concessionaire pursuant to the Phase 2 TIFIA Loan Agreement.

“Concessionaire TIFIA Phase 2 Obligations” means all present and future indebtedness and other obligations of Concessionaire incurred pursuant to the Phase 2 TIFIA Loan Agreement, including principal, interest (including interest incurred after the commencement of a bankruptcy proceeding by or against Concessionaire), fees, premiums, reimbursement obligations, collection costs and expenses and all other amounts, liabilities and obligations of Concessionaire arising thereunder, and (b) all amounts owed under any modifications, renewals or extensions of any of the foregoing obligations, in each case, whether fixed or contingent, matured or unmatured, liquidated or unliquidated or joint or owed jointly or severally or in any other capacity whatsoever.

“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 in the Concession Agreement.

“Concessionaire’s Phase 2 ETCS Proposals” means the Concessionaire’s Proposals to satisfy the HPTE Phase 2 ETCS Requirements.

“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.

“Concurrent Phase 1 Assumption and Commencement Condition” is defined in “PHASE 1 PROJECT – Assumption of Phase 1 TIFIA Loan” in the front part of the Official Statement.

“Conditions Precedent to the Commencement Date” is defined in “PHASE 2 CONSTRUCTION PROJECT – Conditions Precedent to Commencement Date; Notice to Proceed” in the front part of the Official Statement.

“Conditions Precedent to the Full Services Commencement Date” is defined in “OPERATIONS PROJECT – Full Services Commencement Date” in the front part of the Official Statement.

“Conditions Precedent to the Phase 1 Services Commencement Date” is defined in “PHASE 1 PROJECT – Phase 1 Services Commencement Date” in the front part of the Official Statement.

“Consents and Agreements” is defined in “SECURITY AND SOURCES OF PAYMENT FOR 2014 BONDS – Consents and Agreements; Guarantees” in the front part of the Official Statement.

“Construction Contractors” means, individually or collectively, the Design-Build Contractor and any other party (other than the Concessionaire) to a construction-related agreement.

“Construction Period” is defined in “PHASE 2 CONSTRUCTION PROJECT - Change Orders; Directive Letters” in the front part of the Official Statement.

“Continuing Disclosure Agreement” is defined in “CONTINUING DISCLOSURE” in the front part of the Official Statement.

“Contract Date” means June 27, 2013.

“**Contract Period**” is defined in “CONCESSION AGREEMENT - Concession and License; Term” in the front part of the Official Statement.

“**Contract Price**” is defined in “OTHER PROJECT AGREEMENTS – Design-Build Contract – Contract Price” in the front part of the Official Statement.

“**Cross Default**” is defined in “FINANCING AGREEMENTS – TIFIA Loan Agreements - Events of Default” in the front part of the Official Statement.

“**Cross Default Funding Document**” means the Phase 1 TIFIA Loan Agreement (from and after the Phase 1 Assumption Date), the Intercompany Loan Agreements and Promissory Notes relating to Senior Obligations, the Senior Bonds, any Supplemental Indenture, the Promissory Notes (other than Promissory Notes delivered pursuant to Intercompany Loan Agreements) relating to Senior Obligations and any financing documents entered into in respect of the incurring of Additional Senior Obligations.

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

“**Debt Service**” means with respect of each of the Bond Proceeds Loan, Phase 1 TIFIA Loan, Phase 2 TIFIA Loan, Subordinated Loan, Concessionaire Bond Proceeds Loan, Concessionaire TIFIA Phase 1 Loan, Concessionaire TIFIA Phase 2 Loan or Concessionaire Subordinated Loan, any Intercompany Loan, the Secondary Subordinated Loan or any other Permitted Indebtedness of an Obligor, the principal (including any mandatory sinking fund payments and any extraordinary mandatory redemption payments) and interest payable in respect thereof, as appropriate.

“**Debt Service Accounts**” means the Borrower Finco Debt Service Accounts and the Concessionaire Cash Interest Subordinated Loan Debt Service Account.

“**Debt Service Calculation Assumption**” means, with respect to any calculation of any Debt Service with respect to Variable Rate Indebtedness for any period, (i) the Variable Rate Indebtedness Interest Rate Assumption, as defined in the Bond Proceeds Loan Agreement, if such assumption is agreed to by the TIFIA Lender or (ii) such other assumption as agreed to by the TIFIA Lender and the Bond Trustee.

“**Debt Service Payment Date**” means each date on which Debt Service is due on any of the Bond Proceeds Loan, Phase 1 TIFIA Loan, Phase 2 TIFIA Loan, Subordinated Loan, Secondary Subordinated Loan, any Intercompany Loan or any Additional Senior Obligations.

“**Decision Period**” means the period of time determined by the Intercreditor Agent and designated in any notice delivered by the Intercreditor Agent to the Designated Representatives to make any decision hereunder; provided that (i) subject to clause (iii) below, the Decision Period with respect to the exercise of Enforcement Actions under the Intercreditor Agreement will be the periods specified in the Intercreditor Agreement; (ii) subject to clause (i) above, each Decision Period will end not earlier than ten Business Days nor later than 20 Business Days after the date of such notice; provided that the Intercreditor Agent may designate such lesser period (being at least seven days) as it may consider necessary or advisable in circumstances where the interests of the Secured Creditors or any of them would otherwise be likely to be prejudiced; and (iii) except for the relevant period described in the Intercreditor Agreement, any such period of time may be extended by any Designated Representative for a period not to exceed 30 days on a one time basis only for any notice.

“**Deemed New Contract**” means an agreement on the same terms and conditions as the Concession Agreement as at the Termination Date, but with the following amendments:

- (a) if the Concession Agreement is terminated prior to the Full Services Commencement Date, then the Full Services Commencement Date will be extended by such period as would have been granted to allow a new concessionaire to achieve the issue of the Notice of Phase 2 Work Completion;
- (b) any accrued Noncompliance Points and/or warning notices will be cancelled, for the purposes of termination only, and without prejudice to the rights of HPTE to make financial deductions;
- (c) the term of such agreement will be for a period equal to the term from the Termination Date to the Expiration Date; and
- (d) in the event that any rectification works are required to enable the new concessionaire to provide the Services to the full specification and standards required by the Concession Agreement then provided that the new concessionaire complies with the a reasonable plan for the performance of those rectification works, HPTE will not exercise its rights to terminate the Concession Agreement by reason of any failure to achieve some or all of the specification and/or standards required by the Concession Agreement during such reasonable period solely as a consequence of such rectification works being required.

“**Default**” means any event or condition that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“**Defeasance Escrow Fund**” means any trust account into which money and/or defeasance securities are deposited for the purpose of defeasing any Senior Bonds in accordance with the Indenture.

“**Defect**” means any defect or fault in the design or construction of the Phase 2 Construction Work, for which the Concessionaire is responsible under the Concession Agreement.

“**Deferred Interest**” is defined in “FINANCING AGREEMENTS – Subordinated Loan Agreements – Terms of the Subordinated Loan” in the front part of the Official Statement.

“**Demobilization Costs**” means Losses that have been or will be reasonably and properly incurred by the Concessionaire, or by the Design-Build Contractor or by the Operating Contractor as a direct result of the termination of the Concession Agreement, but only to the extent that:

- (a) the Losses are incurred in connection with the Project and in respect of the provision of services or completion of works, including:
 - (i) any materials or goods ordered or sub-contracts placed that cannot be cancelled without such Losses being incurred;
 - (ii) any expenditure incurred in anticipation of the provision of services or the completion of works in the future;
 - (iii) the cost of demobilization including the cost of any relocation of equipment used in connection with the Project; and
 - (iv) severance payments;
- (b) the Losses are incurred under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms; and

- (c) the Concessionaire and the Design-Build Contractor or the Operating Contractor, as applicable, has each used its reasonable endeavors to mitigate the Losses;

“**Design-Build Contract**” is defined in “PHASE 2 CONSTRUCTION PROJECT – Design-Build Contract” in the front part of the Official Statement.

“**Design-Build Contract Payment Certifier**” means BTY.

“**Design-Build Contractor**” means Ames/Granite JV, a joint venture of Ames Construction and Granite Construction.

“**Design-Build Contractor Consent**” is defined in “SECURITY AND SOURCES OF PAYMENT FOR 2014 BONDS - Consents and Agreements; Guarantees” in the front part of the Official Statement.

“**Design-Build Contractor Related Party**” means the Design-Build Contractor’s agents and 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 Design-Build Contractor (other than HPTE or any HPTE Related Party, Concessionaire or any Concessionaire 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 Design-Build Contractor or the Design-Build Contractor’s business in relation to the Project (as defined in the Design-Build Contract)).

“**Design-Build Guarantee**” is defined in “SECURITY AND SOURCES OF PAYMENT FOR 2014 BONDS – Consents and Agreements; Guarantees - Design-Build Guarantee and Operating Guarantee” in the front part of the Official Statement.

“**Design-Build Guarantor**” is defined in “PHASE 2 CONSTRUCTION PROJECT – Design-Build Contract” in the front part of the Official Statement.

“**Design-Build Liabilities**” is defined in “SECURITY AND SOURCES OF PAYMENT FOR 2014 BONDS – Consents and Agreements; Guarantees - Design-Build Guarantee and Operating Guarantee” in the front part of the Official Statement.

“**Designated Representative**” means, at any time:

- (a) with respect to the holders of the 2014 Bonds, the Bond Trustee;
- (b) with respect to the TIFIA Lender as lender of the Phase 1 TIFIA Loan, the TIFIA Lender;
- (c) with respect to the TIFIA Lender as lender of the Phase 2 TIFIA Loan, the TIFIA Lender;
and
- (d) with respect to any Additional Secured Creditor, such Additional Secured Creditor (or any trustee or agent acting on its behalf pursuant to the relevant Funding Documents).

“**Development Default**” means (a) the Concessionaire fails to achieve Substantial Completion on or prior to the Development Default Trigger Date; or (b) (i) the Substantial Completion Date is projected to occur after the Development Default Trigger Date by the Concessionaire or by the Independent Engineer and (ii) the Concessionaire fails to comply with any of the following requirements:

- (A) within ten Business Days after the date the Concessionaire knew of such projection, the Concessionaire will have notified the Issuer and the Trustee that it is preparing a detailed plan

indicating that, if followed, the Substantial Completion Date will no longer be projected to occur after the Development Default Trigger Date (a “**Remedial Plan**”);

(B) such Remedial Plan is delivered to the Issuer and the Trustee within 30 Business Days from the end of such ten-Business Day period;

(C) concurrently with the delivery of such Remedial Plan, the Independent Engineer has confirmed in writing to the Issuer and the Trustee that, in its view, the Remedial Plan is reasonably achievable; and

(D) the Concessionaire will diligently implement such Remedial Plan in accordance with the terms thereof.

“**Development Default Trigger Date**” means the date that is 270 days after the Planned Full Services Commencement Date.

“**Differing Site Conditions**” is defined in “PHASE 2 CONSTRUCTION PROJECT - Site Conditions; Hazardous Substances; Differing Site Conditions - Differing Site Conditions” in the front part of the Official Statement.

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

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

“**Direction Notice**” is defined in “FINANCING AGREEMENTS – MSA – Exercise of Remedies” in the front part of the Official Statement.

“**Discharge of Senior Obligations**” means the date on which all Senior Obligations (other than indemnity obligations which survive the termination of Funding Documents relating to the Senior Obligations have been paid in full in cash or fully defeased, as applicable, and all obligations of Senior Creditors under the Funding Documents have been terminated pursuant to the terms thereof); provided that no Discharge of Senior Obligations will be deemed to have occurred to the extent of any reinstatement as provided in the Subordination Agreement.

“**Disclosed Data**” means certain materials, documents and data related to the Project and the Site and the Managed Lanes, that were made available by HPTE to the Concessionaire.

“**Discount Bonds**” is defined in “TAX MATTERS – Tax Treatment of Original Issue Discount” in the front part of the Official Statement.

“**Discretionary Capital Expenditures**” means any Capital Expenditures other than Capital Expenditures that are (a) required to be made pursuant to the Concession Agreement (which includes the Phase 2 Work), (b) made by the Design-Build Contractor pursuant to the Design-Build Contract or

(c) Maintenance Capex and which, in the case of such Capital Expenditures that exceed \$200,000 in the aggregate in any Fiscal Year, have been certified as being reasonable by the Independent Engineer or another appropriate independent consultant or advisor reasonably acceptable to the Required Senior Creditors and the TIFIA Lender.

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

- (a) the Project (as defined in the Concession Agreement) and not to similar projects;
- (b) the Design-Build Contractor or Concessionaire and not to other persons; and/or
- (c) companies engaged in projects similar to the Project and not to other persons.

"Dispute" means (i) with respect to the Design-Build Contract, any dispute between the Concessionaire and the Design-Build Contractor arising out of or in connection with the Design-Build Contract; and (ii) with respect to the Operating Contract, any dispute between the Concessionaire and the Operating Contractor arising out of or in connection with the Operating Contract.

"Dispute Resolution Procedure" means the procedure for the resolution of Disputes set out in the Design-Build Contract and Operating Contract.

"Distribution Date" means a Calculation Date or a date occurring within 30 days thereafter.

"Drawdown Schedule" means the drawdown schedule attached to the Design-Build Contract.

"DRCOG" means the Denver Regional Council of Governments.

"DTC" means The Depository Trust Company, New York, New York.

"DTCC" means The Depository Trust & Clearing Corporation, the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation.

"E-470 Agreements" is defined in "SECURITY AND SOURCES OF PAYMENT FOR 2014 BONDS - Consents and Agreements; Guarantees – Consent of E-470 Authority" in the front part of the Official Statement.

"E-470 Authority" means the E-470 Public Highway Authority, a body corporate and political subdivision of the State.

"E-470 Consent" is defined in "SECURITY AND SOURCES OF PAYMENT FOR 2014 BONDS - Consents and Agreements; Guarantees – Consent of E-470 Authority" in the front part of the Official Statement.

"Early Design Work" is defined in "OTHER PROJECT AGREEMENTS – Design-Build Contract – Contract Price" in the front part of the Official Statement.

"Early Works" is defined in "PHASE 2 CONSTRUCTION PROJECT – Early Works" in the front part of the Official Statement.

"Effective Date" means (i) with respect to the MSA, the date on which all conditions to the Effective Date in the MSA have been met; (ii) with respect to the Phase 1 TIFIA Loan Agreement, the Phase 1 Assumption Date; and (iii) with respect to the Phase 2 TIFIA Loan Agreement and the Subordinated Loan Agreements, the date on which such agreements become effective in accordance with their terms.

“**Element**” means any one of the following Maintained Elements listed in the Operating Contract: roadway, bridges, electrical supplies to lighting, signs, traffic signals and communications equipment, and toll equipment.

“**Eligible Project Costs**” means the amounts identified as Eligible Project Costs in the Project Budget, substantially all of which (x) in the case of the Phase 1 Project, are paid by or for the account of HPTE and (y) in the case of the Phase 2 Construction Project, are paid by or for the account of the Concessionaire, and which, in each case, may include prior Project expenditures approved by the TIFIA Lender, all of which arise from the following:

- (a) development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, permitting, preliminary engineering and design work, and other preconstruction activities;
- (b) construction, reconstruction, rehabilitation, replacement, and acquisition of real property (including land related to the Project and improvements to land), environmental mitigation, construction contingencies, and acquisition of equipment; and
- (c) capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, and other carrying costs during construction.

provided that the TIFIA Lender confirms to the extent consistent with federal law that cost categories affirmatively indicated as “Eligible Project Costs” in the Phase 2 TIFIA Loan Agreement fall within this definition of “Eligible Project Costs”.

“**EMMA**” means the Municipal Securities Rulemaking Board’s Electronic Municipal Market Access system.

“**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.

“**Enforcement Action**” means any action, whether by judicial proceedings or otherwise, to enforce any of the rights and remedies granted pursuant to the Funding Documents against the Collateral, or any Obligor upon the occurrence of an Event of Default, including without limitation (a) to demand, sue for, take or receive from or on behalf of any Obligor by set-off or in any other manner, the whole or any part of any moneys which may now or hereafter be owing by such Obligor with respect to the Secured Obligations, (b) to initiate or participate with others in any suit, action or proceeding against any Obligor to (i) enforce payment of or to collect the whole or any part of the Secured Obligations or (ii) commence judicial enforcement of any of the rights and remedies under any Funding Documents or applicable law with respect to any Secured Obligations, (c) to exercise any put option or to cause any Obligor to honor any redemption or mandatory prepayment obligation under any Funding Document, (d) to take any action to collect, enforce payment of any Secured Obligations, or exercise any of the remedies with respect to any of the Secured Obligations set forth in any of the Funding Documents or that otherwise may be available to a Secured Creditor, either at law or in equity by judicial proceedings or otherwise (provided that, for the avoidance of doubt, an Acceleration Action will not be an Enforcement Action), (e) any action by a Secured Creditor to enforce any security interest in respect of any Collateral, including any foreclosure proceeding, any public or private sale, or any other disposition pursuant to Article 9 of the UCC, (f) the exercise of any other right or remedy provided to a Secured Party under the Funding Documents or

applicable law, including the taking of control, retention or possession of, or the exercise of any right of setoff with respect to, any Collateral, (g) any action by a Secured Party to retain a broker or investment banker, to prepare for and consummate the sale of any material portion of Collateral, so long as such actions are diligently pursued in good faith, (h) the disposition of Collateral by any Secured Party after the occurrence and during the continuation of an Event of Default, (i) the commencement by any Secured Party of any legal proceedings or actions against or with respect to any Obligor or any of its property or assets or any Collateral to facilitate any of the actions described in clauses (e), (f), (g) or (h) above, or (j) the commencement of, or the joinder with any creditor in commencing, any Bankruptcy Proceeding against any Obligor or with respect to any Collateral.

“**EOD Change of Control Rights**” is defined in “FINANCING AGREEMENTS – Subordinated Loan Agreements – EOD Change of Control Rights” in the front part of the Official Statement.

“**Equity Contribution**” means contributions of capital, directly or indirectly, by the Sponsor to the Concessionaire, by way of Capital Contributions or Shareholder Subordinated Loans.

“**Equity Contribution Agreement**” is defined in “PLAN OF FINANCE – Equity Contribution - General” in the front part of the Official Statement.

“**Equity Contribution Commitment**” is defined in “PLAN OF FINANCE – General” in the front part of the Official Statement.

“**Equity Interests**” means, in respect of any Person, the shares, units, membership interests, partnership interests or other equity or ownership interests in such Person.

“**Equity Letter of Credit**” is defined in “PLAN OF FINANCE – Equity Contribution – Equity Letter of Credit” in the front part of the Official Statement.

“**Equity Letter of Credit Provider**” is defined in “PLAN OF FINANCE - Equity Contribution – Equity Letter of Credit” in the front part of the Official Statement.

“**Equity Lock-up Account**” means the Project Account of Concessionaire created pursuant to and designated as such in the MSA.

“**Equity Member**” is defined in “PROJECT PARTICIPANTS – The Concessionaire” in the front part of the Official Statement.

“**Equity Member Pledge Agreement**” is defined in “SECURITY AND SOURCES OF PAYMENT FOR 2014 BONDS – Equity Member Pledge Agreement” in the front part of the Official Statement.

“**Equity Subaccount**” means the Subaccount of the Project Proceeds Account created pursuant to and designated as such in the MSA.

“**Estimated Fair Value of the Contract**” means the amount determined in accordance with the Concession Agreement that a third party would pay to HPTE as the market value of the Deemed New Contract.

“**ETCS**” is defined in “TOLLING ON THE MANAGED LANES – Electronic Toll Collection System” in the front part of the Official Statement.

“**Event of Default**” is defined in “FINANCING AGREEMENTS – MSA – Events of Default Under the MSA” in the front part of the Official Statement.

“**Event of Loss**” means any event that causes any portion of the U.S. 36 Project to be damaged, destroyed or rendered unfit for normal use for any reason whatsoever, including through a failure of title, or any loss of such property, or a condemnation.

“**Excess Amount**” means amounts owing under the Subordinated Loan Agreements on account of: (a) deferred principal under the Subordinated Loan Agreements; and (b) Deferred Interest.

“**Excluded Account**” means the Joint Insurance Account, the Rebate Account, the Concessionaire Distribution Account and the Handback Requirements Reserve Account.

“**Excluded Assets**” means (i) any lease, license, contract, property rights or agreement to which any Obligor is a party or any of its rights or interests thereunder if and for so long as the grant of such security interest will constitute or result in (a) the abandonment, invalidation or unenforceability of any right, title or interest of any Obligor therein or (b) in a breach or termination pursuant to the terms of, or a default under, any such lease license, contract property rights or agreement (other than to the extent that any such term would be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC (or any successor provision or provisions) of any relevant jurisdiction or any other applicable law (including the Bankruptcy Code) or principles of equity); provided that such security interest will attach immediately at such time as the condition causing such abandonment, invalidation or unenforceability will be remedied and to the extent severable, will attach immediately to any portion of such lease, license, contract, property rights or agreement that does not result in any of the consequences specified in clause (a) or (b) above, and (ii) the Excluded Accounts.

“**Existing Master Indenture**” is defined in “PHASE 1 PROJECT – Financing of the Phase 1 Project” in the front part of the Official Statement.

“**Existing Phase 1 TIFIA Loan Agreement**” is defined in “PHASE 1 PROJECT – Financing of the Phase 1 Project” in the front part of the Official Statement.

“**Expiration Date**” is defined in “INTRODUCTION” in the front part of the Official Statement.

“**Exposure**” means, as of any date of calculation, the aggregate principal amount outstanding of the Senior Obligations.

“**Express Lane**” is defined in “TOLLING ON THE MANAGED LANE – Tolling on the I-25 Managed Lane” in the front part of the Official Statement.

“**FAHP**” means the Federal-Aid Highway Program administered by the FHWA.

“**FASTER**” means the Funding Advancements for Surface Transportation and Economic Recovery Act (§§43-4-801 et seq., Colorado Revised Statutes, as amended).

“**Favorable Opinion of Bond Counsel**” means an opinion of Bond Counsel, addressed to the Issuer, the Borrower Group and the Trustee, to the effect that the action proposed to be taken is authorized or permitted by FASTER and the Indenture and will not adversely affect any exclusion from gross income for federal income tax purposes of interest on the 2014 Bonds, other than for a period during which an Owner or a former Owner is or was a substantial user of the Project or a “related person” for purposes of Section 147(a) of the Code.

“**FEIS**” means the US 36 Corridor Final Environmental Impact Statement/Section 4(f) Evaluation.

“**FHWA**” means the Federal Highway Administration.

“Final Maturity Date” means, (i) with respect to the Phase 2 TIFIA Loan, July 1, 2050 or if the Substantial Completion Date has been revised as reflected in a Financial Plan, the last Payment Date occurring no later than 35 years from the Substantial Completion Date; (ii) with respect to the Phase 1 TIFIA Loan, July 1, 2049 or if the substantial completion date (with respect to the Phase 1 Project) has been revised in connection with an update to the Financial Plan, the last Payment Date occurring no later than 35 years from such substantial completion date; (iii) with respect to the 2014 Bonds and the Bond Proceeds Loan, January 1, 2044; and (iv) with respect to any Additional Senior Bonds and Additional Senior Obligations, the final maturity date set forth in the applicable Supplemental Indenture or Additional Loan Agreement.

“Finance Event of Default” means the occurrence of an Event of Default under, and as defined in, the MSA where the Borrower Finco Senior Obligations or Concessionaire Senior Obligations have been fully accelerated.

“Finance Services Agreement” means the Finance Services Agreement dated on or prior to the Closing Date between the Concessionaire and the Plenary Manager.

“Financial Close” means satisfaction of the conditions to Financial Close pursuant to the MSA.

“Financial Close Adjustment” is defined in “PLAN OF FINANCE – HPTE Capital Payment” in the front part of the Official Statement.

“Financial Close Deadline Date” means February 21, 2014, or such other date as may be fixed by HPTE in accordance with the Concession Agreement.

“Financial Consultant” means a Person who (a) is retained by Borrower Finco, (b) is not, and none of whose officers, directors or employees is, an officer, director or employee of any of the Borrower Group Members or the Issuer, and (c) is a registered broker-dealer or municipal advisor experienced and has a national and favorable reputation with respect to public finance matters.

“Financial Plan” means (i) the financial plan to be delivered within 60 days after the Effective Date of the Phase 2 TIFIA Loan Agreement and (ii) any updates thereto required pursuant to the TIFIA Loan Agreements.

“Finco 1” means Plenary Roads Finco ULC, an unlimited liability corporation established under the laws of the Province of British Columbia, Canada.

“Finco 1 Bond Proceeds Loan Agreement” means the loan agreement dated the Closing Date between Borrower Finco as lender and Finco 1 as borrower, in the amount of the Bond Proceeds Loan, pursuant to which Borrower Finco on-lends to Finco 1 the proceeds of the Bond Proceeds Loan, and includes the Promissory Note executed and delivered by Finco 1 in connection therewith.

“Finco 1 Collateral” is defined in “SECURITY AND SOURCES OF PAYMENT FOR 2014 BONDS – Collateral Pledged Under the MSA” in the front part of the Official Statement.

“Finco 1 Loan Agreements” is defined in “PLAN OF FINANCE – Intercompany Loans” in the front part of the Official Statement.

“Finco 1 Loans” is defined in “PLAN OF FINANCE – Intercompany Loans” in the front part of the Official Statement.

“**Finco 1 Subordinated Loan Agreement**” means the loan agreement pursuant to which Borrower Finco, as lender makes available to Finco 1, as borrower, a loan in the amount of the Subordinated Loan (by way of on-lending the proceeds of the Subordinated Loan), which loan agreement will be on substantially the same terms and conditions (other than in respect of payment of interest) as the Subordinated Loan Agreement, and includes the Promissory Note executed and delivered by Finco 1 in connection therewith.

“**Finco 2**” means Plenary Roads Finco LLC, a limited liability company established under the laws of the State of Delaware.

“**Finco 2 Bond Proceeds Loan Agreement**” means the loan agreement dated the Closing Date between Finco 1 as lender and Finco 2 as borrower, in the amount of the Bond Proceeds Loan, pursuant to which Finco 1 on-lends to Finco 2 the proceeds of the Bond Proceeds Loan, and includes the Promissory Note executed and delivered by Finco 2 in connection therewith.

“**Finco 2 Collateral**” is defined in “SECURITY AND SOURCES OF PAYMENT FOR 2014 BONDS – Collateral Pledged Under the MSA” in the front part of the Official Statement.

“**Finco 2 Loan Agreements**” is defined in “PLAN OF FINANCE – Intercompany Loans” in the front part of the Official Statement.

“**Finco 2 Loans**” is defined in “PLAN OF FINANCE – Intercompany Loans” in the front part of the Official Statement.

“**Finco 2 Subordinated Loan Agreement**” means the loan agreement pursuant to which Finco 1, as lender, makes available to Finco 2, as borrower, a loan in the amount of the Subordinated Loan (by way of on lending the proceeds of the Subordinated Loan), and includes the Promissory Note executed and delivered by Finco 2 in connection therewith.

“**Finco Guarantees**” is defined in “SECURITY AND SOURCES OF PAYMENT FOR 2014 BONDS – Finco Guarantees” in the front part of the Official Statement.

“**Fincos**” means Borrower Finco, Finco 1, and Finco 2.

“**First Amendment to Concession Agreement**” is defined in “PHASE 2 CONSTRUCTION PROJECT – Early Works” in the front part of the Official Statement.

“**Fiscal Year**” means the Concessionaire’s fiscal year, which begins on January 1 of each calendar year and ends on December 31 of such calendar year.

“**Fitch**” means Fitch Ratings, Inc. and any successor thereto.

“**Force Majeure Event**” means the occurrence of an event or circumstance arising after the Contract Date, Operating Contract Date or Design-Build Contract Date, respectively, 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, Operating Contract or Design-Build Contract, respectively, including war, civil war, armed conflict or terrorism or nuclear, chemical or biological contamination unless the source or cause of the contamination is the result of any actions or breach of Contract by the Affected Party. Notwithstanding the previous sentence, until the Phase 1 Services Commencement Date, pending or threatened litigation substantially similar to the litigation described in a disclosure statement made by

HPTE dated on or about the date of Financial Close in connection with the Funding Agreements shall be deemed to be a Force Majeure Event. An event is not a Force Majeure Event if such event is otherwise specifically dealt with in the Concession Agreement, Operating Contract or Design-Build Contract or is, or arises by reason of:

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

“Force Majeure Termination Sum” is defined in “CONCESSION AGREEMENT – Termination Events and Termination Compensation” in the front part of the Official Statement.

“Full Services Commencement Date” is defined in “PHASE 2 CONSTRUCTION PROJECT – General” in the front part of the Official Statement.

“Full Services Commencement Longstop Date” is defined in “PHASE 2 CONSTRUCTION PROJECT – General” in the front part of the Official Statement.

“Full Services Commencement Sunset Date” means the date that is nine months after the Planned Full Services Commencement Date.

“Fundamental Actions” is defined in “INTERCREDITOR ARRANGEMENTS – Intercreditor Agreement – Fundamental Actions” in the front part of the Official Statement.

“Fundamental Senior Bond Event of Default” is defined in “INTERCREDITOR ARRANGEMENTS – Intercreditor Agreement - Defaults; Exercise and Enforcement of Remedies - Fundamental Senior Bonds Events of Default” in the front part of the Official Statement.

“Funding Documents” means the Bond Proceeds Loan Agreement, from and after the Phase 1 Assumption Date, the Phase 1 TIFIA Loan Agreement; the Assignment Agreement; the Phase 2 TIFIA Loan Agreement; the Intercompany Loan Agreements and the Promissory Notes delivered pursuant thereto; the Bond Indenture; the Senior Bonds; any Supplemental Indenture; the Subordinated Loan Agreement; the Secondary Subordinated Loan Agreement; the Promissory Notes (other than Promissory Notes delivered pursuant to Intercompany Loan Agreements); the Security Documents; the Equity Contribution Agreement; the Tax Regulatory Agreement; and any financing documents entered into in respect of the incurring of Additional Senior Obligations, Subordinated Refinancing Debt or Permitted Subordinated Debt in accordance with the terms of the Funding Documents.

“Funding Shortfall” is defined in “PLAN OF FINANCE – Equity Contribution –Funding Shortfalls” in the front part of the Official Statement.

“Funds Transfer Certificate” means a certificate prepared by the Concessionaire in accordance with the terms of the MSA substantially in the form attached to the MSA containing the certifications of the Concessionaire required by the MSA with respect to a requested transfer of funds from a Project Account.

“**Goldman Sachs**” means Goldman, Sachs & Co.

“**Good Industry Practice**” is defined in “PHASE 2 CONSTRUCTION PROJECT – Construction Standards” in the front part of the Official Statement.

“**Governmental Approval**” means any authorization, consent, approval, waiver, exception, variance, filing, permit, orders, license, exemption and declaration of or with any Governmental Authority.

“**Governmental Authority**” means any federal, state, provincial, county, city, town, village, municipal or other government or governmental department, commission, council, court, board, bureau, agency, authority or instrumentality (whether executive, legislative, judicial, administrative or regulatory), of or within the United States of America or its territories or possessions (including the State and its counties and municipalities) or Canada or its provinces or territories and their respective courts, agencies, instrumentalities and regulatory bodies, or any entity that acts “on behalf of” any of the foregoing, whether as an agency or authority of such body.

“**GP Routine Maintenance Fee**” means the fee of that name specified in the Concession Agreement.

“**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 Concession Agreement.

“**GP Snow and Ice Control Services Fee**” means fee of that name specified in the Operating Contract for the performance of the Snow and Ice Control Services solely with respect to the U.S. 36 GP Lanes.

“**Granite Construction**” means Granite Construction Company, a California corporation.

“**GVA**” is defined in “PROJECT PARTICIPANTS - Granite Construction Company” in the front part of the Official Statement.

“**Handback Requirements**” is defined in “OPERATIONS PROJECT – Handback - General” in the front part of the Official Statement.

“**Handback Requirements Reserve Account**” means the Handback Requirements Reserve Account established and created in the name of the Concessionaire pursuant to the MSA.

“**Handback Reserve Fund**” is defined in “OPERATIONS PROJECT – Handback – Handback Reserve Fund” in the front part of the Official Statement.

“**Hazardous Substances**” means any of the following:

- (a) A substance, product, waste, or other solid, liquid or gaseous material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC Section 9601, et seq. (“**CERCLA**”); the Hazardous Materials Transportation Act, 49 USC Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 USC Section 6901 et seq. (“**RCRA**”); the Toxic Substances Control Act, 15 USC Sections 2601 et seq.; the Clean Water Act, 33 USC Sections 1251 et seq.; the Clean Air Act, 42 USC Sections 7401 et seq.; all as amended, or any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect;

- (b) Any substance, product, waste or other or other solid, liquid or gaseous material, of any nature whatsoever heat, sound, vibration or radiation, which in each case is regulated or may give rise to liability in each case under any of the above statutes or under any statutory basis or any common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court;
- (c) Petroleum or crude oil excluding de minimis amounts and excluding petroleum and petroleum products contained within regularly operated motor vehicles; and
- (d) Asbestos or asbestos-containing materials in structures and or other improvements on or in the Site (other than mineral asbestos naturally occurring in the ground).

“**HDR**” means HDR Engineering Inc., a full service architecture and engineering firm based in Omaha, Nebraska.

“**HOT**” means high occupancy toll.

“**HOV**” means high occupancy vehicle.

“**HOV Change Event**” is defined in “TOLLING ON THE MANAGED LANES - Non-Tolled Vehicles” in the front part of the Official Statement.

“**HOV Lane**” is defined in “TOLLING ON THE MANAGED LANES – Tolling on the I-25 Managed Lane” in the front part of the Official Statement.

“**HOV2 Vehicles**” is defined in “TOLLING ON THE MANAGED LANES – Non-Tolled Vehicles” in the front part of the Official Statement.

“**HOV2+ Vehicles**” is defined in “TOLLING ON THE MANAGED LANES – Non-Tolled Vehicles” in the front part of the Official Statement.

“**HOV3+ Vehicles**” is defined in “TOLLING ON THE MANAGED LANES – Non-Tolled Vehicles” in the front part of the Official Statement.

“**HPTE**” means the High Performance Transportation Enterprise, a government owned business and a division of CDOT.

“**HPTE-CDOT Agreement**” is defined in “OPERATIONS PROJECT – Operation and Maintenance – Sources of Funding of Maintenance Fees” in the front part of the Official Statement.

“**HPTE Capital Payment**” is defined in “PLAN OF FINANCE - General” in the front part of the Official Statement.

“**HPTE Capital Subaccount**” means the Subaccount of the Project Proceeds Account created pursuant to and designated as such in the MSA.

“**HPTE Cash Flow Share Amount**” means the amount calculated in accordance with the Concession Agreement.

“**HPTE Cashflow Sharing Account**” means the Project Account of the Concessionaire created pursuant to and designated as such in the MSA.

“**HPTE Default**” is defined in “CONCESSION AGREEMENT – Termination Events - Termination for HPTE Default” in the front part of the Official Statement.

“**HPTE Default Termination Sum**” is defined in “CONCESSION AGREEMENT – Termination Events and Termination Compensation” in the front part of the Official Statement.

“**HPTE-Directed Change**” is defined in “PHASE 2 CONSTRUCTION PROJECT - Change Orders; Directive Letters – HPTE-Directed Changes” in the front part of the Official Statement.

“**HPTE Direct Agreement**” is defined in “SECURITY AND SOURCES OF PAYMENT FOR 2014 BONDS – HPTE Direct Agreement” in the front part of the Official Statement.

“**HPTE Hazardous Substances Circumstances**” is defined in “PHASE 2 CONSTRUCTION PROJECT - Site Conditions; Hazardous Substances; Differing Site Conditions – Hazardous Substances” in the front part of the Official Statement.

“**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: (a) CDOT; (b) the State; (c) an officer, employee or agent of HPTE, or of CDOT or of the State acting in that capacity; or (d) any contractor or sub-contractor of HPTE, or of CDOT or of the State of any tier and their directors, officers, employees or agents acting in that capacity, but excluding in any case HPTE, the Concessionaire and any Concessionaire Related Parties.

“**HPTE Service Requirements**” means the requirements of HPTE set out in the Concession Agreement.

“**HUTF**” means the Highway Users Tax Fund.

“**I-25**” means Interstate 25.

“**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.

“**I-25 Corridor**” is defined in “INTRODUCTION” in the front part of the Official Statement.

“**I-25 ETCS**” is defined in “TOLLING ON THE MANAGED LANES – Tolling on the I-25 Managed Lanes” in the front part of the Official Statement.

“**I-25 Managed Lanes**” is defined in “INTRODUCTION” in the front part of the Official Statement.

“**I-25 Preventative Maintenance Program**” means that program of activities in relation to the I-25 Bridge Deck Superstructure specified in the Concession Agreement.

“**I-25 Project**” means the operation and maintenance of the I-25 Managed Lanes and the I-25 Shared Bridge Decks (as such terms are defined in the Concession Agreement) and the tolling of the I-25 Managed Lanes, in each case, in accordance with the terms of the Concession Agreement.

“I-25 Revenues Suspension Period” is defined in “FINANCING AGREEMENTS – Existing Master Indenture” in the front part of the Official Statement.

“I-25 Shared Bridge Decks” is defined in “OPERATIONS PROJECT – General” in the front part of the Official Statement.

“I-25 Toll Enforcement Agreement” is defined in “TOLLING ON THE MANAGED LANES - Toll Violation Enforcement Services” in the front part of the Official Statement.

“I-25 Toll Revenues” is defined in “I-25 MANAGED LANES – General” in the front part of the Official Statement.

“I-25 Tolling Services Agreement” is defined in “TOLLING ON THE MANAGED LANES – Electronic Toll Collection System – Tolling Services” in the front part of the Official Statement.

“Indebtedness” of any Person means, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person for the deferred purchase price of property or services (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all obligations of such Person created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) all obligations of such Person as lessee under leases that have been or should be, in accordance with IFRS and, if required under applicable law, GAAP, recorded as capital leases, (f) all obligations, contingent or otherwise, of such Person in respect of letters of credit, bankers’ acceptances, bank guaranties, surety bonds or similar extensions of credit, (g) all obligations of such Person in respect of a hedge agreement, (h) indebtedness secured by a Lien on property owned or being purchased by such Person, whether or not such indebtedness will have been assumed by such Person or is limited in recourse and (i) all Indebtedness of others referred to in clauses (a) through (h) above and other payment obligations (collectively, “Guaranteed Indebtedness”) guaranteed directly or indirectly in any manner by such Person, or in effect guaranteed directly or indirectly by such Person through an agreement (i) to pay or purchase such Guaranteed Indebtedness or to advance or supply funds for the payment or purchase of such Guaranteed Indebtedness, (ii) to purchase, sell or lease (as lessee or lessor) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such Guaranteed Indebtedness or to assure the holder of such Guaranteed Indebtedness against loss, (iii) to supply funds to or in any other manner invest in the debtor (including any agreement to pay for property or services irrespective of whether such property is received or such services are rendered) or (iv) otherwise to assure a creditor against loss.

“Indenture” is defined in “DESCRIPTION OF THE 2014 BONDS – General” in the front part of the Official Statement.

“Indenture Event of Default” is defined in “DESCRIPTION OF THE 2014 BONDS - Defaults; Termination Compensation – Indenture Events of Default” in the front part of the Official Statement.

“Independent Engineer” means BTY Group, or any replacement engineering firm which will be selected from a list maintained by the Concessionaire and approved by the TIFIA Lender and the Required Secured Creditors.

“Initial Equity Contribution” is defined in “PLAN OF FINANCE – General” in the front part of the Official Statement.

“**Intercompany Loan Agreements**” is defined in “PLAN OF FINANCE – Intercompany Loans” in the front part of the Official Statement.

“**Intercompany Loan Subsidiaries**” is defined in “PROJECT PARTICIPANTS - Intercompany Loan Subsidiaries” in the front part of the Official Statement.

“**Intercompany Loans**” is defined in “PLAN OF FINANCE – Intercompany Loans” in the front part of the Official Statement.

“**Intercreditor Agent**” is defined in “PLAN OF FINANCE – 2014 Bonds” in the front part of the Official Statement.

“**Intercreditor Agreement**” is defined in “INTERCREDITOR ARRANGEMENTS – Intercreditor Agreement - General” in the front part of the Official Statement.

“**Intercreditor Vote**” means, at any time, a vote conducted in accordance with the procedures set forth in the Intercreditor Agreement among the Designated Representatives with respect to the particular decision at issue at such time.

“**Interest Payment Date**” is defined in “DESCRIPTION OF THE 2014 BONDS – General” in the front part of the Official Statement.

“**Interface Agreement**” is defined in “OTHER PROJECT AGREEMENTS – Interface Agreement” in the front part of the Official Statement.

“**Interim Capital Payment**” is defined in “PLANS OF FINANCE – HPTE Capital Payment” in the front part of the Official Statement.

“**Investment Grade Rating**” means a rating assigned by a Nationally Recognized Rating Agency which is no lower than ‘BBB-’ or ‘Baa3’.

“**Issuer**” means HPTE in its capacity as issuer of the 2014 Bonds.

“**Joint Insurance Account**” is defined in “CONCESSION AGREEMENT – Reinstatement” in the front part of the Official Statement.

“**KPMG**” mean KPMG Corporate Finance LLC, an advisory and consulting organization.

“**L/C Maintenance Fee**” means 1.50%.

“**Letter of Credit**” means the irrevocable letter of credit referenced in the Operating Contract.

“**Level 1 Maintenance**” is defined in “TOLLING ON THE MANAGED LANES – Electronic Toll Collection System – ETCS Maintenance” in the front part of the Official Statement.

“**Level 2 Maintenance**” is defined in “TOLLING ON THE MANAGED LANES – Electronic Toll Collection System – ETCS Maintenance” in the front part of the Official Statement.

“**Lien**” means any security interest, mortgage, deed of trust, pledge, hypothecation, assignment, mandatory deposit arrangement, encumbrance, lien (statutory or other), or preference, priority or other security agreement of any kind or nature whatsoever, including any sale-leaseback arrangement, any conditional sale or other title retention agreement, any financing lease having substantially the same effect

as any of the foregoing, and the filing of any financing statement or similar instrument under the UCC or comparable law.

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

- (a) Any Element, or an individual structure or asset; or
- (b) In relation to the road pavement and sub-structure, where a part of:
 - (i) The pavement; or
 - (ii) Sub-structure where the cost of such work applicable to that individual Element, structure or the road surface or sub-structure (which cost will 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.

“Lifecycle Costs” means the Operating Contractor’s internal and third-party costs to satisfy the Lifecycle Work.

“Lifecycle Work” is defined in “OTHER PROJECT AGREEMENTS – Operating Contract – Compensation for Services” in the front part of the Official Statement.

“Loan Life Coverage Ratio” means, as of each applicable Calculation Date, the ratio of (a) the present value of all projected Net Cash Flow for each Calculation Date from and including such Calculation Date to the Final Maturity Date in each case discounted at the Weighted Average Interest Cost for each future period, using the most recently updated Base Case Financial Model, adjusted to take into account (i) actual results and updated revenue and traffic projections reasonably projected by the Concessionaire and (ii) additional projected Net Cash Flow and Senior Debt Service in connection with any Additional Senior Obligations through the Final Maturity Date, to (b) the aggregate principal amount of the Borrower Finco Loan, the Phase 1 TIFIA Loan, any Additional Senior Obligations and the Phase 2 TIFIA Loan due to be paid on or prior to the Final Maturity Date. In calculating Senior Debt Service with respect to any Variable Rate Indebtedness for any future period, the Debt Service Calculation Assumption will apply.

“Lock-Up Period” is defined in “CONCESSION AGREEMENT – Transfer Restrictions” in the front part of the Official Statement.

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

“Loss Proceeds” means any proceeds of insurance or such other moneys received as a result of any Event of Loss.

“Loss Proceeds Account” means the Project Account of the Concessionaire created and designated as such in the MSA.

“LPT” means license plate toll collection system.

“**Maintained Elements**” is defined in “OPERATIONS PROJECT – Operation and Maintenance” in the front part of the Official Statement.

“**Maintenance Capex**” means any major maintenance expenditures required pursuant to the terms of the Concession Agreement in connection with the O&M work, including the maintenance, repair, renewal, reconstruction or replacement of any portion or component of the Project, as applicable, of a type which is not normally included as ordinary or routine maintenance, except to the extent such Maintenance Capex is furnished pursuant to the Design-Build Contract.

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

“**Maintenance Fees**” is defined in “OPERATIONS PROJECT – Operations and Maintenance – Maintenance Fees” in the front part of the Official Statement.

“**Major Maintenance Reserve Account**” means the Major Maintenance Reserve Account established and credited in the name of the Concessionaire pursuant to the MSA.

“**Major Maintenance Reserve Requirement**” is defined in “PROJECT ACCOUNTS AND FLOW OF FUNDS – Reserve Accounts - Major Maintenance Reserve Account” in the front part of the Official Statement.

“**Managed Lanes**” is defined in “INTRODUCTION” in the front part of the Official Statement.

“**Managed Lanes Goals**” is defined in “TOLLING ON THE MANAGED LANES – Managed Lane Speeds” in the front part of the Official Statement.

“**Management Services Agreement**” mean the Management Services Agreement dated on or prior to the Closing Date between the Concessionaire and Plenary Manager.

“**Master Trustee**” means Zions First National Bank, as trustee.

“**Material Adverse Effect**” means a material adverse effect on (i) the U.S. 36 Project (or any Segment thereof), or the business, property or financial condition of any Borrower Group Member, (ii) the ability of any Borrower Group Member or the Equity Member to perform or comply with any of its material obligations under the Funding Documents or the Material Project Contracts to which it is a party, (iii) prior to the Substantial Completion Date, the business, property or financial condition of the Sponsor relating to the U.S. 36 Project or the Sponsor’s ability to perform or comply with any of its material obligations under the Equity Contribution Agreement, (iv) the validity, perfection or priority of the Liens on the Collateral in favor of the Security Trustee, (v) the Secured Parties’ rights or benefits available under the Funding Documents, or (vi) with respect to the Phase 2 TIFIA Loan Agreement only, the legality, validity or enforceability of any material provision of Phase 2 TIFIA Loan Agreement, any other Funding Document or any Material Project Contract.

“**Material Phase 1 Change Order**” means a Phase 1 Change Order which, when implemented, will have or can reasonably be expected to have a material impact on (a) the Operating Contractor’s ability to perform its obligations under the Operating Contract; (b) the cost to the Operating Contractor of performing its obligations under the Operating Contract; or (c) the Toll Revenues which the Concessionaire may reasonably expect the Project (as defined in the Concession Agreement) to generate.

“**Material Project Contracts**” means the Concession Agreement; the Design-Build Contract; the Design-Build Guarantees; the Operating Contract; the Operating Guarantee; the Interface Agreement; the Tolling Services Agreement; the Trademark License Agreement; at any time prior to the termination of the Phase

2 TIFIA Loan Agreement, and at any time after the Phase 1 Assumption Date but prior to the termination of the Phase 1 TIFIA Loan Agreement, any other contract entered into by the Concessionaire requiring payments by Concessionaire in excess of (\$1,000,000 (inflated annually by CPI) per annum); any other contract entered into by the Concessionaire relating to the Project (or any Segment thereof) designated as a Material Project Contract by the Concessionaire, the TIFIA Lender and the Required Senior Creditors; and any document that replaces or supplements any of the agreements listed above.

“**Maximum Debt to Equity Ratio**” is defined in “FINANCING AGREEMENTS – TIFIA Loan Agreements – Covenants – Maximum Debt to Equity Ratio” in the front part of the Official Statement.

“**Misrepresentation Default**” is defined in “FINANCING AGREEMENTS – TIFIA Loan Agreements - Events of Default” in the front part of the Official Statement.

“**Modification**” means, with respect to any Funding Document, any amendment, supplement, waiver or other modification of the terms and provisions thereof.

“**Monthly Base Operating Contractor Payment**” means the payment calculated in accordance with the payment mechanism schedule to the Operating Contract.

“**Monthly Operating Contractor Lifecycle Payment**” means the payment calculated in accordance with the payment mechanism schedule to the Operating Contract.

“**Monthly Operating Contractor Payment**” means the payment calculated in accordance with the payment mechanism schedule to the Operating Contract.

“**Monthly Transfer Date**” means the last day of each calendar month, or, if such day is not a Business Day, the next preceding Business Day.

“**Moody’s**” means Moody’s Investor Services, Inc. and any successor thereto.

“**MSA**” is defined in “PLAN OF FINANCE – 2014 Bonds” in the front part of the Official Statement.

“**MSRB**” means Municipal Securities Rulemaking Board.

“**Nationally Recognized Rating Agency**” means S&P, Moody’s, Fitch or any other nationally recognized statistical rating organization identified as such by the SEC.

“**Necessary Consents**” is defined in “PHASE 2 CONSTRUCTION PROJECTS – Governmental Consents and Approvals” in the front part of the Official Statement.

“**NEPA**” means the National Environmental Policy Act.

“**NEPA Reevaluations**” is defined in “PHASE 2 CONSTRUCTION PROJECT – Governmental Consents and Approvals” in the front part of the Official Statement.

“**Net Cash Flow**” means, in respect of any period, (a) aggregate Project Revenues received by Concessionaire in such period, less (b) O&M Expenses and Maintenance Capex in each case paid by the Concessionaire during such period (other than (i) the cost of Maintenance Capex funded by funds withdrawn from the Major Maintenance Reserve Account or the Handback Requirements Reserve Account and (ii) any draws under any Acceptable Letter of Credit or other performance security available for purposes of the Major Maintenance Reserve Account or the Handback Requirements Reserve Account, in accordance with the terms of the Agreement and the Concession Agreement, respectively) less (c) deposits to the O&M Reserve Account, the Major Maintenance Reserve Account, the Ramp Up

Reserve Account, the Cash Reserve Account and the Handback Requirements Reserve Account made during such period, plus (d) amounts withdrawn from the O&M Reserve Account, the Major Maintenance Reserve Account, the Ramp Up Reserve Account, the Cash Reserve Account or the Handback Requirements Reserve Account or drawn from any Acceptable Letter of Credit available for the purposes of any such Project Account in accordance with the Agreement and the Concession Agreement, respectively, during, in each case, such period, except to the extent used to pay for Maintenance Capex.

“**Net Loss Proceeds**” means any remaining Loss Proceeds after excluding any proceeds of business interruption insurance, delay-in-start-up insurance, proceeds covering liability of the Concessionaire to third parties, and Loss Proceeds used or to be used by the Concessionaire to repair or restore the Project in accordance with the MSA.

“**Non-Separable Task**” means a task comprising Life Cycle Maintenance (A) for a component that is within both the U.S. 36 Managed Lanes and the U.S. 36 GP 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 U.S. 36 GP Lanes, (2) Bridge deck, superstructure and substructures, (3) major rehabilitation or reconstruction of concrete pavement and (4) media filter drains and such other Elements as are agreed or determined to be Non-Separable Tasks; or (B) which is within the I-25 Preventative Maintenance Program.

“**Net Toll Revenues**” means, in respect of any period, aggregate Toll Revenues, less (A) O&M Expenses (excluding those O&M Expenses paid from funds in the O&M Reserve Account) and Maintenance Capex (excluding Maintenance Capex paid from funds in the Major Maintenance Reserve Account or the Handback Requirements Reserve Account) paid to third parties pursuant to or in connection with (i) the Operating Contract, (ii) the Tolling Services Agreement and (iii) the obtaining of annual ratings pursuant to the TIFIA Loan Agreements, and (B) deposits to the Major Maintenance Reserve Account, the O&M Reserve Account or the Handback Requirements Reserve Account.

“**Non-Tolled Vehicles**” is defined in “TOLLING ON THE MANAGED LANES – Non-Tolled Vehicles” in the front part of the Official Statement.

“**Noncompliance Event**” is defined in “CONCESSION AGREEMENT – Monitoring of Performance of Services; Noncompliance Points” in the front part of the Official Statement.

“**Noncompliance Points**” is defined in “OPERATIONS PROJECT – Operations and Maintenance – Performance Monitoring; Noncompliance Points” in the front part of the Official Statement.

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

“**Notice of Default**” is defined in “INTERCREDITOR ARRANGEMENTS – Intercreditor Agreement – Defaults; Exercise and Enforcement of Remedies – Notice of Default” in the front part of the Official Statement.

“**Notice of Phase 2 Work Completion**” means the notice to be issued by Concessionaire under the Design-Build Contract.

“**Notice to Proceed**” is defined in “PHASE 2 CONSTRUCTION PROJECT - Conditions Precedent to Commencement Date; Notice to Proceed” in the front part of the Official Statement.

“O&M Expenses” means all actual cash maintenance and operation costs (excluding all costs of capital expenditures (including Maintenance Capex) and payments in respect of indebtedness) incurred and paid (or, if applicable, forecast to be incurred and paid) in connection with the operation and maintenance of the Project in any particular calendar year or fiscal year or other period to which said term is applicable, including payments made pursuant to the Concession Agreement, payments made or required to be made to any consultants, payments for taxes, insurance, consumables, advertising, marketing, payments under real property agreements pursuant to which the Concessionaire has any rights in the Project, payments pursuant to the agreements for the management, operation or maintenance of the Project (including the Operating Contract, the Management Services Agreement and Financial Services Agreement (other than the Phase 2 Completion Success Fee and the Supplemental Contribution Amount)), payments made under the Tolling Services Agreement, reasonable legal fees and expenses paid by the Concessionaire in connection with the management, maintenance or operation of the Project, fees paid in connection with obtaining, transferring, maintaining or amending any Governmental Approvals, costs incurred in connection with the performance of environmental mitigation work to be carried out by the Concessionaire, and reasonable general and administrative expenses of any Obligor, but exclusive in all cases of noncash charges, including depreciation or obsolescence charges or reserves therefor, amortization of intangibles or other bookkeeping entries of a similar nature.

“O&M Reserve Account” means the Project Account of the Concessionaire created pursuant to and designated as such in the MSA.

“O&M Reserve Requirement” defined in “PROJECT ACCOUNTS AND FLOW OF FUNDS – Reserve Accounts – O&M Reserve Account” in the front part of the Official Statement.

“Obligor” means any Borrower Group Member.

“Operating Contract” or **“O&M Contract”** is defined in “OPERATIONS PROJECT – Operations and Maintenance – Operating Contract” in the front part of the Official Statement.

“Operating Contract Date” means the date the Operating Contract is executed by the Concessionaire and the Operating Contractor.

“Operating Contract Liabilities” is defined in “SECURITY AND SOURCES OF PAYMENT FOR 2014 BONDS - Consents and Agreements; Guarantees – Design-Build Guarantee and Operating Guarantee” in the front part of the Official Statement.

“Operating Contract Period” means the period from and including the Commencement Date to the Termination Date.

“Operating Contractor” means Transfield Services Infrastructure Inc., a Virginia corporation.

“Operating Contractor Consent” is defined in “SECURITY AND SOURCES OF PAYMENT FOR 2014 BONDS - Consents and Agreements; Guarantees” in the front part of the Official Statement.

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

- (a) A breach by the Operating Contractor of any of its obligations under the Operating Contract which materially and adversely affects the performance of the Services;
- (b) Insolvency of the Operating Contractor or the Operating Guarantor;

- (c) Assignment of the Operating Contract without the prior written consent of the Concessionaire and HPTE;
- (d) A change in ownership or control of the Operating Contractor in breach of the Design-Build Contract;
- (e) Subject to the Operating Contract a breach by the Operating Contractor of its obligations to take out and maintain any of the Required Insurances;
- (f) The Operating Contractor fails to pay an undisputed amount in excess of \$500,000 (Indexed) for a period of 30 Business Days following delivery of a written demand of the Concessionaire;
- (g) An Operating Contractor Default arises in relation to the number of uncured or unexpired Noncompliance Points pursuant to the noncompliance points system schedule to the Operating Contract;
- (h) Any of the Performance Security not being provided when due; and
- (i) Any default under any Performance Security;
- (j) The Operating Guarantor taking the position that the Operating Guarantee is invalid or unenforceable;
- (k) The liability of the Operating Guarantor under the Operating Guarantee (in the aggregate in respect of all claims thereunder) exceeds the maximum liability under the Operating Guarantee and the Operating Guarantee is not replaced within ten Business Days of notice by Concessionaire with a parent guarantee in the form of the Operating Guarantee and with a maximum liability equal to that set out in the Operating Guarantee.

“**Operating Guarantee**” is defined in “SECURITY AND SOURCES OF PAYMENT FOR 2014 BONDS - Consents and Agreements; Guarantees - Design-Build Guarantee and Operating Guarantee” in the front part of the Official Statement.

“**Operating Guarantor**” or “**O&M Guarantor**” is defined in “SECURITY AND SOURCES OF PAYMENT FOR 2014 BONDS - Consents and Agreements; Guarantees - Design-Build Guarantee and Operating Guarantee” in the front part of the Official Statement.

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

“**Operations Project**” is defined in “INTRODUCTION” in the front part of the Official Statement.

“**Original Phase 1 TIFIA Loan Agreement**” means the loan agreement dated as of September 1, 2011 pursuant to which the TIFIA Lender has made available the Phase 1 TIFIA Loan to the Issuer, as amended pursuant to the Phase 1 TIFIA Loan Agreement.

“**Other Loan Document**” is defined in “FINANCING AGREEMENTS –TIFIA Loan Agreements - Events of Default” in the front part of the Official Statement.

“**Other Material Indebtedness**” is defined in “FINANCING AGREEMENTS – TIFIA Loan Agreements - Events of Default” in the front part of the Official Statement.

“**Other Revenue**” is defined in “OTHER PROJECT AGREEMENTS - Tolling Services Agreement” in the front part of the Official Statement.

“**Outstanding TIFIA Phase 2 Loan Balance**” means, as of any date of determination, the aggregate principal amount drawn by Borrower Finco and then outstanding with respect to the Phase 2 TIFIA Loan, as determined in accordance with Phase 2 TIFIA Loan Agreement.

“**Parties**” means the Security Trustee, the Intercreditor Agent, the Concessionaire, the Issuer, the TIFIA Lender, the Subordinated Lender, the Subordinated Agent, the Bond Trustee, Borrower Finco, Finco 1, Finco 2 and any other Secured Party that accedes to and becomes party to the MSA, and “**Party**” means any of them.

“**Payment Bond**” means a payment bond substantially in the form attached to the Design-Build Contract naming HPTE, the Senior Lenders and the Concessionaire as multiple obligees, in an amount equal to the Contract Price, to ensure the completion of the Phase 2 Work by the Design-Build Contractor.

“**Payment Date**” means each Semi-Annual Payment Date or Interim Payment Date.

“**Payment Default**” is defined in “FINANCING AGREEMENTS – TIFIA Loan Agreements - Events of Default” in the front part of the Official Statement.

“**Payment Period**” means any period of six months that ends on a Semi-Annual Payment Date, commencing with the six-month period ending on the TIFIA Phase 1 Debt Service Payment Commencement Date and the TIFIA Phase 1 Debt Service Payment Commencement Date, as applicable.

“**Peak Periods**” is defined in “TOLLING ON THE MANAGED LANES - Minimum Tolls, Maximum Tolls” in the front part of the Official Statement.

“**Performance Bond**” means a performance bond substantially in the form attached to the Design-Build Contract naming HPTE, the Senior Lenders and the Concessionaire as multiple obligees, in an amount equal to the Contract Price, to ensure the completion of the Phase 2 Work by the Design-Build Contractor.

“**Performance Security**” means (i) with respect to the Design-Build Contract, the Payment Bond and Performance Bond having a penal sum in the amount of the Contract Price and the Design-Build Guarantee provided by the Design-Build Contractor to the Concessionaire as security for the performance of the Design-Build Contractor’s obligations under the Design-Build Contract and (ii) with respect to the Operating Contract, the Letter of Credit and the Operating Guarantee.

“**Permitted Affiliate Debt**” means Indebtedness of Borrower Finco or the Concessionaire to an Affiliate of Borrower Finco or the Concessionaire in connection with subordinated loans made to such Borrower Group member or the Concessionaire, respectively, which is (a) pledged to the Security Trustee for the benefit of the Secured Creditors, (b) applied to pay Project Costs, (c) repayable solely from monies released from the Concessionaire Distribution Account and (d) subject to subordination terms reasonably satisfactory to the TIFIA Lender.

“**Permitted Affiliate Debt Document**” means any loan agreement (including any Intercompany Loan Agreement) or promissory note entered into by any Borrower Group Member in connection with the incurrence by Borrower Finco or the Concessionaire of Permitted Affiliate Debt and any other agreements, instruments or other documents evidencing, securing, governing or otherwise executed in connection with and effecting in any material respects any Permitted Affiliate Debt.

“Permitted Affiliate Subordinated Debt” means indebtedness of Borrower Finco or Concessionaire to an Affiliate thereof in connection with subordinated loans made to such Obligor, which indebtedness (i) is pledged to the Security Trustee for the benefit of the Secured Parties, (ii) is applied to pay Project Costs, (iii) is repayable solely from moneys released from the Concessionaire Distribution Account, (iv) is subject to subordination terms reasonably satisfactory to the TIFIA Lender and the Required Senior Creditors and (v) at any time prior to the termination of the Subordinated Loan Agreements is Permitted Indebtedness as defined therein.

“Permitted Borrowing” means:

- (a) without double counting, any advance to the Concessionaire under the Senior Funding Agreements in the form in which those Senior Funding Agreements are in place at Financial Close (disregarding any amendments or replacements to such Senior Funding Agreements) provided that such advance is not made under any Committed Standby Facility;
- (b) to avoid doubt if the Senior Funding Agreements are amended or replaced after Financial Close, then the amount of Permitted Borrowing outstanding at the Termination Date will be deemed to be the amount outstanding as shown in the Adjusted Proposal Financial Model;
- (c) in relation to any Senior Funding Agreement which is an interest rate hedging agreement the calculation of Base Senior Debt Termination Amount will be made on the basis that the amount due to the relevant Senior Lender or payable by the Senior Lender to the Concessionaire (as the case may be) as a result of early termination of interest rate hedging arrangements will be that amount which would have been due or payable on the basis of the interest rate hedging arrangements in place at Financial Close, irrespective of any interest rate hedging arrangements which may in fact have been put in place.

Amounts due under hedging instruments or swap agreements in each case which are not entered into for the purpose of hedging variable rate debt will not be included as Permitted Borrowing for any purpose

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

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

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

“Permitted Hedging Arrangement” means any hedging arrangement relating to Permitted Indebtedness, permitted pursuant to the Funding Documents.

“Permitted Indebtedness” is defined in “FINANCING AGREEMENTS – Bond Proceeds Loan Agreement – Permitted Indebtedness” and “FINANCING AGREEMENTS – TIFIA Loan Agreements – Permitted Indebtedness” in the front part of the Official Statement.

“Permitted Liens” means:

- (a) Liens created pursuant to the Funding Documents;
- (b) Liens securing Subordinated Refinancing Debt, Additional Senior Obligations or Permitted Subordinated Debt;
- (c) Liens security Permitted Hedging Arrangements;
- (d) Liens imposed by law for taxes, assessments or governmental charges that are not yet due or are being contested in compliance with the terms of the Funding Documents;
- (e) in respect of Concessionaire:
 - (i) carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s and other like Liens imposed by law or arising in the ordinary course of business and securing obligations that are not overdue by more than 30 days or are being contested in compliance with the terms of the Funding Documents;
 - (ii) deposits, or other acceptable security in lieu of cash, to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business;
 - (iii) licenses or sublicenses of intellectual property granted in the ordinary course of business;

- (iv) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of the Concessionaire;
- (v) any Lien existing on any property or asset prior to the acquisition thereof by the Concessionaire; provided that (i) such Lien is not created in contemplation of or in connection with such acquisition, (ii) such Lien will not apply to any other property or assets of the Concessionaire and (iii) such Lien will secure only those obligations which it secures on the date of such acquisition, and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof;
- (vi) purchase money security interests in and capitalized leases with respect to real property, improvements thereto or equipment acquired (or, in the case of improvements, constructed) by the Concessionaire on or after the Effective Date, provided that (i) such security interests secure indebtedness for borrowed money permitted under the Funding Documents, (ii) such security interests are incurred, and the indebtedness secured thereby is created, within 90 days after such acquisition (or construction), (iii) the indebtedness secured thereby does not exceed the fair market value of such real property, improvements or equipment at the time of such acquisition (or construction) and (iv) such security interests do not apply to any other property or assets (other than accessions to such real property, improvements or equipment) of the Concessionaire; and
- (vii) any right of title retention in connection with the acquisition of assets in the ordinary course of business;
- (f) judgment liens in respect of judgments that do not constitute an Event of Default;
- (g) rights in favor of a banking institution arising as a matter of law encumbering deposits (including the right to set off) and which are within the general parameters customary in the banking industry;
- (h) pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance and other social security laws or regulations; provided that, with respect to any Obligor other than the Concessionaire, such pledges and deposits will only be made to the extent they are required pursuant to applicable law;
- (i) any Lien arising solely by virtue of any statutory or common law provision relating to banker's liens, rights to set-off or similar rights; and
- (j) any right of set-off arising under a Material Project Contract or Funding Document.

“Permitted Subordinated Debt” means indebtedness of Borrower Finco (excluding any Permitted Affiliate Subordinated Debt) subordinate to the Borrower Finco Senior Obligations, which (i) prior to the termination of the Bond Proceeds Loan Agreement, is Permitted Subordinated Indebtedness as defined in the Bond Proceeds Loan Agreement, (ii) prior to the termination of the Phase 2 TIFIA Loan Agreement, has been consented to by the TIFIA Lender (as lender of the Phase 2 TIFIA Loan), (iii) after the Phase 1 Assumption Date and prior to the termination of the Phase 1 TIFIA Loan Agreement, has been consented to by the TIFIA Lender (as lender of the Phase 1 TIFIA Loan) and (iv) at any time prior to the termination

of the Subordinated Loan Agreements, is Permitted Indebtedness as defined therein (provided that, prior to the Discharge of Senior Obligations, clause (iv) will not apply if an Event of Default has occurred and is continuing).

“**Person**” means any natural person, firm, corporation, partnership, limited liability company, state, political subdivision of any state, other public body or other organization or association.

“**Phase 1 Acceptance Notice**” is defined in “PHASE 1 PROJECT – Assumption of Phase 1 TIFIA Loan” in the front part of the Official Statement.

“**Phase 1 Assumption Date**” is defined in “PHASE 1 PROJECT – Assumption of Phase 1 TIFIA Loan” in the front part of the Official Statement.

“**Phase 1 Assumption Plan**” is defined in “PHASE 1 PROJECT – Assumption of Phase 1 TIFIA Loan” in the front part of the Official Statement.

“**Phase 1 Change Order**” means any Change Order as defined in the Design-Build Contract.

“**Phase 1 Construction Work**” is defined in “PHASE 2 CONSTRUCTION PROJECT - Coordination with Phase 1 Construction Work” in the front part of the Official Statement.

“**Phase 1 Corridor**” is defined in “INTRODUCTION” in the front part of the Official Statement.

“**Phase 1 Design-Build Contract**” is defined in “PHASE 2 CONSTRUCTION PROJECT – Coordination with Phase 1 Construction Work” in the front part of the Official Statement.

“**Phase 1 Design-Build Contractor**” is defined in “PHASE 2 CONSTRUCTION PROJECT – Coordination with Phase 1 Construction Work” in the front part of the Official Statement.

“**Phase 1 ETCS**” is defined in “PHASE 2 CONSTRUCTION PROJECT - Coordination with Phase 1 Construction Work” in the front part of the Official Statement.

“**Phase 1 ETCS Installation Contract**” is defined in “PHASE 2 CONSTRUCTION PROJECT - Coordination with Phase 1 Construction Work” in the front part of the Official Statement.

“**Phase 1 GP Lanes**” is defined in “PHASE 2 CONSTRUCTION PROJECT - Coordination with Phase 1 Construction Work” in the front part of the Official Statement.

“**Phase 1 Lanes**” is defined in “PHASE 2 CONSTRUCTION PROJECT - Coordination with Phase 1 Construction Work” in the front part of the Official Statement.

“**Phase 1 Latent Defect**” is defined in “PHASE 1 PROJECT - Concessionaire’s Participation in the Acceptance of the Phase 1 Project” in the front part of the Official Statement.

“**Phase 1 Managed Lanes**” is defined in “INTRODUCTION” in the front part of the Official Statement.

“**Phase 1 Project**” is defined in “OPERATIONS PROJECT – Phase 1 Project” in the front part of the Official Statement.

“**Phase 1 Routine Maintenance Service Fee**” means 76.9% of the GP Routine Maintenance Fee per Year.

“Phase 1 Services Commencement Compensation Date” is defined in “PHASE 1 PROJECT - Delays in Phase 1 Project Acceptance” in the front part of the Official Statement.

“Phase 1 Services Commencement Date” is defined in “PHASE 1 PROJECT - Phase 1 Services Commencement Date” in the front part of the Official Statement.

“Phase 1 TIFIA Loan” is defined in “PHASE 1 PROJECT - Financing of the Phase 1 Project” in the front part of the Official Statement.

“Phase 1 TIFIA Loan Agreement” is defined in “PHASE 1 PROJECT – Financing of the Phase 1 Project” in the front part of the Official Statement.

“Phase 1 Toll Revenues” is defined in “OPERATIONS PROJECT - General” in the front part of the Official Statement.

“Phase 1 U.S. 36 IGA” is defined in “OTHER PROJECT AGREEMENTS – Intergovernmental Agreements – U.S. 36 Concession Project IGA” in the front part of the Official Statement.

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

“Phase 2 Completion Success Fee” means a success fee to be agreed upon by Plenary Manager and the Concessionaire, to be paid to the Plenary Manager pursuant to the Management Services Agreement.

“Phase 2 Construction Project” is defined in “INTRODUCTION” in the front part of the Official Statement.

“Phase 2 Construction Work” is defined in “PHASE 2 CONSTRUCTION PROJECT - General” in the front part of the Official Statement.

“Phase 2 Corridor” is defined in “INTRODUCTION” in the front part of the Official Statement.

“Phase 2 ETCS” is defined in “INTRODUCTION” in the front part of the Official Statement.

“Phase 2 GP Lanes” is defined in “INTRODUCTION” in the front part of the Official Statement.

“Phase 2 Lanes” is defined in “OPERATIONS PROJECT - General” in the front part of the Official Statement.

“Phase 2 Managed Lanes” is defined in “INTRODUCTION” in the front part of the Official Statement.

“Phase 2 TIFIA Debt Termination Amount” means all amounts outstanding at the Termination Date, including interest and default interest accrued as of that date, from the Concessionaire to the TIFIA Lender in respect of the Phase 2 TIFIA Loan, less all reserves and credit balances held by the TIFIA Lender on behalf of the Concessionaire on the Termination Date (save to the extent that such reserves and credit balances are taken into account in the calculation of Base Senior Debt Termination Amount or the Phase 1 TIFIA Loan).

“Phase 2 TIFIA Loan” is defined in “PLAN OF FINANCE - General” in the front part of the Official Statement.

“Phase 2 TIFIA Loan Agreement” is defined in “PLAN OF FINANCE – Phase 2 TIFIA Loan” in the front part of the Official Statement.

“**Phase 2 Warranty Period**” means, under the Design-Build Contract, the time the warranties regarding all elements of the Phase 2 GP Lanes, the Phase 2 ETCS and the Phase 2 Managed Lanes will remain in effect.

“**Phase 2 Work**” is defined in “PHASE 2 CONSTRUCTION PROJECT – General” in the front part of the Official Statement.

“**Phase 2 Work Completion**” is defined in “PHASE 2 CONSTRUCTION PROJECT - Completion; Liquidated Damages” in the front part of the Official Statement.

“**PIA**” means Plenary Group Investments America Ltd., a Delaware corporation.

“**Planned Full Services Commencement Date**” is defined in “PHASE 2 CONSTRUCTION PROJECT – General” in the front part of the Official Statement.

“**Pledge Agreements**” means, collectively, (a) the Equity Member Pledge Agreement and (b) any other pledge agreements executed and delivered after the Effective Date by any additional or substituted member in the Concessionaire in substantially the form of the Equity Member Pledge Agreement, pursuant to which such Person will grant to the Security Trustee for the benefit of the Secured Parties security interests in the Equity Interests held at any time by such Person in the Concessionaire.

“**Pledged Collateral**” is defined in “SECURITY AND SOURCES OF PAYMENT FOR 2014 BONDS - Equity Member Pledge Agreement” in the front part of the Official Statement.

“**Pledged Debt**” is defined in “FINANCING AGREEMENTS – Subordinated Loan Agreements – Subordinated Lender's Pledge of the Subordinated Loan” in the front part of the Official Statement.

“**Pledged Equity Collateral**” means, with respect to each Obligor, all of the property of such Obligor identified below, in each case, wherever located and now owned or hereafter acquired by such Obligor or in which such Obligor now has or at any time in the future may acquire any right, title or interest:

- (a) all of such Obligor’s Equity Interests in any other Obligor, including without limitation, the interests described in the MSA and all after acquired Equity Interests in any other Obligor (collectively, the “**Pledged Equity Interests**”), and all of such Obligor’s rights to acquire Equity Interests in such other Obligor in addition to or in exchange or substitution for the Pledged Equity Interests;
- (b) all of such Obligor’s rights, privileges, authority and powers as a member of any other Obligor, including, without limitation, (i) such Obligor’s right to a share of the profits of such Obligor, (ii) the right to receive distributions from such other Obligor, (iii) the right to vote and participate in the management of such other Obligor and (iv) the capital account, if any, in such other Obligor;
- (c) all certificates or other documents representing any and all of the foregoing in clauses (a) and (b);
- (d) other than as provided below, all dividends, distributions, cash, securities, instruments and other property or proceeds of any kind to which such Obligor may be entitled in its capacity as member of such other Obligor by way of distribution, return of capital or otherwise;

- (e) all indebtedness or other obligations owed to such Obligor by any other Obligor, including without limitation, the interests described in the MSA (collectively, the “**Pledged Debt**”);
- (f) any other claim which such Obligor now has or may in the future acquire in its capacity as member or shareholder of any other Obligor against such other Obligor and its property; and
- (g) all proceeds, products and accessions of and to any of the property described in the preceding clauses (a) through (f) above.

“**Plenary Group**” means Plenary Group (Canada) Ltd, a company governed by the Canadian Business Corporations Act.

“**Plenary Group USA**” means Plenary Group USA Concession Ltd., a Delaware corporation.

“**Plenary Manager**” means Plenary Group USA Ltd., a Nevada corporation.

“**Plenary Parties**” is defined in “PROJECT PARTICIPANTS – The Concessionaire” in the front part of the Official Statement.

“**Premium Bonds**” is defined in “TAX MATTERS - Tax Treatment of Original Issue Premium” in the front part of the Official Statement.

“**Proceeds**” means the proceeds of any sale, collection or other liquidation of Collateral and any payment or distribution made in respect of Collateral in a bankruptcy case and any amounts received by any Senior Creditor or any senior secured party from a Subordinated Creditor in respect of Collateral pursuant to the MSA.

“**Prohibited Act**” means:

- (a) making a false, fictitious, or fraudulent claim, statement, submission, or certification;
- (b) offering, giving or agreeing to give to any public official or any civil servant or to any employees or other persons providing goods or services to HPTE on a contractual basis of HPTE or any other division or agency of the State or of the Federal Government any gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of 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
 - (ii) 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;
- (c) the existence of an organizational conflict of Interests which was known, or should have been known, to any Equity Member or a major non-equity member of the proposer whose proposal led to the entry into the Concession Agreement by the Concessionaire which was not disclosed to HPTE before the Contract Date;

- (d) 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 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
- (e) defrauding or attempting to defraud or conspiring to defraud HPTE, the Federal Government, the State or any division, subdivision or agency of either of them,

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

“**Project**” is defined in “INTRODUCTION” in the front part of the Official Statement.

“**Project Accounts**” is defined in “PROJECT ACCOUNTS AND FLOW OF FUNDS – Project Accounts and Subaccounts – Borrower Finco Accounts” in the front part of the Official Statement.

“**Project Budget**” means the budget for the Project attached to the Phase 2 TIFIA Loan Agreement, which includes (a) a summary of all Eligible Project Costs and the estimated sources and uses of funds for the Phase 1 Project, which amounts are the responsibility of HPTE and may be modified from time to time in accordance with the Phase 1 TIFIA Loan Agreement and (b) a summary of all Eligible Project Costs and the estimated sources and uses of funds for the Phase 2 Construction Project, which amounts are the responsibility of the Concessionaire and may be modified from time to time with the approval of the TIFIA Lender.

“**Project Costs**” means the (a) costs paid or incurred (to the extent paid, such costs will be reimbursed to the Person who paid such costs) or to be paid or incurred by the Concessionaire in connection with or incidental to the acquisition, design, construction, rehabilitation, equipping, operations and maintenance of the U.S. 36 Project, including legal, administrative, engineering, planning, design, insurance, due diligence development and financing costs, including the contract price of the Design-Build Contract, the amounts payable under the Operating Contract, amounts payable under all construction, engineering, technical and other contracts entered into by the Concessionaire in connection with performing its obligations under the Concession Agreement and in accordance with the Funding Documents, all O&M Expenses and Maintenance Capex incurred prior to the Substantial Completion Date, and any Tax Distribution Amounts payable by the Sponsor (or Affiliates thereof) in connection with the Project; (b) payments when due (whether at the maturity of principal, the due date of interest, or upon optional or mandatory prepayment) on any Indebtedness of the Concessionaire (other than the Phase 2 TIFIA Loan) incurred for the U.S. 36 Project and amounts, if any, required by any financing agreement to be paid into any fund or account upon the incurrence of any Senior Obligations (including, for avoidance of doubt, interest on the Concessionaire Bond Proceeds Loan due and payable prior to the Phase 2 Completion Date); (c) costs of equipment and supplies and initial working capital and reserves required by the Concessionaire for the commencement of operation of the U.S. 36 Project (and including funding the Reserve Accounts), including general administrative expenses and overhead of the Concessionaire other than to the extent such amounts constitute direct or indirect costs unallowable to the Concessionaire and its contractors under 18 C.F.R. Part 31; and (d) the repayment of obligations incurred by the Concessionaire, the proceeds of which obligations were used to pay items (a) through (c) of this definition.

“Project O&M Account” means the account of the Concessionaire created pursuant to and designated as such in the MSA.

“Project Proceeds Account” the account of the Concessionaire created pursuant to and designated as such in the MSA.

“Project Proceeds Account Requisition” means a requisition signed by Concessionaire in substantially the form attached to the MSA.

“Project Revenue Account” means the Project Revenue Account established and created in the name of the Concessionaire pursuant to the MSA.

“Project Revenue Subaccount” means the Subaccount of the Project Proceeds Account created pursuant to and designated as such in the MSA.

“Project Revenues” means all revenues of the Concessionaire from the Operating Project,

(a) including all Toll Revenues, interest payable in respect of any funds on deposit in the Concessionaire Accounts, proceeds from any business interruption insurance, payments received by the Concessionaire under any Material Project Contract (including any warranty payments, delay liquidated damages and the proceeds of any Compensation Event (including Termination Compensation), all cash payments received by the Concessionaire under or in connection with any Permitted Hedging Arrangement, and all other operating income, however earned or received, by the Concessionaire during the relevant period;

(b) including any payments to the Concessionaire made by HPTE (including the Maintenance Fees and fees for the Snow and Ice Control Services);

(c) excluding proceeds of the Concessionaire Bond Proceeds Loan, the Concessionaire TIFIA Phase 2 Loan, the Concessionaire Subordinated Loan, the Secondary Subordinated Loan or any other Permitted Indebtedness, Equity Contributions and Net Loss Proceeds and, proceeds of condemnation proceedings and asset sales to the extent that such proceeds are not reinvested in replacement property; and

(d) including, for certainty, all I-25 Toll Revenues (from and after the Commencement Date), and all Phase 1 Toll Revenues (from and after the Phase 1 Services Commencement Date).

“Project Tolling Services Agreement” is defined in “TOLLING ON THE MANAGED LANES – Electronic Toll Collection System – Tolling Services” in the front part of the Official Statement.

“Projected DSCR” means, calculated as at each Distribution Date, the ratio of: (a) Projected Net Cash Flow for the forthcoming 12 months; to (b) the aggregate amount of all interest payments and scheduled payments in respect of outstanding principal paid or payable on (i) the Senior Debt Service and (ii) all Subordinated Debt Service paid or payable under the Subordinated Loan Agreements for the immediately following 12 months.

“Projected Net Cash Flow” means, for any period, the Net Cash Flow reasonably projected by the Concessionaire to accrue to the Project Parties during that period based on the Base Case Financial Model updated for recent developments as determined by the Concessionaire, acting reasonably.

“Promissory Note” means (a) each promissory note issued by Borrower Finco in favor of the lenders for amounts loaned to Borrower Finco by such lenders pursuant to the TIFIA Loan Agreements, and Bond

Proceeds Loan Agreement and Subordinated Loan Agreements (if any), in each case substantially in the forms of the promissory notes attached to the TIFIA Loan Agreements and Bond Proceeds Loan Agreement and Subordinated Loan Agreements (if any), (b) each promissory note issued by the Concessionaire in favor of Finco 2 for amounts loaned to the Concessionaire by Finco 2 pursuant to the applicable Intercompany Loan Agreements, (c) each promissory note issued by Finco 2 in favor of Finco 1 for amounts loaned to Finco 2 by Finco 1 pursuant to the applicable Intercompany Loan Agreements, and (d) each promissory note issued by Finco 1 in favor of Borrower Finco for amounts loaned to Finco 1 by Borrower Finco pursuant to the applicable Intercompany Loan Agreements, in each case of (b), (c) and (d) above, substantially in the forms of the promissory notes attached to the Intercompany Loan Agreements.

“**Proposed Amendment**” is defined in “INTERCREDITOR ARRANGEMENTS – Intercreditor Agreement - Amendment of Funding Documents – Procedures Relating to Owners’ Votes on Amendments” in the front part of the Official Statement.

“**Proposed Enforcement Action**” is defined in “INTERCREDITOR ARRANGEMENTS – Intercreditor Agreement – Defaults; Exercise and Enforcement of Remedies – Election to Pursue Remedies Following Events of Default” in the front part of the Official Statement.

“**Proposed Remedies Commencement Date**” is defined in “INTERCREDITOR ARRANGEMENTS – Intercreditor Agreement – Defaults; Exercise and Enforcement of Remedies – Election to Pursue Remedies Following Events of Default” in the front part of the Official Statement.

“**Punch List**” is defined in “CONCESSION AGREEMENT – Principal Rights and Responsibilities of the Concessionaire – Punch List” in the front part of the Official Statement.

“**Qualifying Change in Law**” means: (a) a Discriminatory Change in Law; and/or (b) a Specific Change in Law; provided, however, that any assignment by HPTE in accordance with the Concession Agreement will not be considered a Qualifying Change in Law.

“**Ramp Up Reserve Account**” means the Project Account of the Concessionaire created pursuant to and designated as such in the MSA.

“**Ramp Up Reserve Requirement**” is defined in “PROJECT ACCOUNTS AND FLOW OF FUNDS – Reserve Accounts - Ramp Up Reserve Account” in the front part of the Official Statement.

“**Rate Covenant**” is defined in “FINANCING AGREEMENTS – TIFIA Loan Agreements - Covenants” in the front part of the Official Statement.

“**RCP**” means a Request for Change Proposal.

“**Rebate Account**” means the account of the Concessionaire created pursuant to and designated as such in the MSA.

“**Record Date**” means (a) with respect to the 2014 Bonds, for a January 1 Interest Payment Date the preceding December 15 and for a July 1 Interest Payment Date the preceding June 15, notwithstanding whether such December 15 or June 15 is a Business Day, and (b) with respect to any Additional Senior Bonds, the Record Date set forth in the Supplemental Indenture.

“**Redemption Price**” means the amount due on a Senior Bond on the date on which it is redeemed prior to maturity pursuant to the redemption provisions applicable to such Senior Bond. Such term does not include the principal and interest or accreted value due on Senior Bonds that are term bonds on the dates

such Senior Bonds are to be redeemed in accordance with a mandatory sinking fund redemption or mandatory pro rata redemption schedule set forth in the Indenture or a Supplemental Indenture.

“**Reference Documents**” means those documents listed in a schedule to the Concession Agreement.

“**Refinancing Indebtedness**” means any Subordinated Refinancing Debt or any Additional Senior Obligations issued or incurred for the purpose of refinancing, replacing or refunding Borrower Finco Senior Obligations.

“**Reinstatement Work**” is defined in “CONCESSION AGREEMENT – Reinstatement” in the front part of the Official Statement.

“**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, Operating Contractor’s or Design-Build Contractor’s obligations under the Concession Agreement, Operating Contract or Design-Build Contract, respectively.

“**Relevant Events**” is defined in “PHASE 2 CONSTRUCTION PROJECT - Relevant Events; Relief and Force Majeure Events” in the front part of the Official Statement.

“**Relevant Incident**” is defined in “CONCESSION AGREEMENT – Reinstatement” in the front part of the Official Statement.

“**Relief Event**” means:

- (a) Fire, explosion, lightning, storm, tempest, tornado, flood, bursting or overflowing of water tanks, apparatus or pipes, ionizing radiation (to the extent it does not constitute a Force Majeure Event), earthquakes, riot and civil commotion;
- (b) A Utility Delay to the extent permitted by the Design-Build Contract;
- (c) Any unforeseeable accidental loss or damage to the Phase 2 Work, the Managed Lanes or the U.S. 36 GP Lanes;
- (d) Any failure or shortage of power, fuel or transport in the Denver metropolitan area;
- (e) Any blockade or embargo which directly impacts the Project (as defined in the Concession Agreement) but which does not constitute a Force Majeure Event;
- (f) 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;
- (g) Any temporary restraining order or injunction by a court prohibiting the construction of the Project;
- (h) An injunction or other order issued by a Governmental Authority having jurisdiction over the Project preventing the Design-Build Contractor or Operating Contractor, HPTE or the Concessionaire from performing its obligations or exercising its rights under the related contract (as applicable);

- (i) Compliance by the Design-Build Contractor or Operating Contractor with an order or direction by police, fire officials or any comparable Governmental Authority having the legal authority to make such order or give such direction;
- (j) The closure, due to an accident of a road necessary for direct access to the Project by order of a Governmental Authority having police power; or
- (k) Any delay in the timely issuance of a Necessary Consent that is directly 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: unless any of the events listed in paragraphs (a) to (j) inclusive arises (directly or indirectly) as a result of any willful default, willful act, negligence or breach of the related contract.

“**Remedies Commencement Date**” is defined in “INTERCREDITOR ARRANGEMENTS – Intercreditor Agreement – Defaults; Exercise and Enforcement of Remedies – Remedies Consultation Period” in the front part of the Official Statement.

“**Remedies Initiation Notice**” is defined in “INTERCREDITOR ARRANGEMENTS – Intercreditor Agreement – Defaults; Exercise and Enforcement of Remedies – Election to Pursue Remedies Following Events of Default” in the front part of the Official Statement.

“**Remedies Instruction**” is defined in “INTERCREDITOR ARRANGEMENTS – Intercreditor Agreement – Defaults; Exercise and Enforcement of Remedies – Exercise of Remedies; Allocation of Collateral Proceeds” in the front part of the Official Statement.

“**Renewal Amount**” is defined in “OPERATIONS PROJECT – Handback - Inspections, Renewal Amount” in the front part of the Official Statement.

“**Renewal Works**” is defined in “OPERATION PROJECT – Handback - Inspections, Renewal Amount” in the front part of the Official Statement.

“**Reports**” is defined in “REPORTS” in the front part of the Official Statement.

“**Required Insurances**” means the insurances specified in the required insurances schedule to the Concession Agreement, Design-Build Contract and Operating Contract.

“**Required Secured Creditors**” means (a) for so long as any Senior Obligations remain outstanding, the Required Senior Creditors and (b) for so long as no Senior Obligations remain outstanding and all commitments to advance loans under any Funding Document with respect to Senior Obligations have been terminated and any TIFIA Phase 2 Obligations remain outstanding, the TIFIA Lender.

“**Required Senior Creditors**” is defined in “INTERCREDITOR ARRANGEMENTS – Intercreditor Agreement – Default; Exercise and Enforcement of Remedies - Required Senior Creditors” in the front part of the Official Statement.

“**Reserve Accounts**” means the Bonds Debt Service Reserve Account, the TIFIA Phase 1 Debt Service Reserve Account, the TIFIA Phase 2 Debt Service Reserve Account, the O&M Reserve Account, the Major Maintenance Reserve Account, the Handback Requirements Reserve Account, the Cash Reserve Account and the Ramp Up Reserve Account and “**Reserve Account**” means any one of them.

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

“**Residual Life Expert**” is defined in “OPERATIONS PROJECT – Handback - Inspections, Renewal Amount” in the front part of the Official Statement.

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

“**Responding Owners**” is defined in “INTERCREDITOR ARRANGEMENTS – Intercreditor Agreement - Amendment of Funding Documents – Procedures Relating to Owners’ Votes on Amendments” in the front part of the Official Statement.

“**Restricted Payment Conditions**” is defined in “FINANCING AGREEMENTS – MSA – Restricted Payment Conditions” in the front part of the Official Statement.

“**Restricted Payments**” is defined in “FINANCING AGREEMENTS – Bond Proceeds Loan Agreement – Covenants – Restricted Payments” in the front part of the Official Statement.

“**Retention Amount**” means five percent of the total payments made to the Design-Build Contractor.

“**Revenue Compensation Payments**” 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 Concession Agreement.

“**ROD**” means Record of Decision.

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

“**Rule**” means Rule 15c2-12 of the Securities and Exchange Commission.

“**S&P**” means Standard & Poor’s Ratings Services, a division of the McGraw-Hill Companies, Inc., and any successor thereto.

“**Scheduled Subordinated Debt Service Catch-up Amount**” means an amount equal to the greater of (i) \$0; and (ii) the lesser of: (A) the Excess Amount; and (B) the greater of: (1) an amount equal to the amounts on deposit in the Borrower Finco Subordinated Loan Debt Service Account or the Concessionaire Cash Interest Subordinated Loan Debt Service Account, as applicable, plus the amounts expected to be deposited into such accounts under the Subordinated Loan Agreements; and (2) 100% of the funds disbursed from the Project Proceeds Account pursuant to clauses (i) through (xiv) as described under “PROJECT ACCOUNTS AND FLOW OF FUNDS – Project Proceeds Account – Monthly Transfers from Project Proceeds Account”) less any amount repaid to the Subordinated Lender under either Subordinated Loan Agreement.

“**SEC**” means the Securities and Exchange Commission.

“**Secondary Subordinated Loan**” is defined in “FINANCING AGREEMENTS – Subordinated Loan Agreements – Secondary Subordinated Loan” in the front part of the Official Statement.

“**Secondary Subordinated Loan Agreement**” is defined in “FINANCING AGREEMENTS – Agreements – Secondary Subordinated Loan” in the front part of the Official Statement.

“**Secured Creditor**” means each of the Bond Trustee (on behalf of the Owners of the Bonds), the TIFIA Lender (as lender of the Phase 2 TIFIA Loan), the Subordinated Lender, the Subordinated Agent, the Issuer, the TIFIA Lender (as lender of the Phase 1 TIFIA Loan from and after the Phase 1 Assumption Date), any Additional Senior Creditor, any Person providing Subordinated Refinancing Debt, any Person providing Permitted Subordinated Debt and any Person providing Permitted Hedging Arrangements.

“**Secured Obligations**” is defined in “SECURITY AND SOURCES OF PAYMENT FOR 2014 BONDS – General – Subordinate Obligations” in the front part of the Official Statement.

“**Secured Party**” means the Security Trustee, the Issuer, the Bond Trustee (on behalf of the Owners of the Senior Bonds), the TIFIA Lender (as lender of the Phase 2 TIFIA Loan), the Subordinated Lender, the TIFIA Lender (as lender of the Phase 1 TIFIA Loan from and after the Phase 1 Assumption Date), any Additional Senior Creditor, any Person providing Permitted Subordinated Debt or Subordinated Refinancing Debt, or any Person providing Permitted Hedging Arrangements, if any, which in each case has acceded to the MSA pursuant to a joinder agreement, and “**Secured Parties**” means all of them.

“**Securities Depository**” means the Depository Trust Company and its successors and assigns, or any other depository selected as set forth in the Indenture, which agrees to follow the procedures required to be followed by such depository in connection with the 2014 Bonds.

“**Security Documents**” is defined in “SECURITY AND SOURCES OF PAYMENT FOR 2014 BONDS - Trust Estate for the 2014 Bonds” in the front part of the Official Statement.

“**Security Trustee**” means The Bank of New York Mellon Trust Company, N.A., as security trustee.

“**Segregated Collateral**” is defined in “INTERCREDITOR ARRANGEMENTS – Intercreditor Agreement – Segregated Collateral” in the front part of the Official Statement.

“**Segregated Bonds Accounts**” means the Bond Proceeds (Costs of Issuance) Subaccount, the Bond Proceeds (Project Costs) Subaccount and the Bonds Debt Service Reserve Account.

“**Segregated Subordinated Loan Accounts**” means the Concessionaire Cash Interest Subordinated Loan Proceeds Account, the Concessionaire Subordinated Loan Lock-up Account and the Concessionaire Cash Interest Subordinated Loan Debt Service Account.

“**Segregated TIFIA Phase 1 Accounts**” means the TIFIA Phase 1 Debt Service Reserve Account.

“**Segregated TIFIA Phase 2 Accounts**” means the TIFIA Phase 2 Loan Subaccount and the TIFIA Phase 2 Debt Service Reserve Account.

“**Semi-Annual Payment Date**” means each January 1 and July 1 or if such date is not a Business Day, then the Business Day succeeding such January 1 or July 1, commencing with the TIFIA Phase 1 Debt Service Payment Commencement Date and the TIFIA Phase 1 Debt Service Payment Commencement Date, as applicable.

“**Senior Bonds**” is defined in “SECURITY AND SOURCES OF PAYMENT FOR 2014 BONDS - Trust Estate for the 2014 Bonds” in the front part of the Official Statement.

“**Senior Creditor**” means each of (a) the Bond Trustee, (b) from and after the Phase 1 Assumption Date, the TIFIA Lender (as lender of the Phase 1 TIFIA Loan), (c) following the occurrence of a TIFIA Parity

Trigger Event, the TIFIA Lender (as lender of the Phase 2 TIFIA Loan), and (d) any Additional Senior Creditor.

“Senior Creditor Shared Collateral” means, at any time, Collateral in which the holders of two or more Classes of Senior Obligations (or their respective Designated Representatives) hold a valid and perfected security interest at such time. If more than two Classes of Senior Obligations are outstanding at any time and the holders of less than all Classes of Senior Obligations hold a valid and perfected security interest in any Collateral at such time, then such Collateral will constitute Shared Collateral for those Classes of Senior Obligations that hold a valid security interest in such Collateral at such time and will not constitute Shared Collateral for any Class which does not have a valid and perfected security interest in such Collateral at such time.

“Senior Debt Service” means, for any period, as of any date of calculation, an amount equal to the sum of all Debt Service in respect of Senior Obligations accruing and payable during such period as provided in the Base Case Financial Model. In determining the principal amount of Senior Obligations due in such period, payment will be assumed to be made in accordance with any amortization schedule established for such Senior Obligations.

“Senior Debt Service Coverage Ratio” or **“Senior DSCR”** means, as of each Calculation Date, the ratio of Net Cash Flow, for the Calculation Period ending on such Calculation Date, to Senior Debt Service, for the Calculation Period ending on such Calculation Date, provided that, during any future period, projected Net Cash Flow will be calculated using the most recently updated Base Case Financial Model. In calculating Senior Debt Service with respect to any Variable Rate Indebtedness (to the extent the incurrence thereof is permitted under the Funding Documents) for any future period, the Debt Service Calculation Assumption will apply.

“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 collectively the financial institution or institutions or Governmental Authority (or any agent or trustee acting on behalf of any of the foregoing) providing the Senior Obligations, initially the Issuer and the Bond Trustee.

“Senior Loan Agreement” means the Bond Proceeds Loan Agreement, the Indenture, any Phase 2 Supplemental Indenture, the Phase 1 TIFIA Loan Agreement (following the Phase 1 Assumption Date) and any other loan agreement or similar document entered into by Borrower Finco in connection with the incurrence of Additional Senior Obligations.

“Senior Loan Documents” means each Senior Loan Agreement, the Security Documents, any agreements and documents executed by Borrower Finco in connection with hedging arrangements entered into pursuant to or in connection with any Senior Loan Agreement and permitted pursuant to the Phase 2 TIFIA Loan Agreement, and all other agreements, instruments and documents executed and delivered pursuant or in connection with any of the foregoing.

“Senior Obligations” is defined in “SECURITY AND SOURCES OF PAYMENT FOR 2014 BONDS – General – Senior Obligations” in the front part of the Official Statement.

“Senior Refinancing Indebtedness” means Additional Senior Obligations (a) issued or incurred solely for the purpose of (i) refinancing, replacing or refunding Borrower Finco Senior Obligations, (ii) making a deposit to any debt service reserve fund, if necessary, and (iii) paying the costs of issuance of such Additional Senior Obligations, and (b) that meet the requirements set forth in the Bond Proceeds Loan Agreement.

“Series 2014 Debt Service Fund” means the fund of such designation as established pursuant to the Indenture.

“Series 2014 Loan Documents” means the Bond Proceeds Loan Agreement, the Series 2014 Note, the Finco 1 Bond Proceeds Loan Agreement, the Finco 2 Bond Proceeds Loan Agreement, the Concessionaire Bond Proceeds Loan Agreement, the Security Documents, the Tax Regulatory Agreement, the Continuing Disclosure Agreement and any and all other agreements, instruments, government approvals or other documents evidencing, securing, governing or otherwise executed in connection with and effecting in any material respects the Bond Proceeds Loan.

“Series 2014 Note” means the promissory note delivered by Borrower Finco pursuant to the provisions of the Bond Proceeds Loan Agreement.

“Services” is defined in “OPERATIONS PROJECT – Operations and Maintenance” in the front part of the Official Statement.

“Services Period” is defined in “OPERATIONS PROJECT – General” in the front part of the Official Statement.

“Shared Collateral” means Senior Creditor Shared Collateral and TIFIA Phase 2 Shared Collateral.

“Shareholder Subordinated Loans” means one or unsecured subordinated loans made to the Concessionaire, directly or indirectly, by the Sponsor, which satisfy the requirements of “Permitted Affiliate Subordinated Debt” for the purposes of the MSA and “Permitted Affiliate Debt” for the other Funding Documents.

“Single Purpose Entity” is defined in “PLAN OF FINANCE – Intercompany Loans” in the front part of the Official Statement.

“Sinking Fund Account” means the Project Account of Concessionaire created pursuant to and designated as such in the MSA.

“Sinking Fund Amount” is defined in “PROJECT ACCOUNTS AND FLOW OF FUNDS - Sinking Fund Account – Deposits into Sinking Fund Account” in the front part of the Official Statement.

“Sinking Fund Certificate” is defined in “PROJECT ACCOUNTS AND FLOW OF FUNDS - Sinking Fund Account – Deposits into Sinking Fund Account” in the front part of the Official Statement.

“Sinking Fund Transfer Date” is defined in “PROJECT ACCOUNTS AND FLOW OF FUNDS - Sinking Fund Account – Deposits into Sinking Fund Account” in the front part of the Official Statement.

“Site” is defined in “PHASE 2 CONSTRUCTION PROJECT - Site Conditions; Hazardous Substances; Differing Site Conditions” in the front part of the Official Statement.

“Snow and Ice Control Services” is defined in “OPERATIONS PROJECT – Operations and Maintenance – Snow and Ice Control Services” in the front part of the Official Statement.

“**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.

"**Specific Change in Law**" means any Change in Law which specifically refers to:

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

“**Sponsor**” means Plenary Group; provided that Plenary Group USA will be deemed to be the Sponsor (and Plenary Group will no longer be the Sponsor) if the following conditions have been satisfied (and Borrower Finco delivers certain certificates in respect thereof as required under the Funding Documents): (a) Plenary Group USA acquires three or more concessions in the United States (one of which is in the transportation sector and all of which have achieved financial close) which have a design, build, finance, operate (“**DBFO**”) structure or other similar structure commonly referred to as a PPP, DBFO, DBFM, DBFMO or otherwise involves a long-term equity investment; (b) the total amount of financed construction costs that have been expended by the relevant project company with respect to each such concession (“**Total Construction Costs**”) is at least \$100,000,000; and (c) Plenary Group USA has and maintains a direct or indirect economic and voting interest in each project company owning an interest in each such concession of at least (i) 100% for projects with Total Construction Costs of less than \$125,000,000, (ii) 75%, for projects with Total Construction Costs of at least \$125,000,000 but no greater than \$200,000,000, (iii) 50%, for projects with Total Construction Costs of greater than \$200,000,000 but no greater than \$500,000,000, (iv) 25%, for projects with Total Construction Costs of greater than \$500,000,000 but no greater than \$1,000,000,000, and (v) 10%, for projects with Total Construction Costs of greater than \$1,000,000,000.

“**Sponsor Base Case**” is defined in “REPORTS - Traffic and Revenue Study” in the front part of the Official Statement.

“**State**” means the State of Colorado.

“**State Highway Fund**” is defined in “PROJECT PARTICIPANTS – CDOT - Funding of CDOT’s Annual Budget” in the front part of the Official Statement.

“**Subaccounts**” means any subaccount established pursuant to the Indenture or any Supplemental Indenture.

“**Subdebt Equity Cure Amounts**” means any equity contributions made by the Equity Member, the Sponsor or any Affiliate thereof pursuant to the Subordinated Loan Agreement, provided that any such equity contributions in the form of subordinated loans will satisfy the requirements of Permitted Affiliate Subordinated Debt.

“**Subdebt Senior Creditor**” means each of (a) Bond Trustee, (b) from and after the Phase 1 Assumption Date, the TIFIA Lender (with respect to the Phase 1 TIFIA Loan), (c) TIFIA Lender (with respect to the Phase 2 TIFIA Loan) and (d) any Additional Senior Creditor.

“**Subdebt Senior Obligations**” is defined in “PLAN OF FINANCE – Subordinated Loan” in the front part of the Official Statement.

“**Subdebt Senior Funding Documents**” means (i) each of the Bond Proceeds Loan Agreement, Indenture, any Supplemental Indenture, Phase 1 TIFIA Loan Agreement (following the Phase 1 Assumption Date), Phase 2 TIFIA Loan Agreement and any other loan agreement or similar document entered into by Borrower Finco in connection with the incurrence of Indebtedness which constitutes “Additional Senior Obligations” for purposes of the foregoing agreements and which constitutes Permitted Indebtedness, (ii) the Security Documents, (iii) any agreements and documents executed by Borrower Finco in connection with hedging arrangements entered into pursuant to or in connection with any of agreements listed in clause (i) of this definition and permitted under the Subordinated Loan Agreement and (iv) any other agreements, instruments and documents executed and delivered pursuant or in connection with any of the foregoing.

“**Subordinate Obligations**” is defined in “SECURITY AND SOURCES OF PAYMENT FOR 2014 BONDS – General – Subordinate Obligations” in the front part of the Official Statement.

“**Subordinated Agent**” is defined in “PLAN OF FINANCE – Subordinated Loan” in the front part of the Official Statement.

“**Subordinated Creditors**” is defined in “INTERCREDITOR ARRANGEMENTS – Subordination Agreement – General” in the front part of the Official Statement.

“**Subordinated Debt Document**” means the Subordinated Loan Agreements and each other Funding Document evidencing, securing, governing or otherwise executed in connection with and effecting, creating, governing or securing in any material respects the Subordinated Obligations.

“**Subordinated Debt Service**” means, for any period, as of any date of calculation, an amount equal to the sum of all fees and interest and principal of the Subordinated Loans, any Subordinated Refinancing Debt and any Permitted Subordinated Debt accruing and payable during such period as provided in the Base Case Financial Model. In determining the principal amount of the Subordinated Loans, Subordinated Refinancing Debt or Permitted Subordinated Debt due in such period, payment will be assumed to be made in accordance with any amortization schedule established for the Subordinated Loans, Subordinated Refinancing Debt or Permitted Subordinated Debt, as the case may be. In calculating Subordinated Debt Service with respect to any Variable Rate Indebtedness (to the extent the incurrence thereof is permitted under the Funding Documents) for any future period, the Debt Service Calculation Assumption will apply.

“Subordinated Debt Service Payment Commencement Date” means the fifth anniversary of the Substantial Completion Date or, if such date does not fall on a Payment Date, then the Subordinated Debt Service Payment Commencement Date will be the first Payment Date most recently preceding the fifth anniversary of the Substantial Completion Date.

“Subordinated Debt Subaccount” means the Subaccount of the Project Proceeds Account created pursuant to and designated as such in the MSA.

“Subordinated Debt Termination Amount” means all amounts outstanding at the Termination Date, including interest and default interest accrued as of that date, from the Concessionaire to the lenders of Subordinated Loans and other debt which is subordinate to the 2014 Bonds and TIFIA Loans, less all reserves and credit balances held by or on behalf of the Concessionaire on the Termination Date over which the lenders of Subordinated Loans and other debt which is subordinate to the 2014 Bonds and TIFIA Loans have a lien (save to the extent that such reserves and credit balances are taken into account in the calculation of Base Senior Debt Termination Amount or the Phase 1 TIFIA Loan or the Phase 2 TIFIA Debt Termination Amount);

“Subordinated Lender” is defined in “PLAN OF FINANCE – General” in the front part of the Official Statement.

“Subordinated Loan” is defined in “PLAN OF FINANCE – General” in the front part of the Official Statement.

“Subordinated Loan Shared Collateral” means, at any time, Collateral in which the holders of one or more classes of the Subordination Agreement Senior Obligations and the holders of one or more classes of Subordinated Obligations hold a security interest at such time.

“Subordinated Loan Agreement” is defined in “PLAN OF FINANCE – Subordinated Loan” in the front part of the Official Statement.

“Subordinated Loan Agreements” is defined in “FINANCING AGREEMENTS – Subordinated Loan Agreements” in the front part of the Official Statement.

“Subordinated Loan DSCR” means at each Calculation Date, the ratio of: (a) Net Cash Flow for the immediately preceding 12 months then ended including the month which includes such Calculation Date; to (b) the aggregate of (i) Senior Debt Service plus (ii) fees, interest payments and scheduled payments on account of outstanding principal paid or payable under the Subordinated Loan Agreements, in each case calculated as at such Calculation Date for the immediately preceding 12 months then ended including the month which includes such Calculation Date.

“Subordinated Loan Letter of Credit” is defined in “FINANCING AGREEMENTS – Subordinated Loan Agreements – Supporting Letter of Credit” in the front part of the Official Statement.

“Subordinated Loan Restricted Payment Conditions” means the following conditions: (a) the Restricted Payment Conditions (as defined in the MSA) are satisfied; (b) the Subordinated Loan DSCR is greater than 1.05:1; (c) the Projected DSCR is greater than 1.05:1; and (d) the Excess Amount is equal to zero.

“Subordinated Loans” is defined in “FINANCING AGREEMENTS – Subordinated Loan Agreements” in the front part of the Official Statement.

“**Subordinated Loans Pledge Agreement**” is defined in “FINANCING AGREEMENTS – Subordinated Loan Agreements – Subordinated Lender's Pledge of the Subordinated Loan” in the front part of the Official Statement.

“**Subordinated Loans Pledge Agreement Secured Obligations**” is defined in “FINANCING AGREEMENTS – Subordinated Loan Agreements - Subordinated Lender's Pledge of the Subordinated Loan” in the front part of the Official Statement.

“**Subordinated Refinancing Debt**” means Indebtedness that is incurred to refinance or replace the Subordinated Loans or any then-outstanding Subordinated Refinancing Debt, or any then-outstanding Permitted Subordinated Debt, so long as (a) no Event of Default has occurred and is continuing, (b) the governing documents thereof has covenants and terms not materially more restrictive to Borrower Finco than the Indebtedness being refinanced or replaced, (c) such Subordinated Refinancing Debt is term Indebtedness (which will not permit reborrowings) and unless otherwise consented to by the TIFIA Lender, bears interest at a fixed rate and have interest payment dates and principal payment dates that coincide with the Payment Dates (regardless of whether the final maturity date of such Indebtedness is a date that is later than the Final Maturity Date), (d) the Borrower Group Members have entered into such Intercompany Loan Agreements (or amendments thereto) as are required to make available the proceeds of the Subordinated Refinancing Debt indirectly from Borrower Finco to Concessionaire, (e) the net proceeds of the Subordinated Refinancing Debt (in respect of any Subordinated Refinancing Debt that is tax exempt bonds, after costs of issuance not to exceed 2% of the principal amount of such Subordinated Refinancing Debt) do not exceed the principal amount of the Indebtedness being refinanced or replaced, (f) Subordinated Debt Service, after the incurrence of such Subordinated Refinancing Debt, in each year of the remaining term of the TIFIA Loans, is forecast to be no more than the Subordinated Debt Service forecast for such year in the most recently updated Base Case Financial Model, (g) the aggregate Total Debt Service Coverage Ratio is not less than 1.15:1.00, on a pro forma basis for each Calculation Period occurring prior to the Final Maturity Date of the TIFIA Loans and (h) each lender or holder of any such Subordinated Refinancing Debt (or an agent or trustee acting on its behalf) at the time of execution of any documentation with respect thereto becomes a party to and be bound by the MSA and the Subordination Agreement.

“**Subordinated Refinancing Debt Document**” means any loan agreement (including any Intercompany Loan Agreement) or promissory note entered into by any Borrower Group Member in connection with the incurrence by Borrower Finco of Subordinated Refinancing Debt and any other agreements, instruments or other documents evidencing, securing, governing or otherwise executed in connection with and effecting in any material respects any Subordinated Refinancing Debt.

“**Subordination Agreement**” is defined in “INTERCREDITOR ARRANGEMENTS – Subordination Agreement – General” in the front part of the Official Statement.

“**Subordination Agreement Subordinate Obligations**” means the obligations of Borrower Finco under the Subordinated Loan Agreement, the obligations of the Concessionaire under the Secondary Subordinated Loan Agreement and the obligations of Borrower Finco in connection with Permitted Subordinated Debt or Subordinated Refinancing Debt.

“**Substantial Completion**” means the achievement of the following: (a) Phase 2 Work Completion, as confirmed in the Notice of Phase 2 Work Completion (as defined in the Concession Agreement); and (b) the opening of the Project to tolled vehicular or passenger traffic.

“**Substantial Completion Date**” means the date upon which the Project has achieved Substantial Completion, as such date may be revised in accordance with the Phase 2 TIFIA Loan Agreement.

“**Suitable Substitute Concessionaire**” is defined in “SECURITY AND SOURCES OF PAYMENT FOR 2014 BONDS – HPTE Direct Agreement” in the front part of the Official Statement.

“**Supplemental Contribution Amount**” means an amount equal to the difference between the HPTE Capital Payment as calculated in accordance with the Concession Agreement, and the HPTE Capital Payment Maximum Amount calculated on the Effective Date.

“**Supplemental Indenture**” means any indenture supplementing or amending the Indenture that is adopted pursuant to the terms of the Indenture.

“**System Toll Enforcement Agreement**” is defined in “TOLLING ON THE MANAGED LANES - Toll Violation Enforcement Services” in the front part of the Official Statement.

“**TABOR**” means Section 20 of Article X of the State Constitution.

“**Tax Distribution Amount**” means, with respect to the Sponsor or an Affiliate thereof for any Fiscal Year, the lowest amount sufficient to enable the Sponsor or such Affiliate to fund its U.S. federal, state and local income tax liabilities attributable to its respective allocable share (including the allocable share of any subsidiary Affiliate that is a member of the Sponsor or Affiliate’s consolidated, combined or unitary group) of net taxable income of the Concessionaire allocable to the Sponsor or such Affiliate for such Fiscal Year, reduced by any taxable loss of the Concessionaire from such Fiscal Year or any prior Fiscal Year (taking into account the character of such loss) and not previously offset by allocations of taxable income, and taking into account the character of the applicable income.

“**Tax-Exempt Bond**” means any Bond of any Series of Senior Bonds designated as Tax-Exempt Bonds in the Supplemental Indenture or a separate trust indenture authorizing the issuance of the Series of Senior Bonds of which such Bond is a part.

“**Tax-Exempt Senior Bond**” means each 2014 Bond and any other Senior Bond designated as a Tax-Exempt Senior Bond in the Supplemental Indenture authorizing the issuance of such Senior Bond.

“**Tax Regulatory Agreement**” means, with respect to each Series of Tax-Exempt Bonds on which the Issuer intends the interest to be excluded from gross income for federal income tax purposes, (a) the certificate or other instrument that sets forth the Issuer’s, Borrower Finco’s and the Concessionaire’s expectations regarding the investment and use of proceeds of such Tax-Exempt Bonds and other matters relating to Bond Counsel’s opinion regarding the federal income tax treatment of interest on such Senior Bonds, including any instructions delivered by Bond Counsel in connection with such certificate, instrument or opinion; and (b) any amendment or modification of any such certificate, instrument or instructions that is accompanied by an opinion of Bond Counsel stating that the amendment or modification will not cause an Adverse Tax Event.

“**Technical Report**” is defined in “REPORTS” in the front part of the Official Statement.

“**Term**” is defined in “CONCESSION AGREEMENT - Concession and License; Term” in the front part of the Official Statement.

“**Termination Compensation**” means any compensation payable by HPTE to the Concessionaire upon the early termination of the Concession Agreement pursuant to the terms of the Concession Agreement.

“**Termination Compensation Subaccount**” means the Subaccount of the Project Proceeds Account created and designated as such in the MSA.

“**Termination Date**” is defined in “CONCESSION AGREEMENT - Concession and License; Term” in the front part of the Official Statement.

“**Termination Sum**” means any compensation payable by HPTE to the Concessionaire on an early termination of the Concession Agreement.

“**TIFIA Act**” is defined in “PROJECT PARTICIPANTS – U.S. Department of Transportation and TIFIA” in the front part of the Official Statement.

“**TIFIA Debt Service Payment Commencement Date**” means, (i) at any time prior to the termination of the Phase 2 TIFIA Loan Agreement, the TIFIA Phase 2 Debt Service Payment Commencement Date, or (ii) after the termination of the Phase 2 TIFIA Loan Agreement, from and after the Phase 1 Assumption Date but prior to the termination of the Phase 1 TIFIA Loan Agreement, the TIFIA Phase 1 Debt Service Payment Commencement Date.

“**TIFIA Guaranteed Obligations**” is defined in “FINANCING AGREEMENTS – TIFIA Loan Agreements - Guaranty” in the front part of the Official Statement.

“**TIFIA Guarantors**” is defined in “FINANCING AGREEMENTS – TIFIA Loan Agreements - Guaranty” in the front part of the Official Statement.

“**TIFIA Lender**” means the U.S. Department of Transportation, acting by and through the Federal Highway Administrator.

“**TIFIA Loan Agreements**” is defined in “PLAN OF FINANCE – Phase 2 TIFIA Loan” in the front part of the Official Statement.

“**TIFIA Loan Documents**” means the TIFIA Loan Agreements, the Intercompany Loan Agreements relating to the TIFIA Loan Agreements, the Security Documents and any other agreements, instruments or other documents evidencing, securing, governing or otherwise executed in connection with and effecting in any material respects the TIFIA Loans.

“**TIFIA Loans**” is defined in “PLAN OF FINANCE - General” in the front part of the Official Statement.

“**TIFIA Parity Trigger Event**” is defined in “FINANCING AGREEMENTS – TIFIA Loan Agreements – TIFIA Parity Trigger Event” in the front part of the Official Statement.

“**TIFIA Phase 1 Debt Service Payment Commencement Date**” means with respect to the Phase 1 TIFIA Loan, the second anniversary of the Substantial Completion Date or, if such date does not fall on a Semi-Annual Payment Date, then the TIFIA Phase 1 Debt Service Payment Commencement Date will be the first Semi-Annual Payment Date to occur prior to the second anniversary of the Substantial Completion Date.

“**TIFIA Phase 1 Debt Service Reserve Account**” means the Project Account of Concessionaire created and designated as such in the MSA.

“**TIFIA Phase 1 Debt Service Reserve Requirement**” is defined in “PROJECT ACCOUNTS AND FLOW OF FUNDS - Debt Service Reserve Accounts – TIFIA Phase 1 Debt Service Reserve Accounts – Deposits into TIFIA Phase 1 Debt Service Reserve Account” in the front part of the Official Statement.

“**TIFIA Phase 1 Prepayment Account**” means the Project Account created by Borrower Finco pursuant to and designated as such in the MSA.

“TIFIA Phase 1 Revenue Share Account” means the Project Account created by Borrower Finco pursuant to and designated as such in the MSA.

“TIFIA Phase 1 Revenue Share Amount” means an amount equal (A) to 50% of the amount by which the aggregate Net Toll Revenue that are deposited in the Project Proceeds Account during the immediately preceding calendar year exceeds the projected Net Toll Revenue for such period as set forth in the TIFIA Loan Agreements that will be adjusted by the Concessionaire with the concurrence of the TIFIA Lender based on the actual Substantial Completion Date less (B) the portion of such amount that has been applied to the prepayment of the Phase 2 TIFIA Loan pursuant to the terms of the Phase 2 TIFIA Loan Agreement and the MSA.

“TIFIA Phase 2 Capitalized Interest Prepayment Amount” means the lesser of: (a) 12.5% of the sum of (i) the amount that remains on deposit in the Project Proceeds Account (after transfers and distributions required to be made pursuant to clauses (i) through (xxii) as described under “PROJECT ACCOUNTS AND FLOW OF FUNDS – Project Proceeds Account – Monthly Transfers from Project Proceeds Account”) on the first Distribution Date occurring on or after the TIFIA Phase 2 Debt Service Payment Commencement Date on which the TIFIA Restricted Payment Conditions are satisfied (determined, if such Distribution Date is not a Calculation Date, as of the Calculation Date immediately preceding such Distribution Date), and (ii) the amount on deposit in the Equity Lock-up Account on the TIFIA Phase 2 Debt Service Payment Commencement Date; and (b) 12.5% of the interest on the Phase 2 TIFIA Loan that has been capitalized from the Substantial Completion Date to the TIFIA Phase 2 Debt Service Payment Commencement Date.

“TIFIA Phase 2 Debt Service” means, for any period, the sum (without duplication) of the TIFIA Phase 2 Mandatory Debt Service and TIFIA Phase 2 Scheduled Debt Service for such period (in each case whether or not any of such amounts were actually paid for such period and whether or not, in the case of TIFIA Phase 2 Scheduled Debt Service, such amount was actually required to be paid for such period under the provisions of the Phase 2 TIFIA Loan Agreement).

“TIFIA Phase 2 Debt Service Payment Commencement Date” means the fifth anniversary of the Phase 1 Substantial Completion Date or, if such date does not fall on a Semi-Annual Payment Date, then the TIFIA Phase 2 Debt Service Payment Commencement Date will be the first Semi-Annual Payment Date most recently preceding the fifth anniversary of the Substantial Completion Date.

“TIFIA Phase 2 Debt Service Reserve Account” means the Project Account of Concessionaire created and designated as such in the MSA.

“TIFIA Phase 2 Loan Documents” means the Phase 2 TIFIA Loan Agreement, the Promissory Note delivered pursuant to the Phase 2 TIFIA Loan Agreement and the Security Documents.

“TIFIA Phase 2 Loan Subaccount” means the Subaccount of the Project Proceeds Account created pursuant to and designated as such in the MSA.

“TIFIA Phase 2 Mandatory Debt Service” means with respect to any Payment Date occurring after the TIFIA Phase 2 Debt Service Payment Commencement Date, the portion of interest and/or principal unconditionally required to be paid on the Phase 2 TIFIA Loan on such Payment Date pursuant to the Phase 2 TIFIA Loan Agreement.

“TIFIA Phase 2 Obligations” means the Borrower Finco TIFIA Phase 2 Obligations and the Concessionaire TIFIA Phase 2 Guarantee Obligations.

“**TIFIA Phase 2 Prepayment Account**” means the TIFIA Phase 2 Prepayment Account established and created in the name of the Security Trustee pursuant to the MSA.

“**TIFIA Phase 2 Revenue Share Account**” means the Borrower Finco Account created pursuant to and designated as such in the MSA.

“**TIFIA Phase 2 Revenue Share Amount**” means an amount equal to 50% of the amount by which the aggregate Net Toll Revenue that are deposited in the Project Proceeds Account during the immediately preceding calendar year exceeds the projected Net Toll Revenue for such period as set forth in the traffic projections schedule that will be adjusted by the Concessionaire with the concurrence of the TIFIA Lender based on the actual Substantial Completion Date.

“**TIFIA Phase 2 Scheduled Debt Service**” means, with respect to any Payment Date occurring on or after the TIFIA Phase 2 Debt Service Payment Commencement Date, the principal portion of the Outstanding TIFIA Phase 2 Loan Balance scheduled to be paid on such Payment Date as shown on the Loan Amortization Schedule and/or the portion of interest thereon scheduled to be paid on the Outstanding TIFIA Phase 2 Loan Balance on such Payment Date in accordance with the provisions of the Phase 2 TIFIA Loan Agreement, but, in each case, required to be paid on such Payment Date.

“**TIFIA Phase 2 Shared Collateral**” means, at any time, Collateral in which the TIFIA Lender and the holders of one or more Classes of Senior Obligations (or their respective Designated Representatives) hold a valid and perfected security interest at such time.

“**TIFIA Phase 2 Sinking Fund Account**” means the TIFIA Phase 2 Sinking Fund Account established and created in the name of the Security Trustee pursuant to the MSA.

“**TIFIA Phase 2 Subaccount**” means the TIFIA Phase 2 Subaccount within the Project Proceeds Account established and created in the name of the Concessionaire pursuant to the MSA.

“**TIFIA Prepayment Accounts**” is defined in “PROJECT ACCOUNTS AND FLOW OF FUNDS - Reserve Accounts - TIFIA Prepayment Accounts and Revenue Share Accounts” in the front part of the Official Statement.

“**TIFIA Revenue Share Accounts**” is defined in “PROJECT ACCOUNTS AND FLOW OF FUNDS - Reserve Accounts - TIFIA Prepayment Accounts and Revenue Share Accounts” in the front part of the Official Statement.

“**TIFIA Revenue Share Amount**” means the TIFIA Phase 1 Revenue Share Amount and the TIFIA Phase 2 Revenue Share Amount.

“**TIGER**” means the Transportation Investment Generating Economic Recovery.

“**Toll Revenue**” means toll revenues, user fees, fines, rents or other similar charges received (or expected to be received) by the Concessionaire for the use of the Managed Lanes, as well as fines and penalties and interest thereon collected as a result of a failure to pay any such amounts; provided that “Toll Revenues” will not include any cash advances representing deposits against future toll payments from users or potential users 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**” is defined in “TOLLING ON THE MANAGED LANES – Tolling on the I-25 Managed Lanes” in the front part of the Official Statement.

“**Tolling Services Agreements**” is defined in “TOLLING ON THE MANAGED LANES – Electronic Toll Collection System – Tolling Services” in the front part of the Official Statement.

“**Tolling Services Provider**” means E-470 Public Highway Authority, a non-profit political subdivision of the State of Colorado, or any replacement thereof acceptable to the Concessionaire and approved by the TIFIA Lender.

“**Tolls**” is defined in “TOLLING ON THE MANAGED LANES - General” in the front part of the Official Statement.

“**Total Debt Service Coverage Ratio**” means, as of each Calculation Date, the ratio of (a) Net Cash Flow to (b) the sum of (i) Senior Debt Service and (ii) TIFIA Phase 2 Debt Service for the Calculation Period ending on such Calculation Date; provided that for purposes of such calculation (i) during the Capitalized Interest Period, the TIFIA Phase 2 Debt Service will be deemed to be zero, (ii) during the TIFIA Phase 1 Capitalized Interest Period, the TIFIA Phase 1 Debt Service will be deemed to be zero, and (iii) during any future period, (A) projected Net Cash Flow will be calculated using the most recently updated Base Case Financial Model, and (B) the Debt Service Calculation Assumption will apply to the calculation of any Variable Rate Indebtedness.

“**Trademark License Agreement**” means the Trademark License Agreement dated on or prior to the Closing Date, among the E-470 Authority, HPTE and the Concessionaire.

“**Transfield**” means Transfield Services Limited, an Australian publicly listed company.

“**Traffic and Revenue Study**” is defined in “REPORTS” in the front part of the Official Statement.

“**Traffic Consultant**” means Buro Happold or such other firm of traffic consultants as may be approved by the TIFIA Lender and the Required Senior Creditors.

“**Transportation Commission**” means the Transportation Commission which under Colorado law is responsible for formulating general policy with respect to State public highways and other transportation systems, and which promulgates and adopts all CDOT budgets and all State transportation programs.

“**Trust Estate**” is defined in “SECURITY AND SOURCES OF PAYMENT FOR 2014 BONDS – Trust Estate for the 2014 Bonds” in the front part of the Official Statement.

“**Uncontrollable Force**” means any cause beyond the control of the Concessionaire, including but not limited to: (a) a tornado, flood or similar occurrence, landslide, earthquake, fire or other casualty, strike or labor disturbance, freight embargo, act of a public enemy, explosion, war, blockade, terrorist act, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, sabotage or act of God; provided that the Concessionaire will not be required to settle any strike or labor disturbance in which it may be involved; or (b) the order or judgment of any federal, state or local court, administrative agency or governmental officer or body, if it is not also the result of willful or negligent action or a lack of reasonable diligence of the Concessionaire and the Concessionaire does not control the administrative agency or governmental officer or body; provided, further, that the diligent contest in good faith of any such order or judgment will not constitute or be construed as a willful or negligent action or a lack of reasonable diligence of the Concessionaire.

“**Underwriter**” means Goldman, Sachs & Co.

“**Updated Rating**” is defined in “PHASE 1 PROJECT - Assumption of Phase 1 TIFIA Loan” in the front part of the Official Statement.

“**U.S. 36**” means U.S. Route 36.

“**U.S. 36 Concession Project IGA**” is defined in “I-25 MANAGED LANES - General” in the front part of the Official Statement.

“**U.S. 36 Corridor**” is defined in “INTRODUCTION” in the front part of the Official Statement.

“**U.S. 36 GP Lanes**” or “**U.S. 36 General Purpose Lanes**” is defined in “INTRODUCTION” in the front part of the Official Statement.

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

“**U.S. 36 Project**” means, collectively, the Phase 1 Project, the Phase 2 Project and the I-25 Project.

“**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 will be considered part of such utility. Without limitation, any service line connecting directly to a utility will 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 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 Relocation Agreement**” means the agreement(s) between CDOT, HPTE, and Utility owners for the Phase 2 Work that is required pursuant to the Contract.

“**Variable Rate Indebtedness**” means any Indebtedness the interest rate on which is not fixed at the time of incurrence of such indebtedness, and has not at some subsequent date been fixed at a single numerical rate for the entire term of the Indebtedness.

“**Variable Rate Indebtedness Interest Rate Assumption**” means (a) with respect to (i) Variable Rate Indebtedness the interest on which will be excludable from gross income for federal income tax purposes or (ii) Variable Rate Indebtedness that will secure the payment of interest on Tax-Exempt Senior Bonds, the interest rate will be assumed to be the sum of (i) the rate quoted in The Bond Buyer 25 Revenue Bond Index, or such successor or replacement index, for the last week of the month preceding the date of calculation as published by *The Bond Buyer*, or if that index is no longer published, another similar index selected by a Financial Consultant to be a reasonable index for tax-exempt obligations, plus (ii) a spread, if any, determined by a Financial Consultant to be a reasonable spread above The Bond Buyer 25 Revenue Bond Index (or such successor or replacement index of similar index selected by a Financial Consultant) for tax-exempt obligations of a corresponding maturity date and rating as the Variable Rate Indebtedness to be incurred, with no credit enhancement, and (b) with respect to (i) Variable Rate Indebtedness the interest on which will not be excludable from gross income for federal income tax purposes or (ii) Variable Rate Indebtedness that will secure the payment of interest on Senior Bonds that are not issued as Tax-Exempt Senior Bonds, the interest rate will be assumed to be a rate determined by a Financial Consultant to be a reasonable market rate for comparable taxable fixed interest rate obligations of a corresponding maturity date and rating as the Variable Rate Indebtedness to be incurred, with no credit enhancement.

“Weighted Average Interest Cost” means for each Calculation Date prior to the scheduled termination of the Concession Agreement, a rate calculated as follows: the sum of (a) the applicable true interest costs for the Borrower Finco Senior Obligations multiplied by the ratio of (i) the current Borrower Finco Senior Obligations principal amount then outstanding to (ii) the aggregate principal amount of each of the Borrower Finco Senior Obligations and the Phase 2 TIFIA Loan as of the Calculation Date; and (b) the interest rate on the Phase 2 TIFIA Loan multiplied by the ratio of (i) the current principal amount of the Phase 2 TIFIA Loan outstanding to (ii) the aggregate principal amount of each of the Borrower Finco Senior Obligations and the Phase 2 TIFIA Loan as of the Calculation Date.

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APPENDIX B

SUMMARY OF CERTAIN PROVISIONS OF THE CONCESSION AGREEMENT

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. Capitalized terms used but not defined in this Appendix B shall have the meaning assigned to such term in the List of Defined Terms attached at the end of this Appendix B or in Appendix A; provided that if there are any conflicts in the meaning of a capitalized term used in this Appendix B, the definition in the List of Defined Terms will control.

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) 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
 - (xiv) 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 form 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) The Assignment Effective Date (as defined in the Phase 1 TIFIA Loan AAR Agreement) shall occur concurrently with the Phase 1 Services Commencement Date (as to which, see paragraph 2.6 below).
- (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.

2.6 Process leading to the Phase 1 Services Commencement Date and consequences of delays to occurrence of the Phase 1 Assumption, or the failure of Phase 1 Assumption to occur.

- (a) This paragraph 2.6 summarizes those provisions of the Concession Agreement which set forth:
- (i) a process for cooperation between HPTE and the Concessionaire in the fulfillment of the conditions precedent for Phase 1 Assumption;
 - (ii) a process to be followed if the Phase 1 Services Commencement Date is otherwise ready to occur but Phase 1 Assumption cannot occur because of non-fulfillment of the conditions precedent for Phase 1 Assumption; and
 - (iii) rights for HPTE to terminate the Concession Agreement if the conditions precedent for Phase 1 Assumption have not occurred and a long-term alternative plan for the operation of the Phase 1 Project have not been agreed, and the amount of compensation on termination payable if that right is exercised (which amount varies according to what has led to the exercise of the termination right).
- (b) For the purpose of the Concession Agreement machinery the conditions precedent to Phase 1 Assumption for this purpose are divided into three categories: "Concessionaire Risk CPs", "HPTE Risk CPs" and the remainder which are uncategorized.

The conditions precedent that the Phase 1 TIFIA Loan has been fully advanced to HPTE by the TIFIA Lender, that certain representations and warranties under the agreement which provides for the transfer of the Phase 1 TIFIA Loan to the Concessionaire are true in all material respects and that the required debt service reserve account be funded if a failure to fund has arisen out of a failure by HPTE to direct the Master Trustee to pay the existing debt service reserve to the Concessionaire upon defeasance are the HPTE Risk CPs.

The Concessionaire Risk CPs are that

(i) all Project Accounts required to be established under the MSA on or prior to the Phase 1 Assumption Date have been established; (ii) the TIFIA Phase 1 Debt Service Reserve Account will have been funded to the requisite levels as required under the Phase 1 TIFIA Loan Agreement; (iii) the Master Trustee has caused certain amounts to be released from existing reserves under the Existing Master Indenture (unless HPTE has not directed the Master Trustee to pay those funds to the Concessionaire so that it can fund the TIFIA Phase 1 Debt Service Reserve Account, in which case that is an HPTE Risk CP); (iv) each of the Borrower Group Members have delivered the Phase 1 TIFIA Loan Agreement and promissory notes to the TIFIA Lender relating to the Phase 1 TIFIA Loan; (v) the Concessionaire, HPTE and a tolling services provider (currently, the E-470 Authority) have entered into the Project Tolling Services Agreement, a direct agreement in respect of the Project Tolling Services Agreement and, if applicable, a trademark license agreement (vi) each Borrower Group Member will have delivered to the TIFIA Lender and the Security Trustee a reaffirmation of its grant of security for the benefit of the Secured Creditors; and (vii) certain other documents, certificates, opinions and warranties are delivered.

The condition precedent that the TIFIA Lender has received, within 30 days prior to the Phase 1 Assumption Date, evidence of the assignment of a rating (“Updated Rating”) of the Phase 1 TIFIA Loan, the Senior Bonds and the Phase 2 TIFIA Loan, on a combined basis, after giving effect to the assumption of the Phase 1 TIFIA Loan by Borrower Finco, that is either (A) an Investment Grade Rating, or (B) is no lower than the annual rating last delivered by Borrower Finco pursuant to the Phase 2 TIFIA Loan Agreement is referred to as “the Updated Rating CP”.

The condition precedent that there should be no Material Adverse Effect, or any event or condition that could reasonably be expected to result in a Material Adverse Effect, will have occurred since the date of the most recent annual rating, (which requirement will be deemed satisfied if an Updated Rating is delivered to the TIFIA Lender within ten Business Days prior to the Phase 1 Assumption Date) is referred to as the “Material Adverse Effect CP”.

- (c) The Concessionaire is required to use reasonable endeavors to satisfy all of the Concessionaire Risk CPs (apart from those relating to the payment of monies by the Master Trustee, relating to obtaining a certificate from the Master Trustee and that the representations and warranties in the agreement which effects the transfer of the Phase 1 Loan to the Concessionaire are true) before acceptance by

HPTE of the Phase 1 DB Contract and the Phase 1 ETCS under the relevant contracts. During the period leading those acceptances HPTE and the Concessionaire must regularly consult about the timing for obtaining the annual rating required pursuant to the Phase 2 TIFIA Loan Agreement. Once those acceptances have occurred and HPTE is satisfied that all of the other Conditions Precedent to the Phase 1 Assumption Date have been satisfied or waived (apart from the condition that Phase 1 Assumption must occur concurrently) then HPTE must give an irrevocable notice to that effect. On receipt of that notice, if all of the Concessionaire Risk CPs, apart from those relating to the payment of monies by the Master Trustee and obtaining a certificate from the Master Trustee have been satisfied or waived then the Concessionaire will apply for the rating with which to satisfy the Updated Rating CP.

- (d) If HPTE has given notice that the acceptances of the Phase 1 DB Contract and the Phase 1 ETCS and other conditions precedent to the Phase 1 Services Commencement Date have been satisfied or waived but Phase 1 Assumption does not occur within 10 Business Days then if the unsatisfied condition is one of the HPTE Risk CPs the Concessionaire may give notice to HPTE, and in all other cases HPTE may give notice to the Concessionaire. The notice requires either that outstanding conditions to Phase 1 Assumption are to be satisfied within 30 Business Days from the first of HPTE's notices or that a plan to be delivered within that period to satisfy the outstanding CPs and to operate the Phase 1 Managed Lanes in the meantime.
- (e) If the plan cannot be implemented within the 30 Business Day period then HPTE may commence interim operations of the Phase 1 Managed Lanes. The revenues generated by the Phase 1 Managed Lanes will be dealt with in accordance with the Existing Master Indenture. Any revenues not required to be retained in accordance with the Existing Master Indenture will be held in a separate account until the plan is agreed HPTE may have access to these revenues to fund operation and maintenance of the Phase 1 Managed Lanes if necessary.
- (f) If, following HPTE's notice that the acceptances of the Phase 1 DB Contract and the Phase 1 ETCS have occurred and other conditions precedent to the Phase 1 Services Commencement Date have been satisfied or waived:
 - (i) a plan or interim plan is not put forward within 60 Business Days after HPTE's notice;
 - (ii) the plan or interim plan is put forward within 60 Business Days after HPTE's notice but:
 - (1) the plan or interim plan cannot be agreed; or
 - (2) the Assignment Effective Date does not occur before the Full Services Commencement Longstop Date; or
 - (iii) if other material conditions which may additionally be provided by an agreed plan are not met at all or by any deadline in the plan;

then HPTE may terminate the Concession Agreement by giving notice to the Concessionaire, and compensation on termination shall be calculated and paid as set out in the remainder of this paragraph 2.6 .

- (g) If HPTE terminates the Concession Agreement because the reason preventing Phase 1 Assumption from occurring is non-satisfaction of one of the HPTE Risk CPs then compensation is to be paid as if the termination had arisen out of an HPTE Default.
- (h) In the case of all of the Concessionaire Risk CPs apart from the condition concerning the Tolling Services Agreement and subject to paragraph (h1) below the amount of the termination compensation payable shall be the Adjusted Estimated Fair Value of the Contract capped at the sum of the Base Senior Debt Termination Amount and the Phase 2 TIFIA Debt Termination Amount, unless the Concessionaire establishes (as between the Concessionaire and HPTE) that
 - (i) the Concessionaire the relevant Concessionaire Risk CPs have been satisfied but the TIFIA Lender refused to accept that the relevant Concessionaire Risk CPs have been satisfied, or
 - (ii) the TIFIA Lender had imposed additional conditions or requirements not contemplated by the Phase 1 TIFIA Loan Agreement

in which case the compensation payment shall be the amount which would have been paid on Force Majeure termination.

- (h1) In the case of the Concessionaire Risk CP which is a certificate confirming that certain representations remain true, if that certificate cannot be given because of litigation which has been threatened or is pending then the amount of the termination compensation payable shall be as follows:
 - (i) if the litigation principally relates to acts or omissions or alleged acts or omissions of the Concessionaire and at the date of termination the litigation has been successful, or is unlikely to fail, then the amount of the termination compensation shall be the Adjusted Estimated Fair Value of the Contract capped at the sum of the Base Senior Debt Termination Amount and the Phase 2 TIFIA Debt Termination Amount;
 - (ii) if the litigation principally relates to acts or omissions or alleged acts or omissions of CDOT or HPTE and at the date of termination the litigation has been successful, or is unlikely to fail, then the amount of the termination compensation shall be the amount which would have been paid on Force Majeure termination; and
 - (iii) in all other cases the compensation payment shall be the amount which would have been paid on Force Majeure termination.
- (i) In the case of a termination arising out of a failure to satisfy the condition precedent concerning the Tolling Services Agreement the amount of the

compensation on termination shall be the Adjusted Estimated Fair Value of the Contract unless

- (i) the agreement was substantially consistent with the Tolling Services Agreement and, if applicable, the trademark license, entered into on or about the date of Financial Close and
- (ii) the drafts were provided to the TIFIA Lender at least 180 days before the then expected date for acceptance under the Phase 1 DB Contract

and those documents were not accepted as satisfying the condition precedent. In that case the compensation payment shall be the amount which would have been paid on Force Majeure termination.

- (j) Subject to the following sentence, if a failure to satisfy the Updated Rating CP and/or the Material Adverse Effect CP leads to termination then the quantum of the termination payment shall be the Adjusted Estimated Fair Value of the Contract. If the Concessionaire has obtained an Existing Rating within four (4) weeks prior to the expected date for acceptance of the Phase 1 DB Contract and the Phase 1 ETCS (as set out in notices from HPTE) but subsequent notices from HPTE under the Concession Agreement indicate a later expected date for acceptance of the Phase 1 DB Contract and the Phase 1 ETCS, then the compensation on termination for a failure to satisfy these conditions which leads to termination of this Contract shall be the amount which would have been paid on Force Majeure Termination.
- (k) If the termination compensation is to be on the basis of the Adjusted Estimated Fair Value of the Contract then,
 - (i) in addition to the provisions governing the assessment of that sum set out below (see paragraph 21.4(d) of this summary) it shall be assumed that Phase 1 Assumption took place when the other conditions precedent to the Phase 1 Services Commencement Date took place and that the contract is to be built out by HPTE using its direct agreement rights under the Construction Sub-Contract unless there have been defaults under the Construction Sub-Contractor it has already been terminated
 - (ii) because the Adjusted Estimated Fair Value of the Contract includes the costs and revenues of the Phase 1 Managed Lanes, the outstanding balance of the Phase 1 TIFIA Loan is deducted from that value before any of it is used to pay compensation on termination
 - (iii) if any amount is to be paid in respect of equity then that is paid from free cashflows left after restructured financing, or financing to raise funds to pay the elements of the compensation attributable to debt have first been paid.
- (l) If there is a termination then HPTE is to use its reasonable endeavors to draw down the proceeds of the PABs and the Phase 2 TIFIA Loan. If that is not possible, the elements of the compensation attributable to PABs and the Phase 2 TIFIA Loan must be paid within 270 days of the termination.

- (m) If at the time of the termination there is an Event of Default under the Funding Agreements for any reason apart from the failure to bring about Phase 1 Assumption then the compensation on termination payable if there is a termination under these arrangements is as if the termination had been for Concessionaire Default.
- (n) These provisions are without prejudice to the other provisions of the Concession Agreement which may lead to termination.

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 and to pay or direct the Master Trustee to pay the amount of the debt service reserve account under the Master Indenture to the Concessionaire when the Master Indenture is defeased following assumption of the Phase 1 TIFIA Loan by Borrower Finco.

4. Financial Close Adjustment

- (a) The deadline for achieving financial close and for the Commencement Date occurring is February 28, 2014, 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 (including that HPTE will pay or direct the Master Trustee to pay the amount in the debt service reserve account under the Master Indenture to the Security Trustee under the MSA when the Master Indenture is discharged) and the distribution by the Concessionaire of the Supplemental Contribution Amount and the Phase 2 Completion Success Fee (each as defined in the MSA).
- (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 also adjusted to treat the aggregate amount of equity and subordinated debt as funded by \$15,000,000 of subordinated debt and the balance to be treated as equity. Other amendments are made to remove any difference between that model and the model submitted with the Concessionaire's Proposal 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 the HPTE Capital Payment shall be \$49,650,000, but shall be no more than that amount.
- (f) The version of the financial model referred to in paragraph 3.2(b) is then adjusted by including the final amount of the HPTE Capital Payment, and becomes the Base Case Financial Model.

5. Phase 1 Work

- 5.1 The Phase 1 Construction Work is being undertaken pursuant to a separate agreement: the Phase 1 DB Contract.
- 5.2 The Phase 1 ETCS is being installed pursuant to the Phase 1 ETCS Installation Contract.
- 5.3 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.
- 5.4 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.

- 5.5 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.
- 5.6 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.
- 5.7 If the Concessionaire encounters any latent defect in the Phase 1 Work then that is treated as a Compensation Event.
- 5.8 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.
6. **Environmental Requirements**
- 6.1 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.

- 6.2 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.
- 6.3 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.

7. **Phase 2 Work**

7.1 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.

7.2 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)

7.3 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.

7.4 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.

7.5 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.

7.6 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.

7.7 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.

7.8 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.

7.9 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.

7.10 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.

8. The Services

8.1 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.

8.2 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.

8.3 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.

8.4 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.

8.5 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.

8.6 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.

8.7 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.

9. **Snow and Ice Control Services**

9.1 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.

9.2 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.

9.3 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 serious risk exists to the health or safety of persons or property or to the environment.

10. Other specific provisions in relation to maintenance

10.1 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.

10.2 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).

10.3 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.

11. Monitoring of Performance of Services; Noncompliance Points

- 11.1 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.
- 11.2 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.
- 11.3 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.
- 11.4 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.
- 11.5 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.

- 11.6 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.
- 11.7 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 |
|---------|----------|-----------|------------|--|-----|-----|--|-----|-----|---------------------------------------|
| | Period I | Period II | Period III | Cumulative Unexpired Noncompliance Points (Cured or Uncured) over 365 Day Period | | | Cumulative Unexpired Noncompliance Points (Cured or Uncured) over 1,095 Day Period | | | |
| 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 |

12. Tolling

- 12.1 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.
- 12.2 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.
- 12.3 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.

12.4 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.

12.5 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.

12.6 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.

12.7 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.

12.8 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).

12.9 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 |

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

12.11 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.

12.12 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.

12.13 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.

12.14 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.

13. **Indemnities**

13.1 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.

13.2 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.

14. Insurance Requirements

14.1 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, to the extent such policy remains written by Zurich Australia Limited.

14.2 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.

14.3 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.

14.4 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.

14.5 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.

14.6 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.

14.7 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.

14.8 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.

15. **Uninsurability and Unavailable Terms and Conditions**

15.1 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.

15.2 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.

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

16.1 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.

16.2 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.

16.3 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.

16.4 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.

16.5 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. Until the Phase 1 Services Commencement Date, pending or threatened litigation substantially similar to the litigation described in a disclosure statement made by HPTE dated on or about the

date of Financial Close in connection with the Funding Agreements shall be deemed to be a Force Majeure Event. An event is not a Force Majeure Event if such event is otherwise specifically dealt with in 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.

16.6 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.

17. Change Procedures

17.1 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

17.2 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.

17.3 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 HPTE 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)).

17.4 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

17.5 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).

17.6 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

- 17.7 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.

- 17.8 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

- 17.9 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.

18. Base Case Financial Model and Revenue Compensation Payments

- 18.1 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.

- 18.2 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.
- 18.3 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.
- 18.4 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.

19. **Cash Flow Sharing**

- 19.1 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.

20. **Handback**

- 20.1 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.
- 20.2 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").

20.3 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.

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

21.1 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.

21.2 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.

21.3 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.

21.4 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, 80% of the part of the Base Senior Debt Termination Amount attributable to the TIFIA Lender in respect of the Phase 1 TIFIA Loan (without prejudice to an arrangement under the AAR Agreement whereby the balance of the Phase 1 TIFIA Loan will be repaid over time).

- (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).

21.5 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.

21.6 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.

21.7 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.

21.8 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.

22. **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.

23. **Dispute Resolution**

23.1 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.

23.2 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.

23.3 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:

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

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

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

(h) Any Necessary Consents.

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

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

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

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

(k) Change in Revenue;

provided that,

(A) Where the Change in Costs is that of the Construction Sub-Contractor, then only the following categories of Change in Costs shall be taken into account and other costs of the Construction Sub-Contractor shall not be included in the calculation of a Change in Costs:

- (i) Actual wages and benefits, including FICA, paid for additional labor not otherwise included in (v) below;
- (ii) Costs for additional bond, insurance and tax;
- (iii) Increased costs for materials;
- (iv) Equipment costs calculated in accordance with 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:

- (i) Profit in excess of that provided in A above;
- (ii) Loss of profit;
- (iii) Additional cost of labor inefficiencies in excess of that provided in A above;
- (iv) Home office overhead in excess of that provided in A above;
- (v) Consequential damages, including but not limited to loss of bonding capacity, loss of bidding opportunities, and Insolvency; and
- (vi) costs or expenses of any nature in excess of that provided in A above.

“Change in 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) a breach by HPTE of any provision of the Concession Agreement;
- (b) the existence of any Encumbrance affecting the Site or the Managed Lanes apart from :
 - (i) those Encumbrances held by third parties as disclosed in the Disclosed Data;
 - (ii) the Permitted Encumbrances; and
 - (iii) rights of third parties as required by Law;
- (c) the lack of availability of the Site in certain circumstances described in the Concession Agreement;
- (d) the exercise by HPTE of a right to open up work which does not reveal defective work;
- (e) 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;
- (f) a Phase 1 Latent Defect;
- (g) the deferral of a non-separable task;
- (h) the deferral of non-separable reinstatement work;
- (i) a Change in Law coming into effect after the Commencement Date which permits vehicles for which Tolls could be charged prior to the Change in Law to travel on the Managed Lanes without paying the full Tolls established in accordance with this Agreement (to avoid doubt, including increasing beyond 2,000 the number of permits for low emission vehicles to use the Managed Lanes without payment of Tolls);
- (j) a Change in Law that results in the imposition of new or added federal, State or local taxes on Tolls and gross Toll receipts save to the extent that, at the time such Change in Law comes into effect the Concessionaire has achieved a specified level of internal rate of return;

- (k) the construction and operation of an Unplanned Revenue Impacting Facility;
- (l) the construction of an interchange or interchanges in the vicinity of where the Northwest Parkway terminates near US 36 directly related to a highway connection to Northwest Parkway on the north of US 36 and/or a highway connection south of US 36, including access ramps flyovers, and highways to, from and over US 36, and access to other tolled and non-tolled highways and roads related to such interchange, interchanges, or Northwest Parkway: to avoid doubt, this Compensation Event applies only to provide compensation and/or relief in relation to the (i) impacts of any such construction work during the construction work, and (ii) after the construction work is completed, for the immediate period of 3 consecutive months for any negative impact on revenues which Concessionaire can reasonably demonstrate relate directly from the disruption caused by such construction including reduced traffic volume, but specifically does not provide compensation and /or relief in relation to (x) any effect on the revenue obtained by the Concessionaire (except as specified in (ii) above) or (y) on the costs incurred by the Concessionaire, arising out of or connected with any such interchange or interchanges after they have been constructed unless such cost is as a result of damage or disruption caused to any of the US 36 Managed Lanes or the US 36 General Purpose Lanes by such construction;
- (m) Any law, rule, regulation, order, decree, judgment or administrative decision issued by a Governmental Authority or judicial authority having jurisdiction over the Project preventing the Concessionaire or HPTE from performing its obligations or exercising its rights under the Concession Agreement;
- (n) any delay in the timely issuance of a Necessary Consent that is caused by the imposition of a moratorium by or on the issuing Governmental Authority relating to the acceptance or processing of applications or the issuance of Necessary Consents generally; and
- (o) any other matter which 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.

“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) 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;
- (b) Insolvency of the Concessionaire;
- (c) 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;
- (d) the Concessionaire violates change of control provisions of the Concession Agreement with respect to the legal and beneficial ownership of the Concessionaire;
- (e) abandonment of the Phase 2 Work by the Concessionaire;

- (f) violation of certain insurance requirements;
- (g) the Concessionaire fails to pay an undisputed amount in excess of \$500,000 (Indexed) for a period of thirty (30) Business Days following delivery of a written demand of HPTE;
- (h) failure by the Concessionaire to achieve the Full Services Commencement Date by the Full Services Commencement Longstop Date; and
- (i) accumulation of uncured or unexpired Noncompliance Points above certain limits.

“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 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):

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

“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:

- (a) 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;
- (b) Physical conditions of an unusual nature, differing materially from those ordinarily encountered in the area and generally recognized as inherent in the type of work provided for in the Contract; or
- (c) The presence of any paleontological, archeological or cultural resources or biological resources (which term shall be deemed to mean any threatened or endangered species, raptors or eagles).

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

- (d) Utility facilities;
- (e) Hazardous Substances; and
- (f) 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:

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

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

“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.

"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.

"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.

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

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

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

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

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

“**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 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.

“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 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:

- (a) any confiscation, condemnation or appropriation of a material part of the Assets and/or shares of the Concessionaire by HPTE or the State or of any division or agency of any of them excluding a termination under any provision of the Concession Agreement;
- (b) except to the extent that whether an amount of money is due and payable is the subject of a bona fide dispute, a failure by HPTE to make payment of any amount of money exceeding \$375,000 (Indexed) that is due and payable by HPTE under 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

- (c) 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;
- (d) 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.
- (e) a failure to complete the Phase 1 Managed Lanes or the installation of the Phase 1 ETCS by December 31 2015; and
- (f) the construction of the Phase 1 Managed Lanes or the installation of the Phase 1 ETCS is abandoned by CDOT.

"HPTE Hazardous Substances Circumstances" means:

- (a) the presence, release or threatened release of Hazardous Substances on or from the Site or the Managed Lanes which were generated or introduced:
 - (i) On the Site before the Commencement Date;
 - (ii) On the I-25 Managed Lanes before the Commencement Date;
 - (iii) On the Phase 1 Managed Lanes before the Phase 1 Services Commencement Date; or
 - (iv) After the dates referred to in paragraphs (i) – (iii) other than by reason of any act or omission of the Concessionaire or any Concessionaire Related Party;

In each case irrespective of whether CDOT or HPTE was aware of, or directly involved in, the generation or introduction of such materials;
- (b) as a result of the non-negligent performance by the Concessionaire or any Concessionaire Related Parties, in the handling of such Hazardous Substances; and/or
- (c) as a result of the activities of any Persons (including HPTE and CDOT) other than the Concessionaire and/or any Concessionaire Related Parties in relation to such Hazardous Substances.

“HPTE-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:

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

“I-25 Managed Lanes 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 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:

- (a) The Concessionaire
 - (i) admits, in writing, that it is unable to pay its debts as such become due,
 - (ii) makes an assignment for the benefit of creditors,
 - (iii) files a voluntary petition under Title 11 of the United States Code,
 - (iv) files any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future United States bankruptcy code or any other present or future applicable Law,
 - (v) seeks or consents to or acquiesces in or suffers the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of the Concessionaire, or of all or any substantial part of its assets or any material interest therein, or
 - (vi) takes any corporate action in furtherance of any action described in this paragraph (a);
- (b) 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;
- (c) 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;

- (d) 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
- (e) 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:

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

"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 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.

“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:

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

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

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

“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:

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

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

- (a) bonds or letters of credit shall be provided by an institution with a current credit rating no lower than “A-” from Standard & Poor’s Rating Services, “A-” by Fitch Ratings or “A3” by Moody’s Investors Service, Inc., provided that the outlook for such ratings is “stable” or better;
 - (i) 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:

- (a) 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;
- (b) For the purpose of the performance of the Services, the general purpose lanes on US 36 described at Section 1.2.12 of the HPTE Services Requirements;
- (c) For the purpose of the performance of the Snow and Ice Control Services means the general purpose lanes and the BOS Corridors 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:

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

“Phase 1 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

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

“Phase 2 Managed Lanes” means

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

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

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

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

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

“Prohibited Act” means:

- (a) making a false, fictitious, or fraudulent claim, statement, submission, or certification;
- (b) offering, giving or agreeing to give to any public official or any civil servant or to any employees or other persons providing goods or services to HPTE on a contractual

basis of HPTE or any other division or agency of the State or of the Federal Government any gift or consideration of any kind as an inducement or reward:

- (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of 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
 - (ii) 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;
- (c) the existence of an Organizational Conflict of Interests which was known, or should have been known, to any Equity Member or a Major Non-Equity Member of the Proposer (as each of those terms is defined in the RFP) whose Proposal led to the entry into the Concession Agreement by the Concessionaire which was not disclosed to HPTE before the Contract Date;
- (d) 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
- (e) defrauding or attempting to defraud or conspiring to defraud HPTE, the Federal Government, the State or any division, subdivision or agency of either of them, in each case regardless of whether or not it is a criminal offence pursuant to Law.

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

“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:

- (a) Fire, explosion, lightning, storm, tempest, tornado, flood, bursting or overflowing of water tanks, apparatus or pipes, ionizing radiation (to the extent it does not constitute a Force Majeure Event), earthquakes, riot and civil commotion;
- (b) A Utility Delay to the extent permitted by the Concession Agreement;
- (c) Any unforeseeable accidental loss or damage to the Phase 2 Work, the Managed Lanes or the US 36 General Purpose Lanes;
- (d) Any failure or shortage of power, fuel or transport in the Denver metropolitan area;
- (e) Any blockade or embargo which directly impacts the Project but which does not constitute a Force Majeure Event;
- (f) Any:
 - (i) Official or unofficial strike;
 - (ii) Lockout;
 - (iii) Go-slow; or
 - (iv) Other labor dispute;in each case, generally affecting the road construction industry in the Denver metropolitan area or a significant sector of it;
- (g) Any temporary restraining order or injunction by the court prohibiting the construction of the Project,
- (h) An injunction or other order issued by a Governmental Authority having jurisdiction over the Project preventing the Concessionaire or HPTE from the performing its obligations or exercising its rights under the Contract;

- (i) Compliance by the Concessionaire with an order or direction by police, fire officials or any comparable Governmental Authority having the legal authority to make such order or give such direction;
- (j) The closure, due to an accident of a road necessary for direct access to the Project by order of a Governmental Authority having police power; or
- (k) in relation to the Phase 2 Work, but not in relation to the Services, if a Utility is not indicated with Reasonable Accuracy, where Reasonable Accuracy means”
 - (i) 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
 - (ii) 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.

“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.

“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:

- (a) In respect of the Managed Lanes all those activities required as for delivery of the Services which are not Life Cycle Maintenance or Snow and Ice Control Services;
- (b) drainage clearance of the drains associated with the I-25 Managed Lanes;

- (c) all those activities to be performed in respect of the US 36 General Purpose Lanes in accordance with the HPTE Service Requirements in accordance with the Concessionaire's Service Proposals.

"RTD 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 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:

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

“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.

“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:

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

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

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

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

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

“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:

- (a) The first Year shall be the period commencing on the Commencement Date and ending on the immediately following June 30; and
- (b) 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.

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APPENDIX C

SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT

The following is a summary of selected provisions of the Design Build Contract and is not a full statement of the terms of such agreement. Accordingly, the following summary is qualified in its entirety by reference to the Design Build Contract and is subject to the full text of such agreement. Unless otherwise stated, any reference in this Official Statement to the Design Build Contract shall mean such agreement and all schedules, exhibits and attachments thereto, as amended. All defined terms have the meaning ascribed such defined terms in the DB Contract.

1. OVERVIEW

The Concessionaire has been selected by HPTE to undertake the Project. Concessionaire and DB Contractor entered into the design-build contract agreement dated June 27, 2013, as expected to be amended and restated on or prior to the Closing Date (the “DB Contract”), which sets out the terms and conditions upon which DB Contractor shall perform the Phase 2 Work, as defined in the Concession Agreement.

2. DESIGN BUILD CONTRACTOR

The Design Build Contractor is a joint venture comprised of Ames Construction, Inc., a Minnesota corporation, and Granite Construction Company, a California corporation, (each holding a joint and several interest (the “DB Contractor”). The joint venture partnership formed in the state of Minnesota, is authorized to transact business in the State of Colorado, and has acquired any and all Necessary Consents to perform its obligations under the DB Contract.

3. SCOPE OF WORK

Design

The Existing Design has been prepared on behalf of HPTE and provided to the Concessionaire and DB Contractor as part of the RFQ and RFP processes. The DB Contractor shall be fully responsible for the design and execution of the Phase 2 Work. Furthermore, DB Contractor’s Phase 2 Work Proposal includes provisions for performance of certain critical design work after execution of the Concession Agreement but before Financial Close (the “Early Design Work”).

Use of Property

Concessionaire grants to the DB Contractor for the DB Contract Period a non-exclusive license over, under, upon the Site, the I-25 Managed Lanes, the Phase 1 Managed Lanes, the Phase 2 Managed Lanes and the US 36 General Purpose Lanes, respectively for the purpose of exercising its rights and performing its obligations under the DB Contract. The license shall automatically revoke upon a termination of the DB Contract. The DB Contractor shall also have the right to issue sub-licenses to sub-contractors as necessary. Furthermore, HPTE shall ensure that the Concessionaire shall be granted access to the Node Building for the purpose of performance of its obligations under the Concession Agreement.

During the carrying out of the Phase 2 Work, the DB Contractor, its sub-contractors and/or consultants shall not use or occupy or permit the Job 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. Furthermore, the DB Contractor shall ensure that all vehicles leaving the Job Site are adequately cleaned to prevent the deposit of waste materials and debris off-site.

Utilities

The DB Contractor agrees that: (i) the Phase 2 Work includes all of the Utility Work to be furnished or performed by the DB Contractor described in the Technical Utility Requirements; and (ii) it is feasible to obtain and/or perform all necessary Utility Work within the time deadlines of the DB Contract. The DB Contractor shall be entitled to compensation in relation to Utility Delays if and to the extent that such compensation is recoverable from HPTE or CDOT.

Construction

The DB Contractor will carry out and complete the Phase 2 Work in accordance with the DB Contract, the DB Contractor's Phase 2 Work Proposals and the HPTE Phase 2 Work Requirements to achieve Phase 2 Work Completion by the Planned Full Services Commencement Date. The DB Contractor will do so using Good Industry Practice, and in accordance with all Necessary Consents and all applicable Law.

4. REINSTATEMENT AND NECESSARY CONSENTS

The DB Contractor shall at all times ensure that it and its sub-contractors, after the completion of the Phase 2 Work, reinstates the remainder of the Site, any other Site installation to their original condition or equivalent or to the form specified in HPTE's Requirements (whichever is the higher standard).

The DB Contractor shall be responsible for obtaining all Necessary Consents and for arranging any necessary amendments to any Necessary Consents required for the completion of the Phase 2 Work. When reasonably requested by the DB Contractor, Concessionaire will use reasonable endeavors to assist the DB Contractor in obtaining any Necessary Consent. The DB Contractor shall provide to Concessionaire's Representative a comprehensive list of all Necessary Consents which are required in respect of the Phase 2 Work, which have been or will be applied for and/or all the Necessary Consents obtained.

5. STANDARD OF PERFORMANCE

The DB Contractor shall prepare, implement and continually maintain in respect of the Project Quality Management Documentation to evidence its quality assurance and quality control system in accordance with Good Industry Practice.

DB Contractor acknowledges that HPTE and Concessionaire may from time to time carry out a reasonable audit of the DB Contractor's quality management procedures and documentation to ensure control of the performance of the obligations under the DB Contract.

6. SCHEDULE OF PERFORMANCE

The DB Contractor shall prepare the Phase 2 DB Schedule in accordance with the work requirements of the Project. The Initial Phase 2 DB Schedule is deemed to have been accepted by Concessionaire (and HPTE) and the DB Contractor shall act reasonably to coordinate its work with the work of the Phase 1 DB Contractor.

7. ENVIRONMENTAL REQUIREMENTS AND HAZARDOUS SUBSTANCES

General

The DB Contractor ensures that it and any sub-contractors use appropriate means in accordance with HPTE's Requirements to prevent (where possible) and otherwise to minimize any pollution which may be caused to the environment by the DB Contractor during the design or construction of the Phase 2 Work

and that explosives will only be used for the implementation of the Phase 2 Work where absolutely necessary and with Necessary Consent.

Responsibility for Hazardous Substances

HPTE shall be responsible for and shall ensure that CDOT will be responsible in accordance with the Concession Agreement for matters arising out of HPTE Hazardous Substances Circumstances. If any Remediation Work shall be necessary in relation to any HPTE Hazardous Substances Circumstances, then the DB Contractor shall be entitled to payment of its Change in Costs, to an extension of the Planned Full Services Commencement Date and/or the Full Services Commencement Sunset Date as is reasonably required to permit such work to be carried out, to the same extent and not more than what is paid or granted to Concessionaire under the Concession Agreement.

Concessionaire will reimburse the DB Contractor for any and all claims, proceedings, suits, demands or similar process, damages, losses, liabilities, costs and expenses, including the DB Contractor's attorneys' fees in connection with the existence of HPTE Hazardous Substances Circumstances or for bodily injury arising out of HPTE Hazardous Substances Circumstances, to the same extent and not more than what is paid or granted to Concessionaire.

DB Contractor acknowledges and agrees that it shall be responsible for all claims, and any other obligations whatsoever from any Hazardous Substances, other than HPTE Hazardous Substances Circumstances, except to the extent directly attributable to the negligence of Concessionaire or Concessionaire Related Parties.

Remedial Actions

If any Remediation Work shall be necessary in relation to any HPTE Hazardous Substances Circumstances then the DB Contractor shall be entitled to payment of its Change in Costs, to an extension of the Planned Full Services Commencement Date and/or the Full Services Commencement Sunset Date as is reasonably required. If any such Remediation Work shall be necessary during the course of carrying out the Phase 2 Work then the Change Procedure shall apply. Otherwise the need for the Remediation Work shall be treated as if it was a Compensation Event and the process for Relief Events shall apply.

8. HEALTH, SAFETY AND SECURITY

HPTE, Concessionaire, any HPTE Related Party and any Concessionaire Related Party shall at all times comply with any health, safety and security requirements notified to it by the DB Contractor when exercising its rights.

9. CONTRACT SUM AND PAYMENTS

All amounts below are in US dollars.

Contract Sum

The Contract Price is a fixed lump-sum price of \$120,600,000 inclusive of all design fees and costs, insurance, construction costs, Necessary Consents, applicable taxes, utilities costs, development and building permits. The Contract Price may be adjusted, but only to the extent provided under the DB Contract.

Base Drawdown Schedule¹

The Base Drawdown Schedule is as follows:

| Payment | Date of DB Contractor Payment Application | Amount | Paid from Financing | Paid from HPTE Payment | HPTE Payment |
|---------|---|--------------------|---------------------|------------------------|--------------|
| 1. | Commencement Date | 18,764,462 | | 18,764,462 | 19,715,872 |
| 2. | 28-Feb-14 | 3,800,000 | 2,848,590 | 951,410 | |
| 3. | 31-Mar-14 | 6,270,000 | 6,270,000 | | |
| 4. | 30-Apr-14 | 6,500,000 | 6,500,000 | | |
| 5. | 31-May-14 | 6,500,000 | 6,500,000 | | |
| 6. | 30-Jun-14 | 6,680,000 | 6,680,000 | | |
| 7. | 31-Jul-14 | 6,500,000 | 6,500,000 | | |
| 8. | 31-Aug-14 | 7,200,000 | 7,200,000 | | |
| 9. | 30-Sep-14 | 7,500,000 | 7,500,000 | | |
| 10. | 31-Oct-14 | 5,750,000 | 5,750,000 | | |
| 11. | 30-Nov-14 | 3,650,000 | 3,650,000 | | |
| 12. | 31-Dec-14 | 2,800,000 | 2,800,000 | | |
| 13. | 31-Jan-15 | 2,300,000 | | 2,300,000 | 21,098,590 |
| 14. | 28-Feb-15 | 2,300,000 | | 2,300,000 | |
| 15. | 31-Mar-15 | 3,000,000 | | 3,000,000 | |
| 16. | 30-Apr-15 | 4,000,000 | | 4,000,000 | |
| 17. | 31-May-15 | 4,800,000 | | 4,800,000 | |
| 18. | 30-Jun-15 | 5,700,000 | 1,001,410 | 4,698,590 | |
| 19. | 31-Jul-15 | 4,500,000 | 4,500,000 | | |
| 20. | 31-Aug-15 | 2,500,000 | 2,500,000 | | |
| 21. | 30-Sep-15 | 1,000,000 | 1,000,000 | | |
| 22. | 31-Oct-15 | 550,000 | 550,000 | | |
| 23. | 30-Nov-15 | 25,000 | 25,000 | | |
| 24. | 31-Dec-15 | 25,000 | 25,000 | | |
| | Total | 112,614,462 | | | |

Early Works Drawdown Schedule

| Payment | Date of DB Contractor Payment Application | Amount | Paid from HPTE Payment | HPTE Payment |
|---------|---|------------------|------------------------|--------------|
| 1. | 31-Oct-13 | 2,715,166 | 2,715,166 | 8,835,538 |
| 2. | 30-Nov-13 | 2,525,736 | 2,525,736 | |
| 3. | 31-Dec-13 | 1,253,627 | 1,253,627 | |
| 4. | 31-Jan-14 | 1,841,010 | 1,841,010 | |
| 5. | 28-Feb-14 | 500,000 | 500,000 | |
| | Total | 8,835,538 | | |

¹ The base drawdown schedule shown includes the \$850,000 amount for the McCaslin Underpass.

Payment Schedule and Conditions to Scheduled Payments

Concessionaire shall make monthly progress payments to DB Contractor as set out in the Drawdown Schedule and according to the payment submission and certification process. Concessionaire shall retain such amounts as are reasonably necessary to protect Concessionaire from monetary claims alleging DB Contractor's failure to make payment of amounts owed pursuant to the terms of any subcontract or purchase order which arise out of the Phase 2 Work performed or undertaken and which may be the subject matter of a claim against HPTE and/or Concessionaire, such amounts at any time not to exceed, in the aggregate, the lesser of (A) the amounts claimed and (B) five percent of the total payments made to the DB Contractor.

10. CONTRACT PRICE

Payment Certificate

The DB Contract Payment Certifier must, within 5 Business Days of receipt of each complete and satisfactory Payment Application, issue a Payment Certificate certifying: (i) any amount payable to DB Contractor for Phase 2 Work performed during that month and the amount to be deposited in the Retention Account; (ii) Payments paid previously; (iii) the difference between the amount payable by Concessionaire to the DB Contractor and the gross amount payable for Phase 2 Work completed, before retentions or other deductions (the "Deferred Payment Amount"); (iv) the gross amount payable for any Phase 2 Work for which amounts were previously held back that have now been completed; (v) the Remaining Contract Value estimate; (vi) the CPM Schedule is on schedule; and (vii) the amount of any Concessionaire LD's Provisional Allowance.

Where the DB Contract Payment Certifier certifies that DB Contractor's updated CPM Schedule reflects a delay in excess of 30 days, Concessionaire may withhold an amount equal to 10% of the current Deferred Payment Amount (the "Additional Delay Retention Amount") without duplication of any amounts retained and DB Contractor shall prepare a Recovery Schedule. An amount equal to the Additional Delay Retention Amount will be retained in the Construction Schedule Account. Funds in the Construction Schedule Account shall accrue interest at the relevant deposit rate and interest shall be paid out to DB Contractor and Concessionaire at such time as the Concessionaire is no longer holding any other amounts in the Construction Schedule Account or immediately upon achievement of Phase 2 Work Completion. DB Contractor shall prepare a Recovery Schedule with respect to achieving the Full Services Commencement Date by the Planned Full Services Commencement Date for approval by Concessionaire. The Additional Delay Retention Amount retained in the Construction Schedule Account will be released at such time as the Concessionaire approves the Recovery Schedule and the DB Contract Payment Certifier certifies that the Planned Full Services Commencement Date can be achieved.

Procedure for Payments

Concessionaire will cause DB Contractor Payments to be made within 5 Business Days after certification is received from the DB Contract Payment Certifier.

DB Contract Payments will not exceed any of: (i) the amount certified by the DB Contract Payment Certifier as being payable; (ii) the cumulative amount in the Drawdown Schedule plus additional amounts for Compensation Events or Changes; and (iii) an amount, that when aggregated with previous DB Contractor Payments as at that Relevant Payment Date, equals the Contract Price, as adjusted, plus additional amounts for Compensation Events or Changes.

DB Contractor will submit a Remaining Contract Value estimate with every claim for payment for review by the DB Contract Payment Certifier.

In relation to the above, (i) the Drawdown Schedule will not be altered during the Project Term and (ii) where DB Contractor has not completed the Phase 2 Work in accordance with the Drawdown Schedule or if the Phase 2 Work outstanding does not meet the Remaining Contract Value test, any shortfall amount will be drawn from the Construction Account and placed in the Deferred Payment Account.

Amounts in the Deferred Payment Account will accrue interest at the relevant deposit rate. The Deferred Payment Amounts will be released on a subsequent Relevant Payment Date when the relevant Phase 2 Work is certified for payment. All unpaid interest in the Deferred Payment Account shall be paid out to DB Contractor and Concessionaire at any point that Concessionaire is no longer holding other amounts in the Deferred Payment Account, failing which, it shall be paid out upon achievement of Phase 2 Work Completion. Upon any payout of accrued interest, Concessionaire shall be paid 10% of accrued interest and DB Contractor shall be paid the remaining 90%. Concessionaire will have sufficient committed funding from and after Financial Close to pay the Contract Price and all other budgeted development expenses.

Holdbacks and Concessionaire Liquidated Damages Provisional Allowance

If, at the time of issue of any Payment Certificate within the period of 11 months prior to the Planned Full Services Commencement Date, the DB Contract Payment Certifier, reasonably determines that Phase 2 Work Completion is unlikely to be achieved by Planned Full Services Commencement Date, the DB Contract Payment Certifier shall: (i) acting reasonably, estimate the amount of time that Phase 2 Work Completion will occur after the Planned Full Services Commencement Date; (ii) assess the amount of Liquidated Damages and Concessionaire Liquidated Damages; and (iii) certify in such Payment Certificate the Concessionaire LD's Provisional Allowance amount and Concessionaire may retain such amount from the DB Contractor Payment such that the sum of said retained amount plus any amount then retained, together equals the Concessionaire LD's Provisional Allowance.

The Concessionaire or the Trustee will hold the Concessionaire LD's Provisional Allowance and pay the Concessionaire LD's Provisional Allowance to DB Contractor, on the earlier of: (i) where the subsequent certification of the Concessionaire LD's Provisional Allowance is less than the Concessionaire LD's Provisional Allowance for the preceding month, the date when that Payment Certificate is due for payment; and (ii) the date when Phase 2 Work Completion is achieved.

If the DB Contract Payment Certifier issues a Payment Certificate including the Concessionaire LD's Provisional Allowance, the assessment of the likely overrun (if any) and the certification of the Concessionaire LD's Provisional Allowance (if any) shall continue on a monthly basis, until the earlier of when the Concessionaire LD's Provisional Allowance is certified as zero, or when Phase 2 Work Completion is achieved.

11. PERFORMANCE SECURITY

Each DB Contractor Member shall provide to Concessionaire a guarantee from the applicable DB Contractor Member Guarantor (the "Parent Guarantee"), covering all of the obligations of DB Contractor. The Parent Guarantees shall continue through to the expiry of DB Contractor's obligations. The Guarantor will agree to pay to Concessionaire any and all Costs incurred by Concessionaire in connection with enforcing any of its rights or benefits under this Agreement or any default by the Guarantor.

On or before Financial Close, the DB Contractor shall obtain a Performance Bond, provided such bond shall name HPTE, Senior Lenders and Concessionaire as multiple obligees, in an amount equal to the Contract Price, from a surety with a credit rating at, or better than, the Ratings Standard or is rated VIII or better according to A.M. Best's Financial Strength Rating and Financial Size to ensure the completion of the Phase 2 Work.

12. DELAYS

The DB Contractor shall take all reasonable steps to mitigate the consequences of any delay. However, if at any time the DB Contractor becomes aware that the Phase 2 Work will not or is unlikely to achieve Phase 2 Work Completion on time, it shall give notice within 15 Business Days to Concessionaire, specifying: the reason for the delay or likely delay and an estimate of the likely effect of the delay.

13. LIQUIDATED DAMAGES

Comprehensive Agreement Delay Liquidated Damages

In addition to any other provisions of the Concession Agreement, including the payment of Liquidated Damages by DB Contractor, if Phase 2 Work Completion is not achieved by the Planned Full Services Commencement Date and to the extent such failure is not directly attributable to an act or omission of Concessionaire, Concessionaire Related Parties or others from whom Concessionaire is responsible at law, DB Contractor shall pay to Concessionaire Liquidated Damages as determined by the DB Contract from the Planned Full Services Commencement Date until Phase 2 Work Completion to a maximum amount of \$1,011,989. DB Contractor must pay such amounts to Concessionaire on a monthly basis.

Liquidated Damages and First Share of Toll Revenues

If the DB Contractor fails to achieve Phase 2 Work Completion by the Planned Full Services Commencement Date, in addition to the Concessionaire Liquidated Damages, the DB Contractor agrees to pay to Concessionaire, the liquidated damages of (i) \$3,000 per day for each day from the Planned Full Services Commencement Date until the date of the Phase 2 Work Completion, and (ii) \$15,000 per day in addition to the amount described in (i) for each day from the Planned Full Services Commencement Date until the date of the Phase 2 Work Completion on account of payments Concessionaire makes to HPTE pursuant to the Concession Agreement. To the extent HPTE reimburses Concessionaire for Liquidated Damages, Concessionaire shall reimburse DB Contractor for the corresponding amount.

Limitation on Liability for Liquidated Damages

The total aggregate amount of daily liquidated damages payable from the Planned Full Services Commencement Date until the end of Phase 2 Work Completion shall not exceed \$1,095,000 and the aggregate amount of liquidated damages payable for each day from the Planned Full Services Commencement Date until the date of the Phase 2 Work Completion on account of payments Concessionaire makes to HPTE shall not exceed \$5,475,000.

Payment of Liquidated Damages

To the extent Liquidated Damages and/or sums are due, Concessionaire or HPTE may draw on the Performance Security or deduct such amount from any amount owed by Concessionaire to the DB Contractor and for may send DB Contractor an invoice for Liquidated Damages; such sums shall be payable within 7 Business Days after receipt of the invoice.

14. CHANGES

Scope Changes Generally

Neither party may propose or implement a Concessionaire Change, or a DB Change which: (i) requires the Phase 2 Work to be carried out and/or the Services to be performed or a Change to be implemented that is against any Law or Good Industry Practice; (ii) which would cause any Necessary Consent to be revoked; (iii) which would materially and adversely affect the Concessionaire's ability to deliver the Services carried out in a manner not compensated pursuant to this Change Procedure; (iv) which would

materially and adversely affect the health and safety of any person; (v) which would require the DB Contractor to implement the Change in an unreasonable period of time; (vi) which would materially and adversely change the nature and risk profile of the Project; and/or (vii) whereby HPTE does not have the legal power or capacity to require the implementation of such Change.

Otherwise, either party may serve a Change Notice proposing a Change and such Change Notice shall be processed in accordance with the Change Procedure.

Scope Changes Initiated by the Concessionaire

In the case of a Construction Change, the Concessionaire funding, if any, shall be provided in accordance with the Concession Agreement. In the case of a Concessionaire-Initiated Change, funding shall be provided by the Concessionaire. However, if the DB Contractor does not complete or implement the Change within the specified timescales, then the amount paid in relation to the Change shall be abated at the rate of the Agreed Abatement for every day of delay from the date the DB Contractor Response should have been submitted or the Change should have been implemented.

Scope Changes Initiated by the Design Build Contractor

In the case of a DB Change, any funding shall (unless otherwise agreed) be provided by the DB Contractor except to the extent a Qualifying Change in Law applies. If the DB Contractor wishes to introduce a DB Change, it shall serve a DB Change Notice on HPTE.

Change Disputes

Any dispute arising in respect of this Change Procedure will be resolved in accordance with the Dispute Resolution Procedure.

15. SUBCONTRACTORS AND ASSIGNMENT

DB Contractor shall not sub-contract, assign, charge, sell, bargain, pledge, transfer or create a lien over the benefit of the DB Contract in whole or in part except with the prior written consent of Concessionaire and HPTE. Furthermore, the sub-contracting by the DB Contractor of any of the Phase 2 Work shall not relieve the DB Contractor of any obligations under the DB Contract for any breach of the obligations arising under the DB Contract.

16. UNDERTAKINGS, REPRESENTATIONS AND WARRANTIES

Design Build Contractor's Undertakings, Representations and Warranties

The DB Contractor undertakes to Concessionaire that:

- i. It will inform Concessionaire promptly upon becoming aware of the fact that litigation, arbitration or administrative proceedings or a dispute treated in another manner may be threatened or pending against the DB Contractor if such proceedings or dispute would materially adversely affect the ability of the DB Contractor to perform its obligations under the DB Contract or the DB Contract Documents;
- ii. It will acquire in time to perform its obligations at the time and in the manner when they fall due for performance any and all Necessary Consents to perform its obligations under the DB Contract and the DB Contract Documents;
- iii. Each person executing any DB Contract Document on behalf of the DB Contractor which will be executed after the DB Contract Date will be duly authorized to execute such document;

- iv. The copies of the DB Contract Documents to be provided to Concessionaire after the DB Contract Date will be true and complete copies of these documents as at the date when such copies are provided and, as at that time, there have been no amendments to these documents and there are no other documents which have not been provided, but which have (or may have) a material effect on the interpretation or application of any of the DB Contract Documents;
- v. It will not commit any Prohibited Acts; and
- vi. It shall ensure that, without the prior consent of the Concessionaire, that (a) the partners comprising the DB Contractor shall not be persons other than the DB Contractor Members , and (b) the joint venture agreement pursuant to which the DB Contractor has been constituted and the joint and several declarations entered into by the DB Contractor Members in respect of the DB Contractor shall not be amended or modified in a manner which would eliminate or diminish the joint and several nature of the liability of each DB Contractor Member for the obligations of the DB Contractor.

The DB Contractor represents and warrants to Concessionaire as at the DB Contract Date as follows:

- i. The DB Contractor is a joint venture partnership formed in the State of Minnesota and is authorized to transact business in the State of Colorado, and further that as at the DB Contract Date it has acquired any and all Necessary Consents to perform its obligations under the DB Contract;
- ii. Each person executing the DB Contract (and any other DB Contract Document which has been executed on or before the Contract Date) on behalf of the DB Contractor has been or at such time will be duly authorized to execute each such document on behalf of the DB Contractor;
- iii. Any undertakings of the DB Contractor arising from a DB Contract Document which has been executed on or before the DB Contract Date represent valid and enforceable undertakings of the DB Contractor;
- iv. The DB Contract and the DB Contract Documents which have been executed on or before the DB Contract Date have been validly executed by the DB Contractor and the execution and performance by the DB Contractor of the DB Contract and each DB Contract Document does not contravene:
 - a. Any Law;
 - b. Any organizational documents of the DB Contractor; or
 - c. Any obligation which is binding on the DB Contractor;
- v. The joint venture agreement and declarations of joint and several liability stated in the DB Contractor Warranted Information are true and correct;
- vi. There is no DB Contractor Default, and no fact or event exists that with the passage of time would constitute a DB Contractor Default;
- vii. No litigation, arbitration or other dispute resolution proceedings involving the DB Contractor or, to the best of the DB Contractor's knowledge and belief (the DB Contractor having made reasonable enquiries with a view to obtaining such knowledge and belief) any DB Contractor Related Party, is pending and the DB Contractor is not aware of any threatened dispute, in each case that could materially and adversely affect the ability of the DB Contractor to perform its obligations under the DB Contract;

- viii. The DB Contractor has conducted its own analysis and review of the Disclosed Data and that it has satisfied itself as to accuracy, completeness and fitness for purpose and as to its authors' expert qualifications, results and methodology and, except to the extent otherwise provided in the DB Contract, the DB Contractor shall not in any way be relieved from any obligation under the DB Contract nor shall it be entitled to claim against HPTE or Concessionaire on the grounds that such Disclosed Data is incorrect or insufficient except to the extent expressly permitted by the DB Contract;
- ix. The copies of the DB Contract Documents provided to Concessionaire are true and complete copies of these documents, and, as at the DB Contract Date there have been no amendments to these documents and there are no other documents which have not been provided, but which have (or may have) a material effect on the interpretation or application of any DB Contract Documents;
- x. There is no failure by the DB Contractor to comply with all Laws and Necessary Consents applicable to its obligations in connection with the DB Contract Documents which will have a material adverse effect on the DB Contractor or on the Project; and
- xi. Prior to the execution of the DB Contract, the DB Contractor, and, to the best of the DB Contractor's knowledge and belief (the DB having made reasonable enquiries with a view to obtaining such knowledge and belief) each shareholder of the DB Contractor and each DB Contractor Related Party, has not committed any Prohibited Acts.

Concessionaire's Warranties

Concessionaire represents and warrants to the DB Contractor as at the DB Contract Date as follows:

- i. The Concessionaire is duly incorporated and is an existing Colorado limited liability company in accordance with the laws of State of Colorado, and is authorized to transact business in the State of Colorado;
- ii. The person executing the DB Contract and any other DB Contract Document executed as at the DB Contract Date has been duly authorized to execute such documents;
- iii. The DB Contract has been validly executed by Concessionaire and the execution and performance by Concessionaire of the DB Contract does not contravene:
 - a. Any Law;
 - b. Any organizational documents of the Concessionaire; or
 - c. Any obligation which is binding on Concessionaire;
- iv. No litigation, arbitration or other dispute resolution proceedings involving Concessionaire or to the best of Concessionaire's knowledge and belief (Concessionaire having made reasonable enquiries with a view to obtaining such knowledge and belief) any Concessionaire Related Party (other than the Operating Contractor) is pending and Concessionaire is not aware of any threatened dispute, in each case that could materially adversely affect the ability of Concessionaire to perform its obligations under DB Contract or under the DB Contract Documents to which it is a party;
- v. The DB Contract and any other DB Contract Document to which Concessionaire is a party has been duly authorized, executed and delivered by Concessionaire and the obligations undertaken in such documents constitute valid and legally binding obligations of Concessionaire, enforceable

against it in accordance with the terms of those documents, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity;

- vi. There is no failure by Concessionaire to comply with all Laws and Necessary Consents applicable to its obligations in connection with the DB Contract and any DB Contract Documents to which it is a party as at the DB Contract Date which will have a material adverse effect on Concessionaire or on the Project;
- vii. Neither Concessionaire nor its advisors or agents have willfully misled the DB Contractor in respect of any of the Disclosed Data in a written communication;
- viii. There is no Concessionaire Default, and no fact or event exists that with the passage of time would constitute a Concessionaire Default;
- ix. The information in Schedule 3B (Concessionaire Warranted Information) reflects in all material respects, a true and correct outline of the corporate structure of the Concessionaire; and
- x. Concessionaire, and to the best of Concessionaire's knowledge and belief (Concessionaire having made reasonable enquiries with a view to obtaining such knowledge and belief) and each Concessionaire Related Party (other than the Operating Contractor), has not committed any Prohibited Acts.

17. EARLY DESIGN WORK

DB Contractor's Phase 2 Work Proposal includes provisions for performance of certain critical design work after execution of the Concession Agreement but before Financial Close (the "Early Design Work").

If DB Contractor has performed the Early Design Work in accordance with the terms of the DB Contractor's Phase 2 Work Proposal, and if Concessionaire is unable to achieve Financial Close as a consequence solely of an act or omission of Concessionaire or a Concessionaire Related Party, and DB Contractor is not issued NTP1 to begin Phase 2 Work, Concessionaire shall pay DB Contractor upon termination of the Concession Agreement the amount of the DB Contractor's invoiced out of pocket costs and expenses that have been paid by the DB Contractor to the third party that has prepared the design documents to a maximum of \$3,000,000.

To the extent Concessionaire receives compensation from HPTE on account of the Early Design Work in connection with Financial Close not occurring by the Financial Close Deadline Date, Concessionaire shall pay such amount.

If Concessionaire is unable to achieve Financial Close as a consequence solely of an act or omission of DB Contractor or a DB Contractor Related Party, DB Contractor shall pay Concessionaire an amount equal to its out of pocket expenses and costs that have been paid by the Concessionaire to third parties; to a maximum of \$3,000,000.

Each of the Concessionaire and the DB Contractor shall use Commercially Reasonable efforts not to incur unnecessary out of pocket costs and.

18. INSURANCE

Coverage of the Concessionaire, HPTE, CDOT AND RTD

In all cases where the Concessionaire, HPTE, CDOT and/or RTD are to be named insureds or additional insureds, their coverage shall be primary and non-contributory to any insurance which either of them may maintain, and this shall be stated on the Certificate of Insurance.

Design Build Contractor-Provided Insurance

No later than the Commencement Date, the DB Contractor shall, prior to the carrying out of any building or demolition work on the Managed Lanes, take out and maintain or ensure the maintenance of the insurances in the DB Contract and any other insurances as may be required by Law. These insurances must be effective in each case not later than the date on which the relevant risk commences. The insurance premium and all costs and fees in respect of the insurances shall be the responsibility of the DB Contractor. The required insurances shall be effected with insurers approved by Concessionaire.

Professional Liability Insurance

If providing professional services, DB Contractor shall provide and maintain, or cause to be provided and maintained, a Project Professional Liability insurance policy. DB Contractor may satisfy the Professional Liability insurance requirement through a Sub-Contractor. DB Contractor need not appear as an insured under this policy.

If design services are carried out by professional engineering firms, then limits for each claim and in general aggregate are \$5,000,000. If design services are carried out by DB Contractor or Sub-Contractors who are not professional engineering firms, then limits for each claim and in general aggregate are \$2,000,000.

Coverage shall be maintained in full force and effect for a period of 5 years after the Final Acceptance date of the Project or 10 years from the inception of the policy, whichever period is shorter. The policy coverage shall be effective (retroactively, if applicable) from the date of commencement of all professional activities in connection with the Scope and the deductible shall be the responsibility of DB Contractor and shall be no greater than \$500,000 or an amount as accepted by the Concessionaire in writing.

Workers' Compensation and Employer's Liability Insurance

Worker's Compensation Insurance and Employer's Liability Insurance in accordance with local jurisdictions will be required. Coverage shall include a waiver of subrogation by the insurer in favor of HPTE, CDOT, RTD and Concessionaire. Limits for Bodily Injury by Accident or Disease (Any One Accident), Each Employee (Bodily Injury by Disease) and Each Employee (Bodily Injury by Accident) will each be \$1,000,000.

Commercial General Liability Insurance

Commercial General Liability Insurance ("CGL") written on ISO form CG 00 01 occurrence form or equivalent for hazards of: (a) Operations, (b) Sub-Contractors and Independent Contractors, and (c) Products and Completed Operations. Coverage limits for Bodily Injury and Property Damage Combined Single Limit each Occurrence is \$1,000,000; the General Aggregate limit is \$2,000,000 and the Products and Completed Operations Aggregate limit is \$2,000,000.

To the extent of Sub-Contractors indemnity obligations contained in its subcontract, HPTE, CDOT, RTD and Concessionaire shall be listed as Additional Insured.

Commercial Automobile Liability Insurance

Contractor shall provide at their own expense, Automobile Liability Insurance for claims arising from the Ownership, Maintenance, or use of a motor vehicle, at, upon, or away from the Site. The Combined Single Limit for Bodily Injury and Property Damage is \$1,000,000. Coverage shall include all owned, non-owned, and hired automobiles used in connection with the Work.

If hauling of hazardous waste is part of the Project, Automobile Liability Insurance with a \$1,000,000 combined single limit per occurrence for bodily injury and property damage applicable to all hazardous waste hauling vehicles will be required and must include MCS 90 endorsement and the ISO Form CA 9948 (Pollution Liability Broadened Coverage for Business Automobile).

Umbrella/Excess Liability Insurance

Coverage shall be liability coverage in excess of Primary Commercial General Liability and Employer's Liability coverages and Automobile Liability coverage for On-Site and Off-Site operations in accordance with liability coverage. Scope of Coverage includes limits for Each Occurrence of \$25,000,000, and \$25,000,000 for General Aggregate.

Coverage shall include a waiver of subrogation by the insurer in favor of HPTE, CDOT, RTD and Concessionaire. HPTE, CDOT, RTD and Concessionaire shall be listed as Additional Insureds.

Pollution Liability

This includes coverage for the liability of the Insureds during the process of construction, removal, storage, encapsulation, transport and disposal of hazardous waste and contaminated soil and or asbestos abatement. The policy shall be a Project-specific policy and shall include coverage for on-site and off-site bodily injury and loss or damage to, or loss of use of property, directly or indirectly arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gas, waste materials or other irritants, contaminants or pollutants into or upon the land, the atmosphere or any water course or body of water, whether it be gradual or sudden and accidental, including no exclusion for mold or asbestos. Coverage limits include \$10,000,000 for Each Occurrence and \$10,000,000 in Aggregate.

Coverage shall be maintained in full force and effect for a period of 5 years after the date of Phase 2 Work Completion, and the Policy shall include defense and clean-up costs. The deductible shall be no greater than \$75,000 unless otherwise agreed by the Concessionaire in writing.

Builders Risk

Builders Risk includes all coverage to protect against physical loss or damage to the work or any part thereof to be permanently incorporated into the work. Scope of Coverage includes Operations- Phase 2 Work by enrolled and un-enrolled Sub-Contractors and Insureds include HPTE, CDOT, RTD Concessionaire, DB Contractor and all Lower Tier Subcontractors enrolled and un-enrolled Sub-Contractors. Limits in the amount of Probable Maximum Loss (no less than \$25,000,000) value at all times including any subsequent contract modifications and cost of materials supplied or installed by others, comprising total value for entire project at the site on a replacement cost basis without optional deductibles.

Sub-limits are allowed for the catastrophic perils of earthquake, windstorm and flood, subject to the Concessionaire's approval, it being acknowledged that the Concessionaire shall not grant its approval unless it has received HPTE's corresponding approval (not to be unreasonably withheld) under the Concession Agreement.

All Risk including but not limited to the perils of fire and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, surface water, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss. The policy must cover for loss of income/delayed startup of Toll revenue collection and if the property insurance requires deductibles. The DB Contractor shall pay costs not covered because of such deductibles. Deductibles shall not exceed \$100,000, except for: storm, hail and tornado, where the deductible shall not exceed \$350,000, other natural hazards, where the deductible limit shall not exceed \$200,000

Other Coverage

Other Coverage, as applicable, may include: Railroad Coverage, Riggers Liability Coverage, and Lease Employee Liability Coverage.

19. REINSTATEMENT

All insurance proceeds received under any Physical Damage Policies shall be applied to repair, reinstate and replace each part or parts of the Managed Lanes and the Assets in respect of which such proceeds were received.

The DB Contractor acknowledges that all insurance proceeds paid under a Physical Damage Policy in respect of a single event (or a series of related events) in an amount in excess of \$500,000 shall be paid into the Joint Insurance Account.

Where a claim is made or proceeds of insurance are receivable under any Physical Damage Policy in respect of a single event (or a series of related events) (the "Relevant Incident") the DB Contractor shall promptly prepare a Reinstatement Plan and carry out the works necessary and shall keep Concessionaire informed in relation to the progress of the Reinstatement Work.

The DB Contractor shall effect the Reinstatement Work in accordance with the Reinstatement Plan and in a manner that will not put Concessionaire in breach of its obligations under the Concession Agreement, and: (i) shall enter into contractual arrangements in accordance with the process for procuring the contractual arrangement set out in the Reinstatement Plan; (ii) prior to the earlier to occur of the Termination Date or the Expiration Date, any amounts standing to the credit of the Joint Insurance Account may be withdrawn by the Concessionaire as required to effect the Reinstatement Work and to meet any other reasonable costs and expenses of the DB Contractor to fund the Reinstatement Work, and the Parties shall operate the signatory requirements of the Joint Insurance Account; (iii) Concessionaire agrees and undertakes that, it shall not exercise any right which it might otherwise have to terminate this Contract by virtue of the event which gave rise to the claim for the Relevant Proceeds; (iv) Concessionaire undertakes to use reasonable endeavors to assist the DB Contractor in the carrying out of the Reinstatement Plan; (v) After the Reinstatement Plan has been implemented to the reasonable satisfaction of Concessionaire, Concessionaire shall be permitted to withdraw any Relevant Proceeds and accrued interest that have not been paid and (vi) The DB Contractor shall be solely responsible for the payment of any deficiency in relation to the cost of repair or replacement of the Managed Lanes.

DB Contractor acknowledges and agrees that in any case where CDOT is able to use the emergency contracting procedures in the then-current version of its construction manual in relation to any Non-Separable Reinstatement Work, if CDOT considers in good faith that it will more rapidly be able to carry out sufficient reinstatement work, then CDOT may proceed to carry out such reinstatement work at its own risk. If CDOT's work results in the Managed Lanes also re-opening to traffic then the DB Contractor shall reimburse CDOT's reasonable costs less the Non-Separable Price Percentage of those

costs save to the extent that CDOT's actions prevent recovery by the DB Contractor of any part of such cost from the Required Insurances. Where insurance proceeds are to be used the DB to repair, reinstate or replace any part of any of the Managed Lanes, the US 36 General Purpose Lanes or any Asset, the DB Contractor shall carry out such work in accordance with HPTE's Requirements and the DB Contractor's Proposals.

20. UNINSURABILITY

The DB Contractor shall not be obliged to take out insurance in respect of a risk which is Uninsurable, except where the predominant cause of the risk being Uninsurable is any act(s) or omission(s) of the DB Contractor or a DB Contractor Related Party.

If a risk usually covered by builders' all risks insurance, property damage insurance, general liability insurance, (but not loss of profits) or workers compensation insurance in each case becomes Uninsurable then: (i) The DB Contractor shall notify Concessionaire within 3 Business Days of the risk becoming Uninsurable; and (ii) If both Parties agree, or it is determined in accordance with the Dispute Resolution Procedure, that the risk is Uninsurable and that the risk being Uninsurable is not caused by the actions of the DB Contractor or a sub-contractor, the Parties shall meet to discuss the means by which the risk should be managed or shared.

If the Parties cannot agree as to how to manage the risk, then: (a) In respect of such general commercial liability insurance only, Concessionaire shall, at Concessionaire's option, either pay to the DB Contractor an amount equal to the Demobilization Costs or elect to allow the DB Contract to continue; and (b) In respect of DB Contractor's all risks insurance, property damage insurance, general commercial liability insurance delay in startup and business interruption insurance (but not loss of profits) or statutory insurances, the DB Contract shall continue and on the occurrence of the risk (but only for as long as such risk remains Uninsurable) Concessionaire shall (at Concessionaire's option) either pay to the DB Contractor an amount equal to insurance proceeds that would have been payable had the relevant insurance continued to be available and the DB Contract will continue, or an amount equal to the Demobilization Costs attributable to the Phase 2 Work, but only upon receipt by Concessionaire of a corresponding amount; and (c) Where the DB Contract continues, then the DB Contractor shall pay to the Concessionaire in each Year for which the relevant insurance is not maintained, an amount equal to the premium paid by the DB Contractor in respect of the relevant risk in this Year prior to it becoming Uninsurable. Where the risk is Uninsurable for part of a Year, the payment shall be determined proportionally; and (d) Where the DB Contract continues, the DB Contractor shall approach the insurance market at least every 4 months to establish whether the risk remains Uninsurable. As soon as the DB Contractor is aware that the risk is no longer Uninsurable, the DB Contractor shall take out and insurance for such risk. If Concessionaire elects to make payment to the DB Contractor, the DB Contractor shall have the option to pay to Concessionaire on or before the end of the Option Period, an amount equal to the insurance proceeds that would have been payable had the relevant risk not become Uninsurable.

21. UNAVAILABLE TERMS AND CONDITIONS

If, upon the renewal of any insurance which the DB Contractor is required to maintain or to ensure the maintenance of: (a) Any Insurance Term is not available to the DB Contractor in the worldwide insurance markets with reputable insurers of good standing; and/or (b) The insurance premium payable for is such that the Insurance Term is not generally being incorporated in insurance procured in the worldwide insurance market with reputable insurers of good standing by contractors in the United States, then Concessionaire shall waive the DB Contractor's obligations in respect of that particular Insurance Term, and the DB Contractor shall not be considered in breach of its obligations regarding the maintenance of insurance.

The DB Contractor shall notify Concessionaire as soon as reasonably practicable and in any event within 3 Business Days of becoming aware that insurance is likely to become unavailable. The DB Contractor shall provide Concessionaire with such information as Concessionaire or HPTE reasonably requests regarding the unavailability of the Insurance Term, and the Parties shall meet to discuss how the unavailability should be managed.

22. COMPENSATION EVENTS

Compensation Events and their consequences

If, as a result of the occurrence of a Compensation Event: (a) The DB Contractor is unable to achieve Phase 2 Work Completion on or before the Planned Full Services Commencement Date or, following the Planned Full Services Commencement Date, before the Full Services Commencement Sunset Date; (b) The DB Contractor is unable to comply with any of its obligations under the DB Contract; and/or (c) The DB Contractor incurs costs or loses revenue, then unless such Compensation Event has been caused solely by the DB Contractor or any DB Contractor Related Party, then the DB Contractor is entitled to apply for relief from its obligations. Except to the extent the Compensation Event is caused solely by an act or omission of Concessionaire, Concessionaire's obligation to pay any amount or grant any relief on account of a Compensation Event shall be subject to actually receiving a corresponding amount or relief or partial relief from HPTE.

23. RELIEF EVENTS

Relief Events and their consequences

If and to the extent that a Relief Event: (a) Is the direct cause of a delay in achieving Phase 2 Work Completion on or before the Planned Full Services Commencement Date; and/or (b) Adversely affects the ability of the DB Contractor to perform any of its obligations under this Contract, then unless such Relief Event has been caused solely by the DB Contractor or any DB Contractor Related Party, then the DB Contractor is entitled to apply for relief from its obligations. Except to the extent the Relief Event is caused solely by Concessionaire, Concessionaire's obligation to grant any relief on account of a Relief Event shall be subject to actually receiving corresponding relief from HPTE.

Relief Events affecting the Phase 2 Work

The process for obtaining relief in relation to any Relief Event shall be the process for obtaining a Change Order.

24. INDEMNITIES

Indemnities by the Design Build Contractor

Subject to loss, damage or cost caused by, among other things, the negligence, bad faith or willful misconduct of an Indemnified Party, the breach by Concessionaire of its obligations under the DB Contract or the violation of any Laws by an Indemnified Party, the DB Contractor shall release, defend, indemnify and hold harmless Concessionaire and its agents and consultants, respective successors and assigns and respective shareholders, officers, directors, agents and employees (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, 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 DB Contract or an Affiliate that is based on:

- i. the breach or alleged breach of the DB Contract by the DB Contractor;
- ii. the failure or alleged failure by any DB Contractor Related Party to comply with any applicable Environmental Laws or other Laws or legal requirements or Necessary Consents in performing its obligations under the DB Contract;
- iii. 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;
- iv. any actual or alleged negligent act or omission or willful misconduct of any DB Contractor Related Party;
- v. any and all claims for recovery of any non-payment which are filed by sub-contractors of the DB Contractor (of any tier) with an Indemnified Party in connection with the Phase 2 Work; and
- vi. any spill or release or threatened spill or release of Hazardous Substances attributable to the negligence, willful misconduct or breach of contract by the DB Contractor, including the exacerbation of any existing Hazardous Substances; or which was brought onto or generated on the Managed Lanes by the DB Contractor.

Further, subject to certain exceptions, the DB Contract shall indemnify the Indemnified Parties from and against all third party Claims relating to or resulting from errors in the Design Documents to the extent that a designer acting in accordance with the DB Contractor's obligations under the DB Contract should have identified such errors.

Indemnification Process

If any of the Indemnified Parties receives notice of a Claim or has knowledge of a Claim that is within the scope of the indemnities, Concessionaire shall: (a) inform DB Contractor, and (b) send to DB Contractor a copy of all written materials Concessionaire has received asserting such Claim. The cost of Council representing the Indemnified Party in any action for which indemnification is sought will be borne by the DB Contractor.

The DB Contractor will not be liable for any settlement or compromise by an affected Indemnified Party of a Claim except with the DB Contractor's prior written consent, which consent will not be unreasonably withheld, or except where the settlement or compromise is approved by the court after the DB Contractor receives reasonable notice and the opportunity to be heard and such court approval has become final and non-appealable.

25. FORCE MAJEURE

Neither Party shall be entitled to bring a claim for a breach of obligations under the DB Contract by the other Party or incur any liability for any Losses incurred, or claim that there are circumstances amounting to DB Contractor Default or Concessionaire Default, if prevented from carrying out obligations by a Force Majeure Event. However, a Force Majeure Event shall not give Concessionaire the right to claim relief from the obligation to make a payment which it is required to make under the DB Contract. On the occurrence of a Force Majeure Event, the Affected Party shall notify the other Party as soon as practicable.

The process for obtaining an extension in relation to any Force Majeure Event affecting the Phase 2 Work shall be the process for obtaining a Change Order.

26. CHANGE IN LAW

If a Qualifying Change in Law occurs or is shortly to occur, then either Party may notify the other of its likely effects, and Concessionaire shall provide DB Contractor with any such notice received from HPTE, giving details of its opinion of: (a) any necessary change in the Phase 2 Work; (b) any changes required to the DB Contract; (c) whether relief from compliance with obligations is required; (d) any loss of revenue that will result from the relevant Qualifying Change in Law; and (e) any Estimated Change in Costs.

As soon as practicable after receipt of any notice from either Party, the Parties shall apply the Change Procedure. In doing so, the Parties shall: (a) Provide evidence that the DB Contractor has used reasonable endeavors to oblige its sub-contractors to minimize any increase in costs and maximize any reduction in costs; (b) Demonstrate how any Capital Expenditure to be incurred or avoided is being measured in a cost-effective manner; (c) Give evidence as to how the Qualifying Change in Law has affected prices charged by any similar businesses to the Phase 2 Work; (d) Demonstrate that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain assets that have been affected by the Qualifying Change in Law concerned, has been taken into account.

27. CHANGE OF OWNERSHIP AND CONTROL

Structure of the DB Contractor

The DB Contractor represents to Concessionaire that at the date of the DB Contract the legal and beneficial ownership of the DB Contractor and DB Contractor Members is as set out in the information set out in DB Contractor Warranted Information and that no arrangements are in place that have or may result in any sale, transfer or disposal of any legal, beneficial, equitable or other interest in any or all of the shares in the DB Contractor or, subject to permitted transactions.

No Change of Control

Apart from Permitted Transactions, DB Contractor shall ensure that there will be no: (i) sale, transfer, or other disposal of any direct or indirect legal, beneficial, equitable or other ownership interest in the DB Contractor or any DB Contractor Member which, when taken together with any other such transfer or disposal during the relevant period gives rise to a Change of Control of the DB Contractor or a DB Contractor Member; (ii) grant of any security interest, lien or other encumbrance over any legal, beneficial, equitable or other direct or indirect ownership interest in the DB Contractor or any DB Contractor Member giving rise to a Change of Control; (iii) agreement in respect of any legal, beneficial, equitable or other direct or indirect ownership interest in the DB Contractor other than customary partnership or joint venture agreements among the DB Contractor Members as of the date of the DB Contract with respect to the governance and management of the DB Contractor; or (iv) agreement, whether or not subject to any condition precedent or subsequent, to do any of the foregoing.

Prohibited Change of Ownership or Change of Control

No Change in Ownership or Change of Control of the DB Contractor or any DB Contractor Member shall be permitted if such Change in Ownership or Change of Control would result in a default event pursuant to the terms of the Concession Agreement or the Senior Funding Agreements, provided the Concessionaire has notified the DB Contractor of the applicable default events.

Permitted Transactions

No breach in connection with a Change of Control shall occur where the following conditions are met: (i) in connection with a Change of Control of the DB Contractor, if the Concessionaire's prior written consent is obtained; (ii) in connection with a Change of Control of Ames Construction, Inc., the Change of Control results solely from a transfer of a direct or indirect equity interest in such DB Contractor

Member to Ames family members in accordance with shareholder, partnership or organizational agreements relating to Ames Construction, Inc. in place as at the date of the DB Contract; and (iii) subject to (ii) above, in connection with a Change of Control of a DB Contractor Member, if the Concessionaire's prior written consent is obtained, provided that:

1. subject to (2) below, such consent may be made subject to conditions of the provision of reasonable additional security or other reasonable arrangements if, acting reasonably, Concessionaire determines that after such Change of Control the DB Contractor's ability to perform the obligations and covenants of the DB Contract pursuant to the DB Contract will be materially adversely affected, and if such consent is not granted pursuant to this paragraph 1, paragraph 2 below shall apply;
2. such consent may not be withheld, and shall be granted by the Concessionaire if:
 - (a) the Concessionaire receives 3 years audited financial statements, including its most current audited financial statements of the entity whose guarantee the acquiring entity proposes to offer Concessionaire, which shall evidence financial strength adequate, in the opinion of the Concessionaire acting reasonably, to support performance of the DB Contract; and
 - (b) a guarantee from the entity acquiring Control having the same form as that guarantee provided by Granite and Ames to Concessionaire; and
 - (c) the Payment Bond and Performance Bond delivered by the DB Contractor as a condition to the Commencement Date remain in full force and effect, or Concessionaire receives replacement payment and performance bonds; and
 - (d) if in Concessionaire's opinion, acting reasonably, the entity acquiring Control (or its guarantor) has inadequate financial strength to support performance of the DB Contract, an irrevocable standby letter of credit in an amount equal to not less than 50% the amount of the Remaining Contract Value at the time of such Change of Control occurs plus 10% of such amount, or such other security as may be required by the Senior Lenders in accordance with the terms of the Senior Funding Agreements.

Notice

The DB Contractor shall provide timely advance notice to Concessionaire of any proposed Change in Ownership or Change of Control of the DB Contractor or any DB Contractor Member. Such notification shall include a statement describing the Change in Ownership or Change in Control, including all controlling owners and their respective holdings of such ownership interests of the DB Contractor or DB Contractor Member, prior to and following any such proposed Change in Ownership, Change of Control or other transaction.

28. TERMINATION OF THE DESIGN BUILD CONTRACT

If the Concession Agreement is terminated for any reason whatsoever, Concessionaire may terminate the DB Contract by giving notice to DB Contractor having immediate effect.

Termination for Design Build Contractor Default

If a DB Contractor Default has occurred and Concessionaire wishes to terminate the DB Contract, it must serve a Termination Notice on the DB Contractor. The Termination Notice must specify the type and nature of DB Contractor Default that has occurred. In the case of any DB Contractor Default, then this

Contract will terminate on the day falling 15-40 Business Days (depending on the nature of the DB Contractor Default) after the notice date, unless the DB Contractor puts forward an acceptable rectification DB Contract Schedule within 15-40 days (depending on the nature of the DB Contractor Default) of receiving the Termination Notice. If the rectification DB Contract Schedule is accepted, the Termination Notice will be deemed to be revoked and the DB Contract will continue.

On termination of the DB Contract, DB Contractor shall be responsible for all costs reasonably incurred by Concessionaire associated with the appointment of a replacement construction contractor, increases to the cost of completing all remaining components of the Phase 2 Work above payments remaining under the DB Contract. This will include an allowance for the amount of any Liquidated Damages and Concessionaire Liquidated Damages that are estimated by Concessionaire that it will incur under the Concession Agreement or will be incurred by DB Contractor as a result of the default of DB Contractor. Performance Security provided by DB Contractor will be available to Concessionaire to cover this potential liability.

Termination for Concessionaire Default

If the Concession Agreement is terminated by HPTE as a result of a Concessionaire Default, then termination under the DB Contract shall be the same as if the DB Contract was terminated by DB Contractor as a result of a Concessionaire Default. If a Concessionaire Default that is also an HPTE Default under the Concession Agreement has occurred and the DB Contractor wishes to terminate the DB Contract, the DB Contractor must serve a Termination Notice on the Concessionaire within 25 Business Days of becoming aware of Concessionaire Default. If a Concessionaire Default is not also an HPTE Default under the Concession Agreement, no notice restriction shall apply. The Termination Notice must specify the type of Concessionaire Default which has occurred entitling DB Contractor to terminate. The DB Contract will terminate on the day falling 35 Business Days after the date the Concessionaire receives the Termination Notice, unless the Concessionaire rectifies the Concessionaire Default within 35 Business Days of receipt of the Termination Notice.

Termination for Mutual Default

If the Concession Agreement is terminated partly as a result of a Concessionaire Default and partly as a result of a DB Contractor Default, there shall be a fair and equitable share of the amounts due to each party based on their respective contributions to the events of default with any disputes to be resolved pursuant to the Dispute Resolution Procedure.

Voluntary Termination by HPTE

If the Concession Agreement is terminated, the DB Contract shall automatically terminate on such date that the Concession Agreement terminates. In this case, DB Contractor shall be entitled to be paid for all Phase 2 Work completed and the Demobilization Costs attributable to the Phase 2 Work. Concessionaire's obligation to make such payment to DB Contractor shall arise only upon receipt of a corresponding amount from HPTE.

Consequences of Termination

The DB Contractor shall within 15 Business Days of the Expiration Date (or, if earlier, the Termination Date, if applicable) hand over to Concessionaire all documents, records, books, data and/or information in the possession, custody or power of the DB Contractor relating to and/or touching upon the Phase 2 Construction Work.

On the Expiration Date (or if earlier, on the Termination Date) the DB Contractor shall assign and transfer to Concessionaire or any Person nominated by Concessionaire the benefit of all and any contracts or

arrangements it may have with any third parties in relation to the Phase 2 Construction Work and shall, if for any reason it cannot assign the same, declare a trust of all its beneficial interest in the same for the benefit of Concessionaire; and the DB Contractor hereby irrevocably and unconditionally appoints Concessionaire as the DB Contractor's lawful attorney for the purpose of generally executing or approving such deeds or documents and doing any such acts or things necessary as the attorney may think fit.

29. GOVERNING LAW AND DISPUTE RESOLUTION

Governing Law

The law of the State of Colorado, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of the DB Contract. Any provision included or incorporated in the DB Contract by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated in the DB Contract by reference which purports to negate this provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Contract, to the extent capable of execution.

Dispute Resolution

To initiate the Works Dispute resolution process, either party shall provide a written notice of Works Dispute to the other upon the failure of the Parties to resolve the issue through negotiation.

30. ASSIGNMENT

Assignment by Concessionaire

Subsequent to Financial Close, Concessionaire may by 60 days written notice, assign, underlet, charge, sell, bargain or otherwise transfer the DB Contract in accordance with and to the extent allowed by the provisions of the Concession Agreement. Subject to providing 60 days written notice to DB Contractor, any Change of Control in Concessionaire shall be as permitted in accordance with the Concession Agreement.

Assignment by the DB Contractor

The DB Contractor shall not assign, underlet, charge, sell, bargain or otherwise transfer the DB Contract in whole or in part except with the prior written consent of Concessionaire. The sub-contracting by the DB Contractor of any of the Phase 2 Work shall not relieve the DB Contractor of any liability or obligation under the DB Contract for any breach of the obligations arising under the DB Contract, or for the actions of negligence and/or defaults by any DB Contractor Related Party.

**LIST OF DEFINED TERMS CONTAINED IN
SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT**

“**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.

“**Base Case Financial Model Change Date**” means the date that the Relevant Event becomes operative as set out in the Concession Agreement, or if no date is specified, the date agreed by the parties pursuant to the Concession Agreement.

“**Change**” means any alterations, change, variation, extension or reduction in the Managed Lanes (whether before or after the Full Services Commencement Date) which Change has been requested by the Concessionaire, HPTE or the DB Contractor in accordance with the DB Contract and/or any matter or circumstance deemed to be a Concessionaire Change by virtue of an express provision of the Contract.

“**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 DB Contractor (without double counting), including, as relevant, the following:

- (a) Actual wages and benefits, including FICA, paid for additional labor not otherwise included in (e) below;
- (b) Costs for additional bond, insurance and tax;
- (c) Increased costs for materials;
- (d) Equipment costs for DB Contractor owned equipment and based on certified invoice costs for rented equipment;
- (e) Costs of extended job site overhead;
- (f) Costs of salaried employees not otherwise included in (a) or (e) above incurred as a direct result of the Dispute or claim;
- (g) Claims from subcontractors and suppliers at any level (the same level of detail as specified herein is required for all such claims);
- (h) An additional 16 percent will be added to the total of items (a) through (g) as compensation for items for which no specific allowance is provided, including the DB Contractor’s profit and home office overhead; and
- (i) Interest shall be paid in accordance with CRS 5-12-102 beginning from the date of the notice of intent to file claim.

To avoid doubt the following items of damages or expense may not be included as a Change in Costs:

- (i) Profit in excess of that provided above;
- (ii) Loss of profit;
- (iii) Additional cost of labor inefficiencies in excess of that provided above;

- (iv) Home office overhead in excess of that provided above;
- (v) Consequential damages, including but not limited to loss of bonding capacity, loss of bidding opportunities, and Insolvency; and
- (vi) Costs or expenses of any nature in excess of that provided above.

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

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

“**Change Notice**” means an HPTE Change Notice, Concessionaire Change Notice or DB Change Notice as the context shall require.

“**Concessionaire Change**” means a Change that is initiated by the Concessionaire by submitting a Concessionaire Change Notice to HPTE.

“**Concessionaire Change Notice**” means:

- (a) A written notice submitted by the Concessionaire requiring a Construction Change or a Concessionaire-Initiated Change, and setting out the information specified in the relevant paragraph of the Change Procedure; or
- (b) In the case of Qualifying Changes in Law a notice issued by either party in the form specified in the DB Contract.

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

- (a) 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 Concessionaire to make payment of any amount of money exceeding \$375,000 that is due and payable by Concessionaire under the DB Contract within (i) fifteen (15) Business Days where such payment to DB Contractor is dependent upon receipt of a corresponding amount from HPTE and such corresponding amount has been received by Concessionaire from HPTE and (ii) for payments other than those described in (i), thirty (30) Business Days of first service of formal written demand by the DB Contractor, where that amount fell due and payable prior to the date of service of the written demand;
- (b) Insolvency of the Concessionaire;
- (c) A breach by Concessionaire of its obligations under the DB Contract which (in the case of more than one breach, when taken together), except to the extent caused or contributed to by DB Contractor, substantially frustrates or renders it impossible for the DB Contractor to perform all or a substantial part of its obligations or to exercise a substantial part of its rights under the DB Contract in each case for a continuous period of two (2) Months, it being agreed that such obligations and rights are not *de minimis* or mere formalities.

“Concessionaire-Initiated Change” means a Change that is initiated solely by the Concessionaire by submitting a Concessionaire Change Notice to the DB Contractor and that shall be agreed upon by the Concessionaire and the DB Contractor.

“Concessionaire Liquidated Damages” means the damages DB Contractor shall pay to Concessionaire as determined pursuant to the DB Contract if Phase 2 Work Completion is not achieved by the Planned Full Services Commencement Date and to the extent such failure is not directly attributable to an act or omission of Concessionaire, Concessionaire Related Parties or others for whom Concessionaire is responsible at law.

“Construction Change” means a Change, initiated by HPTE, which affects the Phase 2 Work and which takes effect during the period from the date of the DB Contract until the end of the Extended Liability Period under the DB Contract as shall be processed in accordance with the DB Contract.

“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 DB Contract.

“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 DB Contract.

“DB Change” means a Change that is initiated by the DB Contractor by submitting a DB Change Notice to the Concessionaire.

“DB Change Notice” means a written notice submitted by the DB Contractor requesting a Change and setting out the information required by the relevant paragraph of the Change Procedure.

“DB Contract Date” means the date the DB Contract is executed by Concessionaire and the DB Contractor.

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

- (a) A breach by the DB Contractor of any of its obligations under the DB Contract which materially and adversely affects the performance of the Phase 2 Work;
- (b) Insolvency of the DB Contractor or any DB Contractor Member;
- (c) Assignment of the DB Contract without the prior written consent of the Concessionaire;
- (d) A change in the legal or beneficial ownership of the DB Contractor in breach of the DB Contract;
- (e) Abandonment of the Phase 2 Work by the DB Contractor;
- (f) Subject to the DB Contract a breach by the DB Contractor of its obligations to take out and maintain any of the Required Insurances;
- (g) The DB Contractor 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 Concessionaire;

- (h) Failure by the DB Contractor to achieve the Full Services Commencement Date by the Full Services Commencement Sunset Date; and
- (i) Any DB Contractor Member Guarantor defaulting under any Parent Guarantee or an Insolvency occurring in respect thereof or taking the position that the guarantee in question is invalid or unenforceable.

“**DB Contract Documents**” means the Material Project Contracts to which DB Contractor is a party, the DB Contract, the Interface Agreement, the Parent Guarantees and any other document entered into by DB Contractor that relates to the Project.

“**DB Contract Payment Certifier**” means BTY Group.

“**DB Contractor Related Party**” means the DB Contractor’s agents and 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 DB Contractor (other than HPTE or any HPTE Related Party, Concessionaire or any Concessionaire 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 DB Contractor or the DB Contractor’s business in relation to the Project).

“**DB Contractor Response**” means the written response of the DB Contractor to a Concessionaire Change Notice which shall include the information listed in the relevant paragraph of the Change Procedure.

“**DB Contract Schedule**” has the meaning given to it in the schedule to the DB Contract related to Phase 2 Work Requirements.

“**DB Contractor Warranted Information**” means then information relating to the DB Contractor and its affiliates pursuant to the DB Contract.

“**DB Contract**” means the design and construction agreement made between the Concessionaire and the DB Contractor, as such agreement may be amended, supplemented, restated or otherwise varied from time to time in accordance with its terms.

“**DB Contractor**” means Ames/Granite JV, a joint venture of Ames Construction, Inc. and Granite Construction Company.

“**DB Contractor Member**” means Granite Construction Company or Ames Construction, Inc., collectively the “**DB Contractor Members**”.

“**DB Contractor Member Guarantor**” means Granite Construction Incorporated or Ames Construction, Inc., collectively the DB Contractor Member Guarantors.

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

“**Existing Design**” means the existing design contained in the Disclosed Data and provided to the DB Contractor in accordance with the Design-Build Contract.

“**Extended Liability Period**” means the last day on which a claim may be brought with respect to the Phase 2 Work pursuant to C.R.S. 13-80-104.

“Financial Close” means the event when all of the conditions set out in the Concession Agreement have been fulfilled.

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

“First Tier Covered Transactions” refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract).

“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.

“High Value Changes” means a Change which is not a Low Value Change or a Medium Value Change, and which is likely either

- (a) To cost more than \$350,000 (indexed) to implement, or
- (b) 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)).

“HPTE Change” means:

- (a) A Change that is initiated by HPTE by submitting a Low Value Change Request or an HPTE Change Notice to the Concessionaire;
- (b) A Material Phase 1 Change Order; or
- (c) Qualifying Change in Law.

“HPTE Change Notice” means

- (a) A written notice submitted by HPTE requiring a Medium Value Change, a High Value Change, Construction Change, and setting out the information specified in the relevant paragraph of the Change Procedure; or
- (b) In the case of Qualifying Changes in Law a notice issued by either party in the form specified in the Concession Agreement.

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

“I-25 Managed Lanes” means:

- (a) for the purpose of performance of the Services, the existing tolled lanes on Interstate Highway 25 described in the HPTE Services Requirements including all Assets associated with or forming part of, or necessary for the operation and maintenance of, the I-25 Managed Lanes, but excluding:

- (i) the sub-grade supporting the pavement of the I-25 Managed Lanes where the pavement rests on sub-grade together with all structures lying within that sub-grade;
 - (ii) the I-25 Bridge Substructures,
- (b) for the purpose of the performance of the Snow and Ice Control Services means those parts of the existing tolled lanes on Interstate Highway 25 described in the HPTE Snow and Ice Control Services Requirements.

“**Indemnified Parties**” means, under the DB Contract, the Concessionaire and its agents and consultants, respective successors and assigns and respective shareholders, officers, directors, agents and employees.

“**Job Site**” means those parts of the Site which are under the care, custody and control of DB Contractor.

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

“**Lower Tier Covered Transactions**” refers to any covered transaction under a First Tier Covered Transaction.

“**Low Value Change**”: means:

- (a) 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
- (b) 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.

“**Low Value Change Request**” means a request for a Low Value Change in the form set out in the appendix to the Change Procedure.

“**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.

“**Medium Value Change**” means a Change, which is not a Low Value Change, and which, in the reasonable opinion of HPTE, is likely either

- (a) To cost less than \$350,000 (indexed) to implement, or
- (b) 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).

“**Necessary Consents List**” means a comprehensive list of all Necessary Consents which are required in respect of the Phase 2 Work, which have been or will be applied for and/or all the Necessary Consents obtained.

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

“**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 DB Contract.

“**Payment Certificate**” means the certificate provided by the DB Contract Payment Certifier must, within five Business Days of receipt of each complete and satisfactory Payment Application pursuant to the DB Contract.

“**Parent Guarantee**” means the guarantee each DB Contractor Member shall provide to Concessionaire, in accordance with the DB Contract, from the applicable DB Contractor Member Guarantor.

“**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 GP Lanes**” means:

- (a) For the purpose of the work being carried out under the Phase 1 DB Contract the general purpose lanes to be constructed under the Phase 1 DB Contract;
- (b) For the purpose of the performance of the Services, the general purpose lanes on US 36 described in the HPTE Services Requirements;
- (c) For the purpose of the performance of the Snow and Ice Control Services means the general purpose lanes and the BOS Corridors on US 36 described in the HPTE Snow and Ice Control Services Requirements.

“**Phase 1 Managed Lanes**” means:

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

“**Phase 2 ETCS**” means the electronic toll collection system to be installed and commissioned by the DB Contractor in accordance with the DB Contractor’s Phase 2 ETCS Proposals in order to fulfill the related aspects of the HPTE Phase 2 ETCS Requirements, which will be operated by the Concessionaire and maintained by the Concessionaire as part of the ETCS after Full Service Commencement Date.

“Phase 2 GP Lanes” means:

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

“Phase 2 Managed Lanes” means

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

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

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

“Relief Event” means:

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

- (g) An injunction or other order issued by a Governmental Authority having jurisdiction over the Project preventing the DB Contractor, HPTE or the Concessionaire from performing its obligations or exercising its rights under the related contract (as applicable);
- (h) Compliance by the DB Contractor 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;
- (i) 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
- (j) Any delay in the timely issuance of a Necessary Consent that is directly 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: unless any of the events listed in paragraphs (a) to (j) inclusive arises (directly or indirectly) as a result of any willful default, willful act, negligent breach of the DB Contract or any DB Contractor Related Party.

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

“**Revenue Compensation Payment**” means a payment 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 Concession Agreement.

“**RFP**” means the Request for Proposals for the Project issued by HPTE, dated December 14, 2012, modified by an addendum for the RFP itself, and an addendum for the Concession Agreement and schedules related thereto.

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

“**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 DB Contract to procure the provision of the Phase 2 Work and/or the Services and/or the Snow and Ice Control Services (or any of them).

“**Termination Date**” means the earlier of the Expiration Date and such earlier date, if any, on which the termination of the DB Contract takes effect in accordance with its terms.

“**Termination Notice**” means a notice of termination issued in accordance with the DB Contract.

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

APPENDIX D

SUMMARY OF CERTAIN PROVISIONS OF THE OPERATING CONTRACT

The following is a summary of selected provisions of the Operating Contract and is not a full statement of the terms of such agreement. Accordingly, the following summary is qualified in its entirety by reference to the Operating Contract and is subject to the full text of such agreement. Unless otherwise stated, any reference in this Official Statement to the Operating Contract shall mean such agreement and all schedules, exhibits and attachments thereto, as amended. All defined terms have the meaning ascribed such defined terms in the Operating Contract.

1. OVERVIEW

Concessionaire and Operating Contractor entered into the operating contract as of June 27, 2013, as expected to be amended and restated on or prior to the Closing Date (the “Operating Contract”), which sets out the terms and conditions upon which Operating Contractor shall perform the Services and Snow and Ice Control Services. The Operating Contractor shall perform its duties as an independent contractor and not as an agent.

2. SERVICES

I-25 Services

The Operating Contractor will not commence the delivery of the Services in respect of the I-25 Managed Lanes and the I-25 Shared Bridge Deck unless and until Concessionaire has advised Operating Contractor that the Conditions Precedent to the Commencement Date and the Conditions Precedent set out in Part 1 of Schedule 2 of the Operating Contract have been satisfied or waived. Upon the occurrence of the Commencement Date, HPTE will issue NTP1 and the Concessionaire shall promptly provide a copy of NTP1 to Operating Contractor and Operating Contractor will promptly 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.

Services at Phase 1 Commencement Date

The Operating Contractor will not commence delivery of the Services and the Snow and Ice Control Services in respect of the Phase 1 Managed Lanes or the Phase 1 GP Lanes until the Conditions Precedent to the Phase 1 Services Commencement Date have been satisfied. Upon the occurrence of the Phase 1 Services Commencement Date, the Operating Contractor 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.

Services After Full Services Commencement Date

The Operating Contractor will not commence delivery of the Services and the Snow and Ice Control Services in respect of the Managed Lanes as an integrated system and the US 36 General Purpose Lanes until the Conditions Precedent to the Full Services Commencement Date have been satisfied. Upon the occurrence of the Full Services Commencement Date, the Operating Contractor will commence delivery of the Services and the Snow and Ice Control Services in relation to the Managed Lanes and the US 36 General Purpose Lanes as an integrated system.

Subcontracting of Services

Operating Contractor shall not sub-contract, assign, charge, sell, bargain, pledge, transfer or create a lien over the benefit of the Operating Contract in whole or in part except with the prior written consent of

Concessionaire and in no event shall the Operating Contractor sub-contract any part of the Services to a Restricted Person. It is acknowledged and agreed that the Operating Contractor may, with the Concessionaire's consent, enter into Material Subcontracts in connection with the performance of part of the Services, provided each Material Subcontract shall permit, in a manner satisfactory to the Concessionaire, the Concessionaire to step-in to the Operating Contractor's position under the Material Subcontract.

The sub-contracting of any Services shall not relieve the Operating Contractor of any obligations under the Operating Contract for any breach of the obligations arising under the Operating Contract, or for the actions of negligence and/or defaults by any Operating Contractor Related Party.

3. MAINTENANCE OF RECORDS

The Operating Contractor shall at all times maintain a full record of particulars of the costs of performing the Services and upon request by Concessionaire, must provide a written summary of any of the costs as Concessionaire may reasonably require to monitor the performance by the Operating Contractor.

The Operating Contractor will be required to keep books of account in accordance with Good Industry Practice with respect to the Operating Contract, showing in detail: administrative overheads, payments to sub-contractors, capital and revenue expenditure, and such other items as Concessionaire may reasonably require from time to time to conduct costs audits for the purpose of the Operating Contract.

Furthermore, the Operating Contractor shall maintain a full record of all incidents relating to health, safety and security which occur during the term of the Operating Contract and full records of all maintenance procedures carried out during the term of the Operating Contract.

The records referred to in this section shall be retained for a period of at least 5 years.

4. OWNERSHIP AND USE OF PROPERTY

Operating Contractor's License to Enter Land

HTPE granted to the Concessionaire for the Contract Period a non-exclusive license over, under, upon the Site, the I-25 Managed Lanes, the Phase 1 Managed Lanes, the Phase 2 Managed Lanes and the US 36 General Purpose Lanes, for the purpose of exercising its rights and performing its obligations under the Concession Agreement. Such license shall automatically revoke upon a termination of the Concession Agreement. The Concessionaire has the right to issue sub-licenses to sub-contractors as necessary to carry out the obligations under the Concession Agreement.

Concessionaire grants to the Operating Contractor and the Operating Contractor Related Parties non-exclusive access rights to the Site prior to the Full Services Commencement Date and during the Operating Contract Period for the purposes of the applicable Project Operations.

Concessionaire and HPTE reserve the right of use, occupancy and ownership over, under, upon and in the lands referenced to above. The Concessionaire and HPTE may agree in writing to revise the schedule for making the Site available as set out in the Concession Agreement. If HPTE at any time determines it will be unable to provide access to a particular parcel of land, then HPTE shall notify the Concessionaire regarding the revised projected date for delivery of access and the Concessionaire will communicate same to the Operating Contractor.

The Site and the Managed Lanes

The periods for which HPTE grants a license to the Managed Lanes and the US 36 General Purpose Lanes to the Concessionaire, and which Concessionaire in turn grants a sub-license to Operating Contractor commence in respect of: (i) The I-25 Managed Lanes upon the Commencement Date; (ii) The Phase 1 Managed Lanes and the Phase 1 GP Lanes upon the Phase 1 Services Commencement Date; and (iii) The Phase 2 Managed Lanes and the Phase 2 GP Lanes upon the Full Services Commencement Date; and last for the remainder of the term of the Operating Contract.

The Site, the Managed Lanes and the US 36 General Purpose Lanes will not be used by the Operating Contractor for any purpose other than for the purpose of exercising its rights and performing its obligations under the Operating Contract.

At the end of the term of the Operating Contract, the Operating Contractor will deliver back the Managed Lanes to Concessionaire in accordance with the Operating Contract Term Handback Requirements.

70th Avenue Maintenance Facility

HPTE shall ensure that the Concessionaire shall be granted access to the 70th Avenue Maintenance Facility for the purpose of performance of the Snow and Ice Control Services. The Concessionaire shall only have a contractual right of entry into the 70th Avenue Maintenance Facility, which includes Node 2 Building, and shall not have, nor shall it acquire any right, title or other interest in over or under that property. Concessionaire shall provide access to the 70th Avenue Maintenance Facility to Operating Contractor except to the extent prohibited by HPTE.

Additional Property

If at any time the Operating Contractor requires access to or any interest in any land which does not form part of the Site or the Managed Lanes, any additional rights beyond those which the Operating Contractor has in relation to any part of the Site, the responsibility and cost of securing or acquiring such access or interest shall be entirely the responsibility of the Operating Contractor.

Protests and Trespassers

Concessionaire may request the assistance of HPTE to remove protesters or trespassers where Concessionaire demonstrates that it has exercised all legal remedies available to it to remove the protesters or trespassers, and that the continued presence of the protesters or trespassers is having a material adverse effect on the Project. Following such request, HPTE shall notify Concessionaire whether HPTE or CDOT can lawfully provide any assistance and, to the extent that assistance can be provided, HPTE shall or shall cause CDOT to provide such assistance as appropriate.

5. PAYMENTS

All of the dollar amounts referred to below will be indexed.

Unless specific timeframes are stipulated for payment of any amounts owing or payable by one Party to the other Party under the Operating Contract, such amounts shall be due within 30 days of receipt of an invoice. Concessionaire shall not be liable to any sub-contractor for non-payment by the Operating Contractor unless such non-payment was caused by an act, omission or default of Concessionaire.

No payment shall be construed as an acceptance or approval of incomplete, defective or improper performance by the Operating Contractor of any of its obligations under the Operating Contract, nor shall

it operate to relieve the Operating Contractor from the performance of any of its obligations under the Operating Contract which have not been performed.

Monthly Operating Contractor Payments

Subject to and in accordance with the Operating Contract, the Concessionaire shall pay to the Operating Contractor the all-inclusive Monthly Operating Contractor Payments for the performance of all of the Services. The amount of any Monthly Operating Contractor Payment may be adjusted pursuant to Schedule 31- Payment Mechanism of the Operating Contract.

All Noncompliance Points (as between HPTE and Concessionaire) originate from a determination made by HPTE under the Concession Agreement. Upon the imposition by HPTE of Noncompliance Points under the Concession Agreement, such Noncompliance Points shall equally apply to the Operating Contractor unless they arose from an act or omission of Concessionaire or a Concessionaire Related Party. The Noncompliance Points shall be effective against the Operating Contractor as at the time of determination by HPTE pursuant to the Concession Agreement.

Commencing on the Payment Commencement Date, the Concessionaire shall pay to the Operating Contractor the Monthly Operating Contractor Payments due to the Operating Contractor in respect of each Payment Period following the Payment Commencement Date.

In the event that actual Toll Revenues collected by Concessionaire are projected to be materially less than the amount anticipated by Concessionaire, Concessionaire may request that the Monthly Operating Contractor Payment be reduced to an amount that takes account of such reduction in Toll Revenues. Operating Contractor shall negotiate such reduction in good faith.

In the event that a reduction in the Monthly Operating Contractor Payment that is satisfactory to Concessionaire cannot be agreed upon, Concessionaire and Operating Contractor shall cooperate in an effort to change the HPTE Services Requirements in order to facilitate a reduction in Monthly Operating Contractor Payments. In the event that such agreement is not achieved within 30 days of Concessionaire commencing discussions with HPTE with respect to such changes in the HPTE Services Requirements, Concessionaire may terminate the Operating Contract.

Lifecycle Payments

The Operating Contractor has delivered to Concessionaire a budget of Lifecycle Costs for all Life Cycle Maintenance and all replacement, refreshment and/or refurbishment of the Assets to be completed (the "Lifecycle Work"). The Concessionaire shall pay to the Operating Contractor the Lifecycle Payment. Lifecycle Payments shall be paid into an account to be held jointly by Operating Contractor and Concessionaire (the "Lifecycle Account").

On an annual basis, during the Operating Contract Period, the Operating Contractor and Concessionaire will meet to review the Lifecycle Work completed, the Lifecycle Costs incurred, the Monthly Operating Contractor Lifecycle Payments paid to the Operating Contractor and to review and approve a Lifecycle Replacement Schedule for the next calendar year.

In the event the Monthly Operating Contractor Lifecycle Payments are not sufficient to cover the Lifecycle Costs incurred, the Operating Contractor shall be liable to provide all required additional capital necessary to pay such costs and the Operating Contractor will not be entitled to be reimbursed for such additional Lifecycle Costs from Concessionaire or HPTE at any time, unless such additional costs are from a Change, in which case such costs will be paid in accordance with the Change Procedure.

Provided no Operating Contractor Default has occurred, any funds remaining in the Lifecycle Account shall be released to the Operating Contractor upon the latter of; (i) completion of all Lifecycle Work; and (ii) the funds allocated for such Lifecycle Work being deposited in the Lifecycle Account where such Lifecycle Work was completed prior to such date.

GP Snow and Ice Control Services Fee

The Monthly GP Snow and Ice Control Services Fee for each month of each Year from November to April shall be: one-sixth of the Phase 1 GP Snow and Ice Control Services Fee from the month which includes the Phase 1 Services Commencement Date (or from the November occurring after that month if it does not fall in the period November – April), until the month which includes the Full Services Commencement Date; and one-sixth of the GP Snow and Ice Control Services Fee from the Month which contains the Full Services Commencement Date (or from the November occurring after that month if it does not fall in the period November-April) for the remainder of the Services Period. The GP Snow and Ice Control Services Fee shall be \$458,348.00 per year.

Phase 1 Routine Maintenance Services Fee

The Phase 1 GP Routine Maintenance Services Fee shall be 76.9% of the GP Routine Maintenance Services Fee per Year. The Phase 1 GP Snow and Ice Control Services Fee shall be \$352,470.00 per Year. The GP Routine Maintenance Services Fee shall be \$675,000.00.

GP Routine Maintenance Fee

The fee shall be: (a) one-twelfth of the Phase 1 Routine Maintenance Services Fee from the Month which includes the Phase 1 Services Commencement Date, until the month which includes the Full Services Commencement Date; and one-twelfth of the GP Routine Maintenance Services Fee from the Month which contains the Full Services Commencement Date for the remainder of the Services Period.
Invoicing and Payment Arrangements

Within 3 Business Days following the end of each Payment Period, the Operating Contractor shall issue to Concessionaire an invoice for the amount of the Monthly Operating Contractor Payment owing by Concessionaire to the Operating Contractor for such Payment Period. Each invoice shall include as a minimum: (i) the Monthly Operating Contractor Payment payable in respect of the applicable Payment Period; (ii) any adjustments set out in the Payment Adjustment Report issued in the previous Payment Period that have been approved by Concessionaire; (iii) any other adjustments to reflect overpayments and underpayments, as agreed between the Parties; (iv) any amount owing to Concessionaire under the Operating Contract; (v) any amount owing to the Operating Contractor under the Operating Contract; and (vi) the net amount owing by Concessionaire to the Operating Contractor, or by the Operating Contractor to Concessionaire, as applicable. The Operating Contractor shall also submit to Concessionaire a Performance Monitoring Report and a Payment Adjustment Report together with the invoice.

Concessionaire shall not be obligated to make any payment to the Operating Contractor unless all conditions precedent applicable to such payment under the Operating Contract have been satisfied by the Operating Contractor.

Within 8 Business Days of the end of each relevant month, the Operating Contractor shall submit to Concessionaire an invoice showing: (a) if, pursuant to the Concession Agreement, HPTE accepted the Concessionaire's GP Routine Maintenance Fee for the GP Routine Maintenance Services prior to the Contract Date, the GP Routine Maintenance Fee for that month; (b) the Snow and Ice Control Services Fee and a breakdown of any applicable reductions; and (c) the cost incurred during the month in relation to Routine Maintenance activities on the I-25 Shared Bridge Decks, and the Non-Separable Percentages

of those amounts; (d) the amount due by way of reimbursement of the cost of courtesy patrols; and (e) the total which is due.

Disputes

If either Party, acting in good faith, disputes all or any part of a Payment Adjustment Report, a claim for adjustment by Concessionaire and/or the Monthly Operating Contractor Payments payable, it shall notify the other party in writing of that part of the amounts (insofar as at the time of such notice the disputing party is reasonably able to quantify it) which such party disputes and submit to the other party such supporting documentation as is reasonably required to substantiate and confirm such claim. If they fail to resolve the Dispute, the Dispute may be referred for resolution in accordance with the Dispute Resolution Procedure.

Set-Off

Concessionaire may set-off against any sum owing to the Operating Contractor any amount expressly due under the Operating Contract which is agreed or determined to be due from the Operating Contractor to the Concessionaire. Similarly, Operating Contractor may set-off against any sum owing to the Concessionaire any amount expressly due under the Operating Contract which is agreed or determined to be due from the Concessionaire to the Operating Contractor.

Performance Monitoring Reports

The Operating Contractor shall monitor the provision of the Services in accordance with the Operating Contract and shall compile a Monthly Service Report, an Annual Performance Report and shall also record any instances of unavailability of the Managed Lanes and the corresponding Lane Unavailability Penalties.

Each of the Concessionaire and Operating Contractor shall notify the other Party in writing as soon as it becomes aware of an error contained in a particular Monthly Service Report. If the Parties fail to reach agreement on the discrepancy within 5 Business Days of the date of the notice, the matter shall be settled in accordance with the Dispute Resolution Procedure.

Monitoring by Concessionaire

At any time during the Services Period, and at its own cost, Concessionaire (or HPTE) may carry out checks on the Operating Contractor in relation to the performance of its obligations and the Operating Contractor shall cooperate with Concessionaire (or HPTE) as reasonably required.

Payment of the GP Routine Maintenance Fee, Snow and Ice Control Services Fee

If HPTE accepted the Concessionaire's GP Routine Maintenance Fee for the GP Routine Maintenance Services prior to the Operating Contract Date, then HPTE shall pay to the Concessionaire the Concessionaire's GP Routine Maintenance Fee and Snow and Ice Control Services Fee and Concessionaire will pay the GP Routine Maintenance Fee and Snow and Ice Control Services Fee to Operating Contractor within 3 Business Days of receipt of such payment from HPTE.

Operating Contractor acknowledges and agrees that pursuant to the Concession Agreement HPTE shall reimburse to the Concessionaire the Non-Separable Percentage of the cost of Routine Maintenance on the I-25 Shared Bridge Decks and Concessionaire will pay the relevant amount to Operating Contractor within 3 Business Days of receipt of such payment from HPTE.

6. LIFE CYCLE MAINTENANCE PLAN

Life Cycle Maintenance Plan

No later than 120 days before the beginning of each calendar year after the Full Services Commencement Date, the Operating Contractor will prepare and deliver to Concessionaire a 5-year Life Cycle Maintenance Plan in accordance with HPTE's Service Requirements and including all Life Cycle Maintenance which should be carried out in relation to the Managed Lanes.

The Operating Contractor will reasonably consider any changes or additions proposed by Concessionaire to the proposed Life Cycle Maintenance Plan and will modify the Life Cycle Maintenance Plan to reflect those changes. Concessionaire will deliver its comments to the Operating Contractor within 90 days after the Operating Contractor has delivered each proposed Life Cycle Maintenance Plan to Concessionaire.

In the event of any Dispute relating to a Life Cycle Maintenance Plan, Concessionaire and the Operating Contractor will endeavour to resolve any such Dispute within 60 days. If no agreement is reached within the sixty (60)-day period, either Party may submit the Dispute to the Dispute Resolution Procedure.

I-25 Bridges and I-25 Sub-Grade

Operating Contractor acknowledges that pursuant to the Concession Agreement, 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 in accordance with Good Industry Practice.

The Operating Contractor shall carry out Routine Maintenance and Life Cycle Maintenance (including the I-25 Preventative Maintenance Program) on the I-25 Bridge Deck Superstructure.

The Operating Contractor shall carry out the I-25 Preventative Maintenance Program on the I-25 Bridge Deck Superstructure. Pursuant to the Concession agreement, 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.

7. OPERATOR'S PERFORMANCE

Operating Contractor shall perform all its obligations under, and observe all of the provisions of, each of the Operating Contract Documents to which it is a party, and shall ensure that each Operating Contractor Related Party shall perform its obligations under each of the Operating Contract Documents to which such Operating Contractor Related Party is a party.

Standard of Performance

The Operating Contractor shall ensure on a continuing basis that at all times its maintenance and operating procedures are compliant with the HPTE Service Requirements and in any event are sufficient to ensure that: (i) the Managed Lanes are available as required by the Operating Contract and HPTE's Service Requirements; (ii) it can maintain the design intention of the Maintained Elements to achieve their full working life; and (iii) the Maintained Elements are handed back to Concessionaire on the Expiration Date in a condition complying with the requirements of the Operating Contract Term Handback Requirements.

The Operating Contractor will ensure that all persons employed in connection with the performance of the Services will be skilled and experienced in their several professions, trades and callings or adequately

supervised; and that any person that works directly on the maintenance of highways will receive rates of pay no less than comparable to the lower of a) the then-minimum pay per hour received by CDOT's Transportation Maintenance I employees; Class Code D7D1TX (in each year as applicable, (the "CDOT Employee Rate")); or b) \$18.63 per hour, indexed.

Quality Management

The Operating Contractor shall prepare, implement and continually maintain in respect of each phase of the Project Quality Management Documentation to evidence its quality assurance and quality control system in accordance with Good Industry Practice. HPTE and Concessionaire may from time to time carry out a reasonable audit of the Operating Contractor's quality management procedures and documentation to ensure control of the performance of the obligations under the Operating Contract.

8. MANAGEMENT PLAN, SAFETY PLAN AND COMMUNICATIONS PLANS

The Operating Contractor shall submit a Maintenance Management Plan, an Operations Management Plan, a Transition Management Plan, a Safety Plan and a Communications and Marketing Plan to Concessionaire for Acceptance: (i) at least 60 Business Days prior to the projected Commencement Date in relation to the I-25 Managed Lanes and the I-25 Shared Bridge Decks; (ii) at least 80 Business Days prior to the projected Phase 1 Services Commencement Date in relation to the Phase 1 Managed Lanes and the Phase 1 GP Lanes; (iii) at least 120 Business Days prior to the projected Full Services Commencement Date in relation to the Managed Lanes and the US 36 General Purpose Lanes as an integrated system; and (iv) no less than annually or, if the Operating Contractor wishes to change any matter within any plan, more frequently, but no more frequently than once every 3 months.

Concessionaire will review the plans and within 40 Business Days it will either accept the plans or give reasons why it will not accept the plans.

9. COMPENSATION EVENTS

Compensation Events and their consequences

If, as a result of the occurrence of a Compensation Event: (a) The Operating Contractor is unable to commence Services for the Phase 1 Managed Lanes on or before the Phase 1 Services Commencement Compensation Date; (b) The Operating Contractor is unable to comply with any of its obligations the Operating Contract; and/or (c) The Operating Contractor incurs costs, then the Operating Contractor is entitled to apply for relief from its obligations and/or relief from the allocation of Noncompliance Points and/or from any right which Concessionaire would otherwise have to assert that circumstances amounted to an Operating Contractor Default and/or claim compensation under and in accordance with the Operating Contract. Except to the extent the Compensation Event is directly caused by an act or omission of Concessionaire, Concessionaire's obligation to pay any amount or grant any other relief on account of a Compensation Event shall be subject to receiving a corresponding amount or being granted corresponding relief from HPTE.

To obtain relief and/or claim compensation, the Operating Contractor must give to Concessionaire a notice of its claim as soon as practicable, and in any event within 12 Business Days after it becomes aware that the Compensation Event has caused or is likely to cause a breach..

If the Operating Contractor has demonstrated that the Compensation Event was the cause of the Estimated Change in Costs and/or breach of Operating Contractor's obligations; and the steps which the Operating Contractor has taken to mitigate the Estimated Change in Costs, and/or the need for relief from the obligations under the Operating Contract, then:

- (a) Concessionaire shall compensate the Operating Contractor for the actual Change in Costs incurred within 3 Business Days of receiving a corresponding amount from HPTE;
- (b) In the case of the Estimated Change in Costs anticipated to be incurred after the date of the claim, Concessionaire shall pay Operating Contractor an amount corresponding to the amount HPTE compensated Concessionaire within 3 Business Days of receiving such compensation from HPTE; and/or
- (c) Concessionaire shall give the Operating Contractor the non-financial remedies in respect of the Compensation Event to the extent Concessionaire receives such corresponding non-financial remedies from HPTE.

The Operating Contractor shall not be entitled to financial or non-financial remedies to the extent that the Operating Contractor and its sub-contractors could have avoided the Compensation Event, by steps which they might, reasonably be expected to have taken.

Applicability of Dispute Resolution Procedure

If the Parties cannot agree on the extent of any relief, then the Parties shall resolve the matter in accordance with the Dispute Resolution Procedure.

10. RELIEF EVENTS

If and to the extent that a Relief Event adversely affects the ability of the Concessionaire to perform any of its obligations, then the Operating Contractor is entitled to apply for relief from its obligations and/or relief from the allocation of Noncompliance Points and/or from any right which Concessionaire would otherwise have to assert that circumstances amounted to a Concessionaire Default, but only to the extent corresponding relief is received from HPTE.

To obtain relief, the Operating Contractor must give to Concessionaire a notice of its claim for relief, including full details of the nature of the Relief Event, the date of occurrence and its likely duration within 15 Business Days after it becomes aware that the Relief Event has adversely affected the ability of the Operating Contractor to perform its obligations.

Right to Relief

If the Operating Contractor has complied with its obligations, and demonstrated: (a) that the Relief Event was the cause of the breach of the Operating Contractor 's obligations under the Operating Contract; and (b) the steps which the Operating Contractor has taken to mitigate the need for relief from the obligations under the Operating Contract; then, Concessionaire shall give the Operating Contractor the relief in respect of the Relief Event. The Operating Contractor shall not be entitled to remedies to the extent that the Operating Contractor and its sub-contractors could have avoided, by steps which they might reasonably be expected to have taken. Operating Contractor's entitlement to receive any relief is subject to Concessionaire receiving corresponding relief from HPTE.

The Operating Contractor shall notify Concessionaire if at any time it receives or becomes aware of any further information relating to the Relief Event, giving details of that information to the extent that such information is new.

Reduction of Snow and Ice Services Fee and GP Routine Maintenance Fee for Force Majeure

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 shall be entitled to a fair and reasonable reduction, which may be a reduction to zero for the relevant period if no such services are being provided. Operating Contractor acknowledges and agrees that any such reduction(s) under the Concession Agreement shall be deducted from the corresponding fee payable from Concessionaire to Operating Contractor.

Applicability of Dispute Resolution Procedure

If the Parties cannot agree on the extent of the relief required, then the Parties shall resolve the matter in accordance with the Dispute Resolution Procedure.

11. CHANGE IN LAW

Qualifying Change in Law

If a Qualifying Change in Law occurs or is shortly to occur, then either Party may notify the other of its likely effects, giving details of its opinion of: (a) any necessary change in the Service; (b) whether any changes are required to the terms of the Operating Contract; (c) whether relief from compliance with obligations is required, including the obligation of the Operating Contractor to meet HPTE's Requirements and/or the Operating Contractor's Proposals during the implementation of any relevant Qualifying Change in Law; (d) any loss of revenue that will result from the relevant Qualifying Change in Law; (e) Any Estimated Change in Costs that result from the Qualifying Change in Law; and (f) Any Capital Expenditure that is required or no longer required as a result of a Qualifying Change in Law, in each case giving in full detail the procedure for implementing the change in Services. Responsibility for the costs of implementation shall be dealt with in the Change Procedure.

Change Procedure

As soon as practicable after receipt of any notice from either Party, the Parties shall apply a Change Procedure in order to discuss and agree to ways in which the Operating Contractor can mitigate the effect of the Qualifying Change in Law.

12. FORCE MAJEURE

Neither Party shall be entitled to bring a claim for a breach of obligations under the Operating Contract by the other Party or incur any liability for any Losses incurred, or claim that there are circumstances amounting to Operating Contractor Default or Concessionaire Default, if such party is prevented from carrying out obligations by a Force Majeure Event. However, a Force Majeure Event shall not give Concessionaire the right to claim relief from the obligation to make a payment which it is required to make under the Operating Contract where such payment is subject to a corresponding payment under the Concession Agreement, and such corresponding payment has been received by the Concessionaire. On the occurrence of a Force Majeure Event, the Affected Party shall notify the other Party as soon as practicable.

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 shall be entitled to a fair and reasonable reduction in the Snow and Ice Services Fee and/or the GP Routine Maintenance Fee, which may be a reduction to zero for the relevant period if no such services are being provided.

As soon as practicable following the notification of a Force Majeure Event, the Operating Contractor and the Concessionaire 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. If no such terms are agreed on or before the date falling 80 Business Days after the date of the commencement of the Force Majeure Event and such Force Majeure Event is continuing or its consequence remains such that the Affected Party is unable to comply with its obligations under this Contract for a period of more than 120 Business Days, then either Party may terminate the Contract by giving 20 Business Days written notice to the other Party.

Otherwise, the Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations.

13. RESPONSIBILITY FOR CERTAIN HAZARDOUS SUBSTANCES

It is recognized that HPTE or CDOT may assert that certain third persons or parties may rightfully bear the ultimate legal responsibility for any and all Hazardous Substances, which may be present on the Site and the Managed Lanes. HPTE shall be responsible or shall ensure that CDOT will be responsible for matters arising out of HPTE Hazardous Substances Circumstances.

If any Remediation Work shall be necessary in relation to any HPTE Hazardous Substances Circumstances then the Operating Contractor shall be entitled to payment of its Change in Costs as is reasonably required. Concessionaire shall be responsible, for and shall reimburse the Operating Contractor in respect of, any and all claims, proceedings, suits, demands or similar process, damages, losses, liabilities, costs and expenses, including attorneys' fees, arising out of, or in connection with, the existence of HPTE Hazardous Substances Circumstances; or bodily injury (including death) to persons, damage to property or environmental removal or response costs, to the extent that such amounts cannot be mitigated, reduced or avoided by reasonable steps taken by the Operating Contractor, in each case to the same extent and not more than is paid to Concessionaire by HPTE pursuant to the Concession Agreement.

Operating Contractor shall be responsible for all claims and any other obligations whatsoever from any Hazardous Substances, other than HPTE Hazardous Substances Circumstances, except to the extent directly attributable to the gross negligence of Concessionaire.

14. OVERSIGHT BY HPTE

Operating Contractor acknowledges and agrees that HPTE has certain access, monitoring and inspection rights. The Operating Contractor shall not in any way inhibit or prevent HPTE from exercising these rights.

Survey/Audit Right

Once in every year, and at additional times if HPTE or Concessionaire reasonably believe that the Operating Contractor is in breach of its obligations under the Operating Contract, HPTE or Concessionaire may carry out or ensure the carrying out of each of: (i) a survey of the Managed Lanes by a suitably qualified independent expert, and (ii) an audit of the Operating Contractor's records and operations, and of the Assets. Concessionaire shall notify the Operating Contractor in writing a minimum of 9 Business Days in advance of the date it or HPTE wishes to carry out a survey or audit. Concessionaire shall use reasonable endeavors to minimize any disruption caused to the provision of the Services by the Operating Contractor. The cost of the survey or audit shall be borne by Concessionaire or HPTE.

HPTE Self-Help Rights

Operating Contractor acknowledges and agrees that if HPTE reasonably believes that it needs to take action in connection with the Services because a serious risk exists to the health or safety of persons or property or to the environment and/or to discharge a constitutional or statutory duty, or otherwise to discharge a duty imposed on HPTE by any Law, then HPTE shall be entitled to take action in accordance with the Concession Agreement.

15. INDEMNIFICATION

General Indemnities

The Operating Contractor shall release, defend, indemnify and hold harmless Concessionaire and its agents and consultants, respective successors and assigns and respective shareholders, officers, directors, agents and employees (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 for avoidance of doubt, Claim shall include any Claim by HPTE, CDOT or RTD in its capacity as a Project participant, but not consequent of to RTD's normal course of transit operations), 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 Operating Contract or an Affiliate that is based on:

- i. The breach or alleged breach of the Operating Contract by the Operating Contractor;
- ii. The failure or alleged failure by any Operating Contractor 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 the Operating Contract;
- iii. 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 Operating Contractor's obligations under the Operating Contract, or arising out of any use in connection with the Phase 2 GP Lanes or the Project or Services of methods, processes, designs, information or other items furnished or communicated by the Operating Contractor to Concessionaire or HPTE or another Indemnified Party pursuant to the Operating 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 Operating Contractor;
- iv. Any actual or alleged negligent act or omission or wilful misconduct of any Operating Contractor Related Party;
- v. Any and all claims for recovery of any non-payment which are filed by sub-contractors of the Operating Contractor (of any tier) with an Indemnified Party in connection with the Services, including all expenses and attorneys', accountants' and expert witness fees and costs incurred in

discharging any claim, unless Concessionaire is in default in payments owing to Operating Contractor and such payment default has caused the non-payment to the sub-contractor; and

- vi. Any spill or release or threatened spill or release of Hazardous Substances: (i) attributable to the negligence, wilful misconduct or breach of contract by the Operating Contractor, including the exacerbation of any existing Hazardous Substances; or (ii) which was brought onto or generated on the Managed Lanes by the Operating Contractor.

The Operating Contractor's indemnity obligations shall not extend to any loss, damage or cost to the extent same was caused by the negligence, bad faith, fraud or wilful misconduct of the Indemnified Party, the breach of Concessionaire of its obligations, representations or warranties under the Operating Contract, or the breach by an Indemnified Party of any Law.

Indemnification Process

If any of the Indemnified Parties receives notice of a Claim or has knowledge of a Claim that is within the scope of the indemnities, Concessionaire shall: (a) inform Operating Contractor, and (b) send to Operating Contractor a copy of all written materials Concessionaire has received asserting such Claim. The cost of Council representing the Indemnified Party in any action for which indemnification is sought will be borne by the Operating Contractor.

The Operating Contractor will not be liable for any settlement or compromise by an affected Indemnified Party of a Claim except with the Operating Contractor's prior written consent, which consent will not be unreasonably withheld, or except where the settlement or compromise is approved by the court after the Operating Contractor receives reasonable notice and the opportunity to be heard and such court approval has become final and non-appealable.

16. INSURANCE

The Operating Contractor shall take out and maintain or ensure the maintenance of the insurances required to be taken out and maintained by it pursuant to the Required Insurances and any other insurances as may be required by Law in each case until the end of the Services Period, no later than: (a) The Commencement Date, in relation to the Services to be provided in respect of the I-25 Managed Lanes; (b) The Phase 1 Services Commencement Date, in relation to the Services to be provided in respect of the Phase 1 Managed Lanes and the Phase 1 GP Lanes; and (c) The Full Services Commencement Date in relation to the remainder of the Services;

The insurances shall be effected with insurers approved by Concessionaire and the insurance premium and all costs and fees in respect of such insurances shall be the responsibility of the Operating Contractor.

Claims

The Operating Contractor shall give Concessionaire notification within fifteen (15) Business Days after any claim in excess of \$500,000 (Indexed) on any of the insurance policies; accompanied by full details of the incident giving rise to the claim.

17. REINSTATEMENT

All insurance proceeds received under any Physical Damage Policies shall be applied to repair, reinstate and replace each part of the Managed Lanes and the Assets in respect of which such proceeds were received. All insurance proceeds paid under a Physical Damage Policy in respect of a single event (or a series of related events) in an amount in excess of \$500,000 (Indexed) shall be paid into the Joint Insurance Account.

Where a claim is made or proceeds of insurance are received or are receivable under any Physical Damage Policy in respect of a single event (or a series of related events) in an amount in excess of \$250,000 (Indexed), if the matter which caused the Relevant Incident has also caused damage to the US 36 General Purpose Lanes so that there is any Non-Separable Reinstatement Work, then the Non-Separable Re-instatement work provisions outlined below shall first apply to the development of the Reinstatement Plan. If there shall be no Non-Separable Reinstatement Work, then the Operating Contractor shall promptly carry out the necessary Reinstatement Work to repair, reinstate or replace the assets which are the subject of the relevant claim and shall keep Concessionaire informed in relation to the progress of the Reinstatement Work.

Non-Separable Reinstatement Work

The performance of Non-Separable Reinstatement Work shall, if requested by the Concessionaire, be carried out by the Operating Contractor entering into contracts with third parties. Where the Concessionaire does not request the Operating Contractor to carry out such works, the Operating Contractor shall facilitate and cooperate with any subcontractor(s) hired by HPTE or the Concessionaire to carry out such work.

In the case a Relevant Incident involving Non-Separable Reinstatement Work, within 5 Business Days of such Relevant Incident, the Parties shall endeavor to agree on the following:

- a) A reasonable estimate of the proportionate share of the Non-Separable Reinstatement Work allocated to the Managed Lanes and the US 36 General Purpose Lanes, with the Operating Contractor responsible for the Managed Lanes portion and HPTE responsible for the US 36 General Purpose Lanes, and a proportionate share for any shared portion of the Non-Separable Reinstatement Work;
- b) The scope of the work package which includes the Non-Separable Reinstatement Work;
- c) A Reinstatement Plan which will include the form and contents of the tender documents to be delivered to prospective tenderers, which shall include terms and conditions for the contract of the Non-Separable Reinstatement Work Package.

No later than 5 Business Days after the parties have agreed to the above, the Operating Contractor shall prepare and deliver to Concessionaire a draft Reinstatement Plan, which shall incorporate all of the matters agreed by the Parties. If the Parties are unable to agree any of the matters, then either Party may refer the matter to the Dispute Resolution Procedure.

Upon receipt of any invoice under the contract for the Non-Separable Reinstatement Work Package, the Operating Contractor shall promptly submit an invoice for the work attributable to the General Purposes Lanes portion to Concessionaire, and Concessionaire, subject to receiving a corresponding payment from HPTE, shall make payment to the Operating Contractor.

If HPTE does not wish to incur the cost of Non-Separable Reinstatement Work, then unless HPTE and the Concessionaire can reach agreement on terms by which the Concessionaire shall bear the full cost of the Non-Separable Reinstatement Work, then (i) The Operating Contractor shall be released from the obligation to perform the Non-Separable Reinstatement Work in relation to the US 36 General Purpose Lanes; and (ii) The failure of action by HPTE, and the additional costs incurred by Operating Contractor in addressing the Non-Separable Reinstatement Work in relation to the Managed Lanes alone will be considered a Compensation Event.

Implementation of Non-Separable Reinstatement Work

The Operating Contractor shall effect the Non-Separable Reinstatement Work in accordance with the Reinstatement Plan, and shall enter into contractual arrangements in accordance with the process for procuring the contractual arrangement set out in the Reinstatement Plan.

Prior to the Termination Date, any amounts standing to the credit of the Joint Insurance Account may be withdrawn by the Operating Contractor as required to make payments for Reinstatement Work, and the Parties shall operate the signatory requirements of the Joint Insurance Account. Following the Termination Date, Concessionaire may withdraw amounts standing to the credit of the Joint Insurance Account for the purposes of funding any Reinstatement Work.

After the Reinstatement Plan has been implemented to the reasonable satisfaction of Concessionaire, Concessionaire shall permit withdrawal by the Operating Contractor of any Relevant Proceeds and accrued interest held in the Joint Insurance Account that have not been paid in respect of the Relevant Incident. The Operating Contractor shall be solely responsible for the payment of any deficiency in relation to the cost of repair or replacement of the Managed Lanes.

CDOT action under Emergency Contracting Procedures

In any case where CDOT is able to use the emergency contracting procedures in relation to any Non-Separable Reinstatement Work, if CDOT considers in good faith that it will more rapidly be able to carry out sufficient reinstatement work for the US 36 General Purpose Lanes to be re-opened to traffic sooner, then CDOT may proceed to carry out such reinstatement work at its own risk. If CDOT's work results in the Managed Lanes also re-opening to traffic then the Operating Contractor shall reimburse CDOT's reasonable costs less the Non-Separable Price Percentage of those costs. The obligations of the Operating Contractor for non-separable reinstatement work shall be modified to the extent reasonably necessary to take account of the fact that CDOT has procured such work.

Compliance with HPTE's Requirements

Where insurance proceeds are to be used to repair, reinstate or replace any part of any of the Managed Lanes, the US 36 General Purpose Lanes or any Asset, the Operating Contractor shall carry out such repair, reinstatement or replacement.

18. UNINSURABILITY

No Obligation to Insure an Uninsurable Risk

Nothing shall oblige the Operating Contractor to take out insurance in respect of a risk which is Uninsurable, except where the predominant cause of the risk being Uninsurable is any act(s) or omission(s) of the Operating Contractor or an Operating Contractor Related Party.

If a risk usually covered by builders' all risks insurance, property damage insurance, general liability insurance, (but not loss of profits) or workers compensation insurance in each case becomes Uninsurable then: (a) The Operating Contractor shall notify Concessionaire within 3 Business Days of the risk becoming Uninsurable; and (b) if both Parties agree or it is determined in accordance with the Dispute Resolution Procedure, that the risk is Uninsurable and that the risk being Uninsurable is not caused by the actions of the Operating Contractor or a sub-contractor of any tier; the Parties shall meet to discuss the means by which the risk should be managed or shared.

If the Parties cannot agree as to how to manage the risk, then: (a) in respect of such general commercial liability insurance only, Concessionaire shall either pay to the Operating Contractor an amount equal to

the Demobilization Costs attributable to the Services, but only upon receipt by Concessionaire of a corresponding amount, and the Operating Contract will terminate or elect to allow the Operating Contract to continue; and (b) In respect of Operating Contractor's all risks insurance, property damage insurance, general commercial liability insurance delay in startup and business interruption insurance (but not loss of profits) or statutory insurances, the Operating Contract shall continue and on the occurrence of the risk Concessionaire shall (at Concessionaire's option) either pay to the Operating Contractor an amount equal to insurance proceeds that would have been payable had the relevant insurance, or an amount equal to the Demobilization Costs attributable to the Services, but only upon receipt by Concessionaire of a corresponding amount under the Concession Agreement, plus (in relation to general commercial liability insurance only) the amount of insurance proceeds that would have been payable to the Operating Contractor whereupon the Operating Contract will terminate; and (c) where the Operating Contract continues, then the Operating Contractor shall pay to Concessionaire in each Year for which the relevant insurance is not maintained, an amount equal to the premium paid by the Operating Contractor in respect of the relevant risk in this Year prior to it becoming Uninsurable. As soon as the Operating Contractor is aware that the risk is no longer Uninsurable, the Operating Contractor shall take out and maintain insurance for such risk.

If Concessionaire elects to make payment to the Operating Contractor, such that the Operating Contract will terminate, the Operating Contractor shall have the option to pay to Concessionaire on or before the end of the Option Period, an amount equal to the insurance proceeds that would have been payable had the relevant risk not become Uninsurable, in which case the Operating Contract will continue and the Operating Contractor's payment shall be applied for the same purpose and in the same manner as insurance proceeds would have been applied had the relevant risk not become Uninsurable.

19. UNAVAILABLE TERMS AND CONDITIONS

If, upon the renewal of any insurance which the Operating Contractor is required to maintain pursuant to the Operating Contract: (a) any Insurance Term is not available to the Operating Contractor in the worldwide insurance markets with reputable insurers of good standing; and/or (b) the insurance premium payable for insurance incorporating such Insurance Term is such that the Insurance Term is not generally being incorporated in insurance procured in the worldwide insurance market with reputable insurers of good standing by contractors in the United States, then Concessionaire shall waive the Operating Contractor's obligations in respect of that particular Insurance Term, and the Operating Contractor shall not be considered in breach of its obligations regarding the maintenance of insurance.

Notice of Insurance Term Being Unavailable and Discussion on Risk Management

The Operating Contractor shall notify Concessionaire as soon as reasonably practicable and in any event within 3 Business Days of becoming aware that insurance is likely to become unavailable. The Operating Contractor shall provide Concessionaire with such information as Concessionaire reasonably requests regarding the unavailability of the Insurance Term, and the Parties shall meet to discuss how the unavailability should be managed.

Maintenance

In the case of unavailable insurance, the Operating Contractor shall approach the insurance market at least every 4 months to establish whether the waiver should still apply. As soon as the Operating Contractor is aware that the waiver has ceased to apply, the Operating Contractor shall take out and maintain such insurance.

20. REPRESENTATIONS AND WARRANTIES

Operating Contractor's Warranties

The Operating Contractor hereby represents and warrants to Concessionaire as at the Operating Contract Date as follows:

- a. The Operating Contractor is duly incorporated and is an existing Virginia corporation in accordance with the laws of Commonwealth of Virginia, and is authorized to transact business and registered with the Secretary of State in the State of Colorado, and further that as at the Operating Contract Date it has acquired any and all Necessary Consents to perform its obligations under this Contract which fall due for performance immediately upon the Operating Contract Date;
- b. Each person executing the Operating Contract (and any other Operating Contract Document which has been executed on or before the Operating Contract Date) on behalf of the Operating Contractor has been duly authorized to execute each such document on behalf of the Operating Contractor;
- c. Any undertakings of the Operating Contractor arising from an Operating Contract Document which has been executed on or before the Operating Contract Date represent valid and enforceable undertakings of the Operating Contractor;
- d. The Operating Contract and the Operating Contract Documents which have been executed on or before the Operating Contract Date have been validly executed by the Operating Contractor and the execution and performance by the Operating Contractor of Operating Contract and each Operating Contract Document does not contravene: Any Law; Any organizational documents of the Operating Contractor; or Any obligation which is binding on the Operating Contractor;
- e. There is no Operating Contractor Default, and no fact or event exists that with the passage of time would constitute an Operating Contractor Default;
- f. No litigation, arbitration or other dispute resolution proceedings involving the Operating Contractor or, to the best of the Operating Contractor's knowledge and belief (the Operating Contractor having made reasonable enquiries with a view to obtaining such knowledge and belief) any Operating Contractor Related Party, is pending and the Operating Contractor is not aware of any threatened dispute, in each case that could materially and adversely affect the ability of the Operating Contractor to perform its obligations under the Operating Contract or the Operating Contract Documents;
- g. The Operating Contractor has conducted its own analysis and review of the Disclosed Data and that it has satisfied itself as to accuracy, completeness and fitness for purpose and as to its authors' expert qualifications, results and methodology and, except to the extent otherwise provided in the Operating Contract, the Operating Contractor shall not in any way be relieved from any obligation under the Operating Contract nor shall it be entitled to claim against Concessionaire or HPTE on the grounds that such Disclosed Data is incorrect or insufficient except to the extent expressly permitted by the Operating Contract;
- h. The copies of the Operating Contract Documents provided to Concessionaire are true and complete copies of these documents, and, as at the Operating Contract Date, there have been no amendments to these documents and there are no other documents which have not been provided, but which have (or may have) a material effect on the interpretation or application of any of the Operating Contract; and

- i. There is no failure by the Operating Contractor to comply with all Laws and Necessary Consents applicable to its obligations in connection with the Operating Contract Documents which will have a material adverse effect on the Operating Contractor or on the Project; and
- j. Prior to the execution of the Operating Contract, the Operating Contractor, and, to the best of the Operating Contractor's knowledge and belief (the Operating Contractor having made reasonable enquiries with a view to obtaining such knowledge and belief) each shareholder of the Operating Contractor and each Operating Contractor Related Party, has not committed any Prohibited Acts.

Concessionaire's Warranties

Concessionaire hereby represents and warrants to the Operating Contractor as at the Operating Contract Date as follows:

- a. The Concessionaire is duly incorporated and is an existing Colorado limited liability company in accordance with the laws of the State of Colorado, and is authorized to transact business in the State of Colorado;
- b. The person executing the Operating Contract and any other Operating Contract Document executed as at the Operating Contract Date has been duly authorized to execute such documents;
- c. The Operating Contract and any other Operating Contract Document executed as at the Operating Contract Date has been validly executed by Concessionaire and the execution and performance by Concessionaire of the Operating Contract does not contravene: Any Law; or Any obligation which is binding on Concessionaire;
- d. No litigation, arbitration or other dispute resolution proceedings involving Concessionaire or to the best of Concessionaire's knowledge and belief (Concessionaire having made reasonable enquiries with a view to obtaining such knowledge and belief) is pending and Concessionaire is not aware of any threatened dispute, in each case that could materially adversely affect the ability of Concessionaire to perform its obligations under the Operating Contract or under the Operating Documents to which it is a party;
- e. The Operating Contract and any other Operating Contract Document to which Concessionaire is a party has been duly authorized, executed and delivered by Concessionaire and the obligations undertaken in such documents constitute valid and legally binding obligations of Concessionaire, enforceable against it in accordance with the terms of those documents, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity;
- f. There is no failure by Concessionaire to comply with all Laws and Necessary Consents applicable to its obligations in connection with the Operating Contract and any Operating Contract Document to which it is a party as at the Operating Contract Date which will have a material adverse effect on Concessionaire or on the Project;
- g. Neither Concessionaire nor its advisors or agents have willfully misled the Operating Contractor in respect of any of the Disclosed Data in a written communication; and
- h. There is no Concessionaire Default, and no fact or event exists that with the passage of time would constitute a Concessionaire Default.

21. CHANGE OF OWNERSHIP AND CONTROL

No Change in Ownership or Change of Control of the Operating Contractor, shall be permitted where the person acquiring the ownership interest or Control is a person whose standing or activities are inconsistent with HPTE's role, Concessionaire's role, or may compromise HPTE's or Concessionaire's reputation or integrity (a "Restricted Person"); or if such Change in Ownership or Change of Control would have a material adverse effect on the Project or the performance of the Services.

The Operating Contractor will ensure that there will be no Change in Control of the Operating Contractor, unless the Concessionaire has approved such Change of Control. . Items of consideration may include: the financial strength and integrity of those who will exercise Control over the Operating Contractor after the Change of Control; and the experience of those who will exercise Control over the Operating Contractor after the Change of Control. The Operating Contractor shall provide timely notice to Concessionaire of any proposed Change in Ownership or Change in Control of the Operating Contractor.

22. OPERATING CONTRACTOR SECURITY AND GUARANTEE

Letter of Credit

On or before Financial Close, the Operating Contractor shall deliver to Concessionaire a letter of credit from a Permitted LC Provider addressed to and in favor of Concessionaire and the Collateral Agent (for the benefit of the Senior Lenders) in an amount from time to time equal to the average Monthly Operating Contractor Payment and the average Monthly Operating Contractor Lifecycle Payment projected to be payable in the then current month and the next following two months. The Letter of Credit shall be irrevocable, unconditional and provide for partial drawdowns. Concessionaire or the Collateral Agent, as applicable, shall draw on the Letter of Credit (in whole or in part) by presenting the issuing bank with a certificate of an officer of Concessionaire or the Collateral Agent, as applicable, certifying that an Operating Contractor Default has occurred and is continuing.

If Concessionaire calls upon or makes any drawdown from the Letter of Credit, the Operating Contractor must immediately provide a replacement Letter of Credit in the same form and in the same amount as existed immediately prior to such full or partial drawdown.

Concessionaire will return the Letter of Credit (to the extent not called on) to the Operating Contractor once all of the obligations of the Operating Contractor under the Operating Contract have been satisfied in full and the term of the Letter of Credit shall be effective until such date. Concessionaire shall return the Letter of Credit not later than six months following the Termination Date.

Parent Company Guarantee

The Operating Contractor shall cause the Operating Contractor Guarantor to deliver to Project Co an irrevocable and unconditional guarantee in favor of Concessionaire of all obligations of the Operating Contractor. The Operating Contractor Guarantor's maximum liability under the Parent Guarantee shall be \$18,000,000.

Assignment of Security

Performance Security shall be assignable by Concessionaire in connection with the assignment by Concessionaire of its interest in the Operating Contract and, for greater certainty, to the Collateral Agent on behalf of the Senior Lenders or to any trustees or agents of the Senior Lenders. In recognition of the security interests, assignments and liens that Concessionaire is entitled to grant in favor of such Senior Lenders or trustees or agents thereof under or in respect of the Performance Security, the Operating

Contractor shall deliver a direct agreement in favor of the Collateral Agent in the form to be agreed pursuant to the Financial Close Amendment.

23. LIMITATION OF LIABILITY

Concessionaire shall have no liability to the Operating Contractor under the Operating Contract or on any other basis whatsoever for any delay to the Phase 1 Services Commencement Date caused by acceptance of the Phase 1 Managed Lanes or the Phase 1 ETCS occurring after the Planned Phase 1 Services Commencement Date unless acceptance of the Phase 1 Managed Lanes or the Phase 1 ETCS does not take place until after the Phase 1 Services Commencement Compensation Date.

24. CONFIDENTIALITY

The Parties agree that the provisions of the Operating Contract and each Operating Contract Document shall not be treated as Confidential Information and may be disclosed without restriction.

The Parties shall keep confidential all Confidential Information received by one Party from the other Party relating to the Operating Contract and Operating Contract Documents or the Project and shall use all reasonable endeavors to prevent their employees and agents from making any disclosure to any Person of any such Confidential Information.

25. DEFAULTS AND REMEDIES

Default by the Operator

If an Operating Contractor Default has occurred and Concessionaire wishes to terminate the Operating Contract, it must serve a Termination Notice on the Operating Contractor, specifying the type and nature of Operating Contractor Default that has occurred, within 20-40 days (depending on the default classification).

If the Operating Contractor either rectifies the Operating Contractor Default within the time period specified in the Termination Notice, the Termination Notice will be deemed to be revoked and the Operating Contract will continue. If the Concessionaire fails to rectify the Operating Contractor Default within the time period specified, then, Concessionaire may give notice stating that the Operating Contract will terminate on the date falling 10 Business Days after the date of receipt of such notice.

If the default is by the Operating Contractor, the Operating Contractor shall be responsible for all costs incurred by Concessionaire associated with the appointment of a replacement operating contractor, including without limitation, increases to the cost of performing the Services.

Termination of the Concession Agreement

If the Concession Agreement is terminated by HPTE as a result of a Concessionaire Default, which is not a default for which Operating Contractor is responsible, then termination under the Operating Contract shall be the same as if the Operating Contract was terminated by Operating Contractor as a result of a Concessionaire Default. If the Concession Agreement is terminated partly as a result of a Concessionaire Default and partly as a result of an Operating Contractor Default, there shall be a fair and equitable share of the amounts due to each party based on their respective contributions to the events of default with any disputes to be resolved pursuant to the Dispute Resolution Procedure.

If a particular breach during the Services Period (other than any breach for which Noncompliance Points could have been awarded in accordance with Schedule 10 of the Operating Contract) has continued for more than 14 days or occurred more than 3 times in any 6 month period, then Concessionaire may serve a

warning notice on the Operating Contractor. If, following warning notice, the breach continues beyond 30 days or recurred 2 or more times in the 6 month period after the date the warning notice was served, then Concessionaire may serve a "Final Warning Notice".

If the Operating Contract is then terminated, Operating Contractor shall be entitled to be paid the Demobilization Costs attributable to the Services. Concessionaire's obligation to make such payment to Operating Contractor shall arise only upon receipt of a corresponding amount from HPTE.

Default by the Concessionaire

If a Concessionaire Default has occurred that is also a HPTE Default under the Concession Agreement, and the Operating Contractor wishes to terminate the Operating Contract, the Operating Contractor must serve a Termination Notice on Concessionaire within 25 Business Days of becoming aware of Concessionaire Default.

The Operating Contract will terminate on the day falling thirty-five (35) Business Days after the date Concessionaire receives the Termination Notice, unless Concessionaire rectifies the Concessionaire Default within 35 Business Days of receipt of the Termination Notice. If the default is by the Concessionaire, then the Concessionaire shall reimburse the Operating Contractor upon receipt of an invoice for all reasonable costs properly incurred by Operating Contractor.

Remedies for the Default

Where a Concessionaire Default is attributable to a default by HPTE of its obligations under the Concession Agreement, Concessionaire shall take all commercially reasonable steps to obtain reimbursement from HPTE and any reimbursement made by Concessionaire to Operator Contractor will only be made when and to the extent that Concessionaire receives reimbursement for such costs from HPTE under the Concession Agreement.

26. OPERATING CONTRACT TERM HANDBACK

Condition of Maintained Elements on Expiry

Each element of the Project shall be in a condition which would be consistent with diligent performance by the Operating Contractor of its obligations under the Operating Contract and, in particular, is consistent with the Maintained Elements having been maintained in accordance with the Operations Management Plan and the Rehabilitation Schedule.

Independent Inspector

Not less than 48 months prior to the Expiry Date, the Concessionaire shall engage an independent and suitably qualified and experienced person (the "Independent Inspector") to carry out inspections of the Project. The Concessionaire and the Operating Contractor shall share equally the responsibility for the payment of all fees and costs of the Independent Inspector.

The inspector shall deliver a Condition Report within 30 Business Days after the Expiry Date (the "Final Condition Report"). If the Final Condition Report identifies any Expiry Transition Works, the Concessionaire may withdraw from the Escrow Account or call upon the Expiry Transition Security an amount equivalent to those costs and the Concessionaire shall pay any remaining funds in the Escrow Account (including any interest accrued) to the Operating Contractor and return any remaining Expiry Transition Security to the Operating Contractor. If no Expiry Transition Works are identified in the Final Condition Report, the Concessionaire shall, within 20 Business Days of receipt by the Concessionaire of

the Final Condition Report, pay the funds in the Escrow Account (including any interest accrued) to the Operating Contractor and return the Expiry Transition Security to the Operating Contractor.

Operator Actions Upon Termination

The Operating Contractor shall within fifteen (15) Business Days of the Expiration Date (or, if earlier, the Termination Date, if applicable) hand over to Concessionaire all documents, records, books, data and/or information in the possession, custody or power of the Operating Contractor relating to and/or touching upon the Assets, the design, installation, maintenance and/or replacement of the Managed Lanes and the Assets and the carrying out of the Services.

On the Expiration Date (or if earlier, on the Termination Date, if applicable) the Operating Contractor shall assign and transfer to Concessionaire or any Person nominated by Concessionaire the benefit of all and any contracts or arrangements it may have with any third parties in relation to the Project and shall, if for any reason it cannot assign the same, declare a trust of all its beneficial interest in the same for the benefit of Concessionaire; and the Operating Contractor irrevocably and unconditionally appoints Concessionaire as the Operating Contractor's lawful attorney for the purpose of generally executing or approving such deeds or documents and doing any such acts or things necessary as the attorney may think fit.

27. GOVERNING LAW AND DISPUTE RESOLUTION

Governing Law

The law of the State of Colorado shall be applied in the interpretation, execution, and enforcement of the Operating Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of the Operating Contract, to the extent capable of execution.

Dispute Resolution

To initiate the Works Dispute resolution process, either party shall provide a written notice of Works Dispute to the other upon the failure of the Parties to resolve the issue through negotiation.

28. ASSIGNMENT

Assignment by Concessionaire

Concessionaire may assign, underlet, charge, sell bargain or otherwise transfer the Operating Contract in accordance with and to the extent allowed by the provisions of the Concession Agreement. Any Change of Control in Concessionaire shall be as permitted in accordance with the Concession Agreement. Operating Contractor shall have no rights in connection with the foregoing.

Assignment by the Operating Contractor

The Operating Contractor shall not assign, underlet, charge, sell, bargain or otherwise transfer this Contract in whole or in part except with the prior written consent of Concessionaire and HPTE, each in its sole discretion.

**LIST OF DEFINED TERMS CONTAINED IN
SUMMARY OF CERTAIN PROVISIONS OF THE OPERATING CONTRACT**

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

“**Affiliate**” means in relation to any Person:

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

“**CDOT Employee Rate**” means the then minimum pay per hour received by CDOT’s Transportation Maintenance I employees.

“**Change**” means any alteration, change, variation, extension or reduction in the Managed Lanes (whether before or after the Full Services Commencement Date) and/or the Services which Change has been requested by the Operating Contractor, the Concessionaire or HPTE in accordance with the Operating Contract and/or any matter or circumstance deemed to be a Concessionaire Change by virtue of an express provision of the Operating Contract or the Concession Agreement.

“**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 Operating Contractor (without double counting), including, as relevant, the following:

- (a) The costs of continued employment of, or making redundant, staff who are no longer required;
- (b) The costs of employing additional staff;
- (c) Reasonable professional fees;
- (d) The effects on implementation of any insurance reinstatement in accordance with the Operating Contract, including any adverse effect on the insurance proceeds payable to the Operating Contractor and any extension of the period required for implementation;
- (e) Operating costs, life cycle, maintenance or replacement costs;
- (f) Capital expenditure;
- (g) Any deductible or increase in the level of deductible, or any increase in premium under or in respect of any insurance policy;
- (h) Losses, including reasonable legal expenses; and
- (i) Change in revenue.

“Change of Control” means:

(a) Any sale, transfer or disposal of any legal, beneficial, equitable or other interest in relation to the equity interests in the Operating Contractor or of any intermediate entity in the chain of ownership of the Operating Contractor which results in 50% or more of such interests no longer being held by such Persons; or

(b) Any sale, transfer or disposal of any legal, beneficial, equitable or other interest in of interest or other transaction of any type or description, a shareholder, member, partner or joint venture member of the Operating Contractor or of any intermediate entity in the chain of ownership of the Operating Contractor which results in a change of Control of the Operating Contractor; provided that the following will not constitute a Change of Control:

A change in Control due solely to bona fide open market transactions in securities effected on a recognized public stock exchange, excluding such transactions involving an initial public offering;

A change in Control of the Operating Contractor due solely to a bona fide transaction involving securities or beneficial interests in the ultimate parent organization of a shareholder, member, partner or joint venture member of the Operating Contractor, unless the transferee in such transaction is at the time of the transaction suspended or debarred or subject to a proceeding to suspend or debar from bidding, proposing or contracting with any Federal department or the State or any division of the State;

An reorganization or transfer of direct or indirect interests in the Operating Contractor or of any intermediate entity in the chain of ownership so long as there occurs no change in the entity with ultimate power to Control Operating Contractor;

The exercise of preferred or minority equity holder veto or voting rights (whether provided by Law or by the Operating Contractor’s organizational documents) over major business decisions of the Operating Contractor; or

Transfers of direct or indirect ownership interests in the Operating Contractor (as applicable) between or among any members of a fund constituted as a limited partnership so long as there is no change of Control of the general partner of that limited partnership.

“Commencement Date” means 12:01am Denver, Colorado time on the day immediately following the date when the Concessionaire gives notice that the Conditions Precedent to the Commencement Date have been satisfied or waived.

“Concessionaire Change” means:

(a) a Change, initiated by HPTE under the Concession Agreement, which is initiated by the Concessionaire under the Operating Contract by submitting a Low Value Change Request or a Concessionaire Change Notice to the Operating Contractor;

(b) a Concessionaire-Initiated Change

(c) a Material Phase 1 Change Order; or

(d) Qualifying Change in Law

“Concessionaire Default” means one of the following events:

(a) 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 the Concessionaire to make payment of any amount of money exceeding \$500,000 (Indexed) that is due and payable by the Concessionaire under the Operating Contract within thirty (30) Business Days of service of a formal written demand by the Operating Contractor, where that amount fell due and payable prior to the date of service of the written demand; or

(b) Insolvency of the Concessionaire; or

(c) A breach by the Concessionaire of its obligations under the Operating except to the extent caused or contributed to by the Operating Contractor, which substantially frustrates or renders it impossible for the Operating Contractor to perform its obligations for a continuous period of two (2) Months.

“Conditions Precedent to the Commencement Date” means those conditions set out in the Operating Agreement.

“Conditions Precedent to the Full Services Commencement Date” means those conditions set out in the Operating Contract.

“Confidential Information” means all information disclosed from one Party to the others as provided for in the confidentiality provisions of the Operating Contract, but shall expressly not include certain information listed in the Operating Contract.

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

(a) holds the majority of voting rights in the person;

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

(c) exercises direct or indirect control over that person’s affairs.

“Dispute” means any dispute, controversy or claim of whatever nature between the Concessionaire and the Operating Contractor arising under, out of or in connection with the Operating Contract (including any question of the breach, interpretation, validity, effect, performance or termination of the Operating Contract and any claims for set off or counterclaim and including any matter for which the Operating Contract expressly permits to be referred to the Dispute Resolution Procedure).

“Element” means any one of the following Maintained Elements listed in the DB Contract: roadway, bridges, electrical supplies to lighting, signs, traffic signals and communications equipment, and toll equipment.

“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.

“Expiry Transition Security” means a bond or letter of credit which the Operating Contractor may (and if, at any time, the amounts which the Concessionaire is permitted to deduct pursuant to certain provisions of the Operating Contract is greater than the remaining Monthly Service Payments, the Operating Contractor shall), within 5 Business Days of a written request from the Concessionaire, provide in favor of the Concessionaire in an amount equal to the amounts which the Concessionaire is permitted to deduct pursuant to certain provisions of the Operating Contract, in a form and from a surety or bank, as applicable, acceptable to the Concessionaire.

“Final Condition Report” means the report which the Independent Inspector will provide after inspection of the Maintained Elements and which documents whether the Project met the Expiry Transition Requirements on the Expiry Date, as well as identifying any Expiry Transition Works and related Expiry Transition Works Costs Estimates.

“Final Warning Notice” means the notice the Concessionaire may serve on the Operating Contractor if following service of a warning notice the breach specified has continued beyond thirty (30) days or recurred two (2) or more times in the six (6) month period after the date the warning notice was served.

“Financial Close” means the event when all of the conditions set out in the Concession Agreement have been fulfilled.

“Financial Close Amendment” means amendments which may be required to the Operating Contract and its schedules to address requirements of the Senior Lenders.

“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).

“Full Services Commencement Date” means the later of the date of Phase 2 Work Completion (as such term is defined in the Concession Agreement) 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.

“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 rescheduling of their indebtedness or any refinancing).

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

“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 Managed Lanes” means:

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

(b) for the purpose of the performance of the Snow and Ice Control Services means those parts of the existing tolled lanes on I-25 described in the HPTE Snow and Ice Control Services Requirements.

“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.

“Indemnified Parties” means the Concessionaire and its agents and consultants, respective successors and assigns and respective shareholders, officers, directors, agents and employees.

“Independent Inspector” means an independent and suitably qualified and experienced person the Concessionaire shall engage not less than 48 months prior to the Expiry Date, to carry out the inspections of the Project.

“Lifecycle Account” means a joint account of the Operating Contractor and Concessionaire, and Concessionaire’s interest therein may be secured in favor of the Senior Lenders.

“Lifecycle Costs” means the Operating Contractor’s internal and third-party costs to satisfy the Lifecycle Work.

“Lifecycle Payment” means the amounts as set out in –the payment mechanism schedule to the Operating Contract and does not included additional costs other than anticipated costs in respect of the replacement, refreshment and/or refurbishment of any Element, individual structure, Asset, pavement or substructure that have reached the end of their useful service life during the Operating Contract Period, as set out in the rehabilitation schedule to the Operating Contract.

“Lifecycle Work” means a budget of Lifecycle Costs for all Life Cycle Maintenance and all replacement, refreshment and/or refurbishment of the Assets to be completed in accordance with the Operating Contract for the Operating Contract Period.

“Maintained Elements” means those elements of the Managed Lanes and the GP Lanes described in the Concession Agreement.

“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 Operating Contract and the Concession Agreement.

“Material Subcontracts” means a contract entered into between Operating Contractor and a subcontractor in connection with the performance of part of the Services or the Snow and Ice Control Services whose value is in excess of \$100,000 per annum in any one year.

“Monthly Service Report” means the service report that is required to be filed by the Operating Contractor pursuant to the Operating Contract.

“**Noncompliance Points**” means the points of that description which may be allocated in accordance with the Operating Contract.

“**NTPI**” means the First Notice to Proceed.

“**Operating Contract Documents**” means Material Project Contracts to which the Operating Contractor or Operating Contractor Guarantor is a party, the Operating Contract, the Interface Agreement, the Parent Guarantee and any specification, plan, method statement, working procedure, manual of any sort whatsoever related to or in connection with the Services or the Snow and Ice Control Services.

“**Operating Contractor Related Party**” means the Operating Contractor’s agents and subcontractors 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 Operating Contractor (other than HPTE or any HPTE Related Party, Concessionaire or Concessionaire Related Party, Operating Contractor or Operating Contractor 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 Operating Contractor or the Operating Contractor’s business in relation to the Project).

“**Payment Adjustment Report**” means a report setting out any adjustments required between the actual Monthly Operating Contractor Payment determined by the Operating Contractor to be owing by Concessionaire to the Operating Contractor in respect of the Payment Period just ended and the amount that was paid by Concessionaire during such Payment Period, including details of all Noncompliance Points.

“**Parent Guarantee**” means the irrevocable and unconditional guarantee of all obligations of the Operating Contractor under the Operating Contract and the Interface Agreement which the Operating Contractor Guarantor shall deliver in favor of the Concessionaire in accordance with the Operating Contract.

“**Parties**” means the Concessionaire and the Operating Contractor and “**Party**” means any of them.

“**Payment Periods**” means the payment periods of one calendar month established by the Concessionaire for each contract Year.

“**Performance Monitoring Report**” means a monthly service report and an annual performance report in accordance with the Operating Contract.

“**Permitted LC Provider**” means certain financial institutions meeting ratings and credit worthiness tests as shall be acceptable to the Senior Lenders, to be further agreed upon prior to Financial Close.

“**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 Contract.

“**Phase 1 GP Lanes**” means:

(a) For the purpose of the performance of the Services, the general purpose lanes on US 36 described in the HPTE Services Requirements;

(b) 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 in the HPTE Snow and Ice Control Services Requirements.

“Phase 1 Managed Lanes” means:

(a) For the purpose of the performance of the Services, the managed lanes on US 36 described in 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

(b) For the purpose of the performance of the Snow and Ice Control Services means the managed lanes on US 36 described in 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 DB Contract and the date upon which the Concessionaire has given notice to the Operating Contractor that the Conditions Precedent to Phase 1 Services Commencement have been satisfied or waived.

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

“Phase 2 GP Lanes” means

(a) For the purpose of the performance of the Services, the general purpose lanes on US 36 described in the HPTE Services Requirements; and

(b) 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 in 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.

“Project Right of Way” means the physical area necessary for the provision of the Services.

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

“Rehabilitation Schedule” or **“Rehabilitation Plan”** means the schedules and plans set out in the Operating Contract.

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

“Required Insurances” means the insurances specified in the required insurances schedule to the Operating Contract

“Restricted Person” means a person whose standing or activities are inconsistent with HPTE’s role, Concessionaire’s role, or may compromise HPTE’s or Concessionaire’s reputation or integrity.

“Safety Plan” means the plan of that name which the Operating Contractor is required to produce in accordance with the Operating 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 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).

“**Services**” 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.

“**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 listed in the Concession Agreement.

“**Termination Date**” means the earlier of: (i) any date of early termination of the Operating Contract in accordance with the Operating Contract; and (ii) the Expiration Date.

“**Termination Notice**” means a notice of termination issued in accordance with the Operating Contract.

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

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

APPENDIX E

SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE AND THE BOND PROCEEDS LOAN AGREEMENT

Following are summaries of certain provisions of the Indenture and the Bond Proceeds Loan Agreement. These summaries are not to be considered a full statement of the terms of the Indenture or the Bond Proceeds Loan Agreement, respectively, and accordingly are qualified by reference thereto and are subject to the full text thereof.

CERTAIN DEFINITIONS

The following are definitions of certain terms used in this Appendix E. Capitalized terms used in this Appendix E and not otherwise defined herein shall have the meanings assigned to them in the Indenture and the Bond Proceeds Loan Agreement, as applicable.

“*2014 Additional Payment*” means the amounts required to be paid by the Borrower Finco pursuant to the provisions of the Bond Proceeds Loan Agreement, as described in the Bond Proceeds Loan Agreement.

“*2014 Bond Purchase Agreement*” means the Bond Purchase Agreement, dated February 20, 2014, by and among the Underwriter, the Issuer, the Borrower Finco and the Concessionaire, entered into with respect to the 2014 Bonds.

“*2014 Bonds*” means the Colorado High Performance Transportation Enterprise U.S. 36 and I-25 Managed Lanes Senior Revenue Bonds Series 2014 issued in the original aggregate principal amount of \$20,360,000 pursuant to the Indenture.

“*2014 Note*” means promissory note delivered by the Borrower Finco pursuant to the provisions of the Bond Proceeds Loan Agreement.

“*2014 Tax Regulatory Agreement*” means the Tax Regulatory Agreement to be entered into by the Issuer, the Borrower Finco and the Concessionaire with respect to the 2014 Bonds.

“*2014 Term Bonds*” has the meaning set forth in “DESCRIPTION OF THE 2014 BONDS—Redemption” in the forepart of this Official Statement.

“*Acceptable Credit Rating*” means, with respect to any Person, the rating of its unsecured, uncredit enhanced, senior long term indebtedness (or, if such Person has no such rating, then its issuer rating or corporate credit rating) is no lower than (a) at the time such Person executes, delivers or issues an Equity Letter of Credit, ‘A+’, ‘A1’ or the equivalent rating from any Rating Agency, and (b) at any time thereafter, ‘A’, ‘A2’ or the equivalent rating from any Rating Agency.

“*Acceptable Letter of Credit Provider*” means any bank or trust company authorized to engage in the banking business that is organized under or licensed as a branch or agency under the laws of the United States or any state thereof that has an Acceptable Credit Rating.

“*Account*” means any account established pursuant to the Indenture or any Supplemental Indenture.

“*Additional Senior Bonds*” means Senior Bonds issued in connection with the incurrence of Additional Senior Obligations pursuant to the Indenture and the Bond Proceeds Loan Agreement.

“*Additional Senior Creditor*” means any holder of any Additional Senior Obligations incurred by the Borrower Finco and any Bond Trustee or agent therefor under the related Funding Documents.

“*Additional Senior Loan*” has the meaning given to it in an Additional Senior Bonds Loan Agreement.

“*Additional Senior Bonds Loan Agreement*” means the loan agreement, if any, to be executed by the Issuer and the Borrower Group Members in connection with the issuance of Additional Senior Bonds, substantially in the form of the Bond Proceeds Loan Agreement.

“*Additional Senior Obligations*” means additional Indebtedness (including Senior Refinancing Indebtedness) incurred by the Borrower Finco which ranks on a parity in lien and right of payment status with the Bond Proceeds Loan, as permitted under the Bond Proceeds Loan Agreement. Additional Senior Obligations may be incurred by the Borrower Finco, from time to time, for one or more of the following purposes: (i) to complete construction of the U.S. 36 Phase 2 Project, (ii) to comply with obligations under the Material Project Contracts, (iii) to refurbish, upgrade, modify, expand or add to the U.S. 36 Project, (iv) to refinance, replace or refund all or part of any then outstanding Indebtedness of the Borrower Finco, (v) to fund any debt service reserves with respect to such Additional Senior Obligations, (vi) to pay the costs of issuance of such Additional Senior Obligations, and (vii) for any combination of such purposes.

“*Aggregate Total Debt Service Coverage Ratio*” means, as of each Calculation Date, the ratio of (a) Net Cash Flow to (b) the sum of (i) all Senior Debt Service, (ii) Debt Service in respect of the TIFIA Phase 2 Loan, and (iii) Subordinated Debt Service, provided that for purposes of such calculation (A) during the Capitalized Interest Period (as defined in the TIFIA Phase 2 Loan Agreement) the Debt Service on the TIFIA Phase 2 Loan will be deemed to be zero, and (B) during any future period, projected Net Cash Flow will be calculated using the most recently updated Base Case Financial Model.

“*Adverse Tax Event*” means, with respect to a Tax-Exempt Senior Bond, an event that would cause interest on such Tax-Exempt Senior Bond to be included in gross income for federal income tax purposes.

“*Affiliate*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*Authorized Denomination*” means, with respect to 2014 Bonds, \$5,000 in principal amount and any integral multiple thereof.

“*Bankruptcy Related Event*” means

(a) an involuntary proceeding is commenced or an involuntary petition is filed seeking (i) liquidation, reorganization or other relief in respect of any Borrower Group Member or any of its debts, or of a substantial part of the assets of any Borrower Group Member, under any Insolvency Law; or (ii) the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for any Borrower Group Member or for a substantial part of the assets of any Borrower Group Member, and, in any case referred to in the foregoing subclauses (i) and (ii), such proceeding or petition continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing is entered; or

(b) any Borrower Group Member (i) applies for or consents to the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for any Borrower Group Member or for a substantial part of the assets of any Borrower Group Member; (ii) generally does not pay its debts as they become due unless such debts are the subject of a bona fide dispute, or become unable to pay its debts generally as they become due; (iii) makes a general assignment for the benefit of creditors; (iv) consents to the institution of, or fails to contest in a timely and appropriate manner, any proceeding or petition with respect to it described in clause (a) of this definition; (v) commences a voluntary proceeding under any Insolvency Law, or files a voluntary petition seeking liquidation, reorganization, an arrangement with creditors or an order for relief under any Insolvency Law; (vi) files an answer admitting the material allegations of a petition filed against it in any proceeding referred to in the foregoing subclauses (i) through (v), inclusive, of this clause (a); or (vii) takes any action for the purpose of effecting any of the foregoing;

(c) (i) all or a substantial part of the Collateral (including Equity Interests) securing such Borrower Group Member's Secured Obligations are sold or otherwise disposed of in a public or private sale or disposition pursuant to a foreclosure of the Liens thereon securing such Secured Obligations, or (ii) all or a substantial part of the Collateral (including Equity Interests) securing such Obligor's Secured Obligations are transferred pursuant to a sale or disposition of such Collateral in lieu of foreclosure; or

(d) the Security Trustee transfers, pursuant to instructions issued in accordance with the MSA (other than in accordance with Article IV of the MSA), funds on deposit in any of the Project Accounts following the occurrence and during the continuance of an Event of Default (as defined in the MSA), for application to the prepayment or repayment of any principal amount of Secured Obligations.

“*Base Case Financial Model*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*Beneficial Owners*” means any Person which has or shares the power, directly or indirectly, to make investment decisions concerning ownership of any Senior Bonds (including Persons holding Senior Bonds through nominees, depositories and other intermediaries).

“*Blue Sky Laws*” means the laws and accompanying regulations regulating the offers and sales of securities and of those selling them in each of the 50 states, District of Columbia and territories of Puerto Rico and Guam.

“*Bond Counsel*” means Kutak Rock LLP or other attorneys selected by the Issuer who have nationally recognized expertise in the issuance of municipal securities, the interest on which is excluded from gross income for federal income tax purposes.

“*Bond Proceeds (Costs of Issuance) Subaccount*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*Bond Proceeds Loan*” has the meaning set forth under the caption “SUMMARY OF THE BOND PROCEEDS LOAN AGREEMENT—Agreement to Issue the 2014 Bonds; Loan of Proceeds” in this Appendix E.

“*Bond Proceeds Loan Agreement*” means the Loan Agreement, dated the Closing Date, by and among the Issuer, the Borrower Finco, Finco 1, Finco 2 and the Concessionaire, as amended from time to time.

“*Bond Proceeds Loan Agreement Event of Default*” has the meaning set forth under the caption “SUMMARY OF THE BOND PROCEEDS LOAN AGREEMENT—Events of Default and Remedies—Events of Default Defined” in this Appendix E.

“*Bond Proceeds Loan Documents*” means the Bond Proceeds Loan Agreement, the 2014 Note, the Finco 1 Bond Proceeds Loan Agreement, the Finco 2 Bond Proceeds Loan Agreement, the Concessionaire Bond Proceeds Loan Agreement, the Security Documents, the 2014 Tax Regulatory Agreement, the Continuing Disclosure Agreement and any and all other agreements, instruments or other documents evidencing, securing, governing or otherwise executed in connection with and effecting in any material respects the Bond Proceeds Loan.

“*Bond Proceeds Loan Payments*” means the amounts required to be paid by the Borrower Finco in repayment (or prepayment) of the Bond Proceeds Loan and the 2014 Note pursuant to the Bond Proceeds Loan Agreement.

“*Bond Proceeds (Project Costs) Subaccount*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*Bonds Debt Service Reserve Account*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*Bonds Debt Service Reserve Requirement*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*Bond Trustee*” means The Bank of New York Mellon Trust Company, N.A., acting in its capacity as Bond Trustee under the Indenture, and any successor appointed under the Indenture.

“*Bond Trustee Fees and Expenses*” means the fees and expenses payable to the Bond Trustee for its services as Bond Trustee under the Indenture, subject to the terms of the compensation agreement between the Concessionaire and the Bond Trustee.

“*Bond Trustee Representative*” means, with respect to the Bond Trustee, any officer assigned to the Corporate Trust Office, including any managing director, principal, vice president, assistant vice president, assistant treasurer, assistant secretary, or any other officer of such Person customarily performing functions similar to those performed by any of the above designated officers and having direct responsibility for the administration of the applicable agreement, and also, with respect to a particular matter, any other officer, to whom such matter is referred because of such officer's knowledge of and familiarity with the particular subject.

“*Borrower Finco*” means Plenary Roads Finco LP, a limited partnership organized under the laws of the State of Delaware, and any successor thereto.

“*Borrower Finco GP*” means PGC US Finco GP Ltd., a company organized in accordance with the laws of the Province of British Columbia, as general partner of the Borrower Finco, and any successors thereto.

“*Borrower Finco LP*” means PGC US Finco Ltd., a company organized in accordance with the laws of the Province of British Columbia, as limited partner of the Borrower Finco, and any successors thereto.

“*Borrower Finco Senior Bonds Debt Service Account*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*Borrower Finco Senior Obligations*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*Borrower Finco Subordinated Agent*” means Northleaf/PRD LenderCo LP, as agent under the Borrower Finco Subordinated Loan Agreement.

“*Borrower Finco Subordinated Lender*” means Northleaf/PRD LenderCo LP, as lender under the Borrower Finco Subordinated Loan Agreement.

“*Borrower Finco Subordinated Loan*” means the loan made available by Borrower Finco Subordinated Lender to Borrower Finco under the Borrower Finco Subordinated Loan Agreement.

“*Borrower Finco Subordinated Loan Agreement*” means the agreement dated as of February 25, 2014, pursuant to which the Borrower Finco Subordinated Lender makes available to Borrower Finco a subordinated loan in a maximum amount of \$21,600,000, and includes the guarantees thereof made by each of the Concessionaire, Finco 1 and Finco 2.

“*Borrower Group*” means, collectively, the Borrower Finco, Finco 1, Finco 2 and the Concessionaire.

“*Borrower Group Member*” or “*Obligor*” means the Borrower Finco and each of the Guarantors.

“*Borrower Group Member Indemnity Party*” means (a) each Borrower Group Member Related Party, (b) as to the Concessionaire, the Design-Build Contractor, (c) any Person for whom any Borrower Group Member may be legally or contractually responsible and (d) the employees, agents, officers, directors, shareholders, members, representatives, consultants, successors and assigns of any of the foregoing.

“*Borrower Group Member Related Party*” means, individually or collectively, each Borrower Group Member, the Member and the Sponsor.

“*Business Day*” means any day other than a Saturday, a Sunday or a day on which offices of the Government or the State of New York or the Commonwealth of Pennsylvania are authorized to be closed or on which commercial banks are authorized or required by law, regulation or executive order to be closed in New York, New York or Pittsburgh, Pennsylvania.

“*Calculation Date*” means each January 1 occurring after the Closing Date, except that Calculation Date will mean each January 1 and July 1 occurring after the Closing Date for purposes of Sections 6.15(h) and 6.15(i) of the Bond Proceeds Loan Agreement.

“*Calculation Period*” means a twelve (12) month period ending on the date that is one day prior to a Calculation Date.

“*Cash Reserve Account*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*Cash Reserve Requirement*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*CDOT*” means the Colorado Department of Transportation created in C.R.S. Section 24-1-128.7 and any successor thereto.

“*Closing Date*” means February 26, 2014.

“*Change of Control*” has the meaning set forth under the caption “SUMMARY OF THE BOND PROCEEDS LOAN AGREEMENT—Special Covenants—Change of Control Pursuant to the Borrower Finco Subordinate Loan Agreement” in this Appendix E.

“*Code*” means the Internal Revenue Code of 1986, as amended, and regulations thereunder.

“*C.R.S.*” means the Colorado Revised Statutes, as amended.

“*Collateral*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*Concession Agreement*” means the Amended and Restated Concession Agreement, dated February 25, 2014, by and between HPTE and the Concessionaire.

“*Concessionaire*” means Plenary Roads Denver LLC, a limited liability company organized under the laws of the State of Colorado, and any successor thereto.

“*Concessionaire Bond Proceeds Loan*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*Concessionaire Bond Proceeds Loan Agreement*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*Concessionaire Cash Interest Subordinated Loan*” means the loan provided by the Concessionaire Subordinated Lender to the Concessionaire pursuant to the Concessionaire Cash Interest Subordinated Loan Agreement.

“*Concessionaire Cash Interest Subordinated Loan Agreement*” means the agreement dated as of February 25, 2014, pursuant to which the Concessionaire Subordinated Lender makes available to the Concessionaire a subordinated loan for the purpose of enabling, indirectly, the payment of interest on the Borrower Finco Subordinated Loan.

“*Concessionaire Cash Interest Subordinated Loan Debt Service Account*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*Concessionaire Cash Interest Subordinated Loan Proceeds Account*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*Concessionaire Distribution Account*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“Concessionaire Senior Bond Guarantee Obligations” means the obligations of Concessionaire pursuant to the guarantee granted by it in favour of the Issuer pursuant to the Bond Proceeds Loan Agreement, guaranteeing the obligations of Borrower Finco to the Issuer thereunder.

“Concessionaire Senior Guarantee Obligations” means the Concessionaire Senior Bond Guarantee Obligations, any obligations of Concessionaire pursuant to a guarantee of any Additional Senior Obligations, from and after the Phase 1 Assumption Date, the Concessionaire’s guarantee of certain obligations of Borrower Finco under the TIFIA Phase 1 Loan and, under certain circumstances, the Concessionaire’s guarantee of certain obligations of Borrower Finco under the TIFIA Phase 2 Loan.

“Concessionaire Senior Obligations” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“Concessionaire Subordinated Agent” means Northleaf/PRD LenderCo LP, as agent under the Concessionaire Cash Interest Subordinated Loan Agreement.

“Concessionaire Subordinated Lender” means Northleaf/PRD LenderCo LP, as lender under the Concessionaire Cash Interest Subordinated Loan Agreement.

“Concessionaire Subordinated Loan” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“Concessionaire Subordinated Loan Agreement” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“Concessionaire Subordinated Loan Lock-Up Account” means the account of such designation established pursuant to the MSA.

“Concessionaire TIFIA Phase 1 Loan” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“Concessionaire TIFIA Phase 2 Loan” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“Continuing Disclosure Agreement” has the meaning set forth in “CONTINUING DISCLOSURE” in the forepart of this Official Statement.

“Corporate Trust Office” means the corporate trust office of the Bond Trustee located at 525 William Penn Place, Pittsburgh, PA 15259. The Bond Trustee may hereafter designate alternate Corporate Trust Offices and any successor Bond Trustee will designate its Corporate Trust Office by written notice delivered to the Issuer.

“Costs of Issuance” means costs financed with the proceeds of Senior Bonds that are incurred in connection with the preparation, negotiation, execution and delivery of the Funding Documents or any other document related thereto, including, but not limited to, any fees and expenses of the Issuer and the Security Trustee, any fees and expenses of any underwriter or financial advisor that provides services in connection with any Secured Obligations, legal fees and expenses, costs incurred in obtaining ratings from rating agencies, Bond insurance premiums, costs of immediately available funds, costs of publication, printing and engraving, accountants’ fees and recording and filing fees.

“*CPI*” means the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100 (not seasonally adjusted), or its successor, published by the Bureau of Labor Statistics with, unless otherwise specified, January 2014 as the base period.

“*Cross Default Funding Document*” means the Funding Documents listed in clauses (b), (e) (as such clause (e) relates to Senior Obligations), (g), (h), (k) (as such clause (k) relates to Senior Obligations), and (o) (as such clause (o) relates to Senior Obligations) of the definition of “Funding Documents.”

“*Debt Service*” means with respect of each of the Bond Proceeds Loan, TIFIA Phase 1 Loan, TIFIA Phase 2 Loan, Borrower Finco Subordinated Loan, Concessionaire Bond Proceeds Loan, Concessionaire TIFIA Phase 1 Loan, Concessionaire TIFIA Phase 2 Loan or Concessionaire Subordinated Loan, any Intercompany Loan, the Concessionaire Cash Interest Subordinated Loan or any other Permitted Indebtedness of a Borrower Group Member, the principal (including any mandatory sinking fund payments) and interest payable in respect thereof, as appropriate.

“*Default*” means any event of condition that, with the giving of any notice, the passage of time, or both, would be an Indenture Event of Default or a Bond Proceeds Loan Agreement Event of Default.

“*Defeasance Escrow Fund*” means any trust account into which money and/or Defeasance Securities are deposited for the purpose of defeasing any Senior Bonds in accordance with the Indenture.

“*Defeasance Securities*” means Permitted Investments which are:

- (a) cash;
- (b) U.S. Treasury Bonds, Notes and Bonds, including State and Local Government Series (“SLGS”);
- (c) direct obligations of the U.S. Treasury which have been stripped by the Treasury itself and CATS, TIGRS and similar securities;
- (d) Resolution Funding Corp. (REFCORP): only the interest component of REFCORP strips which have been stripped by request to the Federal Reserve Bank of New York in book entry form;
- (e) pre-refunded municipal bonds rated in the same or a higher rating category than direct obligations of the U.S. Treasury by Moody’s and rated in the same or a higher rating category than direct obligations of the U.S. Treasury by S&P; provided that if the issue is only rated by S&P (i.e., there is no Moody’s rating), then the pre-refunded municipal bonds must have been pre-refunded with cash, direct U.S. or U.S. guaranteed obligations, or pre-refunded municipal bonds rated in the same or a higher rating category than direct obligations of the U.S. Treasury; and
- (f) the following obligations issued by the following agencies if such obligations are backed or guaranteed by the full faith and credit of the United States or the full faith and credit of the United States is pledged for the payment of principal of and interest on such obligations:
 - (i) U.S. Export-Import Bank (Eximbank) direct obligations or fully guaranteed certificates of beneficial ownership;

- (ii) Farmers Home Administration (FmHA) certificates of beneficial ownership;
- (iii) Federal Financing Bank;
- (iv) General Services Administration participation certificates;
- (v) U.S. Maritime Administration Guaranteed Title XI financing;
- (vi) U.S. Department of Housing and Urban Development (HUD):
 - (A) Project Notes;
 - (B) Local Transportation Enterprise Bonds;
 - (C) New Communities Debentures—U.S. government guaranteed debentures; and
 - (D) U.S. Public Housing Notes and Bonds—U.S. government guaranteed public housing notes and bonds.

“*Design-Build Contract*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*Design-Build Contractor*” means Ames/Granite JV, a joint venture formed by its members Ames Construction, Inc., a Minnesota corporation, and Granite Construction Company, a California corporation, each holding a joint and several interest, in its capacity as construction contractor under the Design-Build Contract for the U.S. 36 Phase 2 Project.

“*Determination of Taxability*” means the occurrence of any of the following: (a) either the Bond Trustee or the Issuer has received written notice from the Borrower Finco or any of the Guarantors, supported by an opinion of nationally recognized bond counsel, that an Event of Taxability has occurred, (b) either the Bond Trustee or the Issuer has received written notice that the Commissioner of Internal Revenue or any District Director of Internal Revenue has issued a statutory notice of deficiency, or document of substantially similar import due to the occurrence of an Event of Taxability, or (c) the Issuer has received written notice from the Bond Trustee that the Bond Trustee has been advised by any taxpaying owner of the 2014 Bonds or former owner of 2014 Bonds that the Internal Revenue Service has assessed as includible in the gross income of such owner the interest on such owners 2014 Bond or 2014 Bonds due to the occurrence of an Event of Taxability; provided, however, that in respect of clauses (b) and (c) above, a Determination of Taxability will not be deemed to have occurred unless and until the Concessionaire has been notified of the allegation that an Event of Taxability has occurred and either (i) the Borrower Finco or the Concessionaire fails to commence a contest of such allegation in good faith and by appropriate legal or administrative proceeding within sixty (60) days following such notification; or (ii) the Borrower Finco or the Concessionaire does commence such contest within such time, but thereafter fails to pursue it diligently, in good faith and by appropriate legal or administrative proceeding to a final order or judgment by a court or administrative body of competent jurisdiction; or (iii) such contest results in a final order of judgment of a court or administrative body of competent jurisdiction to the effect that an Event of Taxability has occurred and the time for any appeal of such order or judgment has expired.

“*Direct Agreements*” has the meaning assigned to it in the MSA.

“*Director*” means the Director of the Colorado High Performance Transportation Enterprise.

“*Disposition*” or “*Dispose*” means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction) of any property by any Person (or the granting of any option or other right to do any of the foregoing), including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith or of any Equity Interests owned by such Person.

“*DRCOG*” means the Denver Regional Council of Governments, a nonprofit association of local governments from the Denver metropolitan area, including Adams, Arapahoe, Boulder, Clear Creek, Douglas, Gilpin and Jefferson counties, the City and County of Denver, the City and County of Broomfield, and southwest Weld County.

“*Effective Date Borrower Finco Subordinated Debt*” means term Indebtedness (which will not permit reborrowings) incurred pursuant to the Borrower Finco Subordinated Loan.

“*Effective Date Concessionaire Cash Interest Subordinated Debt*” means term Indebtedness (which will not permit reborrowings) incurred pursuant to the Concessionaire Cash Interest Subordinated Loan.

“*Effective Date Subordinated Debt*” means the Effective Date Borrower Finco Subordinated Debt and the Effective Date Concessionaire Cash Interest Subordinated Debt.

“*Equity Contribution Agreement*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*Equity Interests*” means the shares, units, membership interests, partnership units or other equity interests (however denoted) in each Borrower Group Member.

“*Equity Letter of Credit*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*Equity Lock-up Account*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*Equity Subaccount*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*Event of Taxability*” means any event, condition or circumstance which has the effect or result that interest on a 2014 Bond is not excludable for federal income tax purposes from the gross income of an Owner such 2014 Bond or a former Owner of such 2014 Bond under Section 103 of the Code, other than for a period during which such Owner of such 2014 Bond or a former Owner of such 2014 Bond is or was a “substantial user” of the Project or a “related person” for purposes of Section 147(a) of the Code, that results from the failure of the Borrower Finco or the Concessionaire to take any action or to omit to take any action or that results from the inaccuracy of any representation by the Borrower Finco or the Concessionaire under the Bond Proceeds Loan Agreement or the Tax Regulatory Agreement. An Event of Taxability does not include any event, condition or circumstance which results in the interest on a 2014 Bond being a preference item subject to an alternative minimum tax, or any other tax consequences which depend upon an Owner of such 2014 Bond particular tax status.

“*FASTER*” means the Funding Advancements for Surface Transportation and Economic Recovery Act of 2009, title 43, article 4, part 8, Colorado Revised Statutes, as amended from time to time.

“*Favorable Opinion of Bond Counsel*” means an opinion of Bond Counsel, addressed to the Issuer, the Borrower Group Members and the Bond Trustee, to the effect that the action proposed to be taken is authorized or permitted by *FASTER* and the Indenture and will not adversely affect any exclusion from gross income for federal income tax purposes of interest on the 2014 Bonds, other than for a period during which an Owner or a former Owner is or was a Substantial User of the Project or a “related person” for purposes of Section 147(a) of the Code.

“*Final Maturity Date*” means with respect to the 2014 Bonds and the Bond Proceeds Loan, January 1, 2044, and with respect to any Additional Senior Bonds and Additional Senior Obligations, the final maturity date set forth in the applicable Supplemental Indenture or Additional Loan Agreement.

“*Financial Consultant*” means a Person who (a) is retained by the Borrower Finco, (b) is not, and none of whose officers, directors or employees is, an officer, director or employee of any of the Borrower Group Members or the Issuer, and (c) is a registered broker-dealer or municipal advisor experienced and has a national and favorable reputation with respect to public finance matters.

“*Finco*” means each of the Borrower Finco, Finco 1, and Finco 2.

“*Finco 1*” means Plenary Roads Finco ULC, an unlimited liability company established under the laws of the Province of British Columbia, Canada, and any successor thereto.

“*Finco 1 Bond Proceeds Loan*” means the loan provided by the Borrower Finco to Finco 1 pursuant to the Finco 1 Bond Proceeds Loan Agreement.

“*Finco 1 Bond Proceeds Loan Agreement*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*Finco 1 Subordinated Loan*” means the loan provided by the Borrower Finco to Finco 1 pursuant to the Finco 1 Subordinated Loan Agreement.

“*Finco 1 Subordinated Loan Agreement*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*Finco 1 TIFIA Phase 1 Loan*” means the loan provided by the Borrower Finco to Finco 1 pursuant to the Finco 1 TIFIA Phase 1 Loan Agreements (as defined in the MSA).

“*Finco 1 TIFIA Phase 2 Loan*” means the loan provided by the Borrower Finco to Finco 1 pursuant to the Finco 1 TIFIA Phase 2 Loan Agreements (as defined in the MSA).

“*Finco 2*” means Plenary Denver Finco, LLC, a limited liability company established under the laws of the State of Delaware, and any successor thereto.

“*Finco 2 Bond Proceeds Loan*” means the loan provided by Finco 1 to Finco 2 pursuant to the Finco 2 Bond Proceeds Loan Agreement.

“*Finco 2 Bond Proceeds Loan Agreement*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*Finco 2 Subordinated Loan*” means the loan provided by Finco 1 to Finco 2 pursuant to the Finco 2 Subordinated Loan Agreement.

“*Finco 2 Subordinated Loan Agreement*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*Finco 2 TIFIA Phase 1 Loan*” means the loan provided by Finco 1 to Finco 2 pursuant to the Finco 2 TIFIA Phase 1 Loan Agreements (as defined in the MSA).

“*Finco 2 TIFIA Phase 2 Loan*” means the loan provided by Finco 1 to Finco 2 pursuant to the Finco 2 TIFIA Phase 2 Loan Agreements (as defined in the MSA).

“*Fitch*” means Fitch Ratings, Inc. and any successor thereto.

“*Full Services Commencement Date*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*Full Services Commencement Longstop Date*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*Fund*” means any fund established pursuant to the Indenture or any Supplemental Indenture.

“*Funding Documents*” means (a) the Bond Proceeds Loan Agreement, (b) from and after the Phase 1 Assumption Date, the Phase 1 TIFIA Loan Agreement; (c) the Assignment Agreement; (d) the Phase 2 TIFIA Loan Agreement; (e) the Intercompany Loan Agreements and the Promissory Notes delivered pursuant thereto; (f) the Indenture; (g) the Senior Bonds; (h) any Supplemental Indenture; (i) the Borrower Finco Subordinated Loan Agreement; (j) the Concessionaire Cash Interest Subordinated Loan Agreement; (k) the Promissory Notes (other than Promissory Notes delivered pursuant to Intercompany Loan Agreements); (l) the Security Documents; (m) the Equity Contribution Agreement; (n) the Tax Regulatory Agreement; and (o) any financing documents entered into in respect of the incurring of Additional Senior Obligations, Subordinated Refinancing Debt or Permitted Subordinated Debt in accordance with the terms of the Funding Documents..

“*GAAP*” means generally accepted accounting principles as defined by the American Institute of Certified Public Accountants or such other nationally recognized professional body, in effect from time to time in the United States of America, consistently applied.

“*Government*” means the United States of America and its departments and agencies

“*Governmental Authority*” means any federal, state, provincial, county, city, town, village, municipal or other government or governmental department, commission, council, court, board, bureau, agency, authority or instrumentality (whether executive, legislative, judicial, administrative or regulatory), of or within the United States of America or its territories or possessions (including the State and its counties and municipalities) or Canada or its provinces or territories, and their respective courts, agencies, instrumentalities and regulatory bodies, or any entity that acts “on behalf of” any of the foregoing, whether as an agency or authority of such body.

“*Guaranteed Obligations*” has the meaning set forth under the caption “SUMMARY OF THE BOND PROCEEDS LOAN AGREEMENT—Guaranty—Guaranty; Limitations on Liability” in this Appendix E.

“*Guarantor*” means each of the Concessionaire, Finco 1 and Finco 2.

“*Guaranty*” means, collectively, the guaranty made by each Guarantor in favor of the Issuer and the Bond Trustee pursuant to the Bond Proceeds Loan Agreement.

“*Handback Requirements Reserve Account*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*Handback Reserve Requirement*” means such amounts that are required to be deposited into the Handback Reserve Fund (as defined in the Concession Agreement) pursuant to Section 48.8 of the Concession Agreement.

“*Hedge Agreement*” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

“*HPTE*” means the Colorado High Performance Transportation Enterprise, a government-owned business within the Colorado Department of Transportation and a division of the Colorado Department of Transportation, as the public sector party to the Concession Agreement, and any successor thereto.

“*I-25 Managed Lanes*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*I-25 Project*” means the operation and maintenance of the I-25 Managed Lanes and the I-25 Shared Bridge Decks (as such terms are defined in the Concession Agreement) and the tolling of the I-25 Managed Lanes, in each case, in accordance with the terms of the Concession Agreement and each other applicable Transaction Document.

“*IFRS*” means the International Financial Reporting Standards recommended by the Canadian Accounting Standards Board, consistently applied.

“*Indebtedness*” of any Person means, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person for the deferred purchase price of property or services (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all obligations of such Person created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) all obligations of such Person as lessee under leases that have been or should be, in accordance with IFRS and, if required under applicable law, GAAP, recorded as capital leases, (f) all obligations, contingent or otherwise, of such Person in respect of letters of credit, bankers’ acceptances, bank guaranties, surety bonds or similar extensions of credit, (g) all obligations of such Person in respect

of a Hedge Agreement, (h) indebtedness secured by a Lien on property owned or being purchased by such Person, whether or not such indebtedness will have been assumed by such Person or is limited in recourse and (i) all Indebtedness of others referred to in clauses (a) through (h) above and other payment obligations (collectively, “Guaranteed Indebtedness”) guaranteed directly or indirectly in any manner by such Person, or in effect guaranteed directly or indirectly by such Person through an agreement (i) to pay or purchase such Guaranteed Indebtedness or to advance or supply funds for the payment or purchase of such Guaranteed Indebtedness, (ii) to purchase, sell or lease (as lessee or lessor) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such Guaranteed Indebtedness or to assure the holder of such Guaranteed Indebtedness against loss, (iii) to supply funds to or in any other manner invest in the debtor (including any agreement to pay for property or services irrespective of whether such property is received or such services are rendered) or (iv) otherwise to assure a creditor against loss.

“*Indenture*” means the Trust Indenture, dated the Closing Date, by and between the Issuer and the Bond Trustee, as amended and supplemented from time to time.

“*Indenture Event of Default*” has the meaning set forth under the caption “SUMMARY OF THE INDENTURE—Events of Default and Remedies—Indenture Events of Default” in this Appendix E.

“*Independent Engineer*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*Insolvency Laws*” means the United States Bankruptcy Code, 11 U.S.C. §§ 101 et seq., as from time to time amended and in effect, and any state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect.

“*Intercompany Loan Agreements*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*Intercompany Loans*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*Intercreditor Agent*” means The Bank of New York Mellon, in its capacity as intercreditor agent under the Senior Obligations Intercreditor Agreement, and any successor thereto.

“*Interest Payment Date*” means (a) with respect to the 2014 Bonds, each January 1 and July 1, commencing July 1, 2014, the dates upon which interest on the 2014 Bonds becomes due and payable, and (b) with respect to any Additional Senior Bonds, the Interest Payment Date(s) set forth in a Supplemental Indenture.

“*Investment Grade Rating*” means a rating assigned by a Rating Agency which is no lower than “BBB-” or “Baa3.”

“*Issuer*” means the Colorado High Performance Transportation Enterprise, a government-owned business within the Colorado Department of Transportation and a division of the Colorado Department of Transportation, and any successor thereto, in its capacity as issuer of the 2014 Bonds and any Additional Senior Bonds.

“*Issuer Representative*” means the Director any other officer or employee of the Issuer authorized by law or by a writing signed by the Director to act as an Issuer Representative under the Indenture, a

Supplemental Indenture, the Bond Proceeds Loan Agreement and any Additional Senior Bonds Loan Agreement.

“*Law*” means any federal, state, local and municipal laws, rules and regulations, orders, codes, directives, permits, approvals, decisions, decrees, ordinances or by-laws having the force of law and any common or civil law, whether adopted or enacted prior to or after the date hereof including binding court and judicial decisions having the force of law, and includes any amendment, extension or re-enactment of any of the same in force from time to time and all other instruments, orders and regulations made pursuant to statute.

“*Lien*” means any mortgage, deed of trust, pledge, hypothecation, assignment, mandatory deposit arrangement, encumbrance, lien (statutory or other), security interest, or preference, priority or other security agreement of any kind or nature whatsoever, including any sale-leaseback arrangement, any conditional sale or other title retention agreement, any financing lease having substantially the same effect as any of the foregoing, and the filing of any financing statement or similar instrument under the UCC or comparable law.

“*MSA*” means the Master Security Agreement, dated as of February 25, 2014, by and among the Issuer, the Trustee, the Security Trustee, the Intercreditor Agent, the United States Department of Transportation, as TIFIA Phase 1 Lender, the United States Department of Transportation, as TIFIA Phase 2 Lender, Northleaf/PRD LenderCo LP, as the Borrower Finco Subordinated Lender, the Concessionaire Subordinated Lender, the Borrower Finco Subordinated Agent and the Concessionaire Subordinated Agent, the Concessionaire, the Borrower Finco, Finco 1, Finco 2, such other parties as accede thereto from time to time as Secured Parties in accordance with the terms thereof, as amended from time to time.

“*Major Maintenance Reserve Account*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*Major Maintenance Reserve Requirement*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*Managed Lanes*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*Management and Finance Services Agreements*” means (a) the Management Services Agreement, dated as of February 25, 2014, between the Concessionaire and Plenary Group USA Ltd., as manager, under which the manager will provide certain management services to the Concessionaire in respect of the U.S. 36 Project, and (b) the Finance Services Agreement dated as of February 25, 2014, between the Concessionaire and Plenary Group USA Ltd., as finance services provider, under which the finance services provider will provide certain finance services to the Concessionaire, Finco 1, Finco 2 and the Borrower Finco in respect of the U.S. 36 Project.

“*Material Adverse Effect*” means a material adverse effect on (a) the U.S. 36 Project (or any Segment thereof), or the business, property or financial condition of any Borrower Group Member, (b) the ability of any Borrower Group Member or the Member to perform or comply with any of its material obligations under the Funding Documents or the Material Project Contracts to which it is a party, (c) prior to the Substantial Completion Date, the business, property or financial condition of the Sponsor relating to the U.S. 36 Project or the Sponsor’s ability to perform or comply with any of its material obligations under the Equity Contribution Agreement, (d) the validity, perfection or priority of the Liens on the

Collateral in favor of the Security Trustee or (f) the rights or benefits of the Issuer, the Bond Trustee or the Owners of the 2014 Bonds available under the Bond Proceeds Loan Agreement or the Indenture.

“*Material Project Contracts*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*Member*” or “*Sponsor Member*” means Plenary Roads Denver Ltd., a corporation established under the laws of the State of Colorado, and any successor thereto.

“*Monthly Transfer Date*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*Moody’s*” means Moody’s Investor Services, Inc. and any successor thereto.

“*NEPA*” means the National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321 et seq.).

“*Net Cash Flow*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*Net Loss Proceeds*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*O&M Contract*” means the operating contract between the Concessionaire and the O&M Contractor dated June 27, 2013 pursuant to which the O&M Contractor has agreed to carry out the O&M Work (as defined in the O&M Contract) in accordance with the terms thereof as amended and restated on the date hereof, and any replacement contract entered into by the Concessionaire in compliance with the Funding Documents.

“*O&M Contractor*” means Transfield Services Infrastructure Inc., a corporation organized under the laws of the State of Virginia.

“*O&M Expenses*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*O&M Reserve Account*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*O&M Reserve Requirement*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*Organizational Documents*” means, with respect to any Person, (a) to the extent such Person is a corporation, the certificate or articles of incorporation and the by-laws of such Person, (b) to the extent such Person is a limited liability company, the certificate of formation or articles of formation or organization and operating or limited liability company agreement of such Person and (c) to the extent such Person is a partnership, joint venture, trust or other form of business, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization or formation of such Person.

“*Outstanding*” means all Senior Bonds that have been executed and delivered, except:

- (a) any Senior Bond on which all principal of and interest due or to become due has been paid at maturity;
- (b) any Senior Bond on which the Redemption Price due or to become due has been paid in accordance with the redemption provisions applicable to such Senior Bond;
- (c) Senior Bonds in lieu of which other Senior Bonds have been executed and delivered pursuant to the provisions of the Indenture relating to the transfer and exchange of Senior Bonds or the replacement of mutilated, lost, stolen or destroyed Senior Bonds;
- (d) Senior Bonds that have been canceled by the Bond Trustee or that have been surrendered to the Bond Trustee for cancellation;
- (e) Senior Bonds on which all of the principal, interest or Redemption Price is due and for which the Bond Trustee holds moneys sufficient to pay the principal, interest or Redemption Price for the benefit of the Owner thereof pursuant to the Indenture; and
- (f) Senior Bonds that have been defeased pursuant to the Indenture.

“*Owner*” means the registered owner of any Senior Bond as shown in the registration records of the Bond Trustee.

“*Participants*” means the participants of the Securities Depository which include securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations.

“*Permitted Affiliate Subordinated Debt*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*Permitted Hedging Arrangement*” means an interest rate swap, cap, collar, option, floor, forward or other hedging agreement, arrangement or security, however denominated, identified by the Borrower Finco in a certificate signed by an officer of the Borrower Finco as having been entered into by the Borrower Finco with a Qualified Provider not for investment purposes but with respect to Permitted Indebtedness (which Permitted Indebtedness will be specifically identified in the certificate) for the purpose of (a) reducing or otherwise managing the Borrower Finco’s risk of interest rate changes or (b) effectively converting the Borrower Finco’s interest rate exposure, in whole or in part, from a fixed rate exposure to a variable rate exposure, or from a variable rate exposure to a fixed rate exposure.

“*Permitted Indebtedness*” means:

- (a) in respect of the Borrower Finco:
 - (i) the Bond Proceeds Loan;
 - (ii) from and after the Phase 1 Assumption Date, Indebtedness under the TIFIA Phase 1 Loan Agreement in an aggregate principal amount not to exceed \$54,000,000 plus the amount of capitalized interest accrued pursuant to the terms of the TIFIA Phase 1 Loan Agreement
 - (iii) Indebtedness under the TIFIA Phase 2 Loan Agreement in an aggregate principal amount not to exceed \$60,000,000, plus the amount of capitalized interest accrued pursuant to the terms of the TIFIA Phase 2 Loan Agreement;

(iv) Effective Date Borrower Finco Subordinated Debt in an aggregate principal amount not to exceed \$21,600,000;

(v) any Additional Senior Obligations;

(vi) any Subordinated Refinancing Debt or Permitted Subordinated Debt;

(vii) any Permitted Hedging Arrangement; and

(viii) Permitted Affiliate Subordinated Debt.

(b) in respect of the Concessionaire:

(i) Indebtedness owing to Finco 2 in respect of the Concessionaire Bond Proceeds Loan, the Concessionaire TIFIA Phase 1 Loan (from and after the Phase 1 Assumption Date), the Concessionaire TIFIA Phase 2 Loan and the Concessionaire Subordinated Loan;

(ii) Indebtedness owing to Finco 2 pursuant to an Intercompany Loan Agreement entered into in connection with any Additional Senior Obligations, any Subordinated Refinancing Debt, any Permitted Subordinated Debt or any Permitted Affiliate Subordinate Debt incurred by the Borrower Finco;

(iii) Effective Date Concessionaire Cash Interest Subordinated Debt in an aggregate principal amount not to exceed \$10,803,442;

(iv) Permitted Affiliate Subordinate Debt;

(v) reimbursement obligations in respect of letters of credit, and other financial obligations, arising under the Material Project Contracts or any other agreement executed by the Concessionaire in connection with the U.S. 36 Project that are payable as Project Costs or O&M Expenses to the extent the same constitute Indebtedness and that do not in the aggregate have face amounts exceeding \$1,000,000 (inflated annually by CPI) at any time;

(vi) purchase money obligations or capitalized leases incurred to finance discrete items of equipment not comprising an integral part of the U.S. 36 Project that are payable as O&M Expenses and that do not in the aggregate have annual debt service or lease payment obligations exceeding \$500,000 (inflated annually by CPI) at any time;

(vii) trade accounts or accrued expenses (incurred in the ordinary course of business) payable (other than for borrowed money) so long as such trade accounts or expenses payable are not overdue by more than ninety (90) days (unless subject to a good faith contest);

(viii) amounts payable under the Concession Agreement or any other Material Project Contract to the extent the same constitute Indebtedness; and

(ix) Indebtedness under guarantees made in respect of Indebtedness of the Borrower Finco described in clauses (a)(i) through (a)(vii) above.

(c) in respect of Finco 1:

(i) Indebtedness owing to the Borrower Finco in respect of the Finco 1 Bond Proceeds Loan, the Finco 1 TIFIA Phase 1 Loan (from and after the Phase 1 Assumption Date), the Finco 1 TIFIA Phase 2 Loan and the Finco 1 Subordinated Loan;

(ii) Indebtedness owing to the Borrower Finco pursuant to an Intercompany Loan Agreement entered into in connection with any Additional Senior Obligations, any Subordinated Refinancing Debt, any Permitted Subordinated Debt or any Permitted Affiliate Subordinated Debt incurred by the Borrower Finco; and

(iii) Indebtedness under guarantees made in respect of Indebtedness of the Borrower Finco described in clauses (a)(i) through (a)(vii) above.

(d) in respect of Finco 2:

(i) Indebtedness owing to Finco 1 in respect of the Finco 2 Bond Proceeds Loan, the Finco 2 TIFIA Phase 1 Loan (from and after the Phase 1 Assumption Date), the Finco 2 TIFIA Phase 2 Loan and the Finco 2 Subordinated Loan;

(ii) Indebtedness owing to Finco 1 pursuant to an Intercompany Loan Agreement entered into in connection with any Additional Senior Obligations, any Subordinated Refinancing Debt, any Permitted Subordinated Debt or any Permitted Affiliate Subordinated Debt incurred by the Borrower Finco; and

(iii) Indebtedness under guarantees made in respect of Indebtedness of the Borrower Finco described in clauses (a)(i) through (a)(vii) above.

“*Permitted Investments*” means:

(a) with respect to moneys in any fund, subfund, account or subaccount other than any Defeasance Escrow Fund, investments authorized in C.R.S. Sections 24-36-109, 24-36-112 and 24-36-113 or any successor thereto; and

(b) with respect to any Defeasance Escrow Fund, Defeasance Securities.

“*Permitted Liens*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*Permitted Subordinated Debt*” means Indebtedness incurred by the Borrower Finco which ranks on a parity in lien and right of payment status with the Effective Date Subordinated Debt that is incurred (a) to complete construction of the U.S. 36 Phase 2 Project, (b) to comply with obligations under the Material Project Contracts, (c) to refurbish, upgrade, modify, expand or add to the U.S. 36 Project, (d) to refinance, replace or refund all or part of any then outstanding Indebtedness of the Borrower Finco, (e) to fund any debt service reserves with respect to such Indebtedness, (f) to pay the costs of issuance of such Indebtedness, and (g) for any combination of such purposes, provided that: (i) no Bond Proceeds Loan Agreement Event of Default has occurred and is continuing at the time of incurrence of such Indebtedness, (ii) such Indebtedness will have interest payment dates (except for Permitted Subordinate Debt issued as Variable Rate Indebtedness) and principal payment dates that coincide with the Interest Payment Dates (regardless of whether the final maturity date of such Indebtedness is a date that is later than the final maturity date of the Bond Proceeds Loan), (iii) the Borrower Group Members will have

entered into such Intercompany Loan Agreements (or amendments thereto) as will be required to make available the proceeds of the Indebtedness indirectly from the Borrower Finco to the Concessionaire, (iv) at the time of incurrence of such Indebtedness the Bond Trustee receives a certification from the Borrower Finco stating that after giving effect to the incurrence of such Indebtedness (A) the Aggregate Total Debt Service Coverage Ratio for each full Calculation Period occurring between the date of incurrence of such Indebtedness and the Final Maturity Date of the 2014 Bonds will not be less than 1.15:1.00, and (B) the Senior Debt Service Coverage Ratio for each full Calculation Period occurring between the date of incurrence of such Indebtedness and the Final Maturity Date of the 2014 Bonds will not be less than 1.25:1.00, in each case, on a pro forma basis, and (v) each lender or holder of any such Permitted Subordinated Debt (or an agent or Bond Trustee acting on its behalf) at the time of execution of any documentation with respect thereto will become a party to and be bound by the MSA and the Subordinated Obligations Intercreditor Agreement.

“*Person*” means any natural person, firm, corporation, partnership, limited liability company, state, political subdivision of any state, other public body or other organization or association.

“*Phase 1 Assumption Date*” means the date on which the Security Trustee (a) is satisfied that the conditions set forth in the MSA have been met and (b) has issued a notice to all other parties to the MSA that the Phase 1 Assumption Date has occurred.

“*Phase 2 Work*” has the meaning set forth in the Concession Agreement.

“*Pledge Agreements*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*Principal Payment Date*” means any date on which the principal (including mandatory sinking fund redemption payments) of the Senior Bonds becomes due and payable.

“*Project*” has the meaning set forth in the Concession Agreement.

“*Project Accounts*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*Project Costs*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*Project Revenues*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*Qualified Provider*” means any financial institution or insurance company which is a party to a Permitted Hedging Arrangement if the unsecured long-term debt obligations of such financial institution or insurance company (or of the parent or a subsidiary of such financial institution or insurance company if such parent or subsidiary guarantees the performance of such financial institution or insurance company under such Permitted Hedging Arrangement), or obligations secured or supported by a letter of credit, contract, guarantee, agreement, insurance policy or surety bond issued by such financial institution or insurance company (or such guarantor parent or subsidiary), are rated in one of the three highest rating categories (without regard to numerical or similar modifiers) of a Rating Agency at the time of the execution and delivery of the Permitted Hedging Arrangement.

“*Ramp Up Reserve Account*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*Ramp Up Reserve Requirement*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*Rating Agency*” means S&P, Moody’s, Fitch or any other nationally recognized statistical rating organization identified as such by the United States Securities and Exchange Commission.

“*Record Date*” means (a) with respect to the 2014 Bonds, for a January 1 Interest Payment Date the preceding December 15 and for a July 1 Interest Payment Date the preceding June 15, notwithstanding whether such December 15 or June 15 is a Business Day, and (b) with respect to any Additional Senior Bonds, the Record Date set forth in the Supplemental Indenture.

“*Redemption Price*” means the amount due on a Senior Bond on the date on which it is redeemed prior to maturity pursuant to the redemption provisions applicable to such Senior Bond. Such term does not include the principal and interest due on Senior Bonds that are Term Bonds on the dates such Senior Bonds are to be redeemed in accordance with a mandatory sinking fund redemption or mandatory pro rata redemption schedule set forth in the Indenture or a Supplemental Indenture.

“*Representation Letter*” means the Blanket Issuer Letter of Representations dated January 16, 2014 from the Issuer to The Depository Trust Company.

“*Reserved Rights*” means amounts payable to the Issuer as described under the captions entitled “SUMMARY OF THE BOND PROCEEDS LOAN AGREEMENT—Amounts Payable,” “—Indemnification Covenant” and “—Events of Default and Remedies—Agreement To Pay Attorneys’ Fees and Expenses” of this Appendix E and the corresponding provisions under any Additional Senior Bonds Loan Agreement.

“*S&P*” means Standard & Poor’s Ratings Services, a division of the McGraw-Hill Companies, Inc., and any successor thereto.

“*Secured Creditor*” means each of the Issuer, the Bond Trustee (on behalf of the Owners of the 2014 Bonds), the TIFIA Phase 1 Lender (from and after the Phase 1 Assumption Date), the TIFIA Phase 2 Lender, the Subordinated Lenders, the Subordinated Agents, any Additional Senior Creditor, any Person providing Subordinated Refinancing Debt, any Person providing Permitted Subordinated Debt and any Person providing Permitted Hedging Arrangements.

“*Secured Obligations*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*Secured Party*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*Securities Depository*” means The Depository Trust Company and its successors and assigns, or any other depository selected as set forth in the Indenture, which agrees to follow the procedures required to be followed by such depository in connection with the 2014 Bonds.

“*Securities Act*” means the Securities Act of 1933, as amended from time to time, and the rules and regulations promulgated thereunder from time to time.

“*Security Documents*” means the MSA, the Pledge Agreements, the Direct Agreements and each other document or instrument from time to time pursuant to which a Lien or security interest is granted or perfected with regard to the Collateral.

“*Security Trustee*” means The Bank of New York Mellon, acting in its capacity as Security Trustee under the MSA, and any successor appointed under the MSA.

“*Segregated Bonds Accounts*” means the Bond Proceeds (Costs of Issuance) Subaccount, the Bond Proceeds (Project Costs) Subaccount and the Bonds Debt Service Reserve Account.

“*Segregated Subordinated Loan Accounts*” means the Concessionaire Cash Interest Subordinated Loan Proceeds Account, the Concessionaire Subordinated Loan Lock-up Account and the Concessionaire Cash Interest Subordinated Loan Debt Service Account.

“*Segregated TIFIA Phase 1 Account*” means the TIFIA Phase 1 Debt Service Reserve Account.

“*Segregated TIFIA Phase 2 Accounts*” means the TIFIA Phase 2 Loan Subaccount and the TIFIA Phase 2 Debt Service Reserve Account.

“*Senior Bonds*” means, collectively, the 2014 Bonds and any Additional Senior Bonds.

“*Senior Debt Service*” means, for any period, as of any date of calculation, an amount equal to the sum of all fees and interest and principal of the Borrower Finco Senior Obligations or the Concessionaire Senior Obligations, as applicable, accruing and payable during such period as set forth in the Base Case Financial Model (as it may be updated pursuant to the terms of the Funding Documents). In determining the principal amount of the Borrower Finco Senior Obligations or the Concessionaire Senior Obligations, as applicable, during such period, payment will be assumed to be made in accordance with any amortization schedule established in respect thereof. Except with respect to Variable Rate Indebtedness, in determining the interest amount on the Borrower Finco Senior Obligations or the Concessionaire Senior Obligations, as applicable, during such period, payment will be assumed to be made at the interest rate(s) and on the interest payment dates established in respect thereof and set forth in the applicable Senior Loan Documents. In determining the interest amount on Borrower Finco Senior Obligations or Concessionaire Senior Obligations, as applicable, that are incurred as Variable Rate Indebtedness, the Variable Rate Indebtedness Interest Rate Assumption will apply; provided that if a Permitted Hedging Arrangement has been entered into by the Borrower Finco with respect to such Variable Rate Indebtedness, the interest amount on such Variable Rate Indebtedness will be determined at the rate payable by the Borrower Finco as provided by the terms of the Permitted Hedging Arrangement or the net interest rate payable by the Borrower Finco pursuant to offsetting indices as set forth in the Permitted Hedging Arrangement.

“*Senior Debt Service Coverage Ratio*” means, as of each Calculation Date, the ratio of Net Cash Flow, for the Calculation Period ending on such Calculation Date, to Senior Debt Service, for the Calculation Period ending on such Calculation Date, provided that, during any future period, projected Net Cash Flow will be calculated using the most recently updated Base Case Financial Model.

“*Senior Loan Agreement*” means the Bond Proceeds Loan Agreement, the TIFIA Phase 1 Loan Agreement (following the Phase 1 Assumption Date) and any other loan agreement or similar document entered into by the Borrower Finco in connection with the incurrence of Additional Senior Obligations (including any Additional Senior Bonds Loan Agreement).

“*Senior Loan Documents*” means each Senior Loan Agreement, the Security Documents, any agreements and documents executed by the Borrower Finco in connection with a hedging arrangement entered into pursuant to or in connection with any Senior Loan Agreement, and all other agreements, instruments and documents executed and delivered pursuant to or in connection with any of the foregoing.

“*Senior Obligations*” means Borrower Finco Senior Obligations and Concessionaire Senior Guarantee Obligations.

“*Senior Obligations Intercreditor Agreement*” means the Subordination and Intercreditor Agreement, dated as of February 25, 2014, among the TIFIA Phase 2 Lender, the TIFIA Phase 1 Lender, the Bond Trustee, the Security Trustee and the Intercreditor Agent.

“*Senior Refinancing Indebtedness*” means Additional Senior Obligations (a) issued or incurred solely for the purpose of (i) refinancing, replacing or refunding Borrower Finco Senior Obligations, (ii) making a deposit to any debt service reserve fund, if necessary, and (iii) paying the costs of issuance of such Additional Senior Obligations, and (b) that meet the requirements set forth in the Bond Proceeds Loan Agreement.

“*Series*” means the Senior Bonds designated as a separate series in a Supplemental Indenture and any Senior Bonds authenticated and delivered in lieu of or in substitution for such Senior Bonds pursuant to the Indenture.

“*Series 2014 Debt Service Fund*” means the fund of such designation as established pursuant to the Indenture.

“*Series 2014 Interest Account*” means the Account of such designation established in the Series 2014 Debt Service Fund pursuant to the Indenture.

“*Series 2014 Principal Account*” means the Account of such designation established in the Series 2014 Debt Service Fund pursuant to the Indenture.

“*Series 2014 Redemption Account*” means the Account of such designation established in the Series 2014 Debt Service Fund pursuant to the Indenture.

“*Single Purpose Entity*” means a Person, other than an individual, which:

(a) was formed or organized solely for the purpose of entering into the loan transactions contemplated to be entered into by it in the Funding Documents and taking actions with respect thereto;

(e) does not engage and has not engaged, directly or indirectly, in any business other than the actions required or permitted to be performed by it under the Funding Documents;

(f) does not have and has never had any assets other than those pertaining to the loan transactions contemplated or permitted to be entered into by it in the Funding Documents;

(g) maintains and has always maintained its own separate books and records and its own accounts, in each case, which are separate and apart from the books and records and accounts of any other Person, including, in the case of a Person which is a partnership, its partners;

(h) holds itself out as and has always held itself out as being a Person, separate and apart from any other Person, other than, in the case of a Person which is a partnership, its partners;

- (i) does not commingle and has never commingled its assets with those of any other Person other than, in the case of a Person which is a partnership, its partners;
- (j) conducts and has always conducted its own business in its own name, or in the case of a Person which is a partnership, by and through its partners acting solely as the partners of such partnership;
- (k) maintains and has always maintained separate financial statements;
- (l) pays and has always paid its own liabilities out of its own funds;
- (m) does not acquire and has never acquired obligations or securities, directly or indirectly, of (i) any of its partners, members or shareholders or (ii) any other Person, other than (in the case of clause (ii)) as permitted under the Funding Documents;
- (n) complies and has always complied with all applicable corporate formalities required or recommended to maintain its separate legal personality;
- (o) does not hold itself out, and has never held itself out, to be responsible for the debts of another Person or pay another Person's liabilities out of its own funds (other than pursuant to the Guaranty and Permitted Indebtedness);
- (p) holds itself out, and has always held itself out, to the public as a legal Person separate and distinct from any other Person and conducts its business solely in its own name in order not (i) to mislead others as to the identity with which such other party is transacting business, or (ii) to suggest that it is responsible for the debts of any third party, including any of its members or Affiliates, or any general partner, member, principal or Affiliate thereof (other than as permitted under the Funding Documents);
- (q) files and has always filed its own tax returns, if any, as may be required under applicable law, to the extent (i) not part of a consolidated group filing, a consolidated return or returns or (ii) not treated as a division for tax purposes of another taxpayer;
- (r) maintains and has always maintained an arm's length relationship with its Affiliates;
- (s) pays and has always paid the salaries of its own employees, if any;
- (t) allocates and has always allocated fairly and reasonably any overhead for shared office space, if any;
- (u) uses and has always used (to the extent such are or have been used) separate stationery, invoices and checks;
- (v) except as contemplated or permitted by the Funding Documents to which it is a party, does not pledge and has never pledged its assets for the benefit of any other Person;
- (w) except as contemplated or permitted by the Funding Documents to which it is a party, does not form, acquire or hold, and has never formed, acquired or held, any subsidiary (whether corporate, partnership, limited liability company or other); and

(x) corrects and has always corrected any misunderstandings known to it regarding its separate identity.

“*Sinking Fund Amount*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*Special Record Date*” means a special date fixed to determine the names and addresses of Owners of the 2014 Bonds for purposes of paying defaulted interest on the 2014 Bonds in accordance with the Indenture.

“*Sponsor*” means Plenary Group (Canada) Ltd., a Canadian corporation; provided that Plenary Group USA Concessions Ltd., a Delaware corporation, will be deemed to be the Sponsor (and Plenary Group (Canada) Ltd. will no longer be the Sponsor) if the following conditions have been satisfied: (a) Plenary Group USA Concessions Ltd. acquires three or more concessions in the United States (one of which will be in the transportation sector and all of which will have achieved financial close) which have a design, build, finance, operate (DBFO) structure or other similar structure commonly referred to as a PPP, DBFO, DBFM, DBFMO or otherwise involves a long-term equity investment; (b) the total amount of financed construction costs that have been expended by the relevant project company with respect to each such concession (“**Total Construction Costs**”) will be at least \$100,000,000; (c) Plenary Group USA Concessions Ltd. has and maintains a direct or indirect economic and voting interest in each project company owning an interest in each such concession of at least (i) 100% for projects with Total Construction Costs of less than \$125,000,000, (ii) 75%, for projects with Total Construction Costs of at least \$125,000,000 but no greater than \$200,000,000, (iii) 50%, for projects with Total Construction Costs of greater than \$200,000,000 but no greater than \$500,000,000, (iv) 25%, for projects with Total Construction Costs of greater than \$500,000,000 but no greater than \$1,000,000,000, and (v) 10%, for projects with Total Construction Costs of greater than \$1,000,000,000; (d) the Borrower Finco delivers a certificate of an Authorized Officer to the Bond Trustee as to the satisfaction of the requirements set forth in clauses (a) through (c) above and describing each such concession in reasonable detail; and (e) Plenary Group USA Concessions Ltd. delivers a certificate of an authorized officer to the Bond Trustee acknowledging that it is the Sponsor for all purposes under the Funding Documents.

“*State*” means the State of Colorado.

“*Subaccount*” means any subaccount established pursuant to the Indenture or any Supplemental Indenture.

“*Subordinated Agents*” means the Borrower Finco Subordinated Agent and the Concessionaire Subordinated Agent.

“*Subordinated Debt Service*” means, for any period, as of any date of calculation, an amount equal to the sum of all fees and interest and principal of the Effective Date Subordinated Debt, any Subordinated Refinancing Debt and any Permitted Subordinated Debt accruing and payable during such period as set forth in the Base Case Financial Model (as it may be updated pursuant to the terms of the Funding Documents). In determining the principal amount of the Effective Date Subordinated Debt, any Subordinated Refinancing Debt and any Permitted Subordinated Debt during such period, payment will be assumed to be made in accordance with any amortization schedule established in respect thereof. Except with respect to Variable Rate Indebtedness, in determining the interest amount on the Effective Date Subordinated Debt, any Subordinated Refinancing Debt and any Permitted Subordinate Debt during such period, payment will be assumed to be made at the interest rate(s) and on the interest payment dates established in respect thereof and set forth in the Subordinated Loan Agreement or the agreement entered into by the Borrower Finco with respect to the incurrence of any Subordinated Refinancing Debt or any

Permitted Subordinated Debt. In determining the interest amount on any Subordinated Refinancing Debt or Permitted Subordinated Debt that is incurred as Variable Rate Indebtedness, the Variable Rate Indebtedness Interest Rate Assumption will apply; provided that if a Permitted Hedging Arrangement has been entered into by the Borrower Finco with respect to such Variable Rate Indebtedness, the interest amount on such Variable Rate Indebtedness will be determined at the rate payable by the Borrower Finco as provided by the terms of the Permitted Hedging Arrangement or the net interest rate payable by the Borrower Finco pursuant to offsetting indices as set forth in the Permitted Hedging Arrangement.

“*Subordinated Lenders*” means the Borrower Finco Subordinated Lender and the Concessionaire Subordinated Lender.

“*Subordinated Lender Pledge Agreement*” means the Pledge Agreement and Limited Recourse Guaranty, dated as of February 25, 2014, by the Subordinated Lenders in favor of the Security Trustee granting a security interest in the Subordinated Loans for the benefit of the Senior Creditors.

“*Subordinated Loan*” means each of the Borrower Finco Subordinated Loan and the Concessionaire Cash Interest Subordinated Loan.

“*Subordinated Loan Agreement*” means each of the Borrower Finco Subordinated Loan Agreement and the Concessionaire Cash Interest Subordinated Loan Agreement.

“*Subordinated Obligations Intercreditor Agreement*” means the Subordination and Intercreditor Agreement, dated as of February 25, 2014, among the TIFIA Phase 2 Lender, the TIFIA Phase 1 Lender, the Bond Trustee, the Subordinated Lenders, the Subordinated Agents and the Security Trustee.

“*Subordinated Refinancing Debt*” means Indebtedness incurred by the Borrower Finco which ranks on a parity in lien and right of payment status with the Effective Date Subordinated Debt that is incurred to refinance or replace the Effective Date Subordinated Debt, any then-outstanding Subordinated Refinancing Debt or any then-outstanding Permitted Subordinated Debt, so long as (a) no Bond Proceeds Loan Agreement Event of Default has occurred and is continuing, (b) the governing documents thereof will have covenants and terms not materially more restrictive to the Borrower Finco than the Indebtedness being refinanced or replaced, (c) such Subordinated Refinancing Debt will have interest payment dates (except for Subordinate Refinancing Debt issued as Variable Rate Indebtedness) and principal payment dates that coincide with the Interest Payment Dates (regardless of whether the final maturity date of such Indebtedness is a date that is later than the final maturity date of the Bond Proceeds Loan), (d) the Borrower Group Members will have entered into such Intercompany Loan Agreements (or amendments thereto) as will be required to make available the proceeds of the Subordinated Refinancing Debt indirectly from the Borrower Finco to the Concessionaire, (e) the net proceeds of the Subordinated Refinancing Debt (in respect of Subordinate Refinancing Debt that is Tax-Exempt Bonds, after costs of issuance not to exceed two percent (2%) of the principal amount of such Subordinated Refinancing Debt) do not exceed the principal amount of the Indebtedness being refinanced or replaced, (f) Subordinated Debt Service, after the incurrence of such Subordinated Refinancing Debt, in each year of the remaining term of the Bond Proceeds Loan, is forecast to be less than the Subordinated Debt Service forecast for such year in the most recently updated Base Case Financial Model, (g) the Aggregate Total Debt Service Coverage Ratio for each Calculation Period during the term of the Bond Proceeds Loan is not less than 1.15:1.00, on a pro forma basis for any period of twelve (12) consecutive months occurring prior to the earlier of (A) the final maturity date of the Bond Proceeds Loan and (B) the final maturity date of such Subordinated Refinancing Debt, and (h) each lender or holder of any such Subordinated Refinancing Debt (or an agent or Bond Trustee acting on its behalf) at the time of execution of any documentation with respect thereto will become a party to and be bound by the MSA and the Subordinated Obligations Intercreditor Agreement.

“*Substantial Completion*” means the achievement of the following: (a) Phase 2 Work Completion (as defined in the Concession Agreement); and (b) the opening of the U.S. 36 Phase 2 Project to tolled vehicular or passenger traffic.

“*Substantial Completion Date*” means the date upon which the U.S. 36 Phase 2 Project has achieved Substantial Completion.

“*Substantial User*” means “substantial user” as defined in Section 147(a) of the Code.

“*Supplemental Indenture*” means any indenture supplementing or amending the Indenture or another Supplemental Indenture that is executed and delivered pursuant to provisions of the Indenture.

“*Supplemental Securities Act*” means the Supplemental Public Securities Act, C.R.S. title 11, article 57, part 2, as amended.

“*Surface Transportation Infrastructure Project*” has the meaning assigned to it in FASTER.

“*Tax Distribution Amount*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*Tax-Exempt Senior Bond*” means each 2014 Bond and any other Senior Bond designated as a Tax-Exempt Senior Bond in the Supplemental Indenture authorizing the issuance of such Senior Bond.

“*Tax Regulatory Agreement*” means, with respect to the 2014 Bonds and each Series of Additional Senior Bonds on which the Issuer intends the interest to be excluded from gross income for federal income tax purposes, (a) the agreement or other instrument that sets forth the Issuer’s, the Borrower Finco’s and the Concessionaire’s expectations regarding the investment and use of proceeds of such Senior Bonds and other matters relating to Bond Counsel’s opinion regarding the federal income tax treatment of interest on such Senior Bonds, including any instructions delivered by Bond Counsel in connection with such certificate, instrument or opinion; and (b) any amendment or modification of any such certificate, instrument or instructions that is accompanied by an opinion of Bond Counsel stating that the amendment or modification will not cause an Adverse Tax Event.

“*Term Bond*” means Senior Bonds of a Series which are payable on or before their specified maturity dates from sinking installment payments established pursuant to the Supplemental Indenture for such Series for that purpose and calculated to retire such Senior Bonds on or before their specified maturity dates.

“*Termination Compensation*” means any compensation payable by HPTE to the Concessionaire upon the early termination of the Concession Agreement pursuant to the terms of the Concession Agreement.

“*TIFIA Debt Service Payment Commencement Date*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*TIFIA Phase 1 Debt Service Reserve Account*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*TIFIA Phase 1 Debt Service Reserve Requirement*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*TIFIA Phase 1 Lender*” means the United States Department of Transportation, as lender under the TIFIA Phase 1 Loan Agreement.

“*TIFIA Phase 1 Loan*” means the loan made available by the TIFIA Phase 1 Lender to the Colorado High Performance Transportation Enterprise, pursuant to the TIFIA Phase 1 Loan Agreement as assigned to, and assumed by, Borrower Finco as of the Phase 1 Assumption Date pursuant to the TIFIA Phase 1 Loan Assignment Agreement (as defined in the MSA).

“*TIFIA Phase 1 Loan Agreement*” means the agreement dated as of February 25, 2014, amending and restating the Original TIFIA Phase 1 Loan Agreement (as defined in the MSA), pursuant to which the TIFIA Phase 1 Loan is made available by the TIFIA Phase 1 Lender to Borrower Finco as at the Phase 1 Assumption Date and includes the promissory note executed and delivered by Borrower Finco in connection therewith and guarantees by each of the Concessionaire, Finco 1 and Finco 2.

“*TIFIA Phase 2 Debt Service Reserve Account*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*TIFIA Phase 2 Debt Service Reserve Requirement*” has the meaning assigned to it in MSA.

“*TIFIA Phase 2 Lender*” means the United States Department of Transportation, as lender under the TIFIA Phase 2 Loan Agreement.

“*TIFIA Phase 2 Loan*” means the loan made available by the TIFIA Phase 2 Lender to Borrower Finco pursuant to the TIFIA Phase 2 Loan Agreement.

“*TIFIA Phase 2 Loan Agreement*” means the agreement dated as of February 25, 2014, pursuant to which the TIFIA Phase 2 Loan is made available by the TIFIA Phase 2 Lender to Borrower Finco, and includes the promissory note executed and delivered by Borrower Finco in connection therewith, and guarantees by each of the Concessionaire, Finco 1 and Finco 2.

“*TIFIA Phase 2 Loan Subaccount*” means the TIFIA Phase 2 Loan Subaccount established pursuant to the MSA.

“*TIFIA Phase 2 Mandatory Debt Service*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*TIFIA Phase 2 Scheduled Debt Service*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*TIFIA Revenue Share Amounts*” has the meaning set forth in the MSA.

“*Toll Services Agreement*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*Toll Services Provider*” has the meaning assigned to it in “APPENDIX A—DEFINITIONS OF CERTAIN TERMS” of this Official Statement.

“*Total Debt Service Coverage Ratio*” means, as of each Calculation Date, the ratio of (a) Net Cash Flow, for the Calculation Period ending on such Calculation Date, to (b) the sum of (i) Senior Debt Service, for the Calculation Period ending on such Calculation Date, and (ii) Debt Service in respect of the TIFIA Phase 2 Loan, for the Calculation Period ending on such Calculation Date, provided that for

purposes of such calculation (A) during the Capitalized Interest Period (as defined in the TIFIA Phase 1 Loan Agreement) the Debt Service on the TIFIA Phase 1 Loan will be deemed to be zero, (B) during the Capitalized Interest Period (as defined in the TIFIA Phase 2 Loan Agreement) the Debt Service on the TIFIA Phase 2 Loan will be deemed to be zero, and (C) during any future period, projected Net Cash Flow will be calculated using the most recently updated Base Case Financial Model.

“*Transaction Documents*” means the Material Project Contracts and the Funding Documents.

“*Transportation Enterprise Special Fund*” means the statewide transportation enterprise special revenue fund created in the State treasury by C.R.S. § 43-4-806(3)(a).

“*Trust Estate*” has the meaning set forth under the caption “SUMMARY OF THE INDENTURE—Security for Senior Bonds—Grant of Trust Estate” in this Appendix E.

“*UCC*” means the Uniform Commercial Code, as in effect from time to time in the State of Colorado, the State of New York or any other state or jurisdiction, as applicable.

“*Underwriter*” means Goldman, Sachs & Co., as underwriter of the 2014 Bonds.

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

“*U.S. 36 Phase 1 Project*” means, (a) prior to the Phase 1 Assumption Date, the financing, design and construction of one managed lane in each direction along the U.S. 36 median, enhancements to Bus Rapid Transit (as defined in the Concession Agreement) stations, widening of the general purpose lanes and pavement replacement, bridge replacements, sound and retaining walls in selected areas, the construction of a bikeway, and Intelligent System Improvements (ITS) along a 10.1 mile segment of U.S. 36 from Pecos Street in Denver, Colorado to the Interlocken Loop in Broomfield, Colorado, in each case, such work being the responsibility of HPTE, and (b) following the Phase 1 Assumption Date, the operation and maintenance by the Concessionaire of the Phase 1 Managed Lanes and the Phase 1 GP Lanes (as such terms are defined in the Concession Agreement), in each case, in accordance with the terms of the Concession Agreement and each other applicable Transaction Document.

“*U.S. 36 Phase 2 Project*” means (a) the financing, design and construction of one managed lane in each direction along the U.S. 36 median, enhancements to Bus Rapid Transit (as defined in the Concession Agreement) stations, widening of the general purpose lanes and pavement replacement, bridge replacements, sound and retaining walls in selected areas, the construction of a bikeway, and Intelligent System Improvements (ITS) along a 5.1 mile segment of U.S. 36 from 88th Street in Louisville/Superior, Colorado to the Table Mesa/Foothills Parkway in Boulder, Colorado, in each case, such work being the responsibility of the Concessionaire, and (b) the operation and maintenance by the Concessionaire of the Phase 2 Managed Lanes and the Phase 2 GP Lanes (as such terms are defined in the Concession Agreement), in each case, in accordance with the terms of the Concession Agreement and each other applicable Transaction Document.

“*U.S. 36 Project*” means, collectively, the U.S. 36 Phase 1 Project (as described in clause (b) of the definition thereof), the U.S. 36 Phase 2 Project and the I-25 Project. Each of the U.S. 36 Phase 1 Project (as described in clause (b) of the definition thereof), the U.S. 36 Phase 2 Project and the I-25 Project will be referred to herein as a “Segment” of the U.S. 36 Project.

“*Variable Rate Indebtedness*” means any Indebtedness the interest rate on which is not fixed at the time of incurrence of such Indebtedness, and has not at some subsequent date been fixed at a single numerical rate for the entire term of the Indebtedness.

“*Variable Rate Indebtedness Interest Rate Assumption*” means (a) with respect to (i) Variable Rate Indebtedness the interest on which will be excludable from gross income for federal income tax purposes or (ii) Variable Rate Indebtedness that will secure the payment of interest on Tax-Exempt Senior Bonds, the interest rate will be assumed to be the sum of (i) the rate quoted in The Bond Buyer 25 Revenue Bond Index, or such successor or replacement index, for the last week of the month preceding the date of calculation as published by *The Bond Buyer*, or if that index is no longer published, another similar index selected by a Financial Consultant to be a reasonable index for tax-exempt obligations, plus (ii) a spread, if any, determined by a Financial Consultant to be a reasonable spread above The Bond Buyer 25 Revenue Bond Index (or such successor or replacement index of similar index selected by a Financial Consultant) for tax-exempt obligations of a corresponding maturity date and rating as the Variable Rate Indebtedness to be incurred, with no credit enhancement, and (b) with respect to (i) Variable Rate Indebtedness the interest on which will not be excludable from gross income for federal income tax purposes or (ii) Variable Rate Indebtedness that will secure the payment of interest on Senior Bonds that are not issued as Tax-Exempt Senior Bonds, the interest rate will be assumed to be a rate determined by a Financial Consultant to be a reasonable market rate for comparable taxable fixed interest rate obligations of a corresponding maturity date and rating as the Variable Rate Indebtedness to be incurred, with no credit enhancement.

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SUMMARY OF THE INDENTURE

Security for Senior Bonds

Grant of Trust Estate. The Issuer, in consideration for the purchase of the Senior Bonds by the Owners and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, in order to secure the payment of the Senior Bonds and in order to secure the performance and observance of all the covenants and conditions set forth in the Senior Bonds and the Indenture, will execute and deliver the Indenture and will grant, assign, pledge, bargain, sell, alienate, remise, release, convey, set over and confirm or will require to be granted, assigned, pledged, bargained, sold, alienated, remised, released, conveyed, set over and confirmed, and by the presents set forth in the Indenture does grant, assign, pledge, bargain, sell, alienate, remise, release, convey, set over and confirm unto the Bond Trustee and to its successors and assigns forever, for the benefit of the Owners, all of the following described property, franchises, rights and income, including any title or interest therein acquired after the date hereof (collectively, the “Trust Estate”):

(a) all right, title and interest of the Issuer (except for Reserved Rights) in and to the Bond Proceeds Loan Agreement, the 2014 Note, any Additional Senior Bonds Loan Agreement (if executed) and any promissory note(s) entered into with respect to any Additional Senior Bonds Loan Agreement, the present and continuing right of the Issuer to make claim for, collect, receive and receipt for any of the Bond Proceeds Loan Payments, loan payments received pursuant to any Additional Senior Bonds Loan Agreement (if executed) and any and all sums, amounts, income, revenues, issues and profits and any other sums of money payable or receivable under the Bond Proceeds Loan Agreement, the 2014 Note, any Additional Senior Bonds Loan Agreement (if executed) and any promissory note(s) entered into with respect to any Additional Senior Bonds Loan Agreement, to bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all things which the Issuer is entitled to do under the Bond Proceeds Loan Agreement, the 2014 Note, any Additional Senior Bonds Loan Agreement (if executed) and any promissory note(s) entered into with respect to any Additional Senior Bonds Loan Agreement;

(b) all moneys from time to time held by the Bond Trustee under the Indenture including the Series 2014 Debt Service Fund, or any other debt service fund established with respect to Additional Senior Bonds, and any other Fund or Account other than any Defeasance Escrow Fund or any rebate fund established with respect to any Additional Senior Bonds issued as Tax-Exempt Senior Bonds;

(c) any Security Interest created for the benefit of the Issuer under the Security Documents or otherwise, including without limitation the Collateral pledged thereunder, and the present and continuing right of the Issuer to make claim for, collect, receive and receipt for any of the sums, amounts, income, revenues, issues and profits and any other sums of money payable or receivable under the Security Documents, to bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all things which the Issuer is entitled to do under such Security Documents; and

(d) any and all other property, revenues, rights or funds from time to time hereafter by delivery or by writing of any kind specially granted, assigned, pledged, bargained, sold, alienated, remised, released, conveyed, set over or confirmed as and for additional security for any of the Senior Bonds, the Bond Proceeds Loan Agreement, the 2014 Note, any Additional Senior Bonds Loan Agreement (if executed) and any promissory note(s) entered into with respect to any Additional Senior Bonds Loan Agreement in favor of the Bond Trustee.

Time of Pledge; Delivery of Trust Estate. In accordance with Section 43-4-807(1)(e) of FASTER and Section 11-57-208 of the Supplemental Securities Act: (a) the Trust Estate will immediately be subject to the Lien of the pledge pursuant to the Indenture without any physical delivery or other act; (b) the Lien of such pledge will be valid, binding and enforceable against all parties having claims of any kind in tort, contract or otherwise against the Issuer regardless of whether the claiming party has notice of such Lien and even though it is not recorded or filed; and (c) the Lien of such pledge and the obligations of the Issuer to perform the contractual provisions set forth in the Indenture and any Supplemental Indenture will have priority over any or all other obligations and liabilities of the Issuer, except as may be otherwise provided in the Indenture or any Supplemental Indenture.

Amounts Received Pursuant to the MSA. All funds provided pursuant to the MSA for deposit into any Fund or Account of the Indenture will be available together with other moneys then on deposit in such Funds and Accounts to be used for the applicable purposes as set forth in the Indenture and any Supplemental Indenture.

Senior Bonds Secured on Equal and Proportionate Basis. The Trust Estate will be held by the Bond Trustee for the equal and proportionate benefit of the Owners of the Senior Bonds and any of them, without preference, priority or distinction as to Lien or otherwise.

Discharge of Indenture. If the Indenture is discharged in accordance with the provisions of the Indenture (see “—Defeasance” below), the right, title and interest of each Owner and the Bond Trustee in and to the Trust Estate will terminate and be discharged (except those rights, titles and interest that by their terms will survive the discharge of the Indenture); otherwise the Indenture is to be and will remain in full force and effect.

Special, Limited Obligations. The Senior Bonds are special, limited obligations of the Issuer, payable solely from and secured solely by the Trust Estate, and are not, and will not be deemed to constitute an obligation, moral or otherwise, of CDOT or the State, any other agency, instrumentality or political subdivision of the State, or any official, board member, director, officer, employee, agent or representative of any of the foregoing, and neither the full faith and credit of the Issuer or CDOT nor the full faith and credit nor the taxing power of the State or any other agency, instrumentality or political subdivision of the State is pledged to the payment of the principal (or Redemption Price) of and interest on the Senior Bonds. The Owners of the Senior Bonds may not look to any revenues of the Issuer, CDOT or the State for repayment of the Senior Bonds and the only sources of repayment of the Senior Bonds are revenues provided by the Borrower Finco to the Issuer pursuant to the Bond Proceeds Loan Agreement and any Additional Senior Bonds Loan Agreement (if executed) for the payment of the principal (or Redemption Price) of and interest on the Senior Bonds. The Senior Bonds do not constitute an Indebtedness of the Issuer, CDOT or the State or a multiple-fiscal year obligation of the Issuer, CDOT or the State within the meaning of any provisions of the State Constitution or the laws of the State. The payment of the Senior Bonds will not be secured by any encumbrance, mortgage, or other pledge of property of the Issuer, CDOT or the State, other than the Trust Estate. No property of the Issuer, CDOT or the State, subject to such exception, will be liable to be forfeited or taken in payment of the Senior Bonds. No member, officer or agent of the Issuer or any person executing the Senior Bonds will be liable personally on the Senior Bonds by reason of the issuance thereof.

No provision, covenant, or agreement contained in the Indenture, or any obligations therein imposed upon the Issuer, or the breach thereof, will constitute an indebtedness or liability of the Issuer within the meaning of any State constitutional provision or statutory limitation or will constitute or give rise to a pecuniary liability of the Issuer or any member, officer or agent of the Issuer or a charge against the Issuer's general credit. In making the agreements, provisions and covenants set forth in the Indenture,

the Issuer has not obligated itself except with respect to the application of the revenues, as hereinabove provided.

Senior Bonds Constitute a Contract. The Senior Bonds will constitute a contract between the Issuer and the Owners of the Senior Bonds.

Limits on Superior or Parity Liens; Subordinate Liens Permitted. The Issuer will not pledge, grant or create in any manner any Lien or encumbrance on, or rights with respect to, the Trust Estate, except (a) Liens securing the 2014 Bonds and any Additional Senior Bonds issued or incurred in accordance with the Indenture, and (b) Liens or encumbrances that are junior and subordinate to the Lien created under the Indenture for the payment of the Senior Bonds.

Funds and Accounts

Establishment of Series 2014 Debt Service Fund. At the time of issuance of the 2014 Bonds, the following funds and accounts will be established “Colorado High Performance Transportation Enterprise U.S. 36 and I-25 Managed Lanes Senior Revenue Bonds Series 2014 Debt Service Fund” (the “Series 2014 Debt Service Fund”) will be created in the Transportation Enterprise Special Fund, and within the Series 2014 Debt Service Fund, three Accounts designated: (i) the “Series 2014 Interest Account” (the “Series 2014 Interest Account”), (ii) the “Series 2014 Principal Account” (the “Series 2014 Principal Account”), and (iii) the “Series 2014 Redemption Account” (the “Series 2014 Redemption Account”) will be created. The Series 2014 Debt Service Fund (including the Series 2014 Interest Account, the Series 2014 Principal Account and the Series 2014 Redemption Account) will be held and administered by the Bond Trustee.

Deposits to Series 2014 Debt Service Fund. There will be deposited into the Series 2014 Interest Account and the Series 2014 Principal Account: (i) amounts remitted or transferred to such Accounts from the Borrower Finco Senior Bonds Debt Service Account pursuant to the MSA, which will represent the repayment of the Bond Proceeds Loan in accordance with the Bond Proceeds Loan Agreement; and (ii) all other moneys received by the Bond Trustee that are accompanied by directions that such moneys are to be deposited into such Accounts.

There may be deposited into the Series 2014 Redemption Account: (i) any moneys paid to the Bond Trustee pursuant to the Indenture; (ii) amounts transferred from a Defeasance Escrow Fund, and (iii) all other moneys received by the Bond Trustee that are accompanied by directions that such moneys are to be deposited into such Account.

The Bond Trustee, on each Interest Payment Date, will withdraw and apply from moneys on deposit in the Series 2014 Interest Account an amount which will be sufficient to pay interest payable on the outstanding 2014 Bonds on such Interest Payment Date. The Bond Trustee, on each Principal Payment Date, will withdraw and apply from moneys on deposit in the Series 2014 Principal Account, an amount equal to the principal (including mandatory sinking fund redemption payments) becoming due on the 2014 Bonds on such Principal Payment Date. The Bond Trustee, on each redemption date (other than a mandatory sinking fund redemption date), will withdraw and apply from moneys on deposit in the Series 2014 Redemption Account amounts required to pay the Redemption Price on the 2014 Bonds to be redeemed prior to their stated maturity.

Moneys to be Held in Trust. The Series 2014 Debt Service Fund and any other Fund or Account created under the Indenture (excluding any Defeasance Escrow Account), will be held by the Bond Trustee, for the benefit of the Owners of the 2014 Bonds as specified in the Indenture. Any Defeasance

Escrow Account will be held solely for the benefit of the Owners of the 2014 Bonds to be paid therefrom as provided in the agreement governing such Defeasance Escrow Account.

Covenants of Issuer

Maintenance of Existence. The Issuer will maintain its legal existence under the laws of the State and will use its best efforts to maintain and preserve all of its rights and powers under FASTER and the Supplemental Securities Act and preserve its existence as an enterprise within the meaning of article X, Section 20(2)(d) of the Colorado Constitution.

No Superior or Parity Liens on Trust Estate. The Issuer will not, except as specifically permitted pursuant to the Indenture or pursuant to any Security Document, pledge, grant, create or permit to exist in any manner any Security Interest on, or rights with respect to, the Trust Estate, except for a contract or agreement under which the financial obligations of the Issuer and the rights of any Person to require the Issuer to make any payment are (a) limited to (i) moneys in the Funds and Accounts that are to be used pursuant to such contract or agreement for the purposes for which moneys in such Funds and Accounts may be used pursuant to the terms of the Indenture or (ii) moneys of the Issuer that are not part of the Trust Estate; and (b) subordinate to the rights of the Owners of the 2014 Bonds under the Indenture.

Tax Covenant. The Issuer will not take any action or omit to take any action with respect to the 2014 Bonds or any Additional Senior Bonds issued as Tax-Exempt Senior Bonds, the proceeds of the 2014 Bonds or any Additional Senior Bonds issued as Tax-Exempt Senior Bonds, the Trust Estate, the Project or any other funds or property of the Issuer, and it will not permit, to the extent of its control, any other Person to take any action or omit to take any action with respect to the 2014 Bonds or any Additional Senior Bonds issued as Tax-Exempt Senior Bonds, the Trust Estate, the Project or any other funds or property of the Issuer if such action or omission would cause interest on any of the 2014 Bonds or any Additional Senior Bonds issued as Tax-Exempt Senior Bonds, to be included in gross income for federal income tax purposes. In furtherance of this covenant, the Issuer agrees to comply with the procedures set forth in the Tax Regulatory Agreement for the 2014 Bonds or any Additional Senior Bonds issued as Tax-Exempt Senior Bonds. The covenants set forth in this Section will remain in full force and effect notwithstanding the payment in full or defeasance of the 2014 Bonds or any Additional Senior Bonds issued as Tax-Exempt Bonds until the date on which all of the Issuer obligations in fulfilling such covenants have been met.

Compliance with Law. The Issuer will comply with all Laws and regulations, the State Constitution, FASTER and all other State Laws relating to the 2014 Bonds, the organization and operation of the Issuer and the subject matter of the Indenture.

Rights Under Bond Proceeds Loan Agreement, the Additional Senior Bonds Loan Agreement and the MSA. The Bond Proceeds Loan Agreement, any Additional Senior Bonds Loan Agreement (if executed) and the MSA set forth the covenants and obligations of the Issuer and the Borrower Group Members with respect to the related Bond Proceeds Loan and any Additional Senior Bonds Loan, and reference is hereby made to the Bond Proceeds Loan Agreement, any Additional Senior Bonds Loan Agreement (if executed) and the MSA for a detailed statement of such covenants and obligations of the Borrower Group Members thereunder, and the Issuer agrees that the Bond Trustee (subject to the terms of the Bond Proceeds Loan Agreement, any Additional Senior Bonds Loan Agreement and the MSA) in its name or in the name of the Issuer may enforce all rights of the Issuer (other than Reserved Rights) and all obligations of the Borrower Group Members under and pursuant to the Bond Proceeds Loan Agreement, any Additional Senior Bonds Loan Agreement (if executed) and the MSA and on behalf of the Owners, whether or not the Issuer is in default under the Indenture.

Indebtedness. The Issuer will not create, incur, assume or permit to exist any Indebtedness secured by the Trust Estate, other than the 2014 Bonds or any Additional Senior Bonds.

Additional Senior Bonds. Additional Senior Bonds secured by and payable from the Trust Estate may be issued in the Issuer’s sole discretion, provided the following terms and conditions have been met:

(a) The Bond Trustee has received a copy, certified by the secretary of the Issuer, of the resolution adopted by the Issuer authorizing, among other things, the issuance of the Additional Senior Bonds and the execution and delivery of a Supplemental Indenture and an Additional Senior Bonds Loan Agreement;

(b) The Bond Trustee has received a certified copy of the resolutions adopted by each Borrower Group Member authorizing, among other things, the execution and delivery of the Additional Senior Bonds Loan Agreement and the incurrence of the Additional Senior Loan;

(c) The Bond Trustee has received original executed counterparts of the Supplemental Indenture, the Additional Senior Bonds Loan Agreement, the Tax Regulatory Agreement if the Additional Senior Bonds are issued as Tax-Exempt Senior Bonds and any amendments or supplements to the Security Documents entered into in connection with the issuance of such Additional Senior Bonds;

(d) The Bond Trustee has received direction from the Issuer to authenticate such Additional Senior Bonds and deliver such Additional Senior Bonds to the purchaser(s) thereof upon payment to the Bond Trustee, for the account of the Issuer, of the purchase price thereof;

(e) The Issuer and the Bond Trustee have received an opinion of Bond Counsel to the effect that (i) the issuance of such Additional Senior Bonds has been duly authorized, (ii) such Additional Senior Bonds are valid and binding special limited obligations of the Issuer in accordance with their terms, and (iii) if such Additional Senior Bonds are being issued as Tax-Exempt Senior Bonds, the interest on such Additional Senior Bonds is excludable from gross income of the recipient thereof for federal income tax purposes;

(f) No Indenture Event of Default has occurred and is continuing, or if an Indenture Event of Default has occurred and is continuing, such Indenture Event of Default will be cured upon the issuance of the Additional Senior Bonds and the application of the proceeds of the Additional Senior Bonds in accordance with the Supplemental Indenture executed and delivered in connection with the issuance of such Additional Senior Bonds; and

(g) The terms and conditions set forth under the caption “SUMMARY OF THE BOND PROCEEDS LOAN AGREEMENT—Special Covenants—Permitted Indebtedness; Additional Senior Obligations” of this Appendix E have been met.

Events of Default and Remedies

Indenture Events of Default. Any of the following will constitute an “Indenture Event of Default” under the Indenture with respect to all of the Outstanding Senior Bonds:

(a) Default in the payment of any portion of the principal of any Outstanding Senior Bond when due and payable at maturity or upon redemption or otherwise; or

(b) Default in the payment of any portion of interest on any Outstanding Senior Bond when due and payable; or

(c) The Issuer fails to observe or perform in any material way any covenant, condition, agreement or provision contained in the Senior Bonds or in the Indenture on the part of the Issuer to be performed, other than those set forth in (a) and (b) above, and such failure continues for thirty days after written notice specifying such failure and requiring the same to be remedied will have been given to the Issuer by the Bond Trustee, which notice may be given by the Bond Trustee in its discretion and will be given by the Bond Trustee at the written request of the Owners of a majority in aggregate principal amount of the then Outstanding Senior Bonds, provided that if any Indenture Event of Default described in this paragraph (c) cannot be cured within thirty days after written notice specifying such failure has been given to the Issuer by the Bond Trustee, such thirty day period will be extended to sixty days provided the Issuer has commenced curing such Indenture Event of Default and the Issuer diligently proceeds to cure such Indenture Event of Default; or

(d) Failure to preserve the Lien of the Indenture upon any material part of the Trust Estate; or

(e) A Bond Proceeds Loan Agreement Event of Default or an event of default under any Additional Senior Bonds Loan Agreement will have occurred and be continuing.

Remedies Following and During the Continuance of an Indenture Event of Default. Upon the occurrence and during the continuance of an Indenture Event of Default, any Owner or the Issuer may deliver to the Bond Trustee a written notice, with a copy to the Issuer, the Borrower Group Members and the Security Trustee that an Indenture Event of Default has occurred and is continuing. The Bond Trustee will not be deemed to have any knowledge of the occurrence of an Indenture Event of Default, except with respect to an “Indenture Event of Default” described in clauses (a) and (b) under the caption “Indenture Events of Default” above, unless and until it has received such a notice from the relevant party.

Subject to the provisions of the Senior Obligations Intercreditor Agreement, at any time during which an Indenture Event of Default has occurred and is continuing commencing on the date of delivery to the Bond Trustee of the notice described in in clause (a) under the caption “Indenture Events of Default” above (except with respect to an “Indenture Event of Default” described in clauses (a) and (b) under the caption “Indenture Events of Default” above in which no notice will be required), the Owners of a majority in aggregate principal amount of the then Outstanding Senior Bonds will have the right to give the Bond Trustee one or more enforcement directions directing the Bond Trustee to take on behalf of the Owners of the Senior Bonds whatever action at law or in equity may appear necessary or desirable to enforce the rights of the Owners of the Senior Bonds.

Subject to the provisions of the Senior Obligations Intercreditor Agreement, upon the occurrence and during the continuance of an Indenture Event of Default, if so instructed by the Owners of a majority in aggregate principal amount of the then Outstanding Senior Bonds, the Bond Trustee, subject to the immediately succeeding proviso, will declare all Outstanding Senior Bonds, all interest accrued and unpaid thereon, and all other amounts payable in respect of the Senior Bonds to be due and payable, whereupon the same will become immediately due and payable without presentment, demand, protest or further notice of any kind, all of which are waived by the Issuer; provided that the Outstanding Senior Bonds may be accelerated pursuant to this paragraph only to the extent the underlying Bond Proceeds Loan under the Bond Proceeds Loan Agreement and the Additional Senior Loan under the Additional Senior Bonds Loan Agreement, if any, will have been accelerated.

The Owners of a majority in aggregate principal amount of the then Outstanding Senior Bonds may, by written notice to the Bond Trustee, on behalf of all of the Owners, rescind any acceleration and its consequences, if the rescission would not conflict with any judgment or decree and if all existing Indenture Events of Default (except nonpayment of principal, interest or premium that has become due solely because of the acceleration) have been cured or waived and the Issuer has paid or deposited, or caused to be paid or deposited, with the Bond Trustee a sum sufficient to pay all sums paid or advanced by the Bond Trustee under the Indenture and the reasonable compensation, expenses, disbursements and advances of the Bond Trustee, its agents and counsel.

All rights and actions and claims under the Indenture may be prosecuted and enforced by the Bond Trustee on behalf of the Owners of the Senior Bonds. In the case of pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization or other similar judicial proceeding relative to the Issuer or the Trust Estate, the Bond Trustee, subject to the provisions of the Senior Obligations Intercreditor Agreement, will be entitled to file and prove a claim for the amount of the Issuer's and the Borrower Group Members' obligations to the Owners of the Senior Bonds owing and unpaid and to file such other papers or documents as may be necessary in order to have the claims of the Owners of the Senior Bonds allowed in such judicial proceeding and, to the extent permitted by Law, to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same in accordance with the terms hereof and of the MSA.

The exercise of the foregoing remedies upon an Indenture Event of Default is subject to the provisions of the MSA and the Senior Obligations Intercreditor Agreement. Notwithstanding anything in the Indenture to the contrary, in the event of any conflict between the remedial provisions of the Indenture and the remedial provisions of the Senior Obligations Intercreditor Agreement and the MSA, the remedial provisions of the Senior Obligations Intercreditor Agreement will prevail.

Use of Moneys Received from Exercise of Remedies. After an acceleration pursuant to the provisions of the Indenture, moneys received by the Bond Trustee from the Security Trustee pursuant to the MSA, the Indenture, the Bond Proceeds Loan Agreement, any Additional Senior Bonds Loan Agreement and the other Security Documents in respect of the Issuer's obligations under the Indenture will be applied first to pay the reasonable and proper fees and expenses (including the reasonable fees and expenses of counsel) of the Bond Trustee determined in accordance with the provisions of the Indenture and incurred in connection with the exercise of remedies following such Indenture Event of Default, and thereafter remaining amounts will be applied promptly by the Bond Trustee as follows:

First, ratably, to all accrued and unpaid interest on the Senior Bonds;

Second, ratably, to the outstanding principal amount on the Senior Bonds; and

Third, to the Borrower Finco, upon termination, expiration or payment in full of all commitments, any surplus to be applied at the Borrower Finco's discretion.

Limitations on Rights of Owners Acting Individually. Subject to the Senior Obligations Intercreditor Agreement, no Owner will have any right to institute any suit, action or proceeding at law or in equity for the enforcement of any remedy under the Indenture or for the enforcement of the terms of the Indenture, unless an Indenture Event of Default has occurred and is continuing and the Owner of such Senior Bonds has made a written request to the Bond Trustee, and has given the Bond Trustee sixty days, to take such action in its capacity as Bond Trustee. Nothing in this paragraph will affect or impair the right of the Owner to enforce the payment of the principal of and interest on or Redemption Price of any Senior Bond at and after the date such payment is due, subject, however, to the limitations on remedies set forth in the Indenture and the limitations on remedies set forth in the Senior Obligations Intercreditor

Agreement. In addition, any action by any Owner taken with respect to the Trust Estate will only be taken in accordance with the provisions of the Indenture and the provisions of the Senior Obligations Intercreditor Agreement.

Bond Trustee May Enforce Rights Without Senior Bonds. All rights of action and claims under the Indenture or any of the Outstanding Senior Bonds may be enforced by the Bond Trustee without the possession of any of the Senior Bonds or the production thereof in any trial or proceedings relative thereto; any suit or proceeding instituted by the Bond Trustee will be brought in its name as Bond Trustee, without the necessity of joining as plaintiffs or defendants any Owners of the Senior Bonds; and any recovery of judgment will be for the ratable benefit of the Owners of the Senior Bonds, subject to the provisions hereof and the Senior Obligations Intercreditor Agreement.

Bond Trustee to File Proofs of Claim in Receivership, Etc. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceedings affecting the Trust Estate, the Bond Trustee will, subject to the Senior Obligations Intercreditor Agreement and to the extent permitted by law, be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have claims of the Bond Trustee and of the Owners of the Senior Bonds allowed in such proceedings for the entire amount due on the Senior Bonds under the Indenture, at the date of the institution of such proceedings and for any additional amounts which may become due by it after such date, without prejudice, however, to the right of any Owner to file a claim on its own behalf, to the extent permitted under the Indenture.

Delay or Omission No Waiver. No delay or omission of the Bond Trustee or of any Owner to exercise any remedy, right or power accruing upon any Indenture Event of Default or otherwise will exhaust or impair any such remedy, right or power or be construed to be a waiver of any such Indenture Event of Default, or acquiescence therein; and every remedy, right and power given by the Indenture may be exercised from time to time and as often as may be deemed expedient.

Discontinuance of Proceedings on Indenture Event of Default; Position of Parties Restored. In case the Bond Trustee or any Owner will have proceeded to enforce any right under the Indenture and such proceedings will have been discontinued or abandoned for any reason, or will have been determined adversely to the Bond Trustee or such Owner, then and in every such case the Issuer, the Bond Trustee and the Owners of the Senior Bonds will be restored to their former positions and rights, and all rights, remedies and powers of the Bond Trustee and the Owner will continue as if no such proceedings had been taken.

Waivers of Indenture Events of Default. The Bond Trustee, notwithstanding anything else to the contrary contained in the Indenture, will waive any Indenture Event of Default upon the written direction of Owners of a majority in aggregate principal amount of the then Outstanding Senior Bonds; provided, however, that any Indenture Event of Default in the payment of the principal of or interest on, or the Redemption Price of, any Senior Bond when due will not be waived (except as otherwise contemplated in the Indenture) without the consent of the Owners of 100% in aggregate principal amount of the then Outstanding Senior Bonds, unless, prior to such waiver, all such amounts (with interest on amounts past due on any Senior Bond at the interest rate on such Senior Bond) and all Bond Trustee Fees and Expenses in connection with such Indenture Event of Default have been paid or provided for. In case of any such waiver, then and in every such case the Issuer, the Bond Trustee and the Owners of the Senior Bonds will be restored to their former positions and rights under the Indenture, but no such waiver will extend to any subsequent or other Indenture Event of Default, or impair any right consequent thereon.

Bond Trustee

Duties of the Bond Trustee. The Bond Trustee will accept the trusts imposed upon it by the Indenture and will agree to perform said trusts, but only upon and subject to the following express terms and conditions:

(a) The Bond Trustee, prior to the occurrence of an Indenture Event of Default and after the curing of all Indenture Events of Default which may have occurred, (i) undertakes to perform such duties and only such duties as are specifically set forth in the Indenture and the other Funding Documents to which it is a party, and (ii) will not be liable, answerable or accountable under any circumstances, except for its own willful misconduct or negligence, as conclusively determined by the final judgment of a court of competent jurisdiction, no longer subject to appeal or review. In the event the Bond Trustee knows that an Indenture Event of Default has occurred (which has not been cured or waived), the Bond Trustee will exercise such of the rights and powers vested in it by the Indenture, and use the same degree of care and skill in their exercise as a reasonable and prudent man would exercise or use under the circumstances in the conduct of such person's own affairs. The Bond Trustee will not be liable for any action or inaction of any other party or Person (or agent thereof) to the Indenture or any related document.

(b) The Bond Trustee may execute any of the trusts or powers under the Indenture and perform any of its duties by or through attorneys, agents, receivers or employees but will not be responsible for the misconduct or negligence of any agent appointed with due care, and will be entitled to rely and act upon a written opinion of Bond Counsel concerning all matters of trust under the Indenture and the duties thereunder, and may in all cases pay such reasonable compensation to all such attorneys, agents, receivers and employees as may reasonably be employed in connection with the trusts under the Indenture.

(c) The Bond Trustee will not be accountable for the use of any 2014 Bonds delivered to the Underwriter or any other Senior Bonds delivered to the underwriter of such Senior Bonds pursuant to the Indenture or any Supplemental Indenture. The Bond Trustee may become the Owner of the 2014 Bonds or any other Senior Bonds with the same rights which it would have if not Bond Trustee.

(d) The Bond Trustee will be protected in acting upon any notice, request, direction, instruction, consent, certificate, order, affidavit, letter, telegram or other paper or document reasonably believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons. Any action taken by the Bond Trustee pursuant to the Indenture upon the request or authority or consent of any Person who at the time of making such request or giving such authority or consent is the Owner of any Senior Bond will be conclusive and binding upon any Senior Bonds issued in place thereof.

(e) The Bond Trustee may employ or retain such counsel, accountants, appraisers or other experts or advisers as it may reasonably require for the purpose of determining and discharging its rights and duties under the Indenture and, in the absence of the Bond Trustee's gross negligence, bad faith or willful misconduct in employing or retaining any such counsel, accountants, appraisers, experts or advisors, may act and rely and will be protected in acting and relying in good faith on the opinion or advice of or information obtained from any counsel, accountant, appraiser or other expert or advisor, whether retained or employed by any Borrower Group Member, the Issuer or by the Bond Trustee, in relation to any matter arising in the administration of the Indenture, and will not be responsible for any act or omission on the part of any of them. In addition, the Bond Trustee will not be liable for any acts or omissions of its

nominees, correspondents, designees, agents, subagents or subcustodians except to the extent of its gross negligence, bad faith or willful misconduct in nominating or appointing such persons and so long as such persons are permitted to act under the Indenture.

(f) As to the existence or nonexistence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Bond Trustee will be entitled to rely upon a certificate signed by an Issuer Representative or such other Person as may be designated for such purpose by the Issuer, as sufficient evidence of the facts therein contained.

(g) The permissive right of the Bond Trustee to do things enumerated in the Indenture will not be construed as a duty.

(h) The Bond Trustee will not be required to take notice or be deemed to have notice of any Indenture Event of Default, except with respect to an “Indenture Event of Default” described in clauses (a) and (b) under the caption “—Events of Default and Remedies—Indenture Event of Default” above, unless the Bond Trustee will be specifically notified in writing of such Indenture Event of Default by the Issuer, an Owner or a Borrower Group Member.

(i) All moneys received by the Bond Trustee will, until used or applied or invested as provided in the Indenture, be held in trust in the manner and for the purposes for which they were received and will be segregated from all other Funds and Accounts held by the Bond Trustee.

(j) The Bond Trustee will not be required to give any bond or surety in respect of the execution of the said trusts and powers or otherwise in respect of the premises.

(k) Notwithstanding anything in the Indenture to the contrary, the Bond Trustee will have the right, but will not be required, to demand in respect of the delivery of any Senior Bonds, the withdrawal of any cash, or any action whatsoever within the purview of the Indenture, any showings, certificates, opinions, calculations, appraisals, directions, instructions or other information, or corporate action or evidence thereof, in addition to that by the terms of the Indenture required, as a condition of such action by the Bond Trustee.

(l) Whenever in the administration of the trusts or duties imposed upon it by the Indenture the Bond Trustee will deem it necessary that a matter be proved or established prior to taking or not taking any action under the Indenture, such matter may be deemed to be conclusively proved and established by a certificate of an Issuer Representative, and such certificate will be full warrant to the Bond Trustee for any action taken or not taken by it in good faith under the provisions of the Indenture in reliance on such certificate.

(m) The Bond Trustee will not be permitted to unilaterally resolve ambiguities in the Indenture or the Senior Bonds in any manner that will be deemed to be conclusively binding on the Owners.

(n) The Bond Trustee will at all times keep, or cause to be kept, proper books of record and account in which complete and accurate entries will be made of all transactions relating to the Senior Bonds and all Funds and Accounts established pursuant to the Indenture. Such books of record and accounts will be available for inspection by the Issuer, any Owner, the Borrower Finco or the Concessionaire or their agents or representatives duly authorized in writing, at reasonable hours and under reasonable circumstances and upon reasonable prior written request.

(o) Records of the deposits to, withdrawals from and investment earnings on moneys in the Fund and Accounts held by the Bond Trustee under the Indenture will be retained by the Bond Trustee until six years after the later of the final payment of the last Senior Bond.

(p) The Bond Trustee will deliver written reports to the Issuer, the Borrower Finco and the Concessionaire within fifteen days after the end of each calendar month that include at least the following information: (i) the balance in each Fund and Account held by the Bond Trustee as of the first day and the last day of such calendar month; (ii) all moneys received by the Bond Trustee during such calendar month, broken down by source, and earnings from the investment moneys held by the Bond Trustee as part of any Fund or Account into which such moneys are deposited; (iii) all disbursements from each Fund and Account held by the Bond Trustee during such calendar month; and (iv) all transfers to and from each Fund and Account held by the Bond Trustee.

(q) The Bond Trustee will notify the Issuer, the Borrower Finco, the Concessionaire and the Security Trustee within ten days after any claim by any Owner or any other Person that any certification, representation or agreement of the Bond Trustee set forth in the Indenture is not accurate or complete or that the Bond Trustee has failed to perform any of its duties or obligations under or has failed to comply with any provision of the Indenture or any Supplemental Indenture.

(r) Without limiting the duties of the Bond Trustee expressly set forth in the Indenture, the Bond Trustee will have no obligation or responsibility whatsoever in connection with (i) any federal or state tax-exempt status of the Senior Bonds or the interest thereon; (ii) the consequences of investment or non-investment of any funds or accounts relating to the Senior Bonds under Section 148 of the Code; (iii) the calculation of any amount required to be rebated to the United States under Section 148 of the Code; or (iv) any restrictions on the use of moneys as may be set forth in any Tax Regulatory Agreement.

(s) The Bond Trustee will not be bound to make any investigation into (and will not be deemed to have knowledge of) (i) the performance, observance or satisfaction by any other party to the Indenture or under any other Funding Document to which it is a party (or any Person that may become a party thereto or thereunder) of any of the covenants, agreements or other terms or conditions set forth in the Indenture or therein, (ii) the occurrence of any Indenture Event of Default (except with respect to an “Indenture Event of Default” described in clauses (a) and (b) under the caption “—Events of Default and Remedies—Indenture Event of Default” above) or a default under any other Funding Document to which it is a party, (iii) the creation, perfection or priority of any lien that may be purported to be created under the Indenture or under any other Funding Document to which it is a party, or (iv) the value or the sufficiency of any Collateral.

(t) No provision of the Indenture or any other Funding Document to which it is a party will require the Bond Trustee to expend or risk its own funds or otherwise incur any liability, financial or otherwise, in the performance of any of its duties under the Indenture or thereunder or in the exercise of any of its rights or powers, if it will have grounds to believe in its sole determination that repayment of such funds or indemnity satisfactory to it against such risk or liability is not assured to it.

(u) The rights, privileges, protections, indemnities, immunities and benefits afforded to the Bond Trustee under the Indenture and the Bond Proceeds Loan Agreement are extended to, and will be enforceable by (i) the Bond Trustee in each document related thereto to which it is a party or otherwise subject, whether or not specifically set forth therein, and (ii) the entity serving

as the Bond Trustee in each of its capacities under the Indenture and under any related document and each agent, custodian and other Person employed to act by the Bond Trustee under the Indenture and under any related document, whether or not specifically set forth in the Indenture or in any related document, as the case may be, together with such other rights, privileges, protections, indemnities, immunities and benefits afforded to the applicable party under the Indenture or under any related document.

(v) In order to comply with laws, rules, regulations and executive orders in effect from time to time applicable to banking institutions, including those relating to the funding of terrorist activities and money laundering (“Applicable Law”), the Bond Trustee is required to obtain, verify and record certain information relating to individuals and entities which maintain a business relationship with the Bond Trustee. Accordingly, the Issuer will agree to provide to the Bond Trustee upon its request from time to time such identifying information and documentation as may be available for such party in order to enable the Bond Trustee to comply with Applicable Law.

(w) Before taking any action or refraining from taking any action under the Indenture (including, but not limited to, any actions at the request or direction of the Owners) or any Funding Document to which it is a party, the Bond Trustee may require that an indemnity satisfactory to it be furnished for the reimbursement of all expenses to which it may be put and to protect it against all liability, including costs incurred in defending itself against any and all charges, claims, complaints, allegations, assertions, or demands of any nature whatsoever, except liability which is adjudicated to be a result of the Bond Trustee’s negligence or willful misconduct in connection with any such action.

Bond Trustee Fees and Expenses. The Bond Trustee will be entitled to Bond Trustee Fees and Expenses in accordance with its agreement with the Concessionaire, which, notwithstanding any other provision of the Indenture, may be amended at any time by agreement of the Concessionaire and the Bond Trustee without the consent of or notice to the Owners. In no event will the Bond Trustee be obligated to advance its own funds in order to take any action under the Indenture.

Resignation or Replacement of Bond Trustee. The present or any future Bond Trustee may resign by giving written notice to the Issuer (with a copy to the Borrower Finco, the Concessionaire and the Security Trustee) not less than sixty days before such resignation is to take effect. Such resignation will take effect only upon the appointment of a successor qualified as provided in in the Indenture. If no successor is appointed within sixty days following the date designated in the notice for the Bond Trustee’s resignation to take effect, the resigning Bond Trustee may petition a court of competent jurisdiction for the appointment of a successor. The present or any future Bond Trustee may be removed at any time (i) by the Issuer in the event the Issuer reasonably determines that the Bond Trustee is not duly performing its obligations under the Indenture or that such removal is in the best interests of the Issuer and the Owners, provided that the Bond Trustee may not be removed during the pendency of an Indenture Event of Default without the written consent of the Owners of a majority in aggregate principal amount of the then Outstanding Senior Bonds; or (ii) by an instrument in writing executed by the Owners of a majority in aggregate principal amount of the then Outstanding Senior Bonds.

In case the present or any future Bond Trustee will at any time resign or be removed or otherwise become incapable of acting, a successor may be appointed by the Issuer, with the written consent of the Concessionaire (such consent not to be unreasonably withheld, delayed or conditioned). Upon making any such appointment, the Issuer will forthwith give notice thereof to each Owner, the Borrower Finco, the Concessionaire and the Security Trustee, which notice may be given concurrently with the notice of resignation given by any resigning Bond Trustee and will include a description of the right of the each

Owner to object to the appointment. Any successor Bond Trustee appointed by the Issuer pursuant to this subsection will be removed by the Issuer if the Owners of a majority in aggregate principal amount of the then Outstanding Senior Bonds and the Concessionaire object to the appointment by an instrument or concurrent instruments signed by such Owners, or their duly appointed attorneys-in-fact, and the Concessionaire delivered to the Issuer within sixty days following the date of the Issuer's notice of the appointment of such successor. If the Owners of a majority in aggregate principal amount of the then Outstanding Senior Bonds and the Concessionaire object to the appointment of a successor Bond Trustee pursuant to this subsection, the Issuer will appoint another successor Bond Trustee and the Owners and the Concessionaire will have the same right to object to the new successor Bond Trustee.

Every successor Bond Trustee will be a bank or trust company in good standing, duly authorized to exercise trust powers and subject to examination by federal or state authority, qualified to act under the Indenture, having a capital and surplus of not less than \$50,000,000. Any successor Bond Trustee appointed under the Indenture will execute, acknowledge and deliver to the Issuer an instrument accepting such appointment under the Indenture, and thereupon such successor will, without any further act, deed or conveyance, become vested with all the estates, properties, rights, powers and trusts of its predecessor in the trust under the Indenture with like effect as if originally named as Bond Trustee in the Indenture; but the Bond Trustee retiring will, nevertheless, on the written demand of its successor, execute and deliver an instrument conveying and transferring to such successor, upon the trusts in the Indenture expressed, all the estates, properties, rights, powers and trusts of the predecessor, which will duly assign, transfer and deliver to the successor all properties and moneys held by it under the Indenture. Should any instrument in writing from the Issuer be required by any successor for more fully and certainly vesting in and confirming to it, such instrument in writing will, at the reasonable discretion of the Issuer, be made, executed, acknowledged and delivered by the Issuer on request of such successor.

The instruments evidencing the resignation or removal of the Bond Trustee and the appointment of a successor under the Indenture, together with all other instruments provided for in this Section will be filed and/or recorded by the successor Bond Trustee in each recording office, if any, where the Indenture will have been filed and/or recorded.

Conversion, Consolidation or Merger of Bond Trustee. Any bank or trust company into which the Bond Trustee or its successor may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its trust business as a whole will be the successor of the Bond Trustee under the Indenture with the same rights, powers, duties and obligations and subject to the same restrictions, limitations and liabilities as its predecessor, all without the execution or filing of any papers or any further act on the part of any of the parties thereto, anything therein to the contrary notwithstanding. In case any of the Senior Bonds will have been executed, but not delivered, any successor Bond Trustee may adopt the signature of any predecessor Bond Trustee, and deliver the same as executed; and, in case any of such Senior Bonds will not have been executed, any successor Bond Trustee may execute such Senior Bonds in the name of such successor Bond Trustee.

Intervention by Bond Trustee. In any judicial proceeding to which the Issuer is a party and which in the opinion of the Bond Trustee and its counsel has a substantial bearing on the interests of the Owners, the Bond Trustee may intervene on behalf of Owners, and will do so if requested in writing by the Owners of a majority in aggregate principal amount of the then Outstanding Senior Bonds, provided, the Bond Trustee may, as a condition to taking any action at the request or direction of the Owners, require that a satisfactory indemnity bond be furnished to it for the reimbursement of its reasonable fees and expenses and the liability that it may incur as a result of such action.

Limitations on Actions Under Concession Agreement. The Bond Trustee will not name or join the Issuer, CDOT or the State or any officer thereof in any legal proceeding seeking collection of the

related debt or other obligations secured thereby or the foreclosure or other enforcement of the Concession Agreement except to the extent joining the Issuer is required as a necessary party in order to give the court jurisdiction over the dispute.

The Bond Trustee will not seek any damages or other amounts from the Issuer for a breach of the Concession Agreement, except for the rights or claims which the Bond Trustee may have as a successor to the Concessionaire's interests by foreclosure or transfer in lieu of foreclosure.

Supplemental Indentures

Supplemental Indentures Not Requiring Consent of Owners. The Issuer and the Bond Trustee may, without the consent of, or notice to, the Owners, but with the written consent of the Concessionaire, enter into a Supplemental Indenture for any one or more or all of the following purposes:

- (a) to provide for the issuance by the Issuer of Additional Senior Bonds in accordance with the provisions of the Indenture;
- (b) to add additional covenants to the covenants and agreements of the Issuer set forth in the Indenture;
- (c) to add additional revenues, properties or collateral to the Trust Estate;
- (d) to cure any ambiguity, or to cure, correct or supplement any defect or omission or inconsistent provision contained in the Indenture;
- (e) to amend any existing provision of the Indenture or to add additional provisions which, in the opinion of Bond Counsel, are necessary or advisable (i) to qualify, or to preserve the qualification of, the interest on any Tax-Exempt Senior Bonds for exclusion from gross income for federal income tax purposes; (ii) to qualify, or to preserve the qualification of, the Indenture or any Supplemental Indenture under the federal Trust Indenture Act of 1939, as amended; or (iii) to qualify, or preserve the qualification of, any Senior Bonds for an exemption from registration or other limitations under the laws of any state or territory of the United States;
- (f) to provide for or eliminate book-entry registration of any of the Senior Bonds;
- (g) to obtain or maintain a rating of the Senior Bonds by one or more of the Rating Agencies;
- (h) to facilitate the receipt of moneys;
- (i) to establish additional funds, accounts or subaccounts necessary or useful in connection with any other provision of this Section; or
- (j) in connection with any other change which does not materially adversely affect the rights of the Owners, including, without limitation, conforming the Indenture to the terms and provisions of the Bond Proceeds Loan Agreement, the Concession Agreement, the MSA, the Senior Obligations Intercreditor Agreement or any other Security Documents, as set forth in a certificate of an Issuer Representative and an opinion of Bond Counsel delivered pursuant to the Indenture.

Supplemental Indentures Requiring Consent of Owners. Subject to the provisions set forth in the Senior Obligations Intercreditor Agreement, the Issuer and the Bond Trustee may enter into a Supplemental Indenture for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of the Indenture or modifying the rights of the Owners in any way under the Indenture (other than as contemplated in under the caption “Supplemental Indentures Not Requiring Consent of Owners” above) with the consent of the Owners of a majority in aggregate principal amount of the then Outstanding Senior Bonds affected by the proposed amendment and with the consent of the Concessionaire; provided, however, that no Supplemental Indenture modifying the Indenture in the way described below may be entered into without the consent of the Owner of each Senior Bond affected thereby:

- (a) a reduction of the interest rate, principal of or interest on or Redemption Price payable on any Senior Bond, a change in the maturity date of any Senior Bond, a change in any Interest Payment Date for any Senior Bond or a change in the redemption provisions applicable to any Senior Bond;
- (b) the deprivation of an Owner of the Security Interest in the Trust Estate granted by the Indenture;
- (c) the creation of a priority right in the Trust Estate of another Senior Bond over the right of the affected Senior Bond, except as permitted in the Indenture; or
- (d) a reduction in the percentage of Owners that are required to consent to any Supplemental Indenture or the parties whose consent is required.

Conditions to Effectiveness of Supplemental Indentures.

(a) No Supplemental Indenture will be effective until (i) it has been executed by the Issuer and the Bond Trustee and, when applicable, consented to by the Concessionaire, and (ii) Bond Counsel has delivered a written opinion to the effect the Supplemental Indenture complies with the provisions of this Article, is authorized by the Indenture, will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any series of Outstanding Senior Bonds where the interest on such Senior Bonds was excludable from gross income for federal income tax purposes on the original date of issuance of such Senior Bonds, and with respect to any amendment made pursuant to clause (j) of the section entitled “Supplemental Indentures Not Requiring Consent of Owners” above, such amendment does not materially adversely affect the rights of the Owners.

(b) No Supplemental Indenture entered into pursuant to the provisions described under the caption “Supplemental Indentures Requiring Consent of Owners” above will be effective until, in addition to the conditions set forth in subsection (a) of this Section, (i) a notice has been mailed to each Owner by the Bond Trustee, which notice describes the nature of the proposed Supplemental Indenture (or such Supplemental Indenture may be included with such notice) and states that copies of it are on file at the office of the Bond Trustee for inspection by the Owners and (ii) subject to the provisions of the Indenture and any Supplemental Indenture, the required percentage of Owners of the then Outstanding Senior Bonds have consented to the Supplemental Indenture.

(c) For the purposes of the section entitled “Supplemental Indentures Requiring Consent of Owners” above, the purchasers of the Senior Bonds of a Series, whether purchasing as underwriters, for resale or otherwise, upon such purchase from the Issuer, may consent to a

modification or amendment permitted under the section entitled “Supplemental Indentures Requiring Consent of Owners” above in the manner provided in the Indenture and with the same effect as a consent given by the Owners of such Senior Bonds, except that no proof of ownership will be required; provided, that this provision will be disclosed prominently in the offering document, if any, for each Series of Senior Bonds issued pursuant to the Indenture or any Supplemental Indenture, provided that, if such consent is given by a purchaser who is purchasing as an underwriter or for resale, the nature of the modification or amendment and the provisions for the purchaser consenting thereto will be described in the offering document prepared in connection with the primary offering of the Senior Bonds of such Series by the Issuer.

Consent of the Concessionaire. Anything in the Indenture to the contrary notwithstanding, a Supplemental Indenture will not become effective unless and until the Concessionaire will have consented to the execution and delivery of such Supplemental Indenture. In this regard, the Bond Trustee will cause notice of the proposed execution of any such Supplemental Indenture together with a copy of the proposed Supplemental Indenture to be mailed to the Concessionaire at least fifteen Business Days (or such shorter notice period as the Concessionaire may agree to) prior to the proposed date of execution and delivery of any such Supplemental Indenture.

Amendment of and Certain Actions Under Bond Proceeds Loan Agreement, Other Funding Documents and MSA

Amendments to Bond Proceeds Loan Agreement Not Requiring Consent of Owners. The Issuer and the Borrower Group Members may, upon receipt of an opinion of Bond Counsel to the effect that the proposed amendment will not adversely affect the excludability of interest on the 2014 Bonds from gross income for federal income tax purposes and is authorized by the Indenture, amend, change or modify the Bond Proceeds Loan Agreement, without the consent of, or notice to, the Owners, for any one or more or all of the following purposes:

(a) to add additional covenants to the covenants and agreements of the Borrower Group Members set forth therein;

(b) to cure any ambiguity, or to cure, correct or supplement any defect or omission or inconsistent provision contained therein;

(c) to amend any existing provision thereof or to add additional provisions which, in the opinion of Bond Counsel, are necessary or advisable (i) to qualify, or to preserve the qualification of, the interest on any 2014 Bonds for exclusion from gross income for federal income tax purposes or (ii) to qualify, or preserve the qualification of, any 2014 Bonds for an exemption from registration or other limitations under the laws of any state or territory of the United States;

(d) to facilitate the receipt of moneys;

(e) to establish additional funds, accounts or subaccounts necessary or useful in connection with any other provision of this Section; or

(f) in connection with any other change which does not materially adversely affect the rights of the Owners, including, without limitation, conforming the Bond Proceeds Loan Agreement to the terms and provisions of the Indenture, the Concession Agreement, the MSA, the Senior Obligations Intercreditor Agreement or any other Security Documents, as set forth in a certificate of an Issuer Representative and an opinion of Bond Counsel.

Amendments to Bond Proceeds Loan Agreement Requiring Consent of Owners. Subject to the provisions set forth in the Senior Obligations Intercreditor Agreement, except for the amendments, changes or modifications as described under the caption “Amendments to Bond Proceeds Loan Agreement Not Requiring Consent of Owners” above, the Issuer and the Borrower Group Members may amend, change or modify the Bond Proceeds Loan Agreement with the consent of the Owners of a majority in aggregate principal amount of the then Outstanding 2014 Bonds; provided, however, that no amendment, change or modification of the Bond Proceeds Loan Agreement may be entered into in respect of the matters contemplated below unless the consent of the Owner of each 2014 Bond affected thereby has been obtained:

(a) a reduction of the interest rate, principal of or interest on the Bond Proceeds Loan, a change in the maturity date of the Bond Proceeds Loan, a change in the Interest Payment Date for the Bond Proceeds Loan or a change in the prepayment provisions applicable to the Bond Proceeds Loan; or

(b) the deprivation of the Bond Trustee of the Security Interest granted by the Security Documents.

Consent of Owners Required Pursuant to Concession Agreement. The consent of the Owners of a majority in aggregate principal amount of the then Outstanding 2014 Bonds will be required with respect to any actions required to be agreed to by the Owners of the 2014 Bonds pursuant to the provisions of the Concession Agreement in the event of a non-assumption of the TIFIA Phase 1 Loan.

Conditions to Effectiveness of Amendments to Bond Proceeds Loan Agreement. No amendment to the Bond Proceeds Loan Agreement will be effective until (i) it has been executed by the Issuer and each of the Borrower Group Members, and (ii) Bond Counsel has delivered a written opinion to the effect the amendment to the Bond Proceeds Loan Agreement complies with the provisions of this Article and the provisions of the Bond Proceeds Loan Agreement, is authorized by the Indenture and the Bond Proceeds Loan Agreement, will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Outstanding 2014 Bonds, and with respect to any amendment made pursuant to clause (f) under the caption entitled “Amendments to Bond Proceeds Loan Agreement Not Requiring Consent of Owners” above, such amendment does not materially adversely affect the rights of the Owners of the 2014 Bonds.

No amendment to the Bond Proceeds Loan Agreement entered into pursuant to the provisions described under the caption entitled “Amendments to Bond Proceeds Loan Agreement Requiring Consent of Owners” above will be effective until, in addition to the conditions set forth in the previous paragraph, (i) a notice has been mailed to each Owner of the 2014 Bonds by the Bond Trustee, which notice describes the nature of the proposed amendments (or such amendment may be included with such notice) and states that copies of it are on file at the office of the Bond Trustee for inspection by the Owners of the 2014 Bonds and (ii) subject to the provisions of the Indenture, the required percentage of Owners of the then Outstanding 2014 Bonds have consented to the amendment to the Bond Proceeds Loan Agreement.

For the purpose of amendments described under the caption entitled “Amendments to Bond Proceeds Loan Agreement Requiring Consent of Owners” above, the purchasers of the Senior Bonds of a Series, whether purchasing as underwriters, for resale or otherwise, upon such purchase from the Issuer, may consent to a modification or amendment permitted by the provisions described under the caption entitled “Amendments to Bond Proceeds Loan Agreement Requiring Consent of Owners” above in the manner provided in the Indenture and with the same effect as a consent given by the Owners of such Senior Bonds, except that no proof of ownership will be required; provided, that this provision will be disclosed prominently in the offering document, if any, for each Series of Senior Bonds issued pursuant to the

Indenture or any Supplemental Indenture, provided that, if such consent is given by a purchaser who is purchasing as an underwriter or for resale, the nature of the modification or amendment and the provisions for the purchaser consenting thereto will be described in the offering document prepared in connection with the primary offering of the Senior Bonds of such Series by the Issuer.

Actions of Bond Trustee Requiring Owner Consent. In the event that the Bond Proceeds Loan Agreement or any Additional Senior Bonds Loan Agreement (if executed) requires certain actions by the Bond Trustee at the direction of a designated portion of the Owners of the applicable Senior Bonds, or any other Funding Document, the MSA, the Concession Agreement or the Senior Obligations Intercreditor Agreement requires the consent of the Secured Creditors (in each case, the consent of the Bond Trustee, on behalf of the Owners, to be given upon the consent of the Owners of a majority in aggregate principal amount of the then Outstanding Senior Bonds, unless a different designated portion of the Owners of the Senior Bonds is required pursuant to such document), the Bond Trustee will agree as follows:

(a) if a party requests the consent of the Bond Trustee be provided at the direction of a designated portion of the Owners of the applicable Senior Bonds, the Bond Trustee will, upon notice of the same from such party and upon being satisfactorily indemnified with respect to expenses, cause notice of such requested consent or action to be given in the same manner as provided in the Indenture with respect to Supplemental Indentures or the Bond Proceeds Loan Agreement; provided, that prior to the delivery of such notice or request, the Bond Trustee may require that an opinion of Bond Counsel be furnished to the effect that such consent or action complies with the provisions of the Indenture and will not adversely affect the excludability of interest on the Tax-Exempt Senior Bonds from gross income for federal income tax purposes. Such notice will briefly set forth the nature of such requested consent or action and will state that any copies of such request from such requesting party are on file at the Corporate Trust Office of the Bond Trustee for inspection by all Owners; and/or

(b) upon direction from Owners of not less than the required percentage in aggregate principal amount of the then Outstanding Senior Bonds the Bond Trustee will, upon being satisfactorily indemnified with respect to expenses, take any such directed action in accordance with the Bond Proceeds Loan Agreement, any Additional Senior Bonds Loan Agreement (if executed), any other Funding Document, the MSA, the Concession Agreement or the Senior Obligations Intercreditor Agreement; provided, that prior to the delivery of such notice or request, the Bond Trustee may require that an opinion of Bond Counsel be furnished to the effect that such consent or action complies with the provisions of the Indenture and will not adversely affect the excludability of interest on the Tax-Exempt Senior Bonds from gross income for federal income tax purposes.

Defeasance

Discharge of Indenture. If (a) 100% of all the Senior Bonds due, or to become due, have been paid, or provision will have been made for the payment thereof in accordance with provisions described under the caption entitled “Defeasance of Senior Bonds” below, (b) all rebate payments payable to the United States with respect to the Tax-Exempt Senior Bonds have been paid, or provision will have been made for the payment thereof, (c) all other amounts payable under the Indenture (including, but not limited to, Bond Trustee Fees and Expenses) have been paid, or provision will have been made for the payment thereof, and (d) the opinion of Bond Counsel required by the Indenture has been delivered, then, (i) the right, title and interest of the Bond Trustee in and to the Trust Estate will terminate and be discharged (referred to herein as the “discharge” of the Indenture); (ii) the Bond Trustee will transfer and convey to or to the written order of the Issuer all property that was part of the Trust Estate, including but

not limited to any moneys held in any Fund or Account under the Indenture, except any Defeasance Escrow Fund created pursuant to provisions described under the caption entitled “Defeasance of Senior Bonds” below (which Defeasance Escrow Fund will continue to be held in accordance with the agreement governing the administration thereof); and (iii) the Bond Trustee will execute any instrument requested by the Issuer to evidence such discharge, transfer and conveyance.

Defeasance of Senior Bonds. All or any portion of the Outstanding Senior Bonds will be deemed to have been paid (referred to herein as “defeased”) prior to their maturity or redemption if:

(i) the defeased Senior Bonds are to be redeemed prior to their maturity, the Concessionaire has irrevocably instructed the Bond Trustee in writing to give notice of redemption of such Senior Bonds in accordance with the Indenture and any applicable Supplemental Indenture;

(ii) there has been deposited in trust in a Defeasance Escrow Fund either moneys in an amount which will be sufficient, or Defeasance Securities, to pay the principal of and the interest on which when due, and without any reinvestment thereof, will provide moneys which, together with the moneys, if any, deposited into or held in the Defeasance Escrow Fund, will be sufficient to pay the principal and Redemption Price, if any, and interest due and to become due on the defeased Senior Bonds on and prior to the redemption date or maturity date thereof, as the case may be;

(iii) an independent certified public accountant has delivered a verification report verifying the deposit described in paragraph (ii) of this subsection; and

(iv) the opinion of Bond Counsel has been delivered.

The Defeasance Securities and moneys deposited in a Defeasance Escrow Fund pursuant to this section and the principal and interest payments on such Defeasance Securities will not be withdrawn or used for any purpose other than, and will be held in trust solely for, the payment of the principal and Redemption Price, if any, of and interest on the defeased Senior Bonds; provided, however, that (i) any moneys received from principal and interest payments on such Defeasance Securities that are not required to pay the principal and Redemption Price, if any, of and interest on the defeased Senior Bonds on the date of receipt will, to the extent practicable, be reinvested in Defeasance Securities maturing at the times and in amounts sufficient to pay when due the principal and Redemption Price, if any, of and interest on the defeased Senior Bonds on or prior to the redemption date or maturity date thereof, as the case may be; and (ii) any moneys or Defeasance Securities may be withdrawn from a Defeasance Escrow Fund if (A) the moneys and Defeasance Securities that are on deposit in the Defeasance Escrow Fund, including any moneys or Defeasance Securities that are substituted for the moneys or Defeasance Securities that are withdrawn from the Defeasance Escrow Fund, satisfy the conditions stated in clause (ii) above, and (B) a verification report and Bond Counsel opinion are delivered that comply with clauses (iii) and (iv) above.

Any Senior Bonds that are defeased as provided in this section will no longer be secured by or entitled to any right, title or interest in or to the Trust Estate, and the principal and Redemption Price, if any, of and interest on such Senior Bonds will be paid solely from the Defeasance Securities and money held in the Defeasance Escrow Fund.

Opinion of Bond Counsel. Prior to any discharge of the Indenture pursuant to the Indenture or the defeasance of any Senior Bonds pursuant to the Indenture, Bond Counsel will have delivered a written opinion to the effect that all requirements of the Indenture for such discharge or defeasance have been

complied with and that such discharge or defeasance will not constitute a violation by the Issuer of its tax covenant in the Indenture.

Events Occurring on Days that are not Business Days

If the date for making any payment or the last day for performance of any act or the exercising of any right under the Indenture or any Supplemental Indenture is a day that is not a Business Day, such payment may be made, such act may be performed or such right may be exercised on the next succeeding Business Day, with the same force and effect as if done on the nominal date provided in the Indenture and any Supplemental Indenture.

Colorado Governmental Immunity Act and Federal Torts Claims Act

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

No Individual Liability

Pursuant to Section 11-57-209 of the Supplemental Securities Act, if a member of the Board of Directors of the Issuer, or any officer or agent of the Issuer acts in good faith, no civil recourse will be available against such member, officer, or agent for payment of the principal, interest or prior redemption premiums, if any, on the Senior Bonds. Such recourse will not be available either directly or indirectly through the Board of Directors of the Issuer or the Issuer, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of the Senior Bonds and as a part of the consideration of their sale or purchase, any Person purchasing or selling such Senior Bond specifically waives any such recourse. None of the members of the Board of Directors of the Issuer or the officers or employees of the Issuer will be liable personally on the Senior Bonds or be subject to any personal liability or accountability by reason of the issuance thereof. All covenants, stipulations, promises, agreements and obligations of the Issuer or the Bond Trustee, as the case may be, contained in the Indenture, in any Supplemental Indenture, or in the Senior Bonds will be deemed to be the covenants, stipulations, promises, agreements and obligations of the Issuer or the Bond Trustee, as the case may be, and not of any member, director, officer, employee, servant or other agent of the Issuer or the Bond Trustee in his or her individual capacity, and no recourse will be had on account of any such covenant, stipulation, promise, agreement or obligation, or for any claim based thereon or under the Indenture, against any member, director, officer, employee, servant or other agent of the Issuer or the Bond Trustee or any natural person executing the Indenture, any Supplemental Indenture, the Senior Bonds or any related document or instrument.

Parties Interested

The Indenture and any Supplemental Indenture will be for the sole and exclusive benefit of the Issuer, the Bond Trustee and the Owners and their respective successors and assigns. Nothing in the Indenture or any Supplemental Indenture expressed or implied is intended or will be construed to confer upon, or to give to, any person other than the Issuer, the Bond Trustee and the Owners, any right, remedy or claim under or by reason of the Indenture or any terms thereof. To the extent that the Indenture or any Supplemental Indenture confers upon or gives or grants to the Borrower Group Members any right, remedy or claim under or by reason of the Indenture or any Supplemental Indenture, the Borrower Group Members are hereby explicitly recognized as being third-party beneficiaries thereunder and may enforce any such right, remedy or claim conferred, given or granted thereunder.

SUMMARY OF THE BOND PROCEEDS LOAN AGREEMENT

Agreement to Issue the 2014 Bonds; Loan of Proceeds

The Issuer has agreed to issue, sell and deliver the 2014 Bonds in accordance with the terms of the Indenture, and upon the terms and conditions of the Bond Proceeds Loan Agreement and the Indenture, the Issuer has agreed to lend to the Borrower Finco on the Closing Date the proceeds of the 2014 Bonds (the “Bond Proceeds Loan”). The Borrower Finco will on-lend the proceeds of the Bond Proceeds Loan to Finco 1 pursuant to the Finco 1 Bond Proceeds Loan Agreement, which will in turn on-lend such proceeds to Finco 2 pursuant to the Finco 2 Bond Proceeds Loan Agreement, which will in turn on-lend such proceeds to the Concessionaire pursuant to the Concessionaire Bond Proceeds Loan Agreement, which will use such proceeds to (a) finance a portion of the costs of the Phase 2 Work, and (b) pay a portion of the Costs of Issuance of the 2014 Bonds.

Insufficient Funds for Project

In the event that proceeds derived from the Bond Proceeds Loan and such other available funds as described in the Concession Agreement and the MSA are not sufficient to finance the costs of the Project and all of the Costs of Issuance relating to the 2014 Bonds, no Borrower Group Member will be entitled to any reimbursement from the Issuer or the Bond Trustee for the payment of such costs nor will the Borrower Finco be entitled to any abatement, diminution or postponement of its payments under the Bond Proceeds Loan Agreement or the Guarantors be entitled to any abatement, diminution or postponement of their payments under the Finco 1 Bond Proceeds Loan Agreement, the Finco 2 Bond Proceeds Loan Agreement, the Concessionaire Bond Proceeds Loan Agreement or the Guaranty.

Security for Repayment of Loan; 2014 Note

Prior to or simultaneously with the delivery of the Bond Proceeds Loan Agreement, each Borrower Group Member will deliver or will cause to be delivered each of the Security Documents to which it is a party to the Security Trustee.

As evidence of the Borrower Finco’s obligation to repay the Bond Proceeds Loan, the Borrower Finco will deliver to the Bond Trustee, as assignee of the Issuer, on the Closing Date, the 2014 Note. The Issuer will direct the Borrower Finco to make all payments or cause all payments to be made on the 2014 Note directly to the Bond Trustee instead of to the Issuer, and the Borrower Finco will agree to do so in the manner contemplated in the MSA. All payments made or caused to be made by the Borrower Finco on the 2014 Note to the Bond Trustee, as assignee of the Issuer, and all amounts received by the Bond Trustee will be credited to amounts due to the Bond Trustee by the Issuer on the 2014 Bonds.

As security for the Bond Proceeds Loan and the 2014 Note, the Borrower Group Members will pledge, assign and grant, or will cause to be pledged, assigned and granted to the Security Trustee, Liens on the Collateral in accordance with the provisions of the Security Documents. Subject to the terms of the Security Documents and the Senior Obligations Intercreditor Agreement, the Bond Proceeds Loan and the 2014 Note will be secured by the Liens (i) on the Segregated Bonds Accounts, by a first priority security interest (and, for the avoidance of doubt, no other Secured Obligations will be secured by a Lien on such Accounts) and (ii) on the other Collateral by a first priority security interest; provided that each of the Segregated TIFIA Phase 1 Account, the Segregated TIFIA Phase 2 Accounts and the Segregated Subordinate Loan Accounts and all funds deposited therein from time to time (and all earnings thereon), will not be subject to any Lien securing the Bond Proceeds Loan and the 2014 Note.

Except (i) for Permitted Liens, (ii) to the extent otherwise provided in the previous paragraph, or (iii) as may be entitled to priority as a matter of law, the Collateral will be free and clear of any pledge, lien, charge or encumbrance thereon or with respect thereto prior to, or of equal rank with, the pledge created under the Security Documents, and all action on the part of the Borrower Group Members to that end has been duly and validly taken.

The Concessionaire will not use Project Revenues to make any payments or satisfy any obligations other than in accordance with the provisions of the Bond Proceeds Loan Agreement, the MSA, the Concession Agreement and the other Senior Loan Documents.

Limitation of the Issuer's Liability

Nothing in the Bond Proceeds Loan Agreement, the 2014 Note, the Indenture, the 2014 Bonds or the Security Documents will constitute an indebtedness of the Issuer or a multiple-fiscal year obligation of the Issuer within the meaning of any provisions of the State Constitution or the laws of the State. The 2014 Bonds are special, limited obligations of the Issuer, payable solely from and secured solely by the Trust Estate and are not, and will not be deemed to constitute an obligation, moral or otherwise, of CDOT or the State, any other agency, instrumentality or political subdivision of the State, or any official, board member, director, officer, employee, agent or representative of any of the foregoing, and neither the full faith and credit of the Issuer or CDOT nor the full faith and credit nor the taxing power of the State or any other agency, instrumentality or political subdivision of the State is pledged to the payment of the principal (or Redemption Price) of and interest on the 2014 Bonds. The Owners of the 2014 Bonds may not look to any revenues of the Issuer, CDOT or the State for repayment of the 2014 Bonds and the only sources of repayment of the 2014 Bonds are revenues provided by the Borrower Finco to the Issuer pursuant to the Bond Proceeds Loan Agreement for the payment of the principal (or Redemption Price) of and interest on the 2014 Bonds, and the 2014 Bonds do not constitute an indebtedness of the Issuer, CDOT or the State or a multiple-fiscal year obligation of the Issuer, CDOT or the State within the meaning of any provisions of the State Constitution or the laws of the State. The payment of the 2014 Bonds will not be secured by any encumbrance, mortgage, or other pledge of property of the Issuer, CDOT or the State other than the Trust Estate. No property of the Issuer, CDOT or the State, subject to such exception, will be liable to be forfeited or taken in payment of the 2014 Bonds. No member, officer or agent of the Issuer or any person executing the 2014 Bonds will be liable personally on the 2014 Bonds by reason of the issuance thereof.

No provision, covenant, or agreement contained in the Bond Proceeds Loan Agreement, or any obligations therein imposed upon the Issuer, or the breach thereof, will constitute an indebtedness or liability of the Issuer within the meaning of any State constitutional provision or statutory limitation or will constitute or give rise to a pecuniary liability of the Issuer or any member, officer or agent of the Issuer or a charge against the Issuer's general credit. In making the agreements, provisions and covenants set forth in the Bond Proceeds Loan Agreement, the Issuer has not obligated itself except with respect to the application of the revenues, as provided in the Bond Proceeds Loan.

Amounts Payable

The Borrower Finco will covenant and agree to repay the Bond Proceeds Loan and the 2014 Note, as follows: on or before any Principal Payment Date or Interest Payment Date for the 2014 Bonds or any other date that any payment of principal (including mandatory sinking fund redemption payments) or Redemption Price of or interest on the 2014 Bonds, is required to be made or provided for in respect of the 2014 Bonds pursuant to the Indenture, until the payment of principal or Redemption Price of, and interest on the 2014 Bonds will have been fully paid or provision for the payment thereof will have been made in accordance with the Indenture, in immediately available funds, a sum which, together with any

other moneys available for such payment in the applicable account of the Series 2014 Debt Service Fund, will enable the Bond Trustee to pay to the Owners of the 2014 Bonds the amount due and payable on such date as interest, principal or Redemption Price on the 2014 Bonds as provided in the Indenture.

Additionally, the Borrower Finco will covenant and agree to prepay the Bond Proceeds Loan and the 2014 Note in accordance with the provisions described under the captions entitled “Optional Prepayment and Redemption” and Extraordinary Mandatory Redemption; Mandatory Sinking fund Redemption” below.

The Issuer will direct the Borrower Finco and the Borrower Finco will agree to pay or direct the Security Trustee to pay to the Bond Trustee, in accordance with the provisions of the MSA, all payments payable by the Borrower Finco in respect of the 2014 Loan and the 2014 Note pursuant to this subsection.

In accordance with the MSA, the Borrower Finco also will pay or direct the Security Trustee to pay to the Issuer, the Issuer’s reasonable costs, fees and expenses directly related to the issuance of the 2014 Bonds and all agreements related thereto, including the reasonable fees and expenses of its counsel.

In accordance with the MSA, the Borrower Finco also will pay or direct the Security Trustee to pay the Bond Trustee Fees and Expenses and all other amounts which may be payable to the Bond Trustee under the terms of the Indenture or in accordance with any contractual arrangement between the Borrower Finco and the Bond Trustee with respect thereto; provided, that the Borrower Finco may, without creating a default under the Bond Proceeds Loan Agreement, contest in good faith any such Bond Trustee Fees or Expenses.

In the event that the Borrower Finco should fail to make any of the payments required in this section, the amount so in default will continue as an obligation of the Borrower Finco until the amount in default will have been fully paid, and the Borrower Finco agrees to pay the same with interest thereon, to the extent provided under the Indenture or as permitted by Law, from the date when such payment was due, at the rate of interest borne by the 2014 Bonds.

To the extent any moneys have been deposited by the Borrower Finco, or on the Borrower Finco’s behalf, into the Series 2014 Interest Account, the Series 2014 Principal Account or the Series 2014 Redemption Account of the Series 2014 Debt Service Fund for the purpose of paying interest on and principal and Redemption Price of the 2014 Bonds when due, the Borrower Finco’s payment obligations pursuant this section with respect to the applicable amount of principal or Redemption Price of, or interest on the 2014 Bonds will be deemed satisfied.

Obligations of Borrower Finco Unconditional

The obligations of the Borrower Finco to make the payments described under the caption entitled “Amounts Payable” above and to perform and observe the other agreements contained in the Bond Proceeds Loan Agreement will be absolute and unconditional and will not be subject to any defense or any right of setoff, counterclaim or recoupment arising out of (a) any breach by the Issuer, the Guarantors, the Bond Trustee or the Security Trustee of any obligation to the Borrower Finco, whether under the Bond Proceeds Loan Agreement or otherwise, or (b) any indebtedness or liability at any time owing to the Borrower Finco by the Issuer, the Bond Trustee, the Guarantors or the Security Trustee, and, until such time as the principal or Redemption Price of and interest on the 2014 Bonds, will have been fully paid or provision for the payment thereof will have been made in accordance with the Indenture, the Borrower Finco (i) will not suspend or discontinue any payments described under the caption entitled “Amounts Payable” above, (ii) will perform and observe all other agreements contained in the Bond Proceeds Loan Agreement, the 2014 Note, the 2014 Tax Regulatory Agreement and the Security Documents to which it

is a party and (iii) except as otherwise provided in the Bond Proceeds Loan Agreement, will not terminate the Bond Proceeds Loan Agreement, the 2014 Note, the 2014 Tax Regulatory Agreement or the Security Documents to which it is a party for any cause, or any failure of the Issuer, the Bond Trustee, the Guarantors or the Security Trustee to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Bond Proceeds Loan Agreement. Nothing contained in this section will be construed to release the Issuer from the performance of any of the agreements on its part contained in the Bond Proceeds Loan Agreement, and in the event the Issuer should fail to perform any such agreement on its part, the Borrower Finco may institute such action against the Issuer as the Borrower Finco may deem necessary to compel performance so long as such action does not abrogate the obligations of the Borrower Finco contained in the first sentence of this section.

Optional Prepayment and Redemption

At any time and from time to time when the 2014 Bonds are subject to optional redemption as set forth in the Indenture, the Borrower Finco may (a) deliver or cause the delivery of moneys to the Bond Trustee in addition to Bond Proceeds Loan Payments or 2014 Additional Payments required to be made and direct the Bond Trustee to use the moneys so delivered for the purpose of prepaying the Borrower Finco's obligations under the Bond Proceeds Loan Agreement and the 2014 Note and calling the 2014 Bonds for optional redemption in accordance with the applicable provisions of the Indenture providing for optional redemption at the Redemption Price or Prices stated in the Indenture.

Extraordinary Mandatory Redemption; Mandatory Sinking Fund Redemption

The Borrower Finco will prepay the Bond Proceeds Loan and the 2014 Note and cause the extraordinary mandatory redemption of all of the 2014 Bonds (or, if the proceeds received pursuant to the events described in clause (i), (ii) or (iii) below, as applicable, are insufficient to cause the extraordinary mandatory redemption of all of the 2014 Bonds, then any portion thereof as provided by the Indenture) on any Business Day at a Redemption Price of 100% of the principal amount thereof plus interest accrued to the date fixed for redemption and without premium on the occurrence of any of the following events:

- (i) Unspent 2014 Bond proceeds remain on deposit in the Bond Proceeds (Costs of Issuance) Subaccount or the Bond Proceeds (Project Costs) Subaccount on a date that is five (5) years and thirty (30) days after the Closing Date (such prepayment to be made with such unspent proceeds);
- (ii) Net Loss Proceeds have been deposited to the Borrower Finco Senior Bonds Debt Service Account pursuant to the MSA (such prepayment to be made with such Net Loss Proceeds); and
- (iii) A Determination of Taxability has occurred with respect to the 2014 Bonds.

The Borrower Finco will prepay the obligations under the Bond Proceeds Loan Agreement and cause the 2014 Term Bonds to be redeemed by mandatory sinking fund installments at the applicable Redemption Price on the applicable Redemption Date.

Borrower Finco Payments for Redemption

In accordance with the MSA, the Borrower Finco will deliver to the Bond Trustee, or cause to be delivered to the Bond Trustee, as Bond Proceeds Loan Payments, the moneys needed to redeem the 2014 Bonds in accordance with the redemption provisions relating thereto as set forth in the Indenture, and also

any amounts required to be provided in prepayment of the Bond Proceeds Loan and the 2014 Note and as required by the Bond Proceeds Loan Agreement.

Concurrent Discharging of Obligations

In the event any of the 2014 Bonds will be paid and discharged, or deemed to be paid and discharged, pursuant to any provisions of the Bond Proceeds Loan Agreement and the Indenture, so that such 2014 Bonds are not thereafter Outstanding within the meaning of the Indenture, a like principal amount of the Bond Proceeds Loan under the Bond Proceeds Loan Agreement and the 2014 Note will be deemed fully paid for purposes of the Bond Proceeds Loan Agreement and the 2014 Note and to such extent the obligations of the Borrower Finco under the Bond Proceeds Loan Agreement will be deemed terminated with respect to that portion of the Bond Proceeds Loan and the 2014 Note.

Special Covenants

Maintain Legal Structure. Each Borrower Group Member will maintain its existence and good standing under its jurisdiction of formation, and such Borrower Group Member will not consolidate with, privatize or merge into any other Person or convey, assign, transfer or lease all or substantially all of the U.S. 36 Project (or of any Segment thereof), except as otherwise permitted pursuant to the Bond Proceeds Loan Agreement, or its other assets to any other Person, other than the pledge and assignment of the Collateral granted by it pursuant to the Security Documents. Notwithstanding the previous sentence, a Borrower Group Member may consolidate with, privatize or merge into any other Person after the Full Services Commencement Date, if the resulting or acquiring Person (the “Successor Borrower Group Member”):

(a) assumes in writing all obligations and the performance and observance of all covenants and conditions of the predecessor Borrower Group Member of the Bond Proceeds Loan Agreement and the other Transaction Documents to which such predecessor Borrower Group Member was a party;

(b) provides the Issuer and the Bond Trustee with an opinion of nationally recognized municipal bond counsel in form and substance acceptable to the Issuer and the Bond Trustee to the effect that such consolidation, privatization or merger would not (i) cause interest paid on the 2014 Bonds to be included in the gross income of the Owners of the 2014 Bonds for federal income tax purposes (other than interest paid to Owners of the 2014 Bonds that are a “substantial user” of the facilities financed or refinanced with the 2014 Bonds or a “related person” within the meaning of Section 147(a) of the Code), or (ii) cause interest paid on the 2014 Bonds to be included in the taxable income of the Owners of the 2014 Bonds for Colorado income tax purposes, under present Colorado law;

(c) provides the Issuer and the Bond Trustee an opinion of counsel to the Successor Borrower Group Member (reasonably satisfactory to the Issuer and the Bond Trustee) to the effect that (i) the Successor Borrower Group Member has been duly formed, (ii) the Successor Borrower Group Member has all necessary power and capacity to assume, and has validly assumed, all obligations and the performance and observance of all covenants and conditions of the predecessor Borrower Group Member of the Bond Proceeds Loan Agreement and the other Transaction Documents to which such predecessor Borrower Group Member was a party, (iii) all obligations of such Borrower Group Member under the Bond Proceeds Loan Agreement and the other Transaction Documents to which it will become a party constitute legal, valid and binding obligations of such Successor Borrower Group Member; (iv) the proposed transaction does not impair any right or remedy of the Issuer or the Bond Trustee or the Security Trustee under the

Bond Proceeds Loan Agreement, the Indenture or the Security Documents, or impair the priority of the security interests granted thereunder; and (v) if the proposed transaction is applicable to the Concessionaire, the proposed transaction is being undertaken in compliance with the provisions of the Concession Agreement; and

(d) no Bond Proceeds Loan Agreement Event of Default will have occurred or be continuing as of the effective date of each such transaction or will arise as of the effective date of each such transaction or as a result thereof.

Prosecution of Work. The Concessionaire will diligently prosecute, or cause to be prosecuted, the work relating to the U.S. 36 Phase 2 Project and will complete the U.S. 36 Phase 2 Project in accordance with the construction schedule set forth in the Concession Agreement, and in accordance with the standards required by the Concession Agreement.

Operation and Maintenance of U.S. 36 Project. The Concessionaire will operate and maintain the U.S. 36 Project in a reasonable and prudent manner and will maintain the U.S. 36 Project in good repair, working order and condition and in accordance with the requirements of the Concession Agreement. The Concessionaire will, at all times do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the rights, licenses, permits, franchises and authorizations material to the conduct of its business, and comply in all material respects with all applicable laws, rules, regulations, orders, decrees, judgments or administrative decisions, whether now in effect or hereafter enacted, of any Governmental Authority having jurisdiction over the Concessionaire or its assets or operations (including NEPA and all other federal, state and local laws, rules, regulations, orders, decrees, judgments and administrative decisions relating to the environment, the preservation or reclamation of natural resources, the management, release or threatened release of any hazardous material or to health and safety matters) that are applicable to the Concessionaire or the U.S. 36 Project.

Insurance. The Concessionaire will maintain or will require its contractors to maintain insurance that is required to be obtained by the Concessionaire and its contractors to satisfy the requirements of the Concession Agreement. Such policies will (to the extent permitted by the Concession Agreement) name the Security Trustee, on behalf of the Secured Creditors, as an additional payee as their interests may appear (pending any existing contractual overrides). The Concessionaire will notify the Security Trustee within thirty days of cancellation (ten days for non-payment of premium) of any insurance required to be obtained by the Concessionaire.

The Concessionaire will not take, or fail to take, any action, which would result in any insurance obtained by the Concessionaire, lapsing, becoming cancelled or otherwise being rendered void, voidable or ineffective and will not cancel or vary any policy of insurance required to be maintained by it unless the Concession Agreement requires or permits otherwise.

Material Obligations. Each Borrower Group Member will pay each of its material obligations promptly and in accordance with its terms and pay and discharge promptly all material taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or in respect of its property, before the same will become delinquent or in default, as well as all lawful and material claims for labor, materials and supplies or other claims which, if unpaid, in each case, might give rise to a Lien upon such properties or any part thereof; provided that such payment and discharge will not be required with respect to any such tax, assessment, charge, levy or claim so long as the validity or amount thereof will be contested by such Borrower Group Member in good faith by appropriate proceedings and so long as such Borrower Group Member will, to the extent required by IFRS and, if required under applicable law, GAAP, on a consistent basis, set aside on its books adequate reserves with respect thereto, or unless

failure to pay such tax, assessment, charge, levy or claim would not reasonably be expected to have a Material Adverse Effect.

Change in Name, Place of Business or Fiscal Year. No Borrower Group Member will, at any time:

(a) change its name, jurisdiction of formation, or principal place of business without giving the Issuer, the Bond Trustee and the Security Trustee at least ten days prior written notice; or

(b) change its fiscal year without prior written notice sent to the Issuer, the Bond Trustee and the Security Trustee at least ten days prior to such change.

Project Revenues. All Project Revenues received by the Concessionaire will be applied in accordance with the Funding Documents to which it is a party, including as set forth in the MSA.

Accounts and Reporting. Each Borrower Group Member will keep proper books of records and accounts in which complete and correct entries will be made of its transactions in accordance with IFRS, and if required by applicable law, GAAP. Each Borrower Group Member will permit the Bond Trustee, at all reasonable times, to take copies and extracts from such books, records and papers, and will from time to time furnish, or cause to be furnished, to the Bond Trustee such information and statements as the Bond Trustee may reasonably request, all as may be reasonably necessary for the purpose of determining performance or observance by the Borrower Group Member of its obligations under the Bond Proceeds Loan Agreement.

The Borrower Finco and the Concessionaire will employ and maintain independent auditors of nationally recognized standing to audit their respective annual financial statements. Concurrent with such appointment, the Borrower Finco and the Concessionaire will authorize such accountants to communicate directly with the Bond Trustee and/or the Security Trustee and to respond to queries of the Bond Trustee or the Security Trustee regarding the Borrower Finco's or the Concessionaire's respective accounts and operations. The Borrower Finco and the Concessionaire will be given a reasonable opportunity to participate in such communications when they are by phone or in person, and will be copied on such communications when they are in writing.

Each Borrower Group Member will, (A) within five (5) Business Days after such Borrower Group Member learns of the occurrence, give the Bond Trustee and the Issuer notice setting forth details of any event under clauses (i), (ii), (iii) and (iv) below, or (B) with respect to clause (v) below, upon the request of the Bond Trustee or the Issuer, provide copies of such documents; provided that the giving of notice by one Borrower Group Member with respect to a particular event under clauses (i), (ii), (iii) and (iv) below will be deemed to comply with the requirement under clause (A) above without the giving of notice by any other Borrower Group Member with respect to such event;:

(i) Events of Default: any Bond Proceeds Loan Agreement Event of Default or any event which, given notice or the passage of time or both, would constitute a Bond Proceeds Loan Agreement Event of Default;

(ii) Litigation: the filing of any actual litigation, suit or action, or the delivery to such Borrower Group Member of any written claim, which could reasonably be expected to have a Material Adverse Effect;

(iii) Insurance Claim: any insurance claims in respect of any Event of Loss involving the U.S. 36 Project (or any Segment thereof) in excess of \$500,000 either individually or in the aggregate;

(iv) Other Adverse Events: the occurrence of any other event or condition, which could reasonably be expected to result in a Material Adverse Effect;

(v) Documents: as to the Concessionaire, any plans, reports and/or notices, other than those that are non-substantive or ministerial in nature, given by the Concessionaire or received from HPTE, CDOT or the Independent Engineer under the Concession Agreement; and

(vi) Extensions under Concession Agreement: as to the Concessionaire, copies of any extension, or proposed extension (as a result of the occurrence of a Compensation Event, Relief Event or Force Majeure Event (as such terms are defined in the Concession Agreement) or otherwise) to the Planned Full Services Commencement Date or the Full Services Commencement Longstop Date (as defined in the Concession Agreement).

Each Borrower Group Member will deliver the following information to the Issuer and the Bond Trustee:

(a) audited financial statements for such Borrower Group Member, if any, within one hundred twenty (120) days after the end of each Fiscal Year of such Borrower Group Member;

(b) simultaneously with the delivery of the financial statements in clause (i) above a certificate of such Borrower Group Member that states whether a Bond Proceeds Loan Agreement Event of Default has occurred and is continuing; and

(c) until the Full Services Commencement Date, monthly construction progress reports delivered under the Concession Agreement.

Remedial Action. Within thirty (30) days after any Borrower Group Member learns of the occurrence of an event specified in (i) through (iv) in the previous section entitled “Accounts and Reporting”, such Borrower Group Member’s Authorized Representative will provide a statement to the Bond Trustee setting forth the actions such Borrower Group Member has taken (if applicable) and proposes to take with respect thereto; provided that such statement will only be provided to the Bond Trustee if such statement is provided to the TIFIA Phase 1 Lender or the TIFIA Phase 2 Lender.

Enforcement of Documents. Each Borrower Group Member will use commercially reasonable efforts to enforce against any other party thereto each covenant or obligation of such party in each Transaction Document to which it is a party or an intended beneficiary in accordance with its terms, except to the extent that the failure to do any of the foregoing could not reasonably be expected to have a Material Adverse Effect.

Further Assurances, Corrective Instruments and Securing Liens. The Issuer and each Borrower Group Member will agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements to the Bond Proceeds Loan Agreement and such further instruments as may reasonably be required for carrying out the expressed intentions of the Bond Proceeds Loan Agreement. Each Borrower Group Member will, at any and all times, so far as it may be authorized by law, pass, make, do, execute, acknowledge and deliver, every further resolution, act, deed, conveyance, assignment, transfer and assurance as may be necessary or

desirable to assure, convey, grant, assign, secure, confirm and maintain the Liens in and to the Collateral (whether now existing or hereafter arising) granted by such Borrower Group Member to the Security Trustee for the benefit of the Issuer and the Bond Trustee pursuant to the Security Documents, or intended so to be granted pursuant to the Security Documents, or which such Borrower Group Member may become bound to grant, and each Borrower Group Member will ensure that such Collateral is and will be free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto other than Permitted Liens. Each Borrower Group Member will take all actions as may be necessary or desirable to effect the foregoing. Each Borrower Group Member will, at all times, defend, preserve and protect the Liens on such Collateral and all the rights of the Security Trustee for the benefit of the Issuer and the Bond Trustee under the Security Documents against all claims and demands of all Persons whomsoever, subject to Permitted Liens.

The Issuer will execute and deliver all instruments and will furnish all information and evidence deemed necessary in order to enable Borrower Group Member to fulfill its obligations as provided in this Section and the Security Documents. The Concessionaire will reimburse the Issuer for any reasonable expenses it may incur with respect to any actions it may be requested to take pursuant to this Section.

No Prohibited Liens. No Borrower Group Member will create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, or assign or sell any income or Project Revenues (including accounts receivable) or rights in respect of any thereof, except Permitted Liens.

No Prohibited Business. The Concessionaire will not, at any time, engage in any business or activity other than the financing, design, construction, operation and maintenance of the U.S. 36 Project, and activities incidental or related thereto.

Restricted Payments. Except in accordance with this section, a Borrower Group Member will not at any time make (x) any distribution or other payment in respect of an outstanding Equity Interest in such Borrower Group Member, or in respect of any redemption, repurchase or other acquisition thereof (or otherwise permit the withdrawal of capital from such Borrower Group Member), (y) any payment of, interest on or other amounts in respect of any debt for borrowed money owed by such Borrower Group Member to any holder of an outstanding equity interest in such Borrower Group Member, or (z) any payment to any Affiliate of such Borrower Group Member or of any holder of an equity interest in such Borrower Group Member, other than (i) payments due under or to fund payments due under any Intercompany Loan Agreement so long as, at the time such payment is made, all similar such payments between Borrower Group Members can be made as required to make the related debt service payment by the Borrower Finco in accordance with the terms of the Intercompany Loan Agreements, (ii) payments to an Affiliate of such Borrower Group Member permitted pursuant to the Bond Proceeds Loan Agreement, (iii) payments to the Sponsor out of the Equity Subaccount contemplated in the MSA (in connection with the replacement of funds on deposit therein with an Equity Letter of Credit), and (iv) payments to the Sponsor or an Affiliate thereof in an amount equal to the applicable Tax Distribution Amount pursuant to the MSA (collectively, “Restricted Payments”). The Concessionaire may, pursuant to the terms of the MSA, direct the Security Trustee to transfer monies from the Project Proceeds Account to the Concessionaire Distribution Account for the purpose of making Restricted Payments on any Interest Payment Date or a date occurring within thirty days thereafter (each, a “Distribution Date”) if all of the following conditions (collectively, the “Restricted Payment Conditions”) have been satisfied as of such Interest Payment Date:

- (a) all transfers and distributions required to be made pursuant to clauses First through Twenty-First of the flow of funds as described in the forepart of this Official Statement under the caption entitled “PROJECT ACCOUNTS AND FLOW OF FUNDS—project Proceeds

Account—Monthly Transfers from Project Proceeds Account” on or prior to the relevant Interest Payment Date will have been satisfied in full;

(b) (A) no Bond Proceeds Loan Agreement Event of Default has occurred and is continuing, or would occur as a direct result of the proposed transfer of funds to the Concessionaire Distribution Account and (B) no event of default under any other Senior Loan Agreement or the TIFIA Phase 2 Loan Agreement, or an event of default which may exist with due notice or the passage of time or both under any other Senior Loan Agreement or the TIFIA Phase 2 Loan Agreement, has occurred and is continuing;

(c) the Bonds Debt Service Reserve Account, the TIFIA Phase 1 Debt Service Reserve Account (on and after the Phase 1 Assumption Date), the TIFIA Phase 2 Debt Service Reserve Account, the Ramp Up Reserve Account, the Cash Reserve Account, the O&M Reserve Account, the Major Maintenance Reserve Account and the Handback Requirements Reserve Account have been funded (in cash, Permitted Investments and, to the extent permitted, Acceptable Letters of Credit) in an amount equal to the then applicable Bonds Debt Service Reserve Requirement, TIFIA Phase 1 Debt Service Reserve Requirement, TIFIA Phase 2 Debt Service Reserve Requirement, Ramp Up Reserve Requirement, Cash Reserve Requirement, O&M Reserve Requirement, Major Maintenance Reserve Requirement and Handback Reserve Requirement, respectively;

(d) (i) HPTE has not exercised its right to terminate the Concession Agreement pursuant to the Concession Agreement in respect of a Concessionaire Default (as defined in the Concession Agreement) or HPTE has rescinded any notice of termination previously issued pursuant to the Concession Agreement; and (ii) the Concessionaire has not exercised its right to terminate the Concession Agreement pursuant to the Concession Agreement in respect of an HPTE Default (as defined in the Concession Agreement) or the Concessionaire has rescinded any notice of termination previously issued pursuant to the Concession Agreement (it being understood that this clause (d)(ii) will not prohibit the Concessionaire from distributing any Termination Compensation relating to the Initial Equity IRR (as defined in the Concession Agreement) to which it is entitled pursuant to the Concession Agreement so long as the TIFIA Phase 2 Loan will have been repaid in full at the time of such distribution);

(e) the Full Services Commencement Date has occurred;

(f) the TIFIA Debt Service Payment Commencement Date has occurred;

(g) the payment of all debt service on the Bond Proceeds Loan Agreement, debt service on the TIFIA Phase 1 Loan, TIFIA Phase 2 Mandatory Debt Service, TIFIA Phase 2 Scheduled Debt Service, TIFIA Revenue Share Amounts and the transfer of any Sinking Fund Amount to the Sinking Fund Account in accordance with the MSA is current;

(h) (A) the Total Debt Service Coverage Ratio as of the Calculation Date occurring on the last day of the Calculation Period most recently ended was not less than 1.25:1.00, and (B) for each Calculation Date occurring during the immediately succeeding Calculation Period, the Total Debt Service Coverage Ratio is projected to be not less than 1.25:1.00;

(i) (A) the Senior Debt Service Coverage Ratio as of the Calculation Date occurring on the last day of the Calculation Period most recently ended was not less than 1.45:1.00 and (B) for each Calculation Date occurring during the immediately succeeding Calculation Period, the Senior Debt Service Coverage Ratio is projected to be not less than 1.45:1.00;

(j) such Borrower Group Member is not insolvent and would not be rendered insolvent by the making of the proposed Restricted Payment;

(k) all requirements set forth in any other Transaction Documents with respect to making Restricted Payments have been complied with; and

(l) the Issuer and the Bond Trustee have received, no earlier than ten Business Days and no later than three (3) Business Days prior to the proposed Distribution Date, a certificate certifying as to the matters contemplated in clauses (a), (b), (g), (h), (i) and (j) above, including a computation in reasonable detail of the applicable coverage ratios.

Use of Proceeds; Tax Covenants. Borrower Finco will use the proceeds of the Bond Proceeds Loan only for purposes of making such proceeds available to Finco 1, pursuant to the Finco 1 Bond Proceeds Loan Agreement and in accordance with the terms of the MSA. Finco 1 will use the proceeds of the Finco 1 Bond Proceeds Loan only for purposes of making such proceeds available to Finco 2, pursuant to the Finco 2 Bond Proceeds Loan Agreement and in accordance with the terms of the MSA. Finco 2 will use the proceeds of the Finco 2 Bond Proceeds Loan only for purposes of making such proceeds available to the Concessionaire pursuant to the Concessionaire Bond Proceeds Loan Agreement and in accordance with the terms of the MSA. The Concessionaire will use the proceeds of the Concessionaire Bond Proceeds Loan only to (i) pay Costs of Issuance of the 2014 Bonds and (ii) to pay costs of the U.S. 36 Phase 2 Project.

None of the Issuer or the Borrower Group Members will cause any proceeds of the 2014 Bonds to be expended, except pursuant to the Indenture, the Bond Proceeds Loan Agreement, the Finco 1 Bond Proceeds Loan Agreement, the Finco 2 Bond Proceeds Loan Agreement, the Concessionaire Bond Proceeds Loan Agreement, the 2014 Tax Regulatory Agreement and the MSA.

The Issuer will covenant for the benefit of the Owners of the 2014 Bonds that it will not take any action or omit to take any action with respect to the 2014 Bonds and the proceeds thereof, if such action or omission (i) would cause interest paid on the 2014 Bonds to be included in the gross income of the Owners of the 2014 Bonds for federal income tax purposes (other than interest paid to Owners of the 2014 Bonds that are a “substantial user” of the facilities financed or refinanced with the 2014 Bonds or a “related person” within the meaning of Section 147(a) of the Code), or (ii) would cause interest paid on the 2014 Bonds to be included in the taxable income of the Owners of the 2014 Bonds for Colorado income tax purposes, under present Colorado law. The foregoing covenant will remain in full force and effect notwithstanding the payment in full or defeasance of the 2014 Bonds until the date on which all obligations of the Issuer in fulfilling the above covenant under the Code and Colorado law have been met.

Each of the Borrower Finco and the Concessionaire, each on their own behalf, will covenant for the benefit of the Issuer and the Owners of the 2014 Bonds that it will not take any action or omit to take any action with respect to the 2014 Bonds and the proceeds thereof, the Bond Proceeds Loan and the proceeds thereof, any other funds of such Borrower Group Member or any of the facilities financed with the proceeds of the 2014 Bonds and the Bond Proceeds Loan if such action or omission (i) would cause interest paid on the 2014 Bonds to be included in the gross income of the Owners of the 2014 Bonds for federal income tax purposes (other than interest paid to Owners of the 2014 Bonds that are a “substantial user” of the facilities financed or refinanced with the 2014 Bonds or a “related person” within the meaning of Section 147(a) of the Code), or (ii) would cause interest paid on the 2014 Bonds to be included in the taxable income of the Owners of the 2014 Bonds for Colorado income tax purposes, under present Colorado law. The foregoing covenant will remain in full force and effect notwithstanding the payment in full or defeasance of the 2014 Bonds until the date on which all obligations of each of the

Borrower Finco and the Concessionaire in fulfilling the above covenant under the Code and Colorado law have been met.

Each of the Issuer, the Borrower Finco and the Concessionaire, each on their own behalf, will further covenant, represent and warrant to comply with the requirements and covenants applicable to the Issuer, the Borrower Finco and the Concessionaire, as the case may be, set forth in the 2014 Tax Regulatory Agreement, to the extent necessary to comply with the covenants set forth in the previous two paragraphs, respectively.

The Borrower Finco and the Concessionaire will further covenant to retain records relating to the use of the proceeds of the 2014 Bonds and the use of the facilities financed with the proceeds of the 2014 Bonds for a period of three years after payment in full of the 2014 Bonds, all in accordance with the requirements of the Code.

Continuing Disclosure. The Borrower Finco and the Concessionaire will covenant and agree that they will comply with and carry out all of the provisions of the Continuing Disclosure Agreement. Notwithstanding any other provision of the Bond Proceeds Loan Agreement, failure of the Borrower Finco or the Concessionaire to comply with their obligations set forth in the Continuing Disclosure Agreement will not constitute an Bond Proceeds Loan Agreement Event of Default; provided, however, that any participating underwriter for the 2014 Bonds or any Owner or beneficial owner of the 2014 Bonds may take such actions as may be necessary and appropriate to compel performance by the Borrower Finco and the Concessionaire of their obligations under this Section, including seeking mandate or specific performance by court order.

Permitted Indebtedness; Additional Senior Obligations.

(a) No Borrower Group Member will create, issue, incur or assume any Indebtedness, other than Permitted Indebtedness.

(b) Additional Senior Obligations (other than Senior Refinancing Indebtedness) may not be issued, incurred or entered into by the Borrower Finco unless each of the following conditions applicable thereto has been satisfied:

(i) the Bond Trustee receives a certification from the Borrower Finco stating that after giving effect to the issuance of such Additional Senior Obligations, (A) the Total Debt Service Coverage Ratio for each full Calculation Period occurring between the date of incurrence of such Additional Senior Obligations and the Final Maturity Date of the 2014 Bonds will not be less than 1.20:1.00, and (B) the Senior Debt Service Coverage Ratio for each full Calculation Period occurring between the date of incurrence of such Additional Senior Obligations and the Final Maturity Date of the 2014 Bonds will not be less than 1.50:1.00, in each case, on a pro forma basis;

(ii) the Bond Trustee receives an updated Base Case Financial Model upon which the Total Debt Service Coverage Ratio and Senior Debt Service Coverage Ratio, as applicable, as described in clause (i) above will be based, provided such updated Base Case Financial Model:

(A) contains current projections as of the time of the issuance of such Additional Senior Obligations, and

(B) has been reviewed and certified to be correct and accurate in all material respects by the Borrower Finco and by an independent financial model auditor; provided that a review and certification by an independent financial model auditor described in this sub-clause (ii)(B) will not be required, if such a review and certification was undertaken in the six (6) months immediately prior to the incurrence of such Additional Senior Obligations;

(iii) the Bond Trustee receives certified copies of the financing documents pursuant to which such Additional Senior Obligations are issued, incurred or entered into, which financing documents will not prohibit the Borrower Finco from incurring new indebtedness to refinance the Senior Obligations (subject to restrictions set out in this section);

(iv) the Bond Trustee receives a certificate from the Borrower Finco stating that, as of the date the Additional Senior Obligations are issued, incurred or entered into either:

(A) no Bond Proceeds Loan Agreement Event of Default has occurred and is continuing; or

(B) if a Bond Proceeds Loan Agreement Event of Default has occurred and is continuing, such Bond Proceeds Loan Agreement Event of Default will be cured upon the issuance or incurrence of or entering into the Additional Senior Obligations and the application of the proceeds of the Additional Senior Obligations in accordance with the financing documents authorizing the issuance or incurrence of such Additional Senior Obligations;

(v) if the Additional Senior Obligations are being incurred in connection with the issuance of Additional Senior Bonds, proceeds of such Additional Senior Bonds or other moneys will be loaned to the Borrower Finco and then on-lent to Finco 1, Finco 2 and the Concessionaire who will deposit or cause to be deposited such proceeds into the Bond Proceeds (Project Costs) Subaccount, the Bond Proceeds (Costs of Issuance) Subaccount, the Bonds Debt Service Reserve Account, if necessary, or such other funds and accounts established under the MSA, as applicable;

(vi) if clause (v) above applies, each of the Borrower Group Members will have entered into such Intercompany Loan Agreements as will be required to make available the proceeds of the Additional Senior Obligations indirectly from Borrower Finco to Concessionaire;

(vii) such Additional Senior Obligations will have interest payment dates (except for Additional Senior Obligations issued as Variable Rate Indebtedness) and principal payment dates that coincide with the interest payment dates and principal payment dates of the Bond Proceeds Loan and any other Senior Obligations then outstanding;

(viii) the lenders or other holders of such Additional Senior Obligations have (or an agent on their behalf (including the Bond Trustee) has) acceded to the MSA and the Senior Obligations Intercreditor Agreement;

(ix) the covenants and terms of such Additional Senior Obligations are not materially more restrictive for the Borrower Group Members than the covenants and other terms in the applicable Funding Documents entered into with respect to the previously issued Senior Obligations;

(x) the Borrower Finco will provide to the Bond Trustee evidence of the assignment by a Rating Agency of a rating on such Additional Senior Obligations that is either (A) an Investment Grade Rating or (B) a rating that is no lower than the rating last assigned by such Rating Agency to the other outstanding Senior Obligations prior to its assignment of rating on such Additional Senior Obligations; and

(xi) if the TIFIA Phase 1 Loan (provided the Phase 1 Assumption Date has occurred) and/or the TIFIA Phase 2 Loan is then outstanding, the Borrower Finco provides evidence to the Bond Trustee that the TIFIA 1 Lender and/or the TIFIA 2 Lender, as applicable, has consented to, or waived its consent right to, the issuance or incurrence of such Additional Senior Obligations.

(c) Senior Refinancing Indebtedness may not be issued, incurred or entered into by the Borrower Finco unless each of the following conditions applicable thereto has been satisfied:

(i) the Bond Trustee receives a certification from the Borrower Finco stating that after giving effect to the issuance or incurrence of such Senior Refinancing Indebtedness and the refinancing, replacement or refunding of the applicable Senior Obligations, Senior Debt Service for each full Calculation Period occurring between the date of incurrence of such Senior Refinancing Indebtedness and the Final Maturity Date of the 2014 Bonds will be less than or equal to the Senior Debt Service forecast for each such Calculation Period in the most recent Base Case Financial Model that does not take into account the issuance or incurrence of such Senior Refinancing Indebtedness and the refinancing, replacement or refunding of the applicable Senior Obligations;

(ii) the covenants and terms of such Senior Refinancing Indebtedness are not materially more restrictive for the Borrower Group Members than the covenants and other terms in the applicable Funding Documents entered into with respect to the Senior Obligations being refinanced;

(iii) such Senior Refinancing Indebtedness will have interest payment dates (except for Senior Refinancing Indebtedness issued as Variable Rate Indebtedness) and principal payment dates that coincide with the interest payment dates and principal payment dates of the Senior Obligations being refinanced;

(iv) the lenders or other holders of such Senior Refinancing Indebtedness have (or an agent on their behalf (including the Bond Trustee) has) acceded to the MSA and the Senior Obligations Intercreditor Agreement;

(v) the Bond Trustee receives a certificate from the Borrower Finco stating that, as of the date the Senior Refinancing Indebtedness is issued, incurred or entered into either:

(A) no Bond Proceeds Loan Agreement Event of Default has occurred and is continuing; or

(B) if a Bond Proceeds Loan Agreement Event of Default has occurred and is continuing, such Bond Proceeds Loan Agreement Event of Default will be cured upon the issuance or incurrence of the Senior Refinancing Indebtedness and the application of the proceeds of the Senior Refinancing Indebtedness in accordance with the financing documents authorizing the incurrence of such Senior Refinancing Indebtedness;

(vi) the Borrower Finco will provide to the Bond Trustee evidence of the assignment by a Rating Agency of a rating on such Senior Refinancing Indebtedness that is either (A) an Investment Grade Rating or (B) a rating that is no lower than the rating last assigned by such Rating Agency to the other outstanding Senior Obligations prior to its assignment of rating on such Senior Refinancing Indebtedness; and

(vii) the Bond Trustee receives certified copies of the financing documents pursuant to which such Senior Refinancing Indebtedness is issued or incurred, which will not prohibit the Borrower Finco from issuing or incurring new indebtedness to refinance the Senior Obligations (subject to restrictions set out in this section);

(viii) if the Senior Refinancing Indebtedness is being incurred in connection with the issuance of Additional Senior Bonds, proceeds of such Additional Senior Bonds or other moneys will be loaned to the Borrower Finco and then on-lent to Finco 1, Finco 2 and the Concessionaire who will deposit or cause to be deposited such proceeds into (A) such funds and accounts established under the MSA and used to refinance, replace or refund the applicable Senior Obligations, (B) the Bond Proceeds (Costs of Issuance) Subaccount, if any, (C) the Bonds Debt Service Reserve Account, if necessary, and (D) such other funds and accounts established under the MSA;

(ix) if clause (viii) above applies, each of the Borrower Group Members will have entered into such Intercompany Loan Agreements as will be required to make available the proceeds of the Senior Refinancing Indebtedness indirectly from Borrower Finco to Concessionaire; and

(x) if the TIFIA Phase 1 Loan (provided the Phase 1 Assumption Date has occurred) and/or the TIFIA Phase 2 Loan is then outstanding, the Borrower Finco provides evidence to the Bond Trustee that the TIFIA 1 Lender and/or the TIFIA 2 Lender, as applicable, has consented to, or waived its consent right to, the issuance or incurrence of such Senior Refinancing Indebtedness.

(d) In the event the Borrower Finco wishes to incur Additional Senior Obligations for the purpose of refinancing, replacing or refunding Senior Obligations and the provisions of clause (c) above with respect to Senior Refinancing Indebtedness cannot be satisfied, the provisions of clause (b) above will be required to be satisfied.

(e) In addition to the requirements set forth in clauses (b) and (c) above, if the Additional Senior Obligations (including Senior Refinancing Indebtedness) are being incurred in connection with the issuance of Additional Senior Bonds,

(i) The Issuer and the Bond Trustee will enter into a Supplemental Indenture authorizing the issuance of such Additional Senior Bonds, which Supplemental Indenture specifies the matters set out in the Indenture;

(ii) The Issuer and each Borrower Group Member will enter into an amendment to the Bond Proceeds Loan Agreement or an Additional Senior Bonds Loan Agreement consistent with the terms of the Supplemental Indenture described in (i) above; and

(iii) The Bond Trustee will have received the documents and opinions described in the Indenture.

No Lien Extinguishment. No Borrower Group Member will, or will permit any Person to, without the prior written consent of the Owners of the 2014 Bonds, extinguish the Liens on the Collateral granted by it pursuant to the Security Documents, except as provided under the MSA and the other Security Documents.

Changes to Material Project Contracts. The Concessionaire will not amend, assign, modify or waive performance by any other party under any Material Project Contract, in any material respect, or terminate any Material Project Contract or enter into any other material agreement (other than the Transaction Documents) that is not related to the U.S. 36 Project (or incidental or ancillary thereto) without the prior written consent of the Bond Trustee (at the direction of the Owners of a majority in aggregate principal amount of the then Outstanding Senior Bonds). Notwithstanding the foregoing, (a) the Concessionaire, the Design-Build Contractor, the O&M Contractor, HPTE or the Toll Services Provider, as applicable, may enter into change orders, amendments, modifications or waivers under the Design-Build Contract, the O&M Contract or the Toll Services Agreement, as applicable, which are reasonably required for compliance by the Concessionaire with the Concession Agreement; (b) the Concessionaire, the Design-Build Contractor, the O&M Contractor, HPTE or the Toll Services Provider, as applicable, may enter into change orders, amendments, modifications or waivers under the Design-Build Contract, the O&M Contract or the Toll Services Agreement, as applicable, if such change order, amendment, modification or waiver will not require the payment by the Concessionaire, net of any payments received from HPTE or any other party, to exceed an amount equal to (i) in the case of the Design-Build Contract, \$200,000 individually or \$1,000,000 in the aggregate, (ii) in the case of the O&M Contract \$200,000 individually or \$1,000,000 in the aggregate, and (iii) in the case of the Tolling Services Agreement \$200,000 individually or \$1,000,000 in the aggregate, with respect to any such contract (provided, that any change order, amendment, modification or waiver with respect to the construction or operation of the U.S. 36 Project that results in the (x) \$200,000 individual threshold or the \$1,000,000 aggregate threshold with respect to the Design-Build Contract, (y) \$200,000 individual threshold or the \$1,000,000 aggregate threshold with respect to the O&M Contract, or (z) \$200,000 individual threshold or the \$1,000,000 aggregate threshold with respect to the Tolling Services Agreement, as the case may be, being exceeded with respect to any such contract will be permitted without the consent of the Owners of a majority in aggregate principal amount of the then Outstanding Senior Bonds if (A) it is required by applicable Law; (B) the applicable scope of work will not have been changed as a result thereof, or (C) with respect to the Design-Build Contract, the Independent Engineer has certified that, in its reasonable opinion, there are sufficient funds available to the Concessionaire to pay for such change order, amendment, modification or waiver, together with other Project Costs, necessary to complete the Project by the Full Services Commencement Long Stop Date, and such change order, amendment, modification or waiver could not reasonably be expected to have a Material Adverse Effect; (c) the Concessionaire may amend, waive any provision of, or terminate any Material Project Contract if such amendment, waiver or termination could not reasonably be expected to have a Material Adverse Effect; (d) any Material Project Contract may be terminated if such termination occurs by the express expiry of such Material Project Contract and not as a result of any default or breach on the part of any party to such Material Project Contract, and (e) if a Material Project Contract is terminated prior to the expiry of such contract, (i) such Material Project Contract is replaced by a replacement agreement between the Concessionaire and another counterparty that provides projected economic benefits for the Project that

are, in light of the material risks and liabilities of such replacement contract, taken as a whole, at least as favorable as the benefits under the existing contract, in light of the material risks and liabilities of such existing contract and (ii) if the contract being replaced is the Design-Build Contract, the replacement agreement is entered into with a counterparty (taking into consideration any applicable guarantor) of similar or greater creditworthiness and experience as the Design-Build Contractor or with the prior written consent of the Bond Trustee (at the direction of the Owners of a majority in aggregate principal amount of the then Outstanding Senior Bonds); provided, that if a Material Project Contract or counterparty to a Material Project Contract is replaced and a direct agreement existed with respect to such Material Project Contract prior to its replacement, the Concessionaire will cause a new (or amended and restated as the case may be) direct agreement to be entered into by any counterparty to such Material Project Contract, in form and substance substantially similar to the direct agreement being replaced or otherwise that is reasonably acceptable to the Bond Trustee (at the direction of the Owners of a majority in aggregate principal amount of the then Outstanding 2014 Bonds).

The Concessionaire will provide to the Issuer and the Bond Trustee copies of any executed amendments to such documents within fifteen days after the date of such execution.

Concession Agreement. The Concessionaire will comply with the Concession Agreement in all material respects.

Copies of Additional Material Project Contracts. The Concessionaire will provide to the Issuer and the Bond Trustee, promptly after execution, a copy of each Material Project Contract entered into after the Closing Date.

No Prohibited Sale or Assignment. (a) The Concessionaire will not Dispose of its rights in and to the U.S. 36 Project (or any Segment thereof), any of the assets of the Concessionaire included in the U.S. 36 Project (or any Segment thereof) or its rights and obligations under the Concession Agreement or the Bond Proceeds Loan Agreement; and (b) no other Borrower Group Member will Dispose of any of its rights, interests or other assets, except:

(i) As permitted pursuant to the Bond Proceeds Loan Agreement, the Security Documents and the 2014 Tax Regulatory Agreement or as may be effected pursuant to a foreclosure of the Liens thereon securing the Secured Obligations in accordance with the MSA;

(iii) In the case of the Concessionaire only, any Disposition:

(A) of redundant or obsolete assets in the ordinary course of business;

(B) of immaterial assets on an arm's length basis for cash in the ordinary course of business; provided that (1) the fair market value of such Dispositions will not exceed \$50,000 in the aggregate in any Fiscal Year and (2) no such Disposition could reasonably be expected to adversely affect the construction, operation or maintenance of the U.S. 36 Project;

(C) in exchange for or replaced by other assets of at least comparable value and utility in accordance with good operating practice; provided that the proceeds of such Disposition are applied to the purchase price of such replacement property within forty-five Business Days after receipt of such proceeds;

(D) constituting a Permitted Lien; and

(E) that could not reasonably be expected to result in a Material Adverse Effect and do not violate the provisions of the 2014 Tax Regulatory Agreement; and

(iii) In the case of any Borrower Group Member, other than the Concessionaire, any Disposition constituting a Permitted Lien and is permitted pursuant to the provisions of the 2014 Tax Regulatory Agreement.

Notwithstanding anything to the contrary in this section, the Concessionaire and the other Borrower Group Members may allow the Borrower Finco Subordinated Lender or any other Person to exercise any of the step-in rights set forth in the Borrower Finco Subordinated Loan Agreement (or pursuant to any EOD Step-in Agreement as defined in the Borrower Finco Subordinated Loan Agreement), provided the provisions of the Subordinated Obligations Intercreditor Agreement and the provisions described below under the caption “Change of Control Pursuant to the Borrower Finco Subordinated Loan Agreement” are complied with.

Affiliate Transactions. No Borrower Group Member will sell or transfer any property or assets to, or purchase or acquire any property or assets of, or otherwise engage in any other material transactions with, any of its Affiliates, except (a) Permitted Affiliate Subordinated Debt, (b) as to the Concessionaire, transactions at prices and on terms and conditions not less favorable to the Concessionaire than fair market prices and on terms and conditions not less favorable to the Concessionaire than could be reasonably obtained on an arm’s-length basis from unrelated third parties, (c) transactions pursuant to the terms of the Management and Finance Services Agreements and (d) any replacement O&M Contract entered into with an Affiliate of the Concessionaire.

Single Purpose Entity. Each Finco will at all times maintain its existence as a Single Purpose Entity.

No Deposit or Securities Accounts. No Borrower Group Member will create or maintain (or cause to be created or maintained on its behalf or on behalf of any other Borrower Group Member) any deposit or securities account other than the Project Accounts.

No Amendment or Modification of Organizational Documents. No Borrower Group Member will amend or modify its Organizational Documents if such amendment or modification could reasonably be expected to adversely affect the interests of the Owners of the 2014 Bonds.

Change of Control Pursuant to the Borrower Finco Subordinate Loan Agreement. Each of the Borrower Group Members will acknowledge and agree that the Borrower Finco Subordinated Lender or any other Person may exercise any of the “step-in” rights set forth in the Borrower Finco Subordinated Loan Agreement (or pursuant to any EOD Step-in Agreement as defined in the Borrower Finco Subordinated Loan Agreement) (a “***Change of Control***”), provided that prior to such exercise the provisions of the Subordinated Obligations Intercreditor Agreement are complied with and the Issuer and the Trustee are provided with an opinion of nationally recognized municipal bond counsel in form and substance acceptable to the Issuer and the Trustee to the effect that such Change of Control would not (i) cause interest paid on the 2014 Bonds to be included in the gross income of the Owners of the 2014 Bonds for federal income tax purposes (other than interest paid to Owners of the 2014 Bonds that are a “substantial user” of the facilities financed or refinanced with the 2014 Bonds or a “related person” within the meaning of Section 147(a) of the Code), or (ii) cause interest paid on the 2014 Bonds to be included in the taxable income of the Owners of the 2014 Bonds for Colorado income tax purposes, under present Colorado law.

Assignment

Except as expressly contemplated in the Bond Proceeds Loan Agreement, in the Indenture and in the Security Documents, none of the Borrower Group Members or the Issuer may assign its interest in the Bond Proceeds Loan Agreement.

Indemnification Covenant

The Borrower Group Members jointly and severally will agree to indemnify the Issuer and the Bond Trustee, and the members, servants, officers, employees and other agents, now or hereafter, of the Issuer or the Bond Trustee (each such Person being referred to as an “Indemnitee”), against and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities, fines, penalties, costs and expenses (including the fees, charges and disbursements of any counsel for any Indemnitee and the costs of environmental remediation), whether known, unknown, contingent or otherwise, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution, delivery and performance of the Bond Proceeds Loan Agreement, the 2014 Note, the 2014 Tax Regulatory Agreement or any of the other Transaction Documents, (ii) the Bond Proceeds Loan or the use of the proceeds thereof, (iii) any Determination of Taxability, or allegations that interest on the 2014 Bonds is taxable or any regulatory audit or inquiry regarding whether interest on the 2014 Bonds is taxable, (iv) any condition of the Project, (v) the violation by any Borrower Group Member Indemnity Party of any law, rule, regulation, order, decree, judgment or administrative decision relating to the environment, the preservation or reclamation of natural resources, the management, release or threatened release of any hazardous material or to health and safety matters, in each case arising out of the negligence of any Borrower Group Member Indemnity Party and arising out of or in direct relation to the U.S. 36 Project (or any Segment thereof), or (vi) any untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact contained in any offering document related to the 2014 Bonds or any Additional Senior Obligations or caused by any omission or alleged omission from such offering document of any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading (except for the Issuer Covered Sections (as defined in the 2014 Bond Purchase Agreement) as to which no indemnity will be provided to the Issuer by any of the Borrower Group Members); provided that such indemnity will not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence, willful misconduct or material breach of contract of such Indemnitee. In case any action or proceeding is brought against an Indemnitee by reason of any claim with respect to which such Indemnitee is entitled to indemnification hereunder, each Borrower Group Member upon notice from such Indemnitee will defend the same and such Indemnitee will cooperate with such Borrower Group Member at the expense of such Borrower Group Member in connection therewith. Nothing herein will be construed as a waiver of any legal immunity that may be available to any Indemnitee. All amounts due to any Indemnitee under this section will be payable promptly upon demand therefor. The obligations of the Borrower Group Members under this section will survive the payment or prepayment in full or transfer of the Bond Proceeds Loan, the enforcement of any provision of the Bond Proceeds Loan Agreement or the Transaction Documents, any amendments, waivers (other than amendments or waivers in writing with respect to this section) or consents in respect of the Bond Proceeds Loan Agreement or thereof, any Bond Proceeds Loan Agreement Event of Default, and any workout, restructuring or similar arrangement of the obligations of the Borrower Group Members under the Bond Proceeds Loan Agreement or thereunder.

The Issuer and the Bond Trustee, each separately agree that, upon the receipt of notice of the commencement of any action against the Issuer or the Bond Trustee, their respective members, officers, employees and other agents, now or hereafter, as applicable, or any Person controlling it as aforesaid, in

respect of which indemnity may be sought on account of any indemnity agreement contained in the Bond Proceeds Loan Agreement, the Issuer or the Bond Trustee, as applicable, will promptly give written notice of the commencement thereof to the Borrower Group Members, but the failure to so notify the Borrower Group Members of any such action will not relieve the Borrower Group Members from any liability under the Bond Proceeds Loan Agreement to the extent they are not materially prejudiced as a result of such failure to notify and in any event will not relieve them from any liability which they may have to the indemnified party otherwise than on account of such indemnity agreement. In case such notice of any such action will be so given, the Borrower Group Members will be entitled to participate at their own expense in the defense or, if they so elect, to assume the defense of such action, in which event such defense will be conducted by counsel chosen by the Borrower Group Members and satisfactory to the indemnified party or parties who will be defendant or defendants in such action, and such defendant or defendants will bear the fees and expenses of any additional counsel retained by them; but if the Borrower Group Members will elect not to assume the defense of such action, the Borrower Group Members will reimburse such indemnified party or parties for the reasonable fees and expenses of any counsel retained by them; provided, however, if the defendants in any such action (including impleaded parties) include both the indemnified party and the Borrower Group Members and either the Borrower Group Members and counsel for the Borrower Group Members or the indemnified party will have reasonably concluded that there may be a conflict of interest involved in the representation by a single counsel of both the Borrower Group Members and the indemnified parties, the indemnified party or parties will have the right to select separate counsel, at the Borrower Group Members' expense and satisfactory to the Borrower Group Members, to participate in the defense of such action on behalf of such indemnified party or parties, it being understood, however, that the Borrower Group Members will not be liable for the expenses of more than one separate counsel (in addition to counsel specifically representing the Borrower Group Members).

The Borrower Group Members, the Bond Trustee and the Issuer will agree that without the other parties' prior written consent, which consent will not be unreasonably withheld, it will not settle, compromise or consent to the entry of any judgment in any claim in respect of which indemnification may be sought under the indemnification provision of the Bond Proceeds Loan Agreement, unless such settlement, compromise or consent (i) includes an unconditional release of such other applicable party from all liability arising out of such claim and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of such other party.

Guaranty

Guaranty; Limitation of Liability. Each Guarantor will, jointly and severally, absolutely, unconditionally and irrevocably guarantee the punctual payment when due, whether at scheduled maturity or on any date of a required prepayment or by acceleration, demand or otherwise, of all obligations of the Borrower Finco now or hereafter existing under or in respect of the Bond Proceeds Loan Agreement, the 2014 Note and the other Bond Proceeds Loan Documents to which the Borrower Finco is a party (the "Guaranteed Documents") (including any extensions, modifications, substitutions, amendments or renewals of any or all of the foregoing obligations), whether direct or indirect, absolute or contingent, and whether for principal, interest, premiums, fees, indemnities, contract causes of action, costs, expenses or otherwise (such obligations being the "Guaranteed Obligations"), and agrees to pay any and all expenses (including fees and expenses of counsel) incurred by the Issuer or the Bond Trustee in enforcing any rights under the Guaranty or any Guaranteed Document. Without limiting the generality of the foregoing, each Guarantor's liability will extend to all amounts that constitute part of the Guaranteed Obligations and would be owed by the Borrower Finco to the Issuer or the Bond Trustee under or in respect of the Guaranteed Documents but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving the Borrower Finco.

Each Guarantor, and by its acceptance of the Guaranty, the Issuer and the Bond Trustee, will confirm that it is the intention of each such Person that the Guaranty and the obligations of each Guarantor under the Guaranty not constitute a fraudulent transfer or conveyance for purposes of Insolvency Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar foreign, federal or state law to the extent applicable to the Guaranty and the obligations of each Guarantor under the Guaranty. To effectuate the foregoing intention, the Issuer, the Bond Trustee and the Guarantors will irrevocably agree that the obligations of each Guarantor under the Guaranty at any time will be limited to the maximum amount as will result in the obligations of such Guarantor under the Guaranty not constituting a fraudulent transfer or conveyance.

Each Guarantor will unconditionally and irrevocably agrees that in the event any payment will be required to be made to the Issuer or the Bond Trustee under the Guaranty or any other guaranty, such Guarantor will contribute, to the maximum extent permitted by law, such amounts to each other Guarantor so as to maximize the aggregate amount paid to the Issuer and the Bond Trustee under or in respect of the Guaranteed Documents.

Guaranty Absolute. Each Guarantor will guarantee that the Guaranteed Obligations will be paid strictly in accordance with the terms of the Guaranteed Documents, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the Issuer or the Bond Trustee with respect thereto. The obligations of each Guarantor under or in respect of the Guaranty are independent of the Guaranteed Obligations or any other obligations of any other Borrower Group Member under or in respect of the Guaranteed Documents, and a separate action or actions may be brought and prosecuted against each Guarantor to enforce the Guaranty, irrespective of whether any action is brought against any other Borrower Group Member or whether any other Borrower Group Member is joined in any such action or actions. The liability of each Guarantor under the Guaranty will be irrevocable, absolute and unconditional irrespective of, and each Guarantor will irrevocably waive any defenses it may now have or hereafter acquire in any way relating to, any or all of the following:

(a) any lack of validity or enforceability of any Guaranteed Document or any agreement or instrument relating thereto;

(b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Guaranteed Obligations or any other obligations of any other Borrower Group Member under or in respect of the Guaranteed Documents, or any other amendment or waiver of or any consent to departure from any Guaranteed Document, including any increase in the Guaranteed Obligations resulting from the extension of additional credit to any Borrower Group Member or any of its subsidiaries or otherwise;

(c) any taking, exchange, release or non-perfection of any Collateral or any other collateral, or any taking, release or amendment or waiver of, or consent to departure from, any other guaranty, for all or any of the Guaranteed Obligations;

(d) any manner of application of Collateral or any other collateral, or proceeds thereof, to all or any of the Guaranteed Obligations, or any manner of sale or other disposition of any Collateral or any other collateral for all or any of the Guaranteed Obligations or any other obligations of any Borrower Group Member under the Guaranteed Documents or any other assets of any Borrower Group Member or any of its subsidiaries;

(e) any change, restructuring or termination of the corporate structure or existence of any Borrower Group Member or any of its subsidiaries;

(f) any failure of the Issuer or the Bond Trustee to disclose to any Borrower Group Member any information relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of any other Borrower Group Member now or hereafter known to the Issuer or the Bond Trustee (each Guarantor waiving any duty on the part of the Issuer or the Bond Trustee to disclose such information);

(g) the failure of any other Person to execute or deliver the Guaranty or any other guaranty or agreement or the release or reduction of liability of any Guarantor or other guarantor or surety with respect to the Guaranteed Obligations; or

(h) any other circumstance (including any statute of limitations) or any existence of or reliance on any representation by the Issuer or the Bond Trustee that might otherwise constitute a defense available to, or a discharge of, any Borrower Group Member or any other guarantor or surety with respect to the Guaranteed Obligations.

The Guaranty will continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations is rescinded or must otherwise be returned by the Issuer, the Bond Trustee or any other Person upon the insolvency, bankruptcy or reorganization of any Borrower Group Member or otherwise, all as though such payment had not been made.

Waivers and Acknowledgments. Each Guarantor will unconditionally and irrevocably waive promptness, diligence, notice of acceptance, presentment, demand for performance, notice of nonperformance, default, acceleration, protest or dishonor and any other notice with respect to any of the Guaranteed Obligations and the Guaranty and any requirement that the Issuer or the Bond Trustee protect, secure, perfect or insure any Lien or any property subject thereto or exhaust any right or take any action against the Issuer, the Bond Trustee or any other Person or any Collateral.

Each Guarantor will unconditionally and irrevocably waive any right to revoke the Guaranty and acknowledge that the Guaranty is continuing in nature and applies to all Guaranteed Obligations, whether existing now or in the future.

Each Guarantor will unconditionally and irrevocably waive (i) any defense arising by reason of any claim or defense based upon an election of remedies by the Issuer or the Bond Trustee that in any manner impairs, reduces, releases or otherwise adversely affects the subrogation, reimbursement, exoneration, contribution or indemnification rights of such Guarantor or other rights of such Guarantor to proceed against any of the other Borrower Group Members, any other Guarantor or any other Person or any Collateral and (ii) any defense based on any right of set-off or counterclaim against or in respect of the obligations of such Guarantor under the Guaranty.

Each Guarantor will unconditionally and irrevocably waive any duty on the part of the Issuer or the Bond Trustee to disclose to such Guarantor any matter, fact or thing relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of any other Borrower Group Member or any of its subsidiaries now or hereafter known by the Issuer or the Bond Trustee.

Each Guarantor will acknowledge that it will receive substantial direct and indirect benefits from the financing arrangements contemplated by the Guaranteed Documents and that the waivers set forth in the Bond Proceeds Loan Agreement are knowingly made in contemplation of such benefits.

Subrogation. Each Guarantor will unconditionally and irrevocably agree not to exercise any rights that it may now have or hereafter acquire against any other Borrower Group Member that arise from the existence, payment, performance or enforcement of such Guarantor's obligations under or in

respect of the Guaranty or any other Guaranteed Document, including any right of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of the Issuer or the Bond Trustee against any other Borrower Group Member or any Collateral, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including the right to take or receive from any other Borrower Group Member, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security on account of such claim, remedy or right, unless and until all of the Guaranteed Obligations and all other amounts payable under the Guaranty will have been paid in full in cash. If any amount will be paid to any Guarantor in violation of the immediately preceding sentence at any time prior to the latest of (a) the payment in full in cash of the Guaranteed Obligations and all other amounts payable under the Guaranty, and (b) such date as all amounts due or to become due to the Issuer or the Bond Trustee under the Bond Proceeds Loan Agreement and the 2014 Note have been paid, such amount will be received and held in trust for the benefit of the Issuer and the Bond Trustee, will be segregated from other property and funds of such Guarantor and will forthwith be paid or delivered to the Security Trustee in the same form as so received (with any necessary endorsement or assignment) to be credited and applied to the Guaranteed Obligations and all other amounts payable under the Guaranty, whether matured or unmatured, in accordance with the terms of the Guaranteed Documents, or to be held as Collateral for any Guaranteed Obligations or other amounts payable under the Guaranty thereafter arising. If (i) any Guarantor will make payment to the Issuer or the Bond Trustee of all or any part of the Guaranteed Obligations, and (ii) all of the Guaranteed Obligations and all other amounts payable under the Guaranty will have been paid in full in cash, the Issuer and the Bond Trustee will, at such Guarantor's request and expense, execute and deliver to such Guarantor appropriate documents, without recourse and without representation or warranty, necessary to evidence the transfer by subrogation to such Guarantor of an interest in the Guaranteed Obligations resulting from such payment made by such Guarantor pursuant to the Guaranty.

Subordination. Each Guarantor will subordinate any and all debts, liabilities and other obligations owed to such Guarantor by each other Borrower Group Member (the "Guarantor Subordinated Obligations") to the Guaranteed Obligations to the extent and in the manner set forth in the Bond Proceeds Loan Agreement:

(i) *Prohibited Payments, Etc.* Except during the continuance of a Bond Proceeds Loan Agreement Event of Default (including the commencement and continuation of any proceeding under any Insolvency Law relating to any other Borrower Group Member), each Guarantor may receive regularly scheduled payments from any other Borrower Group Member on account of the Guarantor Subordinated Obligations. After the occurrence and during the continuance of any Bond Proceeds Loan Agreement Event of Default (including the commencement and continuation of any proceeding under any Insolvency Law relating to any other Borrower Group Member), however, unless the Bond Trustee otherwise agrees, no Guarantor will demand, accept or take any action to collect any payment on account of the Guarantor Subordinated Obligations.

(ii) *Prior Payment of Guaranteed Obligations.* In any proceeding under any Insolvency Law relating to any other Borrower Group Member, each Guarantor agrees that the Issuer and the Bond Trustee will be entitled to receive payment in full in cash of all Guaranteed Obligations (including all interest and expenses accruing after the commencement of a proceeding under any Insolvency Law, whether or not constituting an allowed claim in such proceeding ("Post Petition Interest")) before such Guarantor receives payment of any Guarantor Subordinated Obligations.

(iii) *Turn-Over.* After the occurrence and during the continuance of any Bond Proceeds Loan Agreement Event of Default (including the commencement and continuation of

any proceeding under any Insolvency Law relating to any other Borrower Group Member), each Guarantor will, if the Issuer or the Bond Trustee so requests, collect, enforce and receive payments on account of the Guarantor Subordinated Obligations as Bond Trustee for the Issuer and the Bond Trustee and deliver such payments to the Security Trustee on account of the Guaranteed Obligations (including all Post Petition Interest), together with any necessary endorsements or other instruments of transfer, but without reducing or affecting in any manner the liability of such Guarantor under the other provisions of the Guaranty.

Continuing Guaranty; Assignments. The Guaranty is a continuing guaranty and will (a) remain in full force and effect until the latest of the payment in full in cash of the Guaranteed Obligations and all other amounts payable under the Guaranty or later date as all amounts due or to become due to the Issuer and the Bond Trustee under the Bond Proceeds Loan Agreement have been paid, (b) be binding upon each Guarantor, its successors and assigns and (c) inure to the benefit of and be enforceable by the Issuer and the Bond Trustee and its successors, transferees and assigns. Without limiting the generality of clause (c) of the immediately preceding sentence, the Issuer or the Bond Trustee may assign or otherwise transfer all or any portion of its rights and obligations under the Bond Proceeds Loan Agreement (including all or any portion of the 2014 Note held by it) to any other Person, and such other Person will thereupon become vested with all the benefits in respect thereof granted to the Issuer or the Bond Trustee in the Bond Proceeds Loan Agreement or otherwise. No Guarantor will have the right to assign its rights under the Guaranty or any interest in the Bond Proceeds Loan Agreement without the prior written consent of the Issuer and the Bond Trustee.

Events of Default and Remedies

Events of Default Defined. Any one of the following will constitute a “Bond Proceeds Loan Agreement Event of Default” under the Bond Proceeds Loan Agreement:

(a) Failure by the Borrower Finco to pay any amounts required to be paid pursuant to the provisions described under the caption entitled “Amounts Payable” above; or

(b) Any representation or warranty of any Borrower Group Member made in or delivered pursuant to the Bond Proceeds Loan Agreement and any other Bond Proceeds Loan Documents will prove to have been incorrect in any material respect when made, and a Material Adverse Effect could reasonably be expected to result therefrom, and, if such misrepresentation is capable of remedy, such misrepresentation has not been cured within thirty days after the Borrower Group Member’s receipt of written notice from the Bond Trustee of such misrepresentation; provided that such cure period will be extended as is reasonably necessary under the circumstances to remedy such misrepresentation so long as corrective action is instituted by the Borrower Group Member within the thirty-day period and is diligently pursued until such misrepresentation is remedied; or

(c) Failure by any Borrower Group Member to observe and perform any covenant, condition or agreement on its part to be observed or performed under the Bond Proceeds Loan Agreement, the 2014 Note or any other Bond Proceeds Loan Documents (other than the 2014 Tax Regulatory Agreement) to which such Borrower Group Member is a party, other than as provided in (a) above, unless such failure is capable of being remedied and is remedied within thirty (30) days after the earlier of (i) written notice specifying such failure will have been given to the Bond Trustee or the Security Trustee by such Borrower Group Member or (ii) written notice specifying such failure and requesting that it be remedied will have been given to the Borrower Group Member by the Issuer, the Bond Trustee or the Security Trustee, or within such longer period of time as is reasonably necessary under the circumstances to remedy such failure, such extension

not to exceed 180 days without the prior written approval of the Owners of a majority in aggregate principal amount of the 2014 Bonds then Outstanding; or

(d) Failure to achieve the Full Services Commencement Date by the Full Services Commencement Longstop Date; or

(e) A Bankruptcy Related Event will occur; or

(f) Any of the events described under the definition of Bankruptcy Related Event occurs (i) with respect to the Member, or (ii) with respect to the Sponsor, prior to the termination of the Equity Contribution Agreement in accordance with its terms; or

(g) The Concession Agreement expires or is terminated (whether by reason of a default thereunder or by mutual agreement of the parties thereto or otherwise), or for any reason will cease to be in full force and effect; or

(h) The Borrower Finco fails to maintain its existence as a limited partnership under the laws of the State of Delaware, Finco 1 fails to maintain its existence as an unlimited liability company under the laws of the Province of British Columbia, Finco 2 fails to maintain its existence as a limited liability company under the laws of the State of Delaware, or the Concessionaire fails to maintain its existence as a Colorado limited liability company; or

(i) Any acceleration occurs of the maturity of any Indebtedness pursuant to any Cross Default Funding Document, or any such Indebtedness is not be paid in full upon the final maturity thereof; or

(j) The occurrence of a Change of Control (as defined in the Concession Agreement) with respect to the Concessionaire that has occurred other than in compliance with the Concession Agreement; or

(k) An Indenture Event of Default has occurred and is continuing; or

(l) An “event of default” (howsoever described) has occurred and is continuing under any Cross Default Funding Document, provided that (i) such “event of default” is continuing after the giving of any applicable notice and the expiration of any applicable grace period specified in such Cross Default Funding Document with respect to such “event of default,” (ii) the effect of such “event of default” would be to permit the immediate acceleration of the maturity of or require the early repayment of any or all of the Senior Obligations related to such Cross Default Funding Document and (iii) the applicable Borrower Group Member has failed to cure such “event of default” or to obtain an effective written waiver thereof within thirty days after receipt of written notice of such “event of default” from the Trustee; or

(m) The Concessionaire or any counterparty thereof defaults in the timely performance of any covenant, agreement or obligation under any Material Project Contract, and such default continues after the giving of any applicable notice and the expiration of any applicable grace period specified in the relevant Material Project Contract (unless in any case such default could not reasonably be expected to have a Material Adverse Effect), and the Concessionaire or the relevant counterparty, as the case may be, fails to cure such default or to obtain an effective written waiver thereof (as the case may be), within thirty days after receipt of written notice thereof from the Bond Trustee; or

(n) One or more judgments for the payment of money in an aggregate amount in excess of \$1,000,000 and not otherwise covered by insurance is entered against a Borrower Group Member and such judgment remains unsatisfied without any procurement of a stay of execution for a period of thirty days; provided, that any such judgment will not constitute an Bond Proceeds Loan Agreement Event of Default during the pendency of an appeal thereof, so long as, during such appeal, execution is effectively stayed or the liability for such judgment is adequately covered by insurance or a performance bond; or

(o) Any Security Document ceases (other than as expressly permitted thereunder or under the other Funding Documents) to be effective to grant a perfected security interest on any material portion of the Collateral described therein (other than Collateral permitted to be Disposed of by the Concessionaire in accordance with the Bond Proceeds Loan Agreement) other than as a result of actions or failure to act by the Bond Trustee, the Security Trustee or any other Secured Creditor, and with the priority purported to be created thereby and such event continues for thirty days after the applicable Secured Creditor giving notice thereof to the Borrower; or

(p) The Subordinated Lender Pledge Agreement ceases (other than as expressly permitted thereunder or under the Funding Documents) to be effective to grant a perfected security interest on any material portion of the collateral described therein other than as a result of actions or a failure to act by the Security Trustee or any Secured Creditor, and with the priority purported to be created thereby; or

(q) At any time, the Guaranty provided by any Guarantor, for any reason, other than the satisfaction in full of all obligations under the Bond Proceeds Loan Agreement, will cease to be in full force and effect (other than in accordance with its terms) or will be declared to be null and void or any Guarantor will repudiate its obligations thereunder; or

(r) The Concessionaire (i) announces that it is abandoning the U.S. 36 Project or (ii) voluntarily ceases construction of the U.S. 36 Phase 2 Project or the operation and maintenance of the U.S. 36 Project (unless such cessation of construction or operation and maintenance will occur by reason of a Relief Event, a Compensation Event or a Force Majeure Event (as such terms are defined in the Concession Agreement)). If the Concessionaire voluntarily ceases construction or operation and maintenance activities and such cessation continues without interruption for ninety days, the Bond Trustee, at the direction of the Owners of a majority in aggregate principal amount of the then Outstanding 2014 Bonds, will deliver to the Concessionaire a notice requesting a certificate to the effect that the Concessionaire intends to cause construction or operation and maintenance activities to resume as soon as is commercially practicable. If within forty-five Business Days following delivery of such notice the certificate is not delivered, or if within forty-five Business Days following delivery of such certificate, the Concessionaire does not resume such construction and operation and maintenance activities (other than as a result of the occurrence of a Relief Event, a Compensation Event or a Force Majeure Event (as such terms are defined in the Concession Agreement)), then the Bond Trustee will have the right to declare that an abandonment has occurred; or

(s) Any Equity Contribution required to be made under the provisions of the Equity Contribution Agreement fails to be made at the time and in the amounts required thereunder.

Remedies on Bond Proceeds Loan Agreement Event of Default. Whenever any Bond Proceeds Loan Agreement Event of Default occurs and is continuing, the Bond Trustee, or the Issuer at the direction or with the written consent of the Bond Trustee, may, in conjunction with its available remedies under the Indenture, exercise all remedies available to it at law or in equity, including one or any combination of the following remedial steps, by notice to the Borrower Group Members and the Security Trustee:

(a) Subject to the provisions of the Senior Obligations Intercreditor Agreement, declare that all or any part of any amount outstanding under the Bond Proceeds Loan Agreement and the 2014 Note is (i) immediately due and payable, and/or (ii) payable on demand by the Bond Trustee, and any such notice will take effect in accordance with its terms but only if all amounts payable with respect to the Outstanding 2014 Bonds are being accelerated, or if all of the Outstanding 2014 Bonds are being defeased under the terms of the Indenture or otherwise paid; or

(b) Have reasonable access to and inspect, examine and make copies of the books and records and any and all accounts, data and income tax and other tax returns of each of the Borrower Group Members during regular business hours of the Borrower Group Members; or

(c) Subject to the provisions of the Senior Obligations Intercreditor Agreement, take whatever other action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower Group Members under the Bond Proceeds Loan Agreement; or

(d) Subject to the provisions of the Senior Obligations Intercreditor Agreement, pursuant to the terms of the Security Documents, direct the Security Trustee to take any and all actions necessary to implement any available remedies with respect to the Collateral under any Security Document.

Any amounts collected pursuant to action taken under this Section and the Security Documents paid to the Bond Trustee will be applied in accordance with the provisions of the Indenture.

No Remedy Exclusive. Subject to the Indenture, no remedy under the Bond Proceeds Loan Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy will be cumulative and will be in addition to every other remedy given under the Bond Proceeds Loan Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Bond Proceeds Loan Agreement Event of Default will impair any such right or power or will be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer or the Bond Trustee to exercise any remedy reserved to it in the Bond Proceeds Loan Agreement, it will not be necessary to give any notice, other than such notice as may be required by Law or in this Article. Any such rights and remedies as are given to the Issuer under the Bond Proceeds Loan Agreement will also extend to the Owners of the 2014 Bonds, the Bond Trustee and the Security Trustee, subject to the provisions of the Indenture, will be entitled to the benefit of all covenants and agreements contained in the Bond Proceeds Loan Agreement, subject to the terms of the Security Documents.

Agreement To Pay Attorneys' Fees and Expenses. If, following the occurrence and during the continuance of an Bond Proceeds Loan Agreement Event of Default, the Issuer will employ attorneys or incur other expenses for the collection of payments required under the Bond Proceeds Loan Agreement or the enforcement of performance or observance of any obligation or agreement on the part of the Borrower Group Members contained in the Bond Proceeds Loan Agreement, the Borrower Finco will agree that it will on demand therefor pay to the Issuer the reasonable and documented fees of such attorneys and such other reasonable and documented expenses so incurred by the Issuer in connection with the same.

Following the occurrence and during the continuance of a Bond Proceeds Loan Agreement Event of Default, the Bond Trustee may, at the Borrower Group Members' reasonable costs and expense, employ or retain such counsel, accountants, appraisers or other experts or advisers as it may reasonably require for the purpose of determining and discharging its rights and duties under the Bond Proceeds Loan

Agreement and, in the absence of the Bond Trustee's gross negligence, bad faith or willful misconduct in employing or retaining any such counsel, accountants, appraisers, experts or advisors, may act and rely and will be protected in acting and relying in good faith on the opinion or advice of or information obtained from any counsel, accountant, appraiser or other expert or advisor, whether retained or employed by the Borrower Group Members or by the Bond Trustee, in relation to any matter arising in the administration of the Bond Proceeds Loan Agreement, and will not be responsible for any act or omission on the part of any of them. In addition, the Bond Trustee will not be liable for any acts or omissions of its nominees, correspondents, designees, agents, subagents or subcustodians except to the extent of its gross negligence, bad faith or willful misconduct in nominating or appointing such persons and so long as such persons are permitted to act under the Bond Proceeds Loan Agreement.

No Additional Waiver Implied by One Waiver. In the event any agreement contained in the Bond Proceeds Loan Agreement should be breached by either party and thereafter waived by the other party, such waiver will be limited to the particular breach so waived and will not be deemed to waive any other breach under the Bond Proceeds Loan Agreement.

Term of Bond Proceeds Loan Agreement

The Bond Proceeds Loan Agreement will be effective upon its execution and delivery and will expire at such time as all of the 2014 Bonds and the fees and expenses of the Issuer and the Bond Trustee will have been fully paid or provision made for such payments, whichever is later; provided, however, that the Bond Proceeds Loan Agreement may be terminated prior to such date pursuant to the provisions of the Indenture and the Bond Proceeds Loan Agreement, but in no event before all of the obligations and duties of the Borrower Group Members under the Bond Proceeds Loan Agreement have been fully performed, including, without limitation, the payments of all costs and fees mandated under the Bond Proceeds Loan Agreement and payment or provision for payment of all 2014 Bonds.

Amendments, Changes and Modifications

Subsequent to the issuance of 2014 Bonds and prior to their payment in full (or provision for the payment thereof having been made in accordance with the provisions of the Indenture), and except as otherwise expressly provided in the Bond Proceeds Loan Agreement, the Bond Proceeds Loan Agreement may not be effectively amended, changed, modified, altered or terminated except in accordance with the provisions of the Indenture.

Colorado Governmental Immunity Act and Federal Torts Claims Act

No term or condition of the Bond Proceeds Loan Agreement will be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b) and 2671 et seq., as applicable now or hereafter amended.

Compliance with MSA

Nothing in the Bond Proceeds Loan Agreement alters in any way the Borrower Finco's or the Guarantors' rights, duties and obligations under the MSA.

Compliance with Concession Agreement

Nothing in the Bond Proceeds Loan Agreement alters in any way the Concessionaire's rights, duties and obligations under the Concession Agreement.

APPENDIX F

SUMMARY OF TIFIA LOAN AGREEMENTS

The following are summaries of certain provisions of the TIFIA Loan Agreements. The summaries are not, and should not be regarded as, complete statements of the provisions of the TIFIA Loan Agreements. Capitalized terms used and not defined on this Appendix have the respective meanings assigned to them elsewhere in this Official Statement, in APPENDIX A hereto or under the caption “Defined Terms” below.

Term

The term of each TIFIA Loan extends from the Effective Date to the Final Maturity Date or to such earlier or later date as all amounts due or to become due to the TIFIA Lender hereunder have been paid. The “**Final Maturity Date**” means (i) with respect to the Phase 1 TIFIA Loan, July 1, 2049 or if the Substantial Completion Date has been revised in connection with an update to the Financial Plan, the last Payment Date occurring no later than 35 years from the Substantial Completion Date and (ii) with respect to the Phase 2 TIFIA Loan, July 1, 2050 or if the Substantial Completion Date has been revised as reflected in a Financial Plan, the last Payment Date occurring no later than 35 years from the Substantial Completion Date.

Interest Rate

The interest rate with respect to the Phase 1 TIFIA Loan is 3.58% per annum. The interest rate on the Phase 2 TIFIA Loan will be determined prior to the Closing Date. Upon the occurrence and during the continuance of a Payment Default, the interest rate with respect to any overdue principal amount of either TIFIA Loan will bear interest at the foregoing rates plus 2.00% (the “**Default Rate**”). Interest (including interest at the Default Rate, if applicable) will be computed on the Outstanding TIFIA Phase 1 Loan Balance and the Outstanding TIFIA Phase 2 Loan Balance, as applicable, from time-to-time on the basis of a 365-day or 366-day year, as appropriate, for the actual number of days elapsed and will be compounded semi-annually.

Disbursement Conditions for the Phase 2 TIFIA Loan

Proceeds of the Phase 2 TIFIA Loan will be disbursed solely to pay directly for, or to reimburse the Concessionaire for its prior payment of, Eligible Project Costs with respect to the Phase 2 Construction Project. Each disbursement of the Phase 2 TIFIA Loan will be made pursuant to a requisition and certification (a “**Requisition**”) submitted by Borrower Finco to, and approved by, the TIFIA Lender. No disbursements of the Phase 2 TIFIA Loan proceeds will be made later than the date that is one year after the Substantial Completion Date. The Concessionaire may, at its sole discretion, use any Phase 2 TIFIA Loan proceeds made available to it to pay Eligible Project Costs, in accordance with the terms and conditions of the Phase 2 TIFIA Loan Agreement, the MSA and the other Funding Documents, and (ii) Borrower Finco may draw the proceeds of the 2014 Bonds, the Subordinated Debt and/or the HPTE Capital Payments in part or in full prior to requisitioning the disbursement of Phase 2 TIFIA Loan proceeds in part or in full.

Copies of each Requisition will be delivered to the TIFIA Lender, the TIFIA Joint Program Office, the Servicer, if applicable, and the FHWA Division Office on or before the first day of each month, or the next succeeding Business Day if such first day is not a Business Day, in which a disbursement is requested. If the TIFIA Lender expressly approves a Requisition or does not expressly deny a Requisition, in each case, disbursements of funds will be made on the 15th day of the month in

which a disbursement has been requested or on the next succeeding Business Day if such 15th day is not a Business Day. In no event will disbursements be made more than once each month, nor will at the time of any disbursement the sum of all prior disbursements of Phase 2 TIFIA Loan proceeds and the disbursement then to be made exceed the cumulative disbursements through the end of the then-current year set forth in the Anticipated TIFIA Phase 2 Loan Disbursement Schedule.

Borrower Finco may amend the Anticipated TIFIA Phase 2 Loan Disbursement Schedule by submitting to the TIFIA Lender, no later than 30 days prior to the proposed effective date thereof, a revised Anticipated TIFIA Phase 2 Loan Disbursement Schedule, together with a detailed explanation of the reasons for such revisions, such revised schedule becoming effective upon the TIFIA Lender's approval thereof, which approval will not be unreasonably withheld.

Capitalized Interest Period

No payment of the principal of or interest on the TIFIA Loans is required to be made during the period beginning on the Effective Date and ending on (i) with respect to the Phase 1 TIFIA Loan, the day prior to the TIFIA Phase 1 Debt Service Payment Commencement Date and (ii) with respect to the Phase 2 TIFIA Loan, the day first day of the Payment Period immediately preceding the TIFIA Phase 2 Debt Service Payment Commencement Date (the "**Capitalized Interest Period**"). On each January 1 and July 1 occurring during the Capitalized Interest Period, interest accrued on the TIFIA Loans in the six-month period ending immediately prior to such date will be capitalized and added to the Outstanding TIFIA Phase 1 Loan Balance and the Outstanding TIFIA Phase 2 Loan Balance, as applicable, and will thereafter be included as part of the principal amount of the applicable TIFIA Loan. Within 30 days after the end of the Capitalized Interest Period, the TIFIA Lender will: (i) give written notice to Borrower Finco stating the Outstanding TIFIA Phase 1 Loan Balance and the Outstanding TIFIA Phase 2 Loan Balance, as applicable, as of the close of business on the last day of the Capitalized Interest Period; and (ii) with respect to the Phase 2 TIFIA Loan, revise the Loan Amortization Schedule to reflect actual disbursements and capitalized interest in accordance with the provisions of the Phase 2 TIFIA Loan Agreement.

Compliance with Concession Agreement Requirements for Project Financings

The TIFIA Lender acknowledges that the Concession Agreement requires the TIFIA Loan Documents to contain certain provisions in order to enable the TIFIA Loans to meet the requirements for project financings under the Concession Agreement. Accordingly, the parties to the TIFIA Loan Agreements have agreed as follows:

(a) Payment of the principal and interest under the TIFIA Loan Agreements (i) does not constitute a claim against CDOT's title to or other real property interest in the Project, the Site, the Managed Lanes and/or the GP Lanes, HPTE's interest under the Concession Agreement or its interest and estate in and to the Project (or any Segment thereof) and (ii) is not an obligation of HPTE or of any HPTE Related Party, moral or otherwise.

(b) Neither the full faith and credit nor the taxing power of HPTE or of any HPTE Related Party is pledged to the payment of the principal or of the interest on the TIFIA Loans, and neither HPTE nor any HPTE Related Party will have any liability whatsoever for the payment of the principal or of the interest on the TIFIA Loans or any other obligations of Borrower Finco under the TIFIA Loan Documents.

(c) The proceeds of the Phase 2 TIFIA Loan will be used solely for the payment of Eligible Project Costs for the Phase 2 Construction Project.

Repayment Terms

Phase 1 TIFIA Loan. On each Payment Date occurring on or after the TIFIA Phase 1 Debt Service Payment Commencement Date and on or prior to the Level Payment Commencement Date, Borrower Finco will pay debt service in the amount of principal and interest on the TIFIA Phase 1 Loan equal to the amounts specified in the Phase 1 TIFIA Loan Agreement (the “**TIFIA Phase 1 Debt Service**”). To the extent that the aggregate amount of TIFIA Phase 1 Debt Service actually paid during any Payment Period for the Phase 1 TIFIA Loan is less than current interest for such period as provided in the Phase 1 TIFIA Loan Agreement, then the unpaid portion of such TIFIA interest will be deferred until the period commencing on the Level Payment Commencement Date and will be part of the Outstanding TIFIA Phase 1 Loan Balance that is due and payable over the remaining life of the Phase 1 TIFIA Loan from the Level Payment Commencement Date to the Final Maturity Date. Following any such deferral, the Phase 1 TIFIA Loan Agreement will be revised on each such Payment Date. On each Payment Date commencing on the Level Payment Commencement Date, Borrower Finco will pay TIFIA Phase 1 Debt Service in the amount of 100% of the amount of principal of and interest on the Phase 1 TIFIA Loan due and payable as of such date as set forth on the Phase 1 TIFIA Loan Agreement.

Borrower Finco will make payments of TIFIA Phase 1 Debt Service on each Payment Date commencing with the TIFIA Phase 1 Debt Service Payment Commencement Date, as follows:

(i) If Senior Obligations (other than the Phase 1 TIFIA Loan) have any payment of principal or interest due on any Interim Payment Date after the TIFIA Phase 1 Debt Service Payment Commencement Date, Borrower Finco will promptly notify the TIFIA Lender thereof in writing, identifying the period covered by such Interest Period and the interest payment date on which interest on or principal of such Senior Obligations for such Interest Period is due and payable.

(ii) The amount of TIFIA Phase 1 Debt Service due and payable on any Interim Payment Date occurring during any Payment Period will be equal to the amount of TIFIA Phase 1 Debt Service for such Payment Period, as the same may be revised, multiplied by a fraction, the numerator of which is equal to the number of months contained in the Interest Period ending on such Payment Date and the denominator of which is equal to six.

(iii) At any time when no Senior Obligations (other than the Phase 1 TIFIA Loan) are outstanding, or when no Senior Obligations are outstanding other than Senior Obligations with respect to which principal and interest are payable on Semi-Annual Payment Dates, then TIFIA Phase 1 Debt Service hereunder will be payable only on each Semi-Annual Payment Date occurring during each Payment Period (subject to any prepayments). In the event that an Interim Payment Date is other than a Monthly Transfer Date, the method for determining the method for calculating interim payments will be determined at such time by the parties hereto.

During the Level Payment Period for the Phase 1 TIFIA Loan, Borrower Finco will make level payments of principal and interest (each a “**Phase 1 Fixed Level Payment**”) of such amount so that each annual payment will be approximately equal in amount. The amount of the Phase 1 Fixed Level Payment will be calculated as of the first day of the Level Payment Commencement Date in such manner that the Outstanding TIFIA Phase 1 Loan Balance of the TIFIA Phase 1 Loan as of such date is reduced to \$0 on the Final Maturity Date. Within 30 days prior to the beginning of the Level Payment Period for the Phase 1 TIFIA Loan, the TIFIA Lender will give written notice to Borrower Finco of the amount of the related Fixed Level Payment (including any adjustment in respect of the first such payment). To the extent that any prepayments of the Phase 1 TIFIA Loan is made during the Level Payment Period in addition to the Fixed Level Payments, such prepayments will be applied to the remaining Outstanding TIFIA Phase 1

Loan Balance and the resulting Fixed Level Payments will be recalculated as provided in the Phase 1 TIFIA Loan Agreement.

Phase 2 TIFIA Loan. Prior to the TIFIA Phase 2 Debt Service Payment Commencement Date, no principal of, or interest on, the Phase 2 TIFIA Loan is payable, and interest on the Phase 2 TIFIA Loan will be accrued and capitalized as principal during such period. Commencing with the six-month period ending on the TIFIA Phase 2 Debt Service Payment Commencement Date and for each period of six months that ends on a Semi-Annual Payment Date thereafter (each a “**Payment Period**”), the scheduled debt service payable by Borrower Finco will fall into two categories (i) the mandatory portion of scheduled debt service, which is a payment unconditionally required to be paid in fixed amounts specified in the Phase 2 TIFIA Loan Agreement (the “**TIFIA Phase 2 Mandatory Debt Service**”); and (ii) the non-mandatory portion of scheduled debt service, which is a payment of interest and/or principal payable by Borrower Finco to the extent funds are available for such payment in accordance with the terms of the MSA (the “**TIFIA Phase 2 Scheduled Debt Service**”).

From the Level Payment Period for the Phase 2 TIFIA Loan, Borrower Finco will make payments on each payment date of TIFIA Phase 2 Mandatory Debt Service equal to approximately level payments of principal and interest (each, a “**Phase 2 Fixed Level Payment**”). The amount of all Phase 2 Fixed Level Payments will be calculated as of the Level Payment Commencement Date in such manner that the outstanding balance on the Phase 2 TIFIA Loan as of such date will be reduced to \$0 on the final maturity date of the Phase 2 TIFIA Loan.

During each Payment Period, Borrower Finco’s obligations to pay the TIFIA Phase 2 Scheduled Debt Service will be applicable only if and to the extent funds are available on such date in accordance with the terms of the MSA. To the extent that the aggregate amount of TIFIA Phase 2 Scheduled Debt Service actually paid during any Payment Period is less than the aggregate amount of the TIFIA Phase 2 Scheduled Debt Service for such Payment Period, then the unpaid portion of such TIFIA Phase 2 Scheduled Debt Service will be deferred until the next payment date and will be applied to the outstanding balance on the Phase 2 TIFIA Loan that is due and payable on the next payment date.

Mandatory Prepayment

Phase 1 TIFIA Loan. Borrower Finco must prepay all or a portion of the Phase 1 TIFIA Loan in the following instances:

(i) On the last Business Day of each January on and after the TIFIA Phase 2 Debt Service Payment Commencement Date, Borrower Finco will cause the Phase 1 TIFIA Loan to be prepaid by an amount equal to the lesser of (i) the amount remaining in the Project Proceeds Account after giving effect to the payments in clauses *first* through *twentieth* described in “ACCOUNTS AND FLOW OF FUNDS – Project Proceeds Account – Monthly Transfers from Project Proceeds Account” and (ii) the TIFIA Revenue Share Amount.

(ii) If Additional Senior Obligations are issued (the proceeds of which are used to add to, refinance or replace the 2014 Bonds or any then-outstanding Additional Senior Obligations) so long as at least 50% of the net proceeds of such Additional Senior Obligations is applied, concurrently with the receipt thereof by Borrower Finco, to prepay the Phase 1 TIFIA Loan.

(iii) Upon the Concessionaire’s receipt of any Termination Compensation, in accordance with the description of the use of moneys in “PROJECT ACCOUNTS AND FLOW OF FUNDS - Use of Moneys Received from Exercise of Remedies.”

(iv) Following the determination of the amount thereof in accordance with the MSA, Borrower Finco must prepay the Phase 1 TIFIA Loan in an amount equal to any Net Loss Proceeds required to be applied to mandatory prepayments of the Phase 1 TIFIA Loan in accordance with the MSA.

Phase 2 TIFIA Loan. Borrower Finco must prepay all or a portion of the Phase 2 TIFIA Loan in the following instances:

(i) If amounts in the Concessionaire Distribution Account are eligible for distribution to the Equity Member or the Sponsor in accordance with the MSA due to the satisfaction of the TIFIA Restricted Payment Conditions on the TIFIA Phase 2 Debt Service Payment Commencement Date, or on the first Calculation Date thereafter, if such Calculation Date falls within two years following the TIFIA Phase 2 Debt Service Payment Commencement Date, Borrower Finco will cause the Security Trustee to transfer an amount equal to the TIFIA Phase 2 Capitalized Interest Prepayment Amount from the Concessionaire Distribution Account (and if applicable, from the Equity Lock-up Account) to the TIFIA Phase 2 Prepayment Account and to apply such amount to the prepayment of the Phase 2 TIFIA Loan.

(ii) On the last Business Day of each January on and after the TIFIA Phase 2 Debt Service Payment Commencement Date, Borrower Finco will cause the Phase 2 TIFIA Loan to be prepaid by an amount equal to the lesser of (i) the amount remaining in the Project Proceeds Account after giving effect to the payments in clauses *first* through *nineteenth* described in “ACCOUNTS AND FLOW OF FUNDS – Project Proceeds Account – Monthly Transfers from Project Proceeds Account” and (ii) the TIFIA Revenue Share Amount.

(iii) If Additional Senior Obligations are issued (the proceeds of which are used to add to, refinance or replace the existing Senior Obligations) so long as at least 50% of the net proceeds of such Additional Senior Obligations is applied, concurrently with the receipt thereof by Borrower Finco, to prepay the Phase 2 TIFIA Loan.

(iv) Upon the Concessionaire’s receipt of any Termination Compensation, Borrower Finco must repay the Phase 2 TIFIA Loan in an amount equal to the proceeds thereof less the amount of such proceeds required to be used to prepay the Senior Obligations pursuant to the MSA; *provided* that, for the avoidance of doubt, if Termination Compensation is payable during the pendency of a Bankruptcy Related Event, then such proceeds will be applied to prepay Senior Obligations and the Phase 2 TIFIA Loan on a pro rata basis.

(v) Following the determination of the amount thereof in accordance with the MSA, Borrower Finco must prepay the Phase 2 TIFIA Loan in an amount equal to any Net Loss Proceeds required to be applied to mandatory prepayments of the Phase 2 TIFIA Loan in accordance with the MSA.

(vi) On the Substantial Completion Date, Borrower Finco must prepay the Phase 2 TIFIA Loan on a pro rata basis with a redemption of the outstanding 2014 Bonds, in the amount of the Equity Contributions, if any, made to comply with the Maximum Debt to Equity Ratio.

(vii) In the event that that the Phase 1 TIFIA Loan is prepaid in full, Borrower Finco will either (A) redeem in full all outstanding 2014 Bonds or (B) prepay in full the outstanding balance of the Phase 2 TIFIA Loan, such election to be made by Borrower Finco in its discretion.

Optional Prepayment

In addition, Borrower Finco has the right to prepay either TIFIA Loan in whole or in part, in principal amounts of \$1,000,000 or any integral multiple thereof or, if less, the entire principal amount thereof then outstanding, at any time or from time to time, without penalty or premium, by paying to the TIFIA Lender the principal amount of the TIFIA Loan to be prepaid, together with the unpaid interest accrued on the amount of the principal so prepaid to the date of such prepayment. Each prepayment of the TIFIA Loans must be made on such date and in such principal amount as Borrower Finco specifies in a written notice delivered to the TIFIA Lender not less than 15 days or more than 30 days prior to the date set for prepayment.

TIFIA Restricted Payment Conditions

For so long as either TIFIA Loan remains outstanding, Borrower Finco, Finco 1, Finco 2 or the Concessionaire may not make any equity distributions until the following “**TIFIA Restricted Payment Conditions**” are satisfied.

(i) all transfers and distributions required to be made pursuant to clauses First through Twenty-Second described under “PROJECT ACCOUNTS AND FLOW OF FUNDS – Project Proceeds Account – Monthly Transfers from Project Proceeds Account” on or prior to the relevant Semi-Annual Payment Date will have been satisfied in full;

(ii) (A) no Default or Event of Default has occurred and is continuing, or would occur as a direct result of the proposed transfer of funds to the Concessionaire Distribution Account and (B) no event of default under any Senior Loan Agreement or the Phase 2 TIFIA Loan Agreement, or an event of default which may exist with due notice or the passage of time or both under any Senior Loan Agreement or the Phase 2 TIFIA Loan Agreement, has occurred and is continuing;

(iii) the Bonds Debt Service Reserve Account, the TIFIA Phase 1 Debt Service Reserve Account (on and after the Phase 1 Assumption Date), the TIFIA Phase 2 Debt Service Reserve Account, the Ramp Up Reserve Account, the Cash Reserve Account, the O&M Reserve Account, the Major Maintenance Reserve Account and the Handback Requirements Reserve Account have been funded (in cash, Permitted Investments and, to the extent permitted, Acceptable Letters of Credit) in an amount equal to the then applicable Bonds Debt Service Reserve Requirement, TIFIA Phase 1 Debt Service Reserve Requirement, TIFIA Phase 2 Debt Service Reserve Requirement, Ramp Up Reserve Requirement, Cash Reserve Requirement, O&M Reserve Requirement, Major Maintenance Reserve Requirement and Handback Reserve Requirement, respectively;

(iv) (A) HPTE has not exercised its right to terminate the Concession Agreement in respect of a Concessionaire Default or HPTE has rescinded any such notice of termination previously issued; and (B) the Concessionaire has not exercised its right to terminate the Concession Agreement in respect of an HPTE Default or the Concessionaire has rescinded any such notice of termination;

(v) the Full Services Commencement Date has occurred;

(vi) the TIFIA Phase 2 Debt Service Payment Commencement Date has occurred;

(vii) the payment of all debt service on the TIFIA Loans, TIFIA Revenue Share Amounts and the Sinking Fund Amounts is current;

(viii) (A) the Total Debt Service Coverage Ratio as of the Calculation Date occurring on the last day of the Calculation Period most recently ended was not less than 1.25:1.00, and (B) for each Calculation Date occurring during the immediately succeeding Calculation Period, the Total Debt Service Coverage Ratio is projected to be not less than 1.25:1.00;

(ix) (A) the Senior Debt Service Coverage Ratio as of the Calculation Date occurring on the last day of the Calculation Period most recently ended was not less than 1.45:1.00 and (B) for each Calculation Date occurring during the immediately succeeding Calculation Period, the Senior Debt Service Coverage Ratio is projected to be not less than 1.45:1.00;

(x) the TIFIA Phase 1 Loan Life Coverage Ratio and the TIFIA Phase 2 Loan Life Coverage Ratio, as applicable, as of the Calculation Date occurring on the last day of the Calculation Period most recently ended and for each future Calculation Date through the Final Maturity Date, is at least 1.30:1.00;

(xi) such Borrower Group Member is not insolvent and would not be rendered insolvent by the making of the proposed Restricted Payment; and

(xii) the TIFIA Lender has received, no earlier than ten Business Days and no later than three Business Days prior to the proposed Distribution Date, a certificate certifying as to the matters contemplated in clauses (i), (ii), (vii), (viii), (ix), (x) and (xi) above, including a computation in reasonable detail of the applicable coverage ratios.

Defined Terms

“Anticipated TIFIA Phase 2 Loan Disbursement Schedule” means the schedule to the Phase 2 TIFIA Loan Agreement reflecting the anticipated disbursement of proceeds of the Phase 2 TIFIA Loan, as such schedule may be amended from time to time pursuant to the Phase 2 TIFIA Loan Agreement.

“Bankruptcy Related Event” means (a) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of any Borrower Group Member or any of its debts, or of a substantial part of the assets of any Borrower Group Member, under any Insolvency Law, or (ii) the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for any Borrower Group Member or for a substantial part of the assets of any Borrower Group Member, and, in any case referred to in the foregoing subclauses (i) and (ii), such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered; (b) any Borrower Group Member shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for such Borrower Group Member or for a substantial part of the assets of such Borrower Group Member, or (ii) generally not be paying its debts as they become due unless such debts are the subject of a bona fide dispute, or become unable to pay its debts generally as they become due, or (iii) make a general assignment for the benefit of creditors, or (iv) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition with respect to it described in clause (a) of this definition, or (v) commence a voluntary proceeding under any Insolvency Law, or file a voluntary petition seeking liquidation, reorganization, an arrangement with creditors or an order for relief under any Insolvency Law, or (vi) file an answer admitting the material allegations of a petition filed against it in any proceeding referred to in the foregoing subclauses (i) through (v), inclusive, of this clause (b), or (vii) take any action for the purpose of effecting any of the foregoing; (c) (i) all or a

substantial part of the Collateral (including Equity Interests) securing such Borrower Group Member's Secured Obligations shall be sold or otherwise disposed of in a public or private sale or disposition pursuant to a foreclosure of the Liens thereon securing such Secured Obligations, or (ii) all or a substantial part of the Collateral (including Equity Interests) securing such Borrower Group Member's Secured Obligations shall be transferred pursuant to a sale or disposition of such Collateral in lieu of foreclosure; or (d) the Security Trustee shall transfer, pursuant to instructions issued in accordance with the MSA, funds on deposit in any of the Project Accounts following the occurrence and during the continuation of an Event of Default under any Funding Document related to Secured Obligations, for application to the prepayment or repayment of any principal amount of Secured Obligations.

“Interim Payment Date” means any day occurring during a Payment Period that (a) is a date on which interest on or principal of Senior Obligations (other than obligations under the TIFIA Phase 1 Loan Documents) is scheduled to be paid and (b) is not a Semi-Annual Payment Date.

“Level Payment Commencement Date” means (i) with respect to the Phase 1 TIFIA Loan, means the twenty-first (21st) Payment Date from the Debt Service Commencement Date; and (ii) with respect to the Phase 2 TIFIA Loan, the Semi-Annual Payment Date following the end of the 50th consecutive Payment Period.

“Loan Amortization Schedule” means (i) with respect to the Phase 1 TIFIA Loan, the Loan Amortization Schedule attached to the Phase 1 TIFIA Note delivered pursuant to the Phase 1 TIFIA Loan Agreement as amended from time to time; and (ii) with respect to the Phase 2 TIFIA Loan, the Loan Amortization Schedule attached to the Phase 2 TIFIA Note delivered pursuant to the Phase 2 TIFIA Loan Agreement as amended from time to time.

“Outstanding TIFIA Phase 1 Loan Balance” means, as of any date of determination, the aggregate principal amount drawn by the Borrower and then outstanding with respect to the Phase 1 TIFIA Loan, as determined in accordance with the Phase 1 TIFIA Loan Agreement.

“Phase 1 TIFIA Note” means the Promissory Note delivered by the Borrower to the TIFIA Lender in substantially the form as provided in the Phase 1 TIFIA Loan Agreement.

“Phase 2 TIFIA Note” means the Promissory Note delivered by the Borrower to the TIFIA Lender in substantially the form as provided in the Phase 2 TIFIA Loan Agreement.

“Requisition” means that requisition and certification pursuant to which each disbursement of the Phase 2 TIFIA Loan shall be made.

“Servicer” means such entity or entities as the TIFIA Lender shall designate from time to time to perform, or assist the TIFIA Lender in performing, certain duties hereunder.

“Substantial Completion Date” means (i) with respect to the Phase 1 TIFIA Loan, the date on which the Phase 1 Project has achieved Substantial Completion, which shall be concurrent the Phase 1 Services Commencement Date; and (ii) with respect to the Phase 2 TIFIA Loan, the date upon which the Project has achieved Substantial Completion, as such date may be revised in accordance with the Phase 2 TIFIA Loan Agreement.

“TIFIA Phase 1 Loan Life Coverage Ratio” means, as of each applicable Calculation Date, the ratio of (a) the present value of all projected Net Cash Flow for each Calculation Date from and including such Calculation Date to the Final Maturity Date in each case discounted at the Weighted Average Interest Cost for each future period, using the most recently updated Base Case Financial Model, adjusted

to take into account (i) actual results and updated revenue and revenue projections reasonably projected by the Concessionaire and (ii) additional projected Net Cash Flow and Senior Debt Service in connection with any Additional Senior Obligations through the Final Maturity Date, to (b) the aggregate principal amount of all Senior Obligations and the Phase 2 TIFIA Loan due to be paid on or prior to the Final Maturity Date.

“TIFIA Phase 2 Capitalized Interest Prepayment Amount” means lesser of (a) 12.5% of the sum of (i) the amount that remains on deposit in the Project Proceeds Account (after application of all transfers and distributions required to be made pursuant to clauses First through Twenty-Second described under “PROJECT ACCOUNTS AND FLOW OF FUNDS – Project Proceeds Account – Monthly Transfers from Project Proceeds Account”) on the first Distribution Date occurring on or after the TIFIA Phase 2 Debt Service Payment Commencement Date on which the TIFIA Restricted Payment Conditions are satisfied and (ii) the amount on deposit in the Equity Lock-up Account on the TIFIA Phase 2 Debt Service Payment Commencement Date; or (b) 12.5% of the interest on the Phase 2 TIFIA Loan that has been capitalized from the Substantial Completion Date to the TIFIA Phase 2 Debt Service Payment Commencement Date.

“TIFIA Phase 2 Loan Life Coverage Ratio” means, as of each applicable Calculation Date, the ratio of (a) the present value of all projected Net Cash Flow for each Calculation Date from and including such Calculation Date to the Final Maturity Date in each case discounted at the Weighted Average Interest Cost for each future period, using the most recently updated Base Case Financial Model, adjusted to take into account (i) actual results and updated revenue and revenue projections reasonably projected by the Concessionaire and (ii) additional projected Net Cash Flow and Senior Debt Service in connection with any Additional Senior Obligations through the Final Maturity Date, to (b) the aggregate principal amount of all Senior Obligations and the Phase 2 TIFIA Loan due to be paid on or prior to the Final Maturity Date.

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FORM OF CONTINUING DISCLOSURE AGREEMENT

\$20,360,000

**COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE
U.S. 36 AND I-25 MANAGED LANES
SENIOR REVENUE BONDS SERIES 2014**

CONTINUING DISCLOSURE AGREEMENT

This Continuing Disclosure Agreement (the “**Agreement**”) dated February 26, 2014 is executed and delivered by Plenary Roads Denver LLC (the “**Concessionaire**”), Plenary Roads Finco LP (the “**Borrower Finco**”), and The Bank of New York Mellon Trust Company, N.A., as dissemination agent (the “**Dissemination Agent**”), in connection with the issuance by Colorado High Performance Transportation Enterprise, a government-owned business within the Colorado Department of Transportation and a division of the Colorado Department of Transportation (the “**Issuer**”) of \$20,360,000 Colorado High Performance Transportation Enterprise U.S. 36 and I-25 Managed Lanes Senior Revenue Bonds Series 2014 (the “**Bonds**”). The Bonds are being issued pursuant to the Trust Indenture (as defined below). The proceeds of the Bonds are being loaned to Borrower Finco pursuant to the Bond Proceeds Loan Agreement (as defined below) and will be made available to the Concessionaire through a series of intercompany loan agreements for the purpose of paying a portion of the costs of the Project (as defined below) which is being undertaken pursuant to the Concession Agreement (as defined below). Each of the Concessionaire, Plenary Roads Finco ULC (“**Finco 1**”), and Plenary Denver Finco, LLC (“**Finco 2**”) are guarantors of Borrower Finco’s payment obligations under the Bond Proceeds Loan Agreement.

In consideration of the mutual promises and agreements made herein, the receipt and sufficiency of which consideration is hereby mutually acknowledged, the parties hereto agree as follows:

Section 1. Purpose of the Agreement. This Agreement is being executed and delivered by the Concessionaire, Borrower Finco and the Dissemination Agent for the benefit of the Beneficial Owners (as defined below) and in order to assist the Underwriter (as defined below) in complying with the Rule (as defined below). The Concessionaire is executing this Agreement on behalf of itself, Finco 1, and Finco 2. The Concessionaire, Borrower Finco, and the Dissemination Agent acknowledge that the Issuer and the Dissemination Agent have undertaken no responsibility with respect to any reports, notices or disclosures provided or required under this Agreement (except for the Dissemination Agent’s obligation to file with the MSRB reports provided by the Concessionaire pursuant to this Agreement and other obligations expressly described herein), and the Issuer and the Dissemination Agent have no liability to any person, including any Beneficial Owner, with respect to any such reports, notices or disclosures.

Section 2. Definitions. Unless otherwise indicated next to each capitalized term, the following capitalized terms shall have the following meanings:

“**Annual Operating Budget**” is defined in Section 3(a)(ii) hereof.

“**Annual Report**” shall mean, collectively, the filings described in Section 3(a) hereof.

“**Audited Financial Statements**” shall mean the annual financial statements of each Obligor, audited by an independent firm of certified public accountants in accordance with the

International Financial Reporting Standards recommended by the Canadian Accounting Standards Board, consistently applied, and if required under applicable law, GAAP.

“**Beneficial Owner**” shall mean, while the Bonds are held in a book-entry only system, the actual purchaser of each Bond, the ownership interest of which is to be recorded on the records of the direct and indirect participants of the Depository, and otherwise shall mean the holder of Bonds.

“**Bond Proceeds Loan Agreement**” shall mean the Loan Agreement dated as of February 26, 2014, by and among the Issuer, as lender, Borrower Finco, as borrower, and each of the Concessionaire, Finco 1 and Finco 2 as guarantors thereunder, as it may be amended or supplemented from time to time.

“**Borrower Finco**” shall mean Plenary Roads Finco LP and its permitted successors and assigns.

“**Business Day**” means any day other than a Saturday, a Sunday or a day on which offices of the Commonwealth of Pennsylvania or State of Colorado are authorized to be closed or on which commercial banks are authorized or required by law, regulation or executive order to be closed in Pittsburgh, Pennsylvania or Denver, Colorado.

“**Commission**” shall mean the United States Securities and Exchange Commission, or any successor body thereto.

“**Concession Agreement**” shall mean collectively, the Concession Agreement dated June 27, 2013, as previously amended, and as amended and restated on or about to the date hereof, between HPTE and the Concessionaire, and as may be further amended or supplemented from time to time.

“**Concessionaire**” shall mean Plenary Roads Denver LLC, and its permitted successors and assigns.

“**EMMA**” shall mean the Electronic Municipal Market Access system and the EMMA Continuing Disclosure Service of MSRB, or any successor thereto approved by the SEC, as a repository for municipal continuing disclosure information pursuant to the Rule.

“**Exchange Act**” shall mean the Securities Exchange Act of 1934, as amended.

“**Finco 1**” shall mean Plenary Roads Finco ULC and any permitted successors or assigns.

“**Finco 2**” shall mean Plenary Denver Finco, LLC and any permitted successors or assigns.

“**Fiscal Year**” shall mean the fiscal year of the Obligors ending December 31.

“**Fiscal Quarter**” shall mean the fiscal quarter of the Obligors ending March 31, June 30, September 30 and December 31.

“**GAAP**” shall mean generally accepted accounting principles, consistently applied.

“**Indenture**” shall mean the Trust Indenture dated February 26, 2014, between the Issuer and The Bank of New York Mellon Trust Company, N.A, as trustee, as it may be amended or supplemented from time to time.

“**Issuer**” shall mean Colorado High Performance Transportation Enterprise, a government-owned business within the Colorado Department of Transportation and a division of the Colorado Department of Transportation.

“**Listed Events**” shall mean any of the events listed in Section 4(a) of this Agreement.

“**MSA**” shall mean the Master Security Agreement dated as of February 25, 2014, among the Issuer, the Obligors, the Trustee, the TIFIA Lender, Northleaf/PRD LenderCo LP, as the Subordinated Lender, the Security Trustee, and the Bank of New York Mellon, as Intercreditor Agent, as it may be amended or supplemented from time to time.

“**MSRB**” shall mean the Municipal Securities Rulemaking Board, or any successor thereto. On July 1, 2009, the MSRB became the sole repository to which the Concessionaire must electronically submit Annual and Quarterly Reports pursuant to Section 3 hereof and material event notices pursuant to Section 4 hereof. Reference is made to Securities and Exchange Commission Release No. 34-59062, December 5, 2008 (the “**Release**”) relating to EMMA, which became effective on July 1, 2009. To the extent applicable to this Agreement, the Concessionaire shall comply with the Release and with EMMA, as amended or supplemented from time to time.

“**Obligors**” shall mean each of the Concessionaire, Borrower Finco, Finco 1 and Finco 2, and “**Obligor**” means any of them.

“**Person**” means any natural person, firm, corporation, partnership, limited liability company, state, political subdivision of any state, other public body or other organization or association.

“**Phase 2 TIFIA Loan Agreement**” shall mean the TIFIA Loan Agreement (for up to \$60,000,000) for the U.S. Managed Lanes/Bus Rapid Transit Project dated as of February 25, 2014, between the Borrower Group and TIFIA Lender, as it may be amended or supplemented from time to time.

“**Project**” shall have the meaning assigned to it in the Official Statement dated February 23, 2014 prepared in connection with the offering and sale of the Bonds.

“**Quarterly Report**” shall mean, collectively, the filings described in Section 3(b) hereof.

“**Rule**” shall mean Rule 15c2-12 adopted by the Commission under the Exchange Act, as the same may be amended from time to time.

“**TIFIA Lender**” shall mean the United States Department of Transportation, an agency of the United States of America, acting by and through the Federal Highway Administrator.

“**Trustee**” shall mean The Bank of New York Mellon Trust Company, N.A., in its capacity as trustee under the Indenture.

“**Underwriter**” shall mean Goldman, Sachs & Co.

Section 3. Provision of Annual Reports and Quarterly Reports.

(a) For each Fiscal Year, the Concessionaire and Borrower Finco shall furnish or cause to be furnished to the Dissemination Agent for filing with the MSRB by and through EMMA:

(i) no later than 120 days following the end of the Fiscal Year, commencing with the Fiscal Year ending December 31, 2014, the annual Audited Financial Statements of each Obligor (provided that, with respect to the Borrower Finco, Finco 1 and Finco 2, the Borrower Finco may furnish or cause to be furnished audited consolidated financial statements of the Borrower Finco, Finco 1 and Finco 2, and a certification of an independent firm of certified public accountants, in each case, satisfying the requirements of the definition of Audited Financial Statements), unless any such Audited Financial Statement shall not be available by such time, in which case the unaudited annual financial statements shall be provided and the Audited Financial Statements shall be delivered to the MSRB by and through EMMA when available;

(ii) no later than sixty (60) days prior to the commencement of each Fiscal Year, an operating plan and a budget on a cash flow basis of projected traffic, Project Revenues (as defined in the Phase 2 TIFIA Loan Agreement), O&M Expenses and Maintenance Capex, in each case, with respect to Project, Senior Debt Service (as defined in the Phase 2 TIFIA Loan Agreement), TIFIA Phase 2 Debt Service (as defined in the Phase 2 TIFIA Loan Agreement), Subordinated Debt Service (as defined in the Phase 2 TIFIA Loan Agreement), Discretionary Capital Expenditures (as defined in the Phase 2 TIFIA Loan Agreement), TIFIA Revenue Share Amount (as defined in the Phase 2 TIFIA Loan Agreement), Sinking Fund Amounts (as defined in the MSA), required reserve account deposits, and other costs, any projected distributions and a pro forma balance sheet for the next Fiscal Year (collectively, an “**Annual Operating Budget**”), each prepared by the Concessionaire in good faith and accompanied by a certificate of a Concessionaire’s Authorized Representative (as defined in the Phase 2 TIFIA Loan Agreement) to the effect that such officer has no reason to believe that it is incorrect or misleading in any material respect, based upon information then known by such Concessionaire’s Authorized Representative; and

(iii) no later than 120 days following the end of each Fiscal Year, commencing with the Fiscal Year ending December 31, 2015, actual Project Revenues (as defined in the Phase 2 TIFIA Loan Agreement) and actual debt service coverage ratio for the Secured Obligations (as defined in the MSA) for the last Fiscal Year.

(b) The Concessionaire shall furnish or cause to be furnished to the Dissemination Agent for filing by the Dissemination Agent with the MSRB by and through EMMA:

(i) no later than 60 days after the end of each first three Fiscal Quarters, commencing with the Fiscal Quarter ending June 30, 2014, the unaudited income statement and balance sheet of such Obligor as of the end of such Fiscal Quarter and the related unaudited statements of operations and changes in member capital and of cash flow of such Obligor for such Fiscal Quarter and for the portion of the Fiscal Year through the end of such Fiscal Quarter, setting forth in each case in comparative form the figures for the previous Fiscal Quarter, certified by the chief executive officer or chief financial officer of such Obligor as fairly stating in all material respects the financial condition of such Obligor as at the end of such Fiscal Quarter and the results of its operations and its cash flows for such period (subject to normal year-end audit adjustments); provided that, with respect to the Borrower Finco, Finco 1 and Finco 2, the Concessionaire may deliver or cause to be delivered unaudited consolidated financial statements of the Borrower Finco, Finco 1 and Finco 2, and a certification of the chief executive officer or chief financial officer of the Borrower Finco, in each case, satisfying the requirements described in this clause (i);

(ii) prior to the Full Services Commencement Date (as defined in the MSA), on a quarterly basis, not later than 60 days after the end of each Fiscal Quarter, a construction progress report prepared by the Concessionaire, (A) providing an assessment of the overall construction progress of the Project since the date of the last report and setting forth a reasonable estimate as to

the completion date for the Project; and (B) providing a reasonably detailed description of any material delays encountered or anticipated in connection with the Project and a reasonably detailed description of the proposed course of action with respect to such delay;

(iii) no later than ninety (90) days after the end of each Fiscal Quarter, a traffic and operating report showing, in each case, with respect to the Project, (A) the operating data for the previous Fiscal Quarter, including total Project Revenues received and total O&M Expenses and Maintenance Capex incurred, (B) the variances for such period between the Project Revenues actually received and the budgeted Project Revenues as shown in the Annual Operating Budget, together with a brief narrative explanation of the reasons for any such variance of twenty percent (20)% or more, and (C) the variances for such period between the actual O&M Expenses and/or Maintenance Capex incurred and the budgeted O&M Expenses and/or Maintenance Capex, as shown in the Annual Operating Budget, together with a brief narrative explanation of the reasons for any such variance of twenty percent (20)% or more.

(d) Any or all of the items listed above may be incorporated by reference from other documents, including official statements of debt issues with respect to which the Concessionaire or Borrower Finco is an “obligated person” (as defined by the Rule), which have been filed with the MSRB by and through EMMA or the Commission. If the document incorporated by reference is a final official statement, it must be available from the MSRB. The Concessionaire, Borrower Finco or the Dissemination Agent (at the direction of the Concessionaire or Borrower Finco), as applicable, shall clearly identify each such other document so incorporated by reference.

(f) If the Dissemination Agent has not received any Annual Report or Quarterly Report by the date which is ten (10) Business Days before the date by which such report is required to be filed, the Dissemination Agent is required to notify the Concessionaire and Borrower Finco via registered or certified mail, electronic mail or facsimile transmission that it has not received such Annual Report or Quarterly Report. However, no failure by the Dissemination Agent to provide the foregoing notice shall relieve the Concessionaire or Borrower Finco from their respective obligations to provide such Annual Report or Quarterly Report, as applicable, in the manner and within the time specified by this Agreement. Nothing contained in this Section shall operate to grant any additional rights or remedies to the Bondholders.

(g) If the Concessionaire or Borrower Finco is unable to provide or cause to be provided to the Dissemination Agent the information required in this Section 3 by the applicable specified dates, the Dissemination Agent shall, in a timely manner, send a notice in substantially the form attached as Exhibit A to the MSRB.

Section 4. Reporting of Material Events.

(a) The Concessionaire and Borrower Finco shall furnish or cause to be furnished to the Dissemination Agent for filing with the MSRB by and through EMMA, in a timely manner not in excess of ten (10) business days after the occurrence of the event, notice of the occurrence of any of the following events with respect to the Bonds:

- (1) principal and interest payment delinquencies;
- (2) non-payment related defaults, if material;
- (3) any unscheduled draws on debt service reserves reflecting financial difficulties;
- (4) unscheduled draws on credit enhancement facilities reflecting financial difficulties;

- (5) substitution of credit or liquidity providers or their failure to perform;
- (6) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;
- (7) modifications to rights of the holders of the Bonds, if material;
- (8) bond calls, if material, and tender offers;
- (9) defeasances;
- (10) release, substitution, or sale of property securing repayment of the Bonds, if material;
- (11) rating changes;
- (12) bankruptcy, insolvency, receivership or similar event of any Obligor;
- (13) the consummation of a merger, consolidation, or acquisition involving any Obligor or the sale of all or substantially all of the assets of any Obligor, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
- (14) appointment of a successor or additional trustee or the change of name of a trustee, if material.

(b) The Concessionaire shall furnish or cause to be furnished to the Dissemination Agent for filing with the MSRB by and through EMMA in a timely manner not in excess of five (5) Business Days after the occurrence of the event, notice of the occurrence of any of the following events with respect to the Bonds:

- (1) insurance claims in excess of \$2,500,000;
- (2) the filing of any actual litigation, suit or action, or the delivery of any written claim which seeks to enjoin or stop the construction or operation of the Project, which seeks damages (not covered by insurance) in excess of \$2,500,000, or which the Concessionaire could reasonably expect to have a Material Adverse Effect (as defined in the Phase 2 TIFIA Loan Agreement); and
- (3) any other event or condition which the Concessionaire could reasonably expect to result in a Material Adverse Effect.

(c) Upon a delay in the Project Construction Schedule (as defined in the Phase 2 TIFIA Loan Agreement) to a date beyond 270 days of the Planned Full Services Commencement Date (as

defined in the Phase 2 TIFIA Loan Agreement), the Concessionaire shall furnish or cause to be furnished to the Dissemination Agent for filing with the MSRB by and through EMMA:

- (1) in a timely manner not in excess of ten (10) Business Days after the Concessionaire knew of such projection, notice of such delay and that it is preparing a detailed plan indicating that, if followed, the Substantial Completion Date (as defined in the Phase 2 TIFIA Loan Agreement) will no longer be projected to occur after the Development Default Trigger Date (as defined in the Phase 2 TIFIA Loan Agreement) (a “**Remedial Plan**”);
- (2) within thirty (30) Business Days (as defined in the Phase 2 TIFIA Loan Agreement) from the end of such ten (10) Business Day period, such Remedial Plan; and
- (3) concurrently with the delivery of such Remedial Plan, written confirmation from the Independent Engineer (as defined in the Phase 2 TIFIA Loan Agreement) that in its view, the Remedial Plan is reasonably achievable.

Section 5. Report by Dissemination Agent. Concurrently with the delivery to the MSRB of any information required pursuant to Sections 3 and 4 above, the Dissemination Agent shall provide evidence to the Concessionaire and Borrower Finco (which evidence may be in the form of a confirmation email from EMMA confirming submission) that it has filed such information with the MSRB.

Section 6. Termination of Reporting Obligation. Concessionaire and Borrower Finco obligations under this Agreement shall terminate upon the defeasance, prior redemption or payment in full of all of the Bonds. Concessionaire and Borrower Finco shall provide or cause to be provided to the Dissemination Agent with written notice that their obligations under this Agreement have terminated and a written request that the Dissemination Agent file a copy of such notice with the MSRB. If obligations of the Concessionaire or Borrower Finco under this Agreement are assumed in full by some other entity, such entity shall be responsible for compliance with this Agreement in the same manner as if it were the Concessionaire or Borrower Finco, as applicable, and the Concessionaire or Borrower Finco, as applicable, shall have no further responsibility hereunder.

Section 7. Amendment; Waiver. Notwithstanding any other provision of this Agreement, the Concessionaire, Borrower Finco, and the Dissemination Agent may amend this Agreement or waive any provision hereof, but only in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of the Obligor with respect to the Bonds or the type of business conducted by said Obligor, provided that (1) the undertaking, as amended or following such waiver, would have complied with the requirements of the Rule on the date hereof, after taking into account any amendments to the Rule as well as any change in circumstances, and (2) the amendment or waiver does not materially impair the interests of the holders of Bonds, in the opinion of the Dissemination Agent or counsel expert in federal securities laws reasonably satisfactory to both the Concessionaire and the Dissemination Agent, or is approved by not less than the Beneficial Owners of a majority in aggregate principal amount of the outstanding Bonds.

In the event of any amendment to the type of financial or operating data provided in an Annual Report or Quarterly Report provided pursuant to Section 3 hereof, or any change in accounting principles reflected in such Annual or Quarterly Report, the Concessionaire agrees that the Annual or

Quarterly Report will explain, in narrative form, the reasons for the amendment or change and the effect of such change, including comparative information, where appropriate. To the extent not otherwise included in such Annual or Quarterly Report, the Concessionaire and Borrower Finco will also provide or cause to be provided timely notice of any change in accounting principles to the MSRB and the Dissemination Agent.

Section 8. Additional Information. Nothing in this Agreement shall be deemed to prevent the Concessionaire or Borrower Finco from disseminating any other information, using the means of dissemination set forth in this Agreement or any other means of communication, or including any other information in any Annual Report or Quarterly Report or notice of occurrence of a Listed Event or an event described in Section 4(b) or 4(c), in addition to that which is required by this Agreement. If either the Concessionaire or Borrower Finco chooses to include any information in any Annual Report or Quarterly Report or notice of occurrence of a Listed Event or an event described in Section 4(b) or 4(c), in addition to that which is specifically required by this Agreement, the Concessionaire or Borrower Finco, as applicable, shall have no obligation under this Agreement to update such information or provide it to the Dissemination Agent to include it in any future Annual Report or Quarterly Report or notice of occurrence of a Listed Event or an event described in Section 4(b) or 4(c).

Section 9. Default. In the event of a failure of the Concessionaire, Borrower Finco, or the Dissemination Agent to comply with any provision of this Agreement, any Beneficial Owner may take such actions as may be necessary and appropriate, including seeking mandamus or specific performance by court order, to cause the Concessionaire, Borrower Finco, or the Dissemination Agent, as applicable, to comply with its obligations under this Agreement; provided, that, to the extent permitted by the securities laws, any Beneficial Owner's right to challenge the adequacy of the information provided in accordance with the undertaking of the Concessionaire, the Borrower Finco, and Dissemination Agent described in Section 3 and Section 4 hereof shall be subject to the same limitations as those set forth in Article VII of the Indenture with respect to Events of Default thereunder. A default under this Agreement shall not be deemed an Event of Default under the Indenture or the Bond Proceeds Loan Agreement, and the sole remedy under this Agreement in the event of any failure of the Concessionaire, Borrower Finco, or Dissemination Agent to comply with this Agreement shall be an action to compel performance.

Section 10. Dissemination Agent's Rights and Duties. The duties and responsibilities of the Dissemination Agent hereunder shall be determined solely by the express provisions of this Agreement, and no further duties or responsibilities shall be implied. The Dissemination Agent (i) shall not be liable for any error in judgment or for any act done or step taken or omitted by it in good faith, or for any mistake of fact or law, or for anything which it may do or refrain from doing in connection therewith, except for its own negligence or willful misconduct, (ii) shall not be obligated to take any legal action or other action hereunder, which might in its judgment involve any expense or liability unless it has been furnished with indemnification satisfactory to it, and (iii) shall be entitled to consult with counsel satisfactory to it, and the advice or opinion of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with the opinion of such counsel. The Dissemination Agent may rely and shall be protected in acting or refraining from acting upon any written notice, instruction or request furnished to it hereunder and believed by it to be genuine and to have been signed or presented by the proper party or parties. The Dissemination Agent shall not have any liability under, or duty to inquire into, or investigate the validity, accuracy or content of any such document. The Dissemination Agent shall not incur any liability for following the instructions herein contained or expressly provided for, or written instructions given by the other parties hereto.

The Concessionaire hereby indemnifies the Dissemination Agent and its officers, directors, employees, agents and attorneys in fact (each, an "**Indemnitee**") from and against any and all losses,

claims, damages, liabilities and related expenses, including the reasonable fees, charges and disbursements of any counsel for any Indemnitee, incurred by or asserted against such Indemnitee arising out of the performance by the parties hereto of their respective obligations hereunder; provided that the Concessionaire shall not be liable for the payment of any portion of such losses, claims, damages, liabilities or related expenses that are found by a final and non-appealable decision of a court of competent jurisdiction to have resulted from any Indemnitee's negligence or willful misconduct. The agreements in this Section shall survive the termination for any reason of this Agreement.

In the administration of this Agreement, the Dissemination Agent may execute any of its powers and perform its duties hereunder directly or through agents or attorneys and may consult with counsel, accountants and other skilled persons to be selected and retained by it. The Dissemination Agent shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel, accountants or other skilled persons. The Dissemination Agent may resign and be discharged of its duties and obligations hereunder by giving notice in writing of such resignation specifying a date when such resignation shall take effect. Any corporation or association into which the Dissemination Agent in its individual capacity may be merged or converted or with which it may be consolidated, or any corporation or association resulting from any merger, conversion or consolidation to which the Dissemination Agent in its individual capacity shall be a party, or any corporation or association to which all or substantially all the corporate trust business of the Dissemination Agent in its individual capacity may be sold or otherwise transferred, shall be the Dissemination Agent under this Agreement without further act.

Section 11. Beneficiaries. This Agreement shall inure solely to the benefit of the Issuer, the Concessionaire, Borrower Finco, the Dissemination Agent, the Underwriter, and Beneficial Owners, and shall create no rights in any other person or entity.

Section 12. Submission of Documents to the MSRB. Unless otherwise required by law, all documents provided to the MSRB pursuant to this Agreement shall be provided to the MSRB in an electronic format and shall be accompanied by identifying information, in each case as prescribed by the MSRB.

Section 13. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 14. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

Section 15. Notices. Unless otherwise provided herein, all notices, certificates, requests or other communications hereunder shall be given by telephone and promptly confirmed in writing and shall be deemed given when given by telephone or addressed as follows:

Plenary Roads Denver LLC: 400 Burrard Street, Suite 2000
Vancouver, BC V6C 3A6
Attention: Rjan Bains/Rob Low
Telephone Number: (604) 638 3905
Facsimile Number: (604) 638 3906
E-mail: rajan.bains@plenarygroup.com,
rob.law@plenarygroup.com

Plenary Roads Finco LP: 1700 Lincoln Street, Suite 3800
Denver, CO 80203
Attention: Russell Dykstra
Telephone Number: (303) 839 3800
Facsimile Number: (303) 839 3838
E-mail: rdykstra@spencerfane.com

Dissemination Agent: The Bank of New York Mellon
525 William Penn Place
Pittsburgh, PA 15259
Attention: Kevin Rockwell
Telephone: 412-234-7984
Facsimile: 412-236-9271
Email: kevin.rockwell@bnymellon.com

Each of the above parties may, by written notice given hereunder to the others, designate any further or different addresses to which subsequent notices, certificates, requests, or other communications shall be sent. In addition, the parties hereto may agree to any other means by which subsequent notices, certificates, requests or other communications may be sent.

Section 16. Miscellaneous. The other parties hereto hereby authorize the Dissemination Agent to rely upon and comply with notices, instructions and directions sent by e-mail, facsimile and other similar unsecured electronic methods (but excluding on-line communications systems covered by a separate agreement (such as the Dissemination Agent 's Inform or CASH-Register Plus system)) ("**Electronic Methods**") by Persons believed by the Dissemination Agent to be authorized to give such communications on behalf of such parties. The Dissemination Agent shall have no duty or obligation to verify or confirm that the Person who sent such communication is, in fact, a Person authorized to give the same on behalf of such party (other than to verify that the signature on a facsimile is the signature of a person authorized to give such communication on behalf of such party); and the Dissemination Agent shall have no liability for any losses, liabilities, costs or expenses incurred or sustained by any other party or any Person as a result of such reliance upon or compliance with such notices, instructions and directions. The other parties hereto agree to assume all risks arising out of the use of Electronic Methods to submit communications to the Dissemination Agent, including without limitation the risk of the Dissemination Agent acting on unauthorized instructions, and the risk of interception and misuse by third parties.

[signatures on the following page]

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Agreement as of the day and year first written above.

PLENARY ROADS DENVER LLC

By: _____
Name: Phil Dreaver
Title: Vice President and Director

By: _____
Name: Brian Clark
Title: Vice President

**PLENARY ROADS FINCO LP
BY PGC US FINCO GP LTD., in its capacity
as General Partner**

By: _____
Name: Phil Dreaver
Title: Vice President and Director

By: _____
Name: Brian Clark
Title: Vice President

**THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A., as Dissemination Agent**

By: _____
Name:
Title:

Signature Page
to
Continuing Disclosure Agreement

EXHIBIT A

**NOTICE TO MSRB OF
FAILURE TO FILE ANNUAL FINANCIAL INFORMATION**

Name of Obligor: _____

Name of Bond Issue: \$20,360,000 Colorado High Performance Transportation Enterprise U.S. 36 and I-25 Managed Lanes Senior Revenue Bonds Series 2014A

Issued on February 26, 2014

NOTICE IS HEREBY GIVEN that [Name of the Obligor] has not provided its [audited financial statements] [information required by Section 3[(a)][(b)] with respect to the above-named Bonds as required by that certain Continuing Disclosure Agreement dated February 26, 2014 (the "Agreement") among Plenary Roads Denver LLC, Plenary Roads Finco LP, and The Bank of New York Mellon Trust Company, N.A., as dissemination agent). [Name of the Obligor] represented that [audited financial statements] [information required by Section 3[(a)][(b)] of the Agreement will be filed by [date].

Date: _____

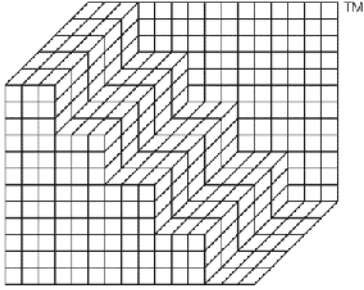
THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A., as dissemination agent

By: _____

Title: _____

APPENDIX H
TRAFFIC AND REVENUE STUDY

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Buro Happold

US36 / I-25 Managed Lanes
Updated Traffic and Revenue Study

030715

4 February 2014

Revision 00

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| Revision | Description | Issued by | Date | Checked |
|----------|------------------------------|-----------|--------------------|---------|
| 00 | US36 / I-25 T&R Study Update | PDB | 4 February 2013 | AC |

This report was prepared for the sole benefit, use and information of Plenary Group for the purposes set out in the report or instructions commissioning it. The liability of Buro Happold Limited in respect of the information contained in the report will not extend to any third party. We acknowledge that Plenary Group will use the report in the financing of the project and consent to its inclusion in materials submitted to potential purchasers of bonds to finance costs of the project, to the United States Department of Transportation in connection with its provision of credit assistance to the project and to Northleaf/PRD LenderCo LP in connection with its provision of subordinated loans to the project, including by the Underwriter in a preliminary official statement and a final official statement to be circulated to potential purchasers of the bonds. We understand that potential purchasers of the bonds will review the report in evaluating technical and commercial aspects of the Project.

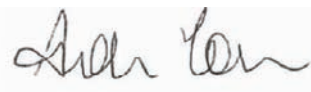
Buro Happold Ltd

Author **P Bates**

Signature

Date **4 February 2014**

Approved **A Comer**

Signature 

Date **4 February 2014**

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1 Introduction

1.1 Reliance and Disclaimer

This report was prepared for the sole benefit, use and information of Plenary Group for the purposes set out in the report or instructions commissioning it. The liability of Buro Happold Limited in respect of the information contained in the report will not extend to any third party. We acknowledge that Plenary Group will use the report in the financing of the project and consent to its inclusion in materials submitted to potential purchasers of bonds to finance costs of the project, to the United States Department of Transportation in connection with its provision of credit assistance to the project and to Northleaf/PRD LenderCo LP in connection with its provision of subordinated loans to the project, including by the Underwriter in a preliminary official statement and a final official statement to be circulated to potential purchasers of the bonds. We understand that potential purchasers of the bonds will review the report in evaluating technical and commercial aspects of the Project.

The projections of traffic and revenue entitled “the Sponsor Base Case” within this document represent Buro Happold’s best estimates of the most likely outturn. While they are not precise forecasts, they do represent, in our view, a reasonable expectation for the future, based on the most credible information available as of the date of this report. However, the estimates contained within this document rely on numerous assumptions and judgments and are influenced by external circumstances that can change quickly and can affect income. In addition, it has been necessary to base most of this analysis on data collected by third parties. While some of this has been independently checked, a significant amount has not, and Buro Happold does not guarantee the accuracy of this third party data.

1.2 Background

Buro Happold was appointed by the Plenary Group (Plenary) in August 2012 to undertake an assessment of the potential future traffic and revenue levels for the US36/I-25 Managed Lanes project between Denver and Boulder in Colorado and to derive Investment Grade Base Case Traffic forecasts related to the project. The proposed concession involves both new build on the US36 and the operations and maintenance of existing sections of managed lane on the I-25 (known as the I-25 Express Lanes).

This current report, which supersedes earlier reports, has been prepared for a number of reasons:

- Earlier reports were prepared to support Plenary submissions to the High-Performance Transportation Enterprise (HPTE), and therefore contained a substantial amount of information related to what we believed were the differences between our forecasts and those prepared for Colorado Department of Transport (CDOT) and HPTE, which appeared to be slightly higher. These references have been removed from this version.
- This report includes additional sensitivity test results and other background information on the model and its output that were not included in earlier reports.
- The situation regarding the HoV3+ trigger has now been confirmed and the current situation is reflected in this report (noting this did not require a change to the forecasts prepared to support the Plenary bid to HPTE).
- Almost a year on from the original report date, there is additional data regarding the traffic and revenues on the existing I-25 Express Lanes, and we have clarified with CDOT and HPTE the differences between the monthly reported revenues and the management account revenues.

- To provide the United States Department of Transportation, others, lenders, bond holders, and potential lenders and bond holders, with information about the US36/I-25 project as described in Section 1.1.

While this report therefore contains some additional and different information from earlier reports, it should be stressed that the “Sponsor Base Case” revenue forecasts contained within this report remain unchanged from that reported in earlier reports. The Sponsor Base Case represent, in the view of Buro Happold, a “Most Likely” forecast (sometimes termed the P50 forecast).

It should also be noted that there have been some changes to the reported number of toll transactions (which are solely used as an input into the calculation of operating costs) from earlier versions of this report to reflect the current need to address the split between:

- Transponder (TAG) users, where a transaction is now defined as a trip that involves passing under a number of consecutive toll gantries (a “trip transaction”)
- License Plate (i.e. non TAG) users, where a transaction is defined as each separate pass under each individual toll gantry, irrespective of whether it is part of a longer trip under a series of gantries (a “gantry transaction”).

The term “Investment Grade” has arisen over the years to define a revenue forecast that has been undertaken to an appropriate standard, and presented in an appropriate manner, to allow investors to make an informed decision on the downside risks and upside benefits of investing in a project (from a revenue perspective). In our experience an Investment Grade forecast should be derived from models that have been validated against observed data, be based on parameters that reflect the nature of the specific project area, and clearly identify all assumptions, explain key risks and quantify their impact. Investment Grade studies should be sufficiently comprehensive to support an Investment Grade rating assigned by one of major credit rating agencies.

1.3 The US36 / I-25 Managed Lanes Project

The US36 / I-25 Managed Lanes project (the Project) is shown in Figure 1-1 and 1-2 overleaf, and can be considered as three sections.

The first section is the two existing I-25 Express Lanes. These were originally built as seven miles of High Occupancy Vehicle (HOV) and Rapid Bus Transit lanes between Downtown Denver and US 36. In June 2006 they opened to traffic as Managed Lanes (i.e. solo drivers or SOV were also allowed to use the HOV lanes if they paid a toll). Tolls are paid using either a TAG or are post-paid via License Plate recognition. The I-25 Express Lanes operate inbound only in the morning and are reversed to operate outbound only for the rest of the day. Toll sections are S1 and N1 on Figure 1-2.

The next section, where construction has recently commenced, is an extension along the US36 of the I-25 Express Lanes from the I-25 to McCaslin Blvd, involving conversion of short length of existing HOV lane at the Denver end of the project and construction of new lanes to the west. The scheme will have one lane in each direction and will operate 24 hours a day. Toll sections are S2 to S7 and N2 to N6 on Figure 1-2. In this report, Phase 1 (or P1) means both the existing I-25 Express Lanes project and the extension on the US36 to McCaslin Blvd combined. The unequal number of toll sections northbound and southbound arises as a consequence of the non-symmetrical access to the US36 at the Broadway Boulevard interchange.

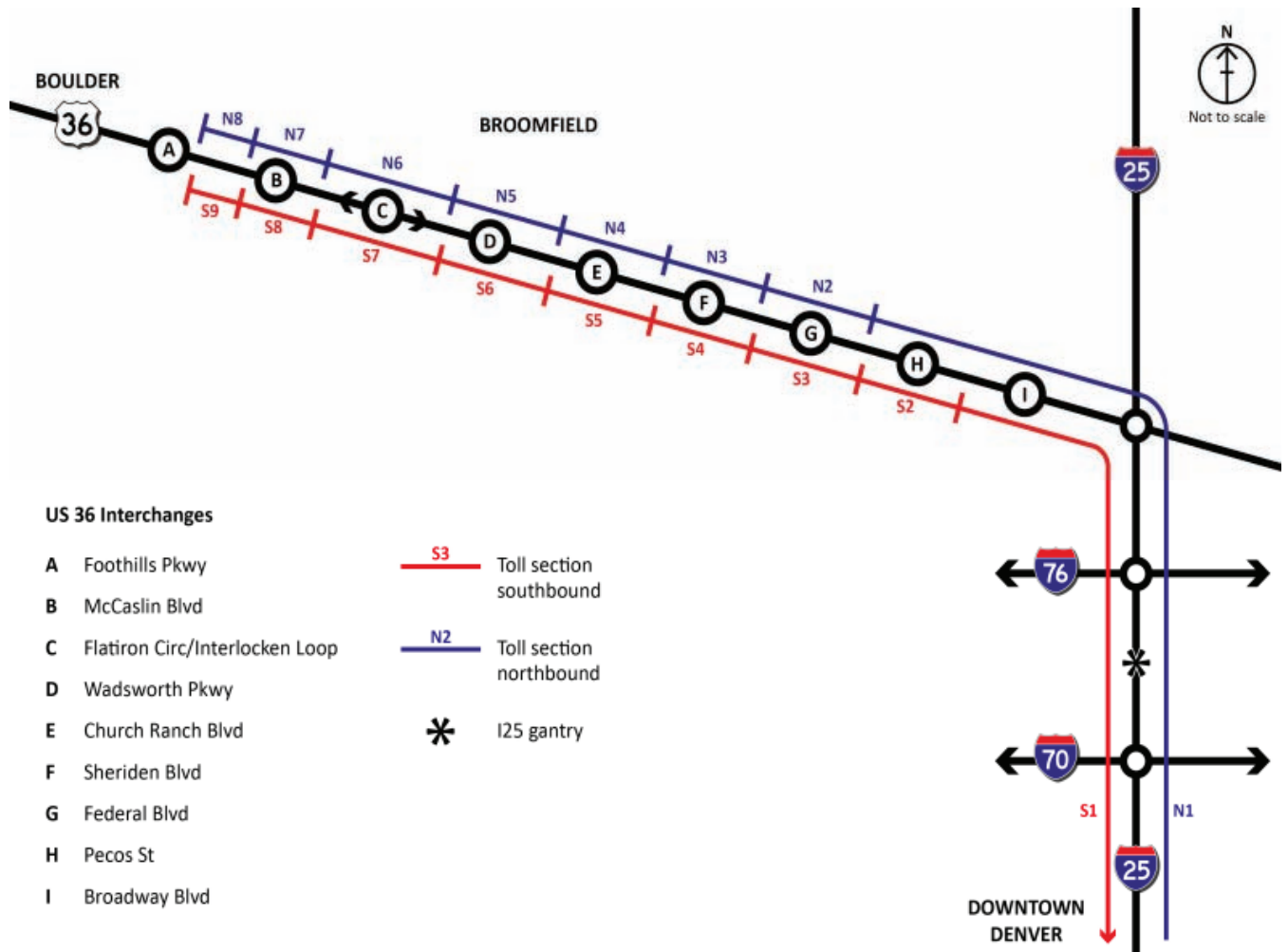
The last section is an extension of the Managed Lanes from the Phase 1 terminus east of McCaslin Blvd to the edge of Boulder at the Foothills Parkway. Toll sections are S8 to S9 and N7 to N8 on Figure 1-2. In this report the I-25, the US36 between the I-25 and McCaslin Blvd, and the US36 between McCaslin Blvd and the Foothills Parkway at Boulder, are all together defined as Phase 2 (or P2).

Figure 1—1 Location of the US36 and I-25 Managed Lanes



Source: Colorado HPTE

Figure 1—2 US36 and I-25 Toll Sections



1.4 The HOV3+ Trigger

1.4.1 Overview

The existing I-25 Express Lanes permit free use by HoV2+ vehicles (i.e. a vehicle with two or more people in it). However, the Project Concession includes a “trigger” for changing from the existing system where HOV2+ can use the Managed Lanes for free (both I-25 and US36) to a system where only HOV3+ can use the Managed Lanes for free. The trigger events for this change, as defined in the Concession Agreement, are as follows:

Upon the earliest to occur of any of the following:

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

Item (e) on this list has now been triggered by a resolution TC-3052 which provides date certainty of 1 January 2017 for the move from HOV2+ to HOV3+ on the I-25 and US36 Managed Lanes. While this firm date has therefore been assumed, as discussed below in the next section, it is possible that this trigger will be reached before that date as a consequence of item (d). Such an event (i.e. the early triggering of the switch to HoV3+) would be an upside benefit as it is not included in current forecasts.

1.4.2 Historic Hourly HOV Traffic on the I-25

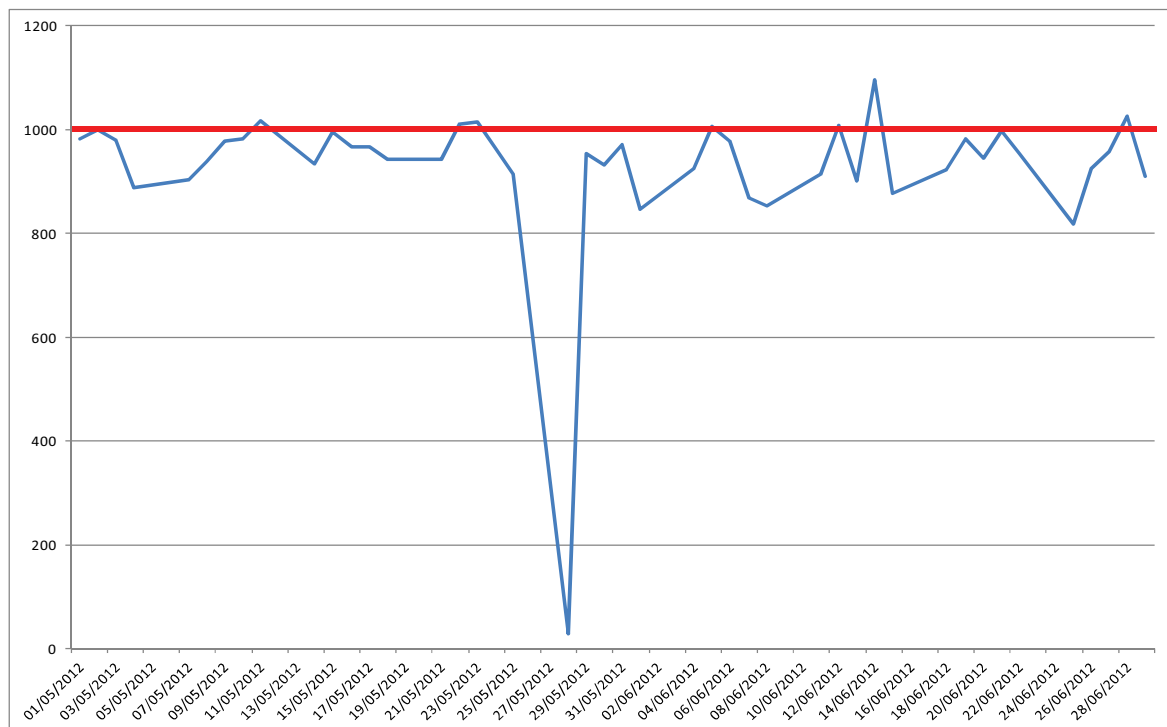
As discussed above, the concession agreement states that the HOV3+ trigger will be activated if “*The Hourly Volume of HOV 2+ Vehicles travelling in one direction during Peak Periods measured at any tolling point, exceeds 1,000 Passenger Car Equivalent within the Managed Lanes on any three (3) days in four (4) out of six (6) consecutive weeks*”.

To consider how likely this outcome is before the date certain trigger of 1 January 2017, we undertook an analysis of hourly traffic flows in May and June 2012. The average hourly values in these months, as reported by HPTE, were as follows:

- May 2012 – 889 in the AM and 813 in the PM
- June 2012 – 830 in the AM and 952 in the PM

However, these are averages over the peak periods. We therefore looked in more detail at the specific 15 minute data to identify the peak hour flow within the longer peak periods. Figure 1-3 shows the highest hourly flow in each week day over a nine week period from May to June 2012 (and noting the low value is for May 28 – Memorial Day). Looking at the hours in more detail one can see that no one hour is consistently the busiest and there is a mix of AM and PM peak hours.

Figure 1—3 I-25 Busiest HOV Traffic Hour in May and June 2012



As can be seen from the above graph, individual days are already regularly exceeding the 1000 vehicle threshold. Applying the trigger criteria of “*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*” we can see:

- Week 1 – Traffic is within 2% of the trigger of 3 days over 1000 (only 4 days)
- Week 2 – Traffic is within 2% of the trigger of 3 days over 1000
- Week 3 – Traffic is within 3% of the trigger of 3 days over 1000
- Week 4 – Traffic is within 4% of the trigger of 3 days over 1000
- Week 5 – Traffic is within 7% of the trigger of 3 days over 1000 (this is the public holiday week)
- Week 6 – Traffic is within 8% of the trigger of 3 days over 1000
- Week 7 – Traffic is within 9% of the trigger of 3 days over 1000
- Week 8 - Traffic is within 5% of the trigger of 3 days over 1000
- Week 9 - Traffic is within 7% of the trigger of 3 days over 1000

1.4.3 Activating the Trigger Earlier than Anticipated

As mentioned above, the forecasts assume the trigger event to go from HoV2+ to HoV3+ will be the firm date of 1 January 2017. However, given the analysis above, it is possible this trigger event will be earlier. For example, a peak hour HOV traffic increase of just 4% would trigger a switch from HOV2+ travelling free on the managed lanes to HOV3+ travelling free on the Managed Lanes. As discussed further below, the Buro Happold traffic model assumes car traffic increase by just over 7% in the AM and PM peaks over the period 2010 to 2015. Taking these traffic model growth rates would mean the trigger would be hit in May/June 2015 (if the target is 4%). As discussed further below, this change has a material positive impact on anticipated project revenues.

1.5 The DRCOG US36 Sub-Model and the Buro Happold Approach to Forecasting

CDOT and HPTE made available to bidders outputs from an existing traffic model, which was a sub model of the region wide Denver Regional Council of Governments (DRCOG) transportation model, including base year (2010) trip tables and networks and future year (2015, 2025 and 2035) trip tables and networks. We also understand that this DRCOG US36 sub-model was used to derive forecasts that were used by CDOT and HPTE to support their successful application for TIFIA funding of the US36 Phase 1 project.

We have reviewed documentation related to that model and some of the revenue estimates derived from it, which were described as being “*of investment-grade caliber, having incorporated the results from significant data collection efforts and refinements to the regional travel demand model*”. From this review we concluded this DRCOG US36 sub-model was developed using industry standard methods and practices. While this model provided the starting point, the Buro Happold model is different and has undertaken extensive independent validation.

Given the available data and models, and the needs of the study, Buro Happold decided to develop traffic and revenue (T&R) forecasts using a two stage process:

- A network model, based on the DRCOG US36 sub-model provided by CDOT and HPTE was developed by Buro Happold to identify route choice between General Purpose Lanes (GPL) and the Managed Lanes (ML) in the corridor for a selection of weekday hours and a selection of years.
- The output from this network model was then transferred into a spreadsheet based revenue model and adjusted through a series of factors to derive the required yearly revenue and transaction data.

1.6 Contents of this Report

The remainder of this report contains 5 further chapters:

- The Study Area
- Base Year Traffic Model Development
- Future Year Model Inputs
- Traffic and Revenue Forecasts
- Conclusions

The report is also supported by a number of appendices.

2 The Study Area

2.1 Background on Denver

Denver is the largest city in Colorado with a population of around 600,000, while the Denver-Aurora-Boulder Statistical Area has a population of around 3.1 million. The state of Colorado has a population of just over 5.1 million. The Denver Metropolitan Statistical Area is said to be the 18th largest metro economy in the United States.

The INRIX Urban Mobility report of 2012 identifies Freeways in the Denver region as having a Travel Time Index of 1.32 (a value of 1.30 indicates a 20 minute free flow trip takes 26 minutes in the peak) and the city is ranked 6th worst out of all cities considered (and with an index of 1.32 is considered as bad as New York-Newark).

As the largest city region within a 500 miles radius it has become a natural location for storage and distribution of goods and services to the Mountain States. The same geography also means Denver has a considerable government presence, with many federal agencies based or having offices in the area, along with companies based on Government defense and aerospace projects. Energy and mining are also still important in Denver's economy, although they are not as dominant as in the past. Finally, Denver's location and elevation means it is the largest city in the U.S. to offer a 'one-bounce' real-time satellite uplink (i.e. one transmitting earth station to one receiving earth station via just one satellite) to six continents in the same business day and related high tech companies had a boom in Denver in the mid to late 1990s.

The "Geographical" benefits of Denver region, combined with an attractive lifestyle, appear to be the reasons why people and businesses have, and continue, to move to the region, and the local labor markets are currently faring much better than many other locations. According to data available in early 2012 the state's growth rate ranked sixth fastest among rates for the 50 states, up from 40th the year before. The state also ranked among 12 states that were expected to return to their peak pre-recession job levels by 2013, according to analysis by IHS Global Insight.

The Metro Denver Economic Development Corporation (Metro Denver EDC) is an affiliate of the Denver Metro Chamber of Commerce, and is a regional economic development entity in which many area economic development groups have joined together to represent, and further, the interests of an entire region. Their September 2013 Economic Report confirms this strong economic recovery is continuing, reporting:

- *Existing-home sales surged to a nine-year high in July, and coupled with low inventory, spurred demand for new residential construction. Residential building permits were up by more than 50 percent over-the-year in July, and according to economists from Regional Economic Models Inc., new housing starts between July 2012 and 2013 led to almost 9,000 total jobs in Colorado.*
- *Compared with July 2012, employment in Metro Denver increased 2.7 percent, adding 38,100 jobs. Employment in nine of the 11 supersectors was higher over-the-year, with only manufacturing (-0.2 percent), and government (-0.2 percent) declining. Similar to the monthly job gains, natural resources and construction rose the most during the period by 7.4 percent, adding 5,900 jobs. Professional and business services showed the second-largest increase of 5.5 percent or 14,100 jobs.*

2.2 Broomfield and Boulder

The employment in the US36 corridor is focused around Broomfield and Boulder and highlights the impact of high tech companies on the region.

A local newspaper (the Daily Camera) undertakes an annual survey of the largest employers in Boulder and Broomfield counties. The publishers of the survey acknowledge there may be some inconsistencies - not all employers give employment figures by individual site and some employers chose not to respond to the survey – resulting in the need to estimate some values. However it does provide a useful snap shot on the sorts of business locating in the US36 (Boulder-Broomfield) corridor.

The top 20 firms in the 2013 survey (all with over 500 employees in the area) are listed in the table below in Table 2-1, along with the results for 2012. The list is dominated by technology companies, with the largest, IBM, on the outskirts of Boulder, although many are based in Broomfield. Further, the top 4 technology firms in the top 20 (IBM, Ball Corp, Level 3, and Oracle), deliver 40% of the jobs in the top 20 list.

What can also be seen from the Table 2-1 is a confirmation of the on-going economic recovery in the region, with most employers showing an increase in the number of employees. The top 20 employers in the region were recorded in the survey as having 22,706 employees in 2012. The equivalent number for the top 20 in 2013 (excluding part time employees) is 24,500, an increase of 8%.

The Broomfield area is also home to the Rocky Mountain Metropolitan Airport. The airport has around 120,000 aircraft operations a year. This airport is included in the National Plan of Integrated Airport Systems for 2011–2015 and is categorized as a reliever airport. Due to different operating requirements between small general aviation aircraft and large commercial aircraft, general aviation pilots often find using a congested commercial service airport can be difficult. In recognition of this, the FAA has encouraged the development of high capacity general aviation airports in major metropolitan areas. These specialized airports, called relievers, provide pilots with attractive alternatives to using congested hub airports. They also provide general aviation access to the surrounding area. The airport is home to a large general aviation population including a fair amount of corporate traffic and several flight schools.

Finally, the region is home to the University of Colorado Boulder (also commonly referred to as CU-Boulder). Its 600 acre campus is located in Boulder. It is a public research university located in Boulder and is seen as the flagship university of the University of Colorado system and considered one of the thirty "Public Ivy League" schools. The university offers around 3,600 courses in 150 fields of study, in arts and sciences, business, education, engineering, environmental design, journalism, law, and music. It has seventy-eight degree programs at the bachelor's level, 56 at the master's level, and 53 at the doctoral level. It also has seventy-eight research centers and institutes exploring the arts and sciences, business, education, engineering, environmental design, journalism, law, music and other disciplines. It currently has around 30,000 enrolled students.

Table 2—1 Major Private Sector Employers in Boulder and Broomfield in 2012 and 2013

| Ranking | Organization | Employees in Boulder and Broomfield | Comment |
|-------------------------------|----------------------------|---|--|
| <u>2013 = 1</u> 2012 = 1 | IBM Corp | <u>2013 = 2,800 (Estimate)</u> 2012 = 2,800 (Estimate) | A large site at Boulder provides Business Continuity and Resiliency Services. |
| <u>2013 = 2</u> 2012 = 3 | Ball Corp | <u>2013= 2,545</u> 2012 = 2,033 | Develops and manufactures spacecraft, advanced instruments and sensors, components and other technologies. |
| <u>2013 = 3</u> 2012 = 2 | Level 3 Communications Inc | <u>2013 = 2,454</u> 2012 = 2,346 | An international operator of advanced fiber-based communications. |
| <u>2013 = 4</u> 2012 = 4 | Oracle Corp | <u>2013 = 1,980 (Estimate)</u> 2012 = 1,975 (Estimate) | Provides integrated business software and hardware systems. |
| <u>2013 = 5</u> 2012 = 5 | Covidien | <u>2013 = 1,830</u> 2012 = 1,870 | A global health care company with a range of product lines in three segments: medical devices, pharmaceuticals and medical supplies. |
| <u>2013 = 6</u> 2012 = 6 | Walmart Stores | <u>2013 = 1,450 (Estimate)</u> 2013 = 1,400 (Estimate) | Stores in Boulder and Broomfield counties. |
| <u>2013 = 7</u> 2012 = 14 | Urban Lending Solutions | <u>2013 = 1,389</u> 2012 = 698 | Pittsburgh-based Urban Lending Solutions is a provider of professional services to the mortgage industry. |
| <u>2013 = 8</u> 2011 = 7 | Seagate Technology | <u>2013 = 1,307 (+41 part time)</u> 2012 = 1,101 | Manufactures and markets hard disk drives and storage technologies for a wide range of applications. |
| <u>2013 = 9</u> 2012 = 18 | King Soopers | <u>2013 = 916 (+ 726 part time)</u> 2012 = 600 | A division of Kroger, a Cincinnati-based grocery chain operator. |
| <u>2013 = 10</u> 2012 = 9 | Hunter Douglas | <u>2013 = 868 (+11 part time)</u> 2012 = 866 | A manufacturer of custom-made window fashions and producer of architectural products. |
| <u>2013 = 11</u> 2012 = 8 | Emerson | <u>2013 = 834</u> 2012 = 871 | Emerson Process Management's Boulder location delivers Micro Motion flow and density measurement technologies |
| <u>2013 = 12</u> 2012 = 10 | Target Corp | <u>2013 = 800 (Estimate)</u> 2012 = 800 (Estimate) | An upscale discount retailer. |
| <u>2013 = 13</u> 2012 = 11 | Intrado Inc | <u>2013 = 774</u> 2012 = 752 | A leader in 911 infrastructure, systems and services and plays a key role in defining, building and maintaining this system. |
| <u>2013 = 14</u> 2012 = 15 | DigitalGlobe Inc | <u>2013 = 701</u> 2012 = 688 | A global provider of commercial, high-resolution, world imagery products and services |
| <u>2013 = 15</u> 2012 = 13 | Staples | <u>2013 = 700 (Estimate)</u> 2012 = 700 (Estimate) | An office supply company |
| <u>2013 = 16</u> 2012 = 12 | Amgen | <u>2013 = 700</u> 2012 = 725 | Develops and delivers human therapeutics in the fight against cancer, kidney disease, arthritis, bone disease and other illnesses. |
| <u>2013 = 17</u> 2012 = 20 | Whole Foods Market Inc | <u>2013 = 646 (+230 part time)</u> 2012 = 599 | Whole Foods and Health Foods Market. |
| <u>2013 = 18</u> 2012 = 17 | Lockheed Martin | <u>2013 = 606</u> 2012 = 636 | Global security company engaged in the research, design, development, manufacture, and integration of systems |
| <u>2013 = 19</u> 2012 = 16 | Sandoz | <u>2013 = 600</u> 2012 = 650 | The generic pharmaceuticals division of Switzerland-based Novartis |
| <u>2013 = 20</u> 2012 = 19 | TransFirst Holdings Inc | <u>2013 = 600</u> 2012 = 596 | Merchant services and credit card processing. |

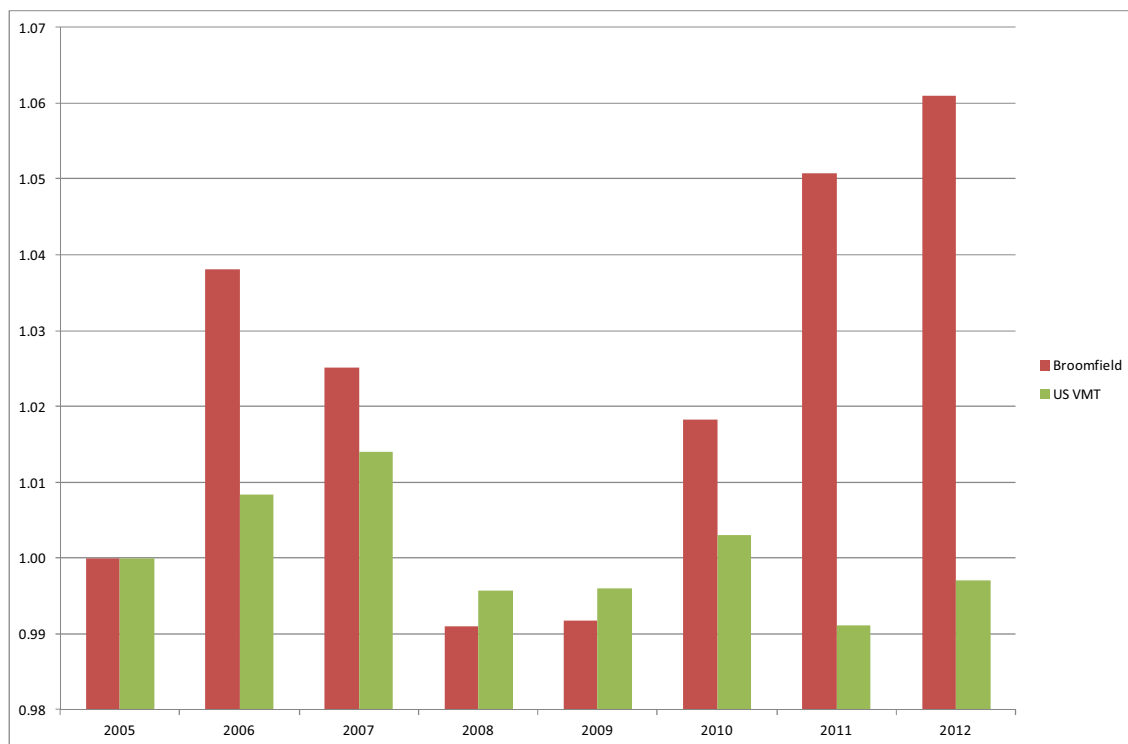
Source: The Daily Camera

2.3 US36 Traffic Flow Data

There is a significant volume of traffic data for both the US36 and I-25 available from CDOT and this was utilized to validate the Buro Happold traffic model. This data, and in particular that from the continuous traffic count site on the US36 at Broomfield, can also be used to look at historic traffic growth on the US36 and to present typical daily traffic profiles.

The first analysis undertaken is to contrast year on year traffic growth on the US36 at Broomfield with the year on year change in total vehicle miles (VMT) in the US. This is shown in Figure 2-1 (growth is an index with the year 2005 = 1.0)

Figure 2—1 Year on Year Traffic Growth on the US36 and US VMT (2005-2012)

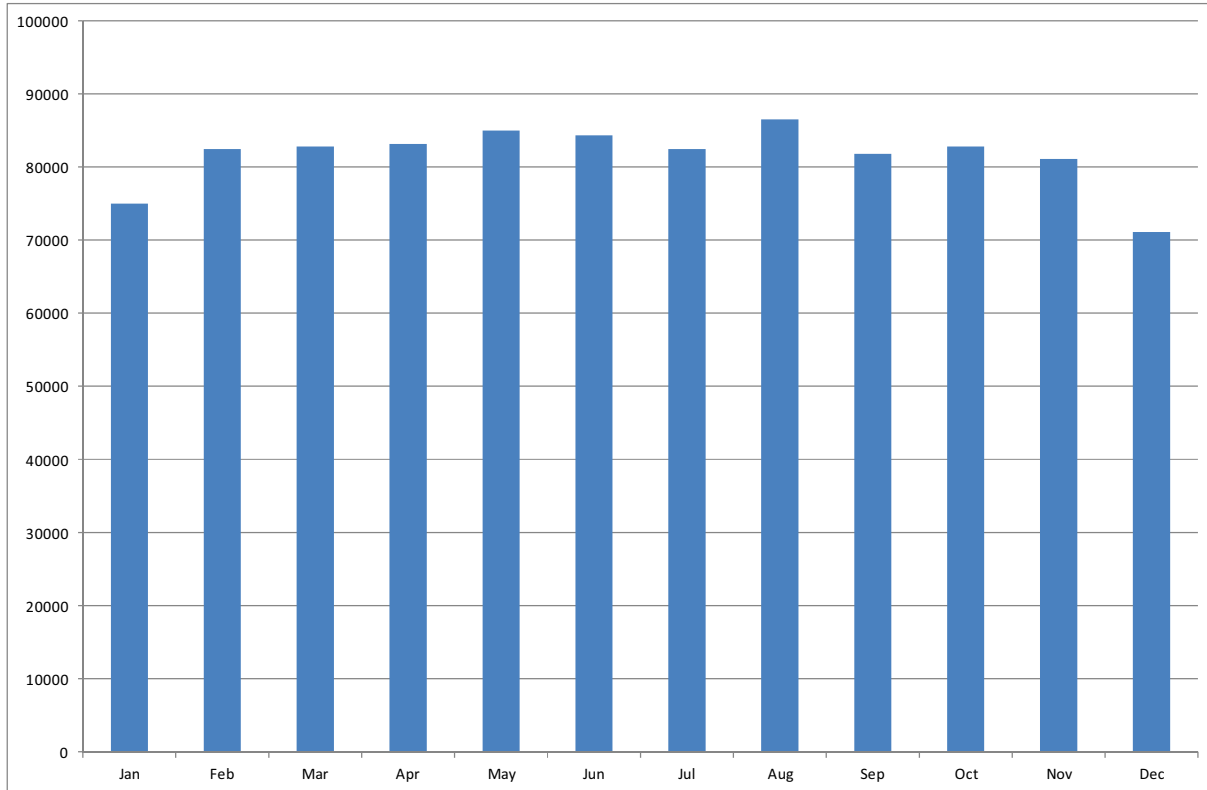


Source: CDOT and USDOT Data and Buro Happold analysis

The Annual Average Daily Traffic (AADT) on the US36 at Broomfield was 76,900 in 2005, and this increased to 81,600 in 2012. Both the US36 and VMT in the US as a whole show a decline in 2008 due to the recession. While traffic on the US36 has picked up since, traffic levels in general across the US have not. This is consistent with the earlier analysis which showed the Denver region was recovering from the 2008 recession more strongly than the US as a whole.

The same US36 traffic count site at Broomfield has also been analyzed to present the monthly traffic profile. This is shown in Figure 2-2 below (average daily traffic per month).

Figure 2—2 Monthly Traffic Profile on the US36 at Broomfield (2012)



Units: Average Daily Traffic per Month

Source: CDOT Data and Buro Happold analysis

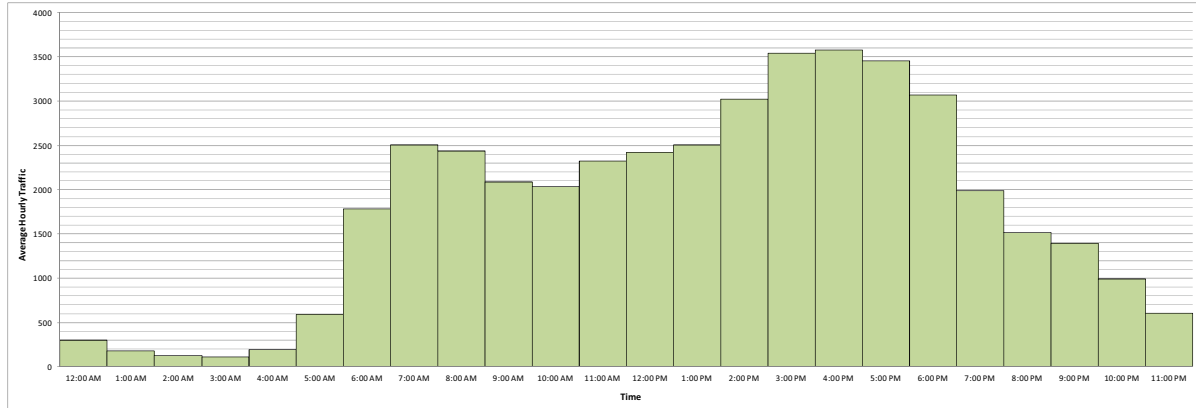
As can be seen from the above figure, traffic is lowest in the winter, especially January, and highest in the summer months, however the variation is not significant, with most months (except January and December) being no more than 4% more or less than the yearly average.

The same traffic count site data has also been analyzed to present a typical weekday profiles for eastbound and westbound traffic. These are shown in Figures 2-3 and 2-4.

At this location (Broomfield) the corridor shows a clear westbound AM peak and an eastbound PM peak. However, this pattern is not replicated along the whole corridor, with the reverse being seen at the Denver end of the corridor (i.e. eastbound AM and westbound PM), with the switch over point being at Federal Boulevard on the western edge of the Denver urban area. This can be seen more clearly later in the report when the traffic model validation is presented.

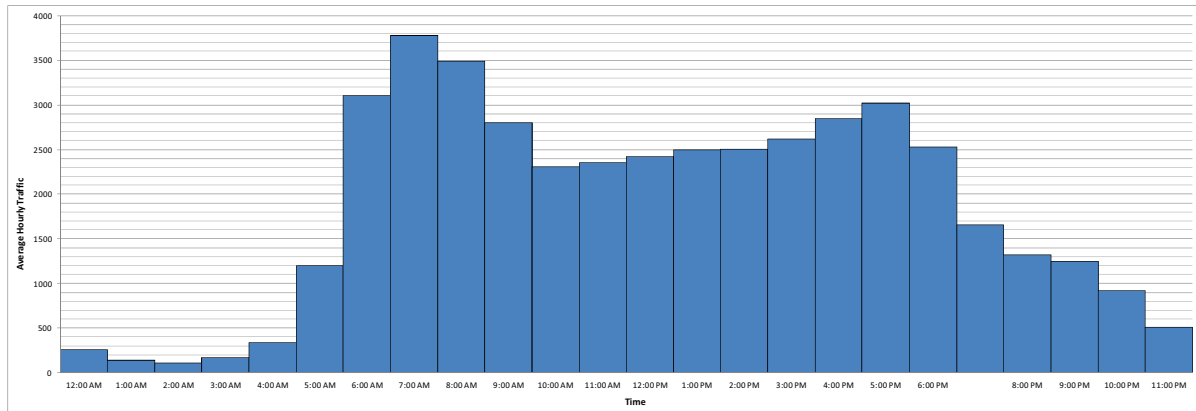
However, all locations show a clear differentiation between the peak and Interpeak period, suggesting that traffic levels on the US36 have not reached the point where the peaks have spread into the Interpeak periods. It is also worth noting the relatively early PM peak, starting to build up at 2pm, which can also be seen in the journey INRIX speed data discussed next.

Figure 2—3 Weekday Eastbound Traffic Profile on the US36 at Broomfield (2011)



Source: CDOT and Buro Happold analysis

Figure 2—4 Weekday Westbound Traffic Profile on the US36 at Broomfield (2011)



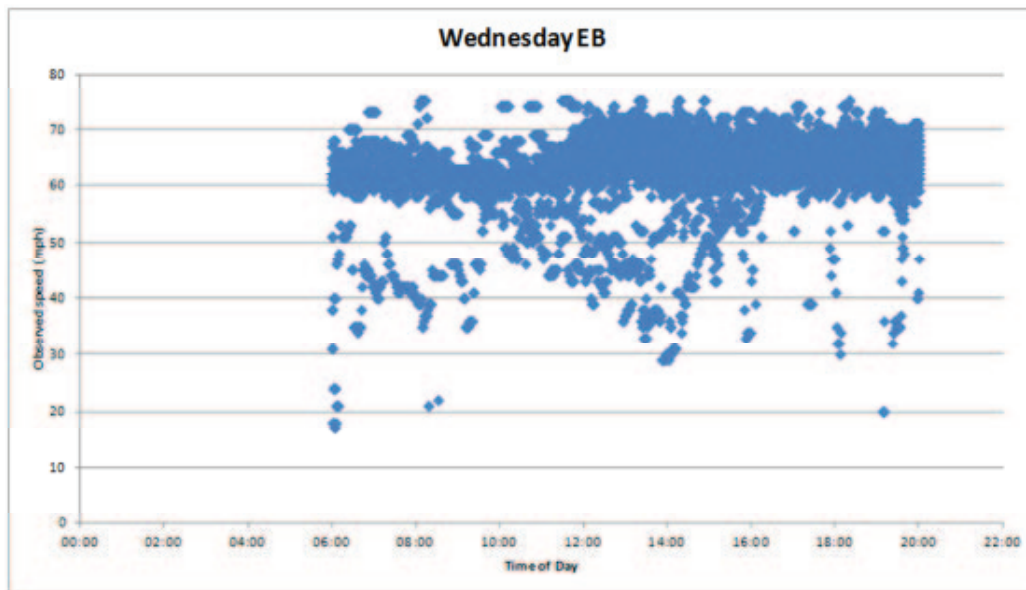
Source: CDOT Data and Buro Happold analysis

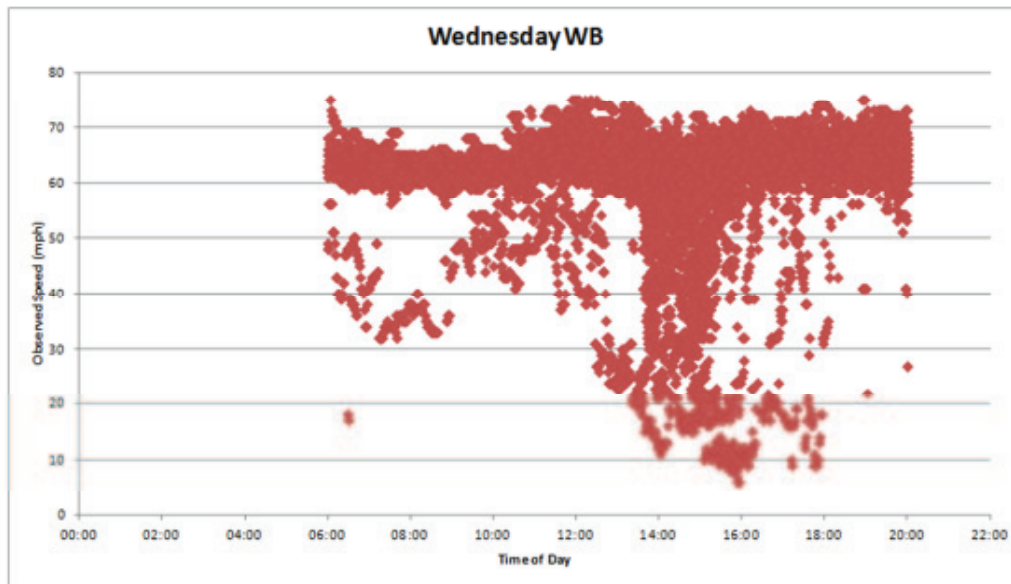
2.4 US36 Traffic Speeds

We obtained INRIX Journey time data for 2011 to assist in the validation of predicted journey times in the Buro Happold traffic model. However, the data also has a wider use in helping visualise the scale of delays and journey time uncertainty currently experienced in the corridor. The graphs below (Figure 2-5) show, for just one section of the US36 (just over 3 miles roughly in the middle of the corridor near Broomfield) the average speed, every minute, for every Wednesday in 2011.

One can clearly see how, for this section, delays are worse westbound than eastbound and that delays do occur in both directions in both peak periods. However, as with the flow data, the journey time data varies by section. As discussed above, one can also see the relatively early start to the PM peak, with low speeds starting after 2pm.

Figure 2—5 Wednesday Observed Eastbound (EB) and Westbound (WB) Speeds on US36 (96th St to CO168)





Source: INRIX and Buro Happold analysis

However, when viewing the INRIX graphs in this report it should be remembered that the vast majority of “measurements” actually sit in the large block of observations in which there is no delay. The sample of slow times is actually swamped by the vast majority of observations where speeds are reasonable. For example, in the westbound PM Peak period (16.30 to 18.00), of the 159,962 journey time observations, only 7,139 (or 4.5%) were below 55 miles an hour. While there is a tendency for some delays in the early afternoon for westbound traffic, these are actually very occasional and could as easily be accident / incident related as congestion / volume related.

The key message from the INRIX data was that, overall, traffic on the US36 still just manages to keep moving, although looking at these occasional low speed periods and the hourly volumes, it is clear the road is close to the tipping point from free flow into congestion.

2.5 HOV on the US36

We have reviewed the occupancy counts in the corridor (US 36) and vehicle occupancy data for the wider Denver Region. Vehicles on US36 were surveyed (by CDOT/HPTE) on a typical weekday for vehicle occupancy and this occupancy data was recorded in for two intervals (7-9am and 2-4pm). From this data it was calculated that a total of 91% of cars in the AM peak (7-9am) are SOV, 7% HoV2 and 2% HoV3+. The values for the Interpeak (2-4pm) were almost identical.

These findings can be contrasted with data from the 2010 US Census American Community Survey. This shows that 10% of commuters in Denver County carpool to work and 70% travel by car alone. The remainder use transit of other modes. Therefore, to derive values that are consistent with the US36 counts the proportion of HOV would be $10 / (10+70) = 13\%$. This value of 13% can be contrasted with 10% from the US36 corridor counts. Given that this does not include non-journey to work trips, the closeness of the two values is reassuring.

Overall, this suggests that over 10% but below 15% of traffic on the US36 is HOV. As shown later, the DRCOG model trip tables show HOV at around at around 14% in the AM Peak, which means that the model should, at worst, be conservative (from a revenue perspective) in terms of HOV assumptions.

2.6 The Existing I-25 Express Lanes

2.6.1 Tolls

The table below shows the TAG tolls on the I-25 Express Lanes in calendar year 2010 (the base year of the Buro Happold traffic model) and the TAG tolls being charged at the end of Fiscal Year 2013 (i.e. June 2013). Licence Plate transactions pay an additional fee on top of the TAG rate, which is around 25% (for example in June 2013 the peak hour License Plate toll is \$5.0 rather than \$4 for a TAG).

Table 2—2 TAG Tolls on the I-25 Express Lanes in 2010 and June 2013

| Year | 0.00-6.00 | 6.00-6.45 | 6.45-7.15 | 7.15-8.15 | 8.15-8.45 | 8.45-10.00 | 10.00-15.00 | 15.00-15.30 | 15.30-16.30 | 16.30-18.00 | 18.00-19.00 |
|------------|-----------|-----------|-----------|-----------|-----------|------------|-------------|-------------|-------------|-------------|-------------|
| 2010 | 0.50 | 1.75 | 2.75 | 3.50 | 2.75 | 1.25 | 0.50 | 1.50 | 2.00 | 3.50 | 1.50 |
| June 2013 | 0.50 | 1.75 | 2.75 | 4.00 | 2.75 | 1.25 | 0.50 | 1.50 | 2.00 | 4.00 | 1.50 |
| Difference | 0% | 0% | 0% | 14% | 0% | 0% | 0% | 0% | 0% | 14% | 0% |

As can be seen from the table above, between the Buro Happold base year of 2010 and June 2013 the only toll increases were for the peak periods (2.5 hours in total), although in July 2013 the toll for a short period in the AM Peak shoulder (6.45am to 7.15am and 8.15am to 8.45am) increased from \$2.75 to \$4.00.

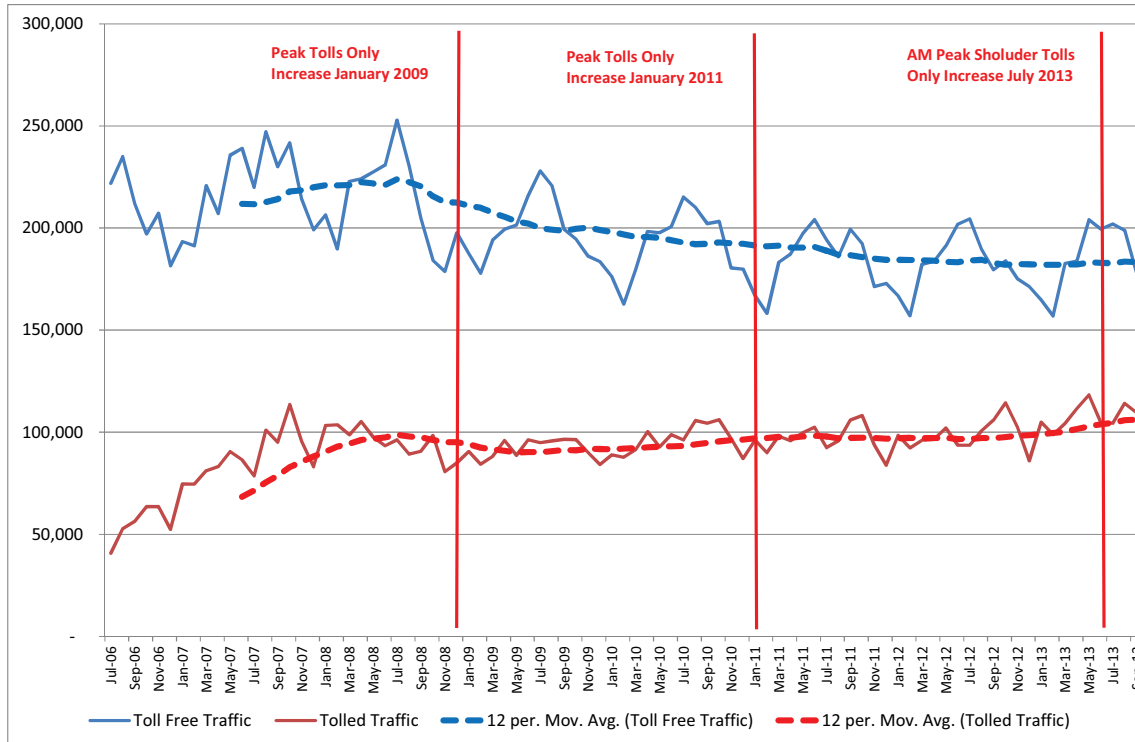
2.6.2 Traffic

The I-25 Express Lanes have been in operation in the current form (i.e. charging a toll for SOV use) since the middle of 2006. We have therefore presented below (Figure 2-6) monthly traffic from opening to September 2013 inclusive (noting the data for July, August and September is preliminary), along with a 12 month rolling average for each value.

This analysis shows tolled traffic levels have remained relative stable (although with a slight dip through the recession years of 2008 and 2009) and with increasing evidence of a growing recovery in 2013. There is no obvious decline in toll paying traffic when peak tolls were increased in January 2011 or AM shoulder peak tolls were increased in July 2013. Traffic does decline in January 2009 when tolls are increased but this is as likely to be a response to the wider economic recession as it is to the toll increase as traffic was already in decline before the increase. Toll paying traffic in the Fiscal Year to June 2013 was 5.9% higher than toll paying traffic in the previous year.

In contrast, un-tolled traffic (largely HOV) has been declining over the period, although it also appears to have stabilized recently and showed only a 0.2% decline for the Fiscal Year to June 2013, compared with the previous year.

Figure 2—6 I-25 Express Lanes Monthly Traffic Since Opening



Source: HPTE Data and Buro Happold analysis

2.6.3 Revenue

When considering historic revenues for the I-25 Express Lanes it should be noted that it has been confirmed by HPTE that the “monthly and quarterly reports”, which are the source of the data describing I-25 Express Lanes traffic flows in the previous section, should be treated with care when considering the revenue values within as they are preliminary estimates. Further, and more importantly, in some years, but particularly FY11/12, there were major year-end reconciliations which actually reflected changes to revenue in previous years (and hence are not reflected in the monthly or quarterly reports). We have therefore taken the monthly revenue from HPTE accounts (which as discussed above are slightly different to the monthly and quarterly reports), but then made three adjustments as follows.

First, in June FY12 the HPTE accounts show there was a one-time revenue payment of an \$865,000 in addition to the normal monthly revenue. This was confirmed by HPTE as being a correction for an error that related to revenues received from E-470 (who collect tolls on behalf of HPTE) in previous years. We have therefore spread this revenue back over the previous years.

Second, in March FY13 there was a one-time deduction of \$72,000 to cover some bad debts that again went back a number of years. We have therefore added this deduction back into the March FY13 revenue and then spread the deduction back over a number of previous years.

Neither of these adjustments alter total revenue as per the HPTE accounts, but simply distribute it differently among some of the years. However, as we wanted to understand “typical” yearly revenue we have made one further small change to ensure the FY13 value was indeed typical. In September 2012 president Obama visited Denver. The I-25 Express Lanes were closed during this visit, including several peak periods. The revenue for that month have been estimated to be \$52,000 lower than normal as a consequence. We have added this back to the September FY13 revenues. This significant impact on revenues in September 2012 has been further confirmed by preliminary I-25 Express Lane traffic numbers for September 2013 provided by the HPTE which suggest average weekday “toll paying” traffic in September 2013 is 24% higher than in 2012. The resultant estimated Fiscal Year revenues are as follows:

- FY07 – 1.070m
- FY08 – 2.497m
- FY09 – 2.357m
- FY10 – 2.462m
- FY11 – 2.680m
- FY12 – 2.632m
- FY13 – 2.731m

Overall, the “normalized” data shows the I-25 Express Lanes are currently running at around \$2.7m a year, although it is believed that revenue (and traffic levels) are since 2010 to the present date are being suppressed by a range of road works including the works on the Union Station (which impacted on the exit ramp from the I-25 Express Lanes into the downtown area) and the recently started works for Phase 1 of the US36 Express Lanes which have resulted in a noticeable drop in traffic levels. These impacts are discussed further below.

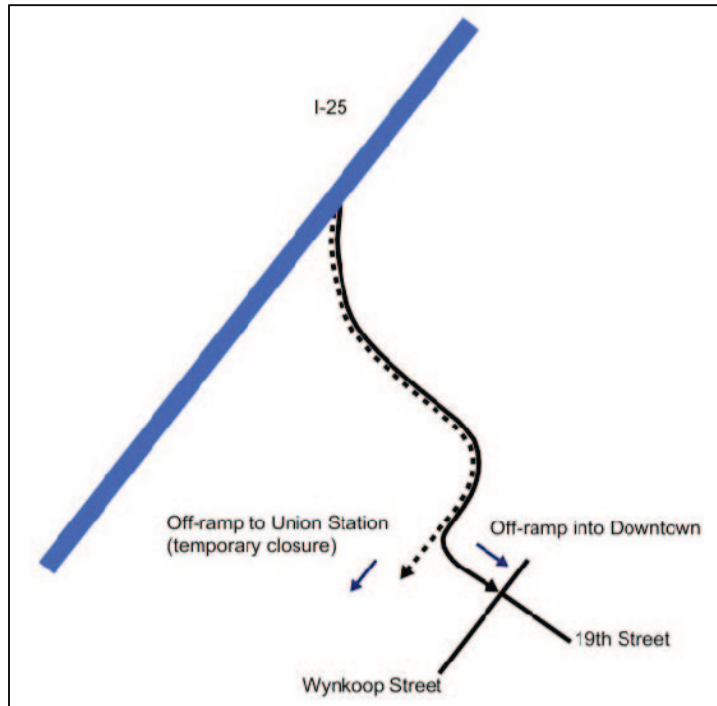
Finally, it should also be noted that the above estimate of \$2.7m for FY13 excludes revenues from penalties and the Plenary Financial Model includes a downward adjustment to the Buro Happold forecasts to reflect bad debts, which, we understand, have been taken into account in the \$2.7m estimate above.

2.7 Temporary Constraints on Traffic and Revenue Growth on the I-25 Express Lanes

The Buro Happold traffic and revenue forecasts were prepared from a base year of 2010, with the first explicitly modelled future year being 2015. Growth between 2010 and 2015 was then interpolated for the forecasts. However, since 2010 there have been two events which we believe have resulted in a temporary constraint on the growth of traffic, which means that current revenue levels are lower than might otherwise have been expected given the output from the 2015 traffic model and the known growth in traffic generally in the Denver region. These impacts are the temporary closure of the Union Station bus exit ramp and the more recent commencement of Phase 1 Works on the US36.

In 2010, the Base Year for the Buro Happold model, the I-25 Express Lanes were fully open, including all exit ramps. However, in February 2012 the bus exit ramp into Union Station was closed as part of the plans to renovate the station. The layout is shown in the figure below.

Figure 2—7 Location of the Bus Exit Ramp on the I-25 Express Lanes



The consequence of this closure was that all buses were forced to exit via the intersection at 19th Street. This additional traffic overloaded this intersection, resulting in delays to the buses (and of course all other users of the I-25 Express Lanes, including those paying a toll). The impact this is having on traffic using the I-25 Express Lanes, and therefore the resultant penalty to users, can be seen by the impact on buses, as reported in the HPTE quarterly monitoring reports.

The first reference to this problem is in the monitoring report for Q4 FY11, although the reference is to February 2011. *“We are monitoring the morning peak exiting onto 19th Street. In February, RTD closed a bus-only exit ramp at that location, which took buses directly from the exit to Union Station. Now, buses must exit with all other vehicles directly on 19th Street. The volume of traffic coming off the Express Lanes is creating a slowdown of travel times, compounded by signalization at that intersection and others in the area”.*

Then, in the Q1 FY12 it says *“This quarter, bus delays were frequent during morning peak hour, most attributed to the construction at Denver Union Station. The closure of the bus exit ramp there continues to be the primary operational issue”.* It also says *“The closure of bus lanes in front of Union Station continues to force all traffic to exit onto 19th Street, causing some delays in the morning peak hour. This closure and exit issue is expected to be resolved in 2013 when Union Station reopens. CDOT and the City and County of Denver are evaluating interim solutions”.*

Every quarterly report since then has also made reference to the impact this closure is having on bus delays, with the most recent report, Q4 FY14, saying “*The closure of bus exit lanes in front of Denver Union Station continues to force all traffic to exit onto 19th Street, causing some delays in the morning peak hour. This closure and exit issue is expected to be resolved prior to 2014 when Union Station reopens*”.

We do not believe the growth in traffic predicted by the Buro Happold model for the years between 2010 and 2015 can be achieved until this constraint on capacity, which is resulting in delays to Managed Lane traffic in the AM peak period, is removed.

However, even when this constraint is removed, it is possibly that full growth will not immediately be achieved because there is now the added issue of the impact of the Phase 1 works on the US36 on traffic levels. At the start of 2013 the works for Phase 1 of the US36 Managed Lanes started and is expected to be completed in early 2015. Despite the adoption of construction methods and phasing designed to minimize impact to users of the US36, there has been a decline in traffic since the works commenced. This highlights how traffic on the US36 was very close to experiencing very significant congestion on a day to day basis, and hence the importance of constructing the new Managed Lanes to provide additional capacity.

To get a sense of this reduction we have contrasted data specifically from the US36 with wider traffic growth data for the US as a whole and, more importantly, the Denver region:

- The USDOT data shows “Urban Arterial” traffic across the US was up by 1.4% and 0.8% in July and August compared with last year.
- The equivalent values for “Urban Arterial” traffic in Colorado (which is dominated by the Denver region given the distribution of population in the state) were up 4.2% and 4.3%.
- In contrast the CDOT permanent counter located at Broomfield shows traffic on the US36 in July and August 2013 is 7.8% lower than the same two months in 2012.

This decline in 2013 on the US36 can also be contrasted with strong growth (despite the economic problems) both in the US as a whole, and particularly, as anticipated, in the Denver region, which is showing a pace of recovery from the recession which is faster than the country as a whole. The decline in traffic on the US36 in 2013 can also be contrasted with the strong observed growth at this location on the US36 between 2009 and 2012, as shown earlier in this report in Figure 2-1. As many users of the I-25 Express Lanes also use the US36 it is inevitable that a decline of traffic on the US36 will also impact, to some degree, on I-25 Express Lane traffic, and while it is hoped the impact will reduce as the construction works progress, full recovery is not expected until the construction works are completed in early 2015.

3 Base Year Traffic Model Development

3.1 The Buro Happold Traffic Network Model

Buro Happold have developed a network model utilizing various files provided by HPTE from the DRCOG US36 sub-model. Network models have three basic constituents:

- **A network of nodes and links** which represent the highway network, and reflecting key characteristics of the network (lengths, lanes, tolls) as well as link type based speed/flow curves (this models how speed declines as flow increases).
- **A series of trip tables** representing vehicle types (SOV, HOV2, HOV3+, Truck etc.) and time slices (peak, shoulder to peak, Interpeak etc.) that identify the number of trips from one geographical location (known as a TAZ) to another.
- **An assignment procedure** which calculates the route a trip will take between TAZs based on the predicted flow and the network characteristics (a complex iterative process but at its simplest involves the identification of lowest cost routes and relies on a Value of Time or VoT to convert time and money to a common unit – termed generalized cost).

The network and trip tables were initially taken from the DRCOG US36 sub-model, although they have undergone reformatting for use by Buro Happold and have been re-validated against observed flow and speed data. This validation process has resulted in some changes to both the networks and the trip tables.

Our model utilizes a bi-criterion traffic assignment method when considering a driver's choice between the GPL and the Managed Lanes which equally considers travel time and cost, thus combining two basic principles:

- **Users' equilibrium:** this principle is to distribute traffic between an origin and destination on potentially several routes to ensure that the final generalized time for each route is the same, taking into account the congestion effect. The various trip tables are assigned simultaneously on the network to correctly model congestion.
- **Price-time assignment:** each vehicle has its own value of time drawn randomly from a log-normal distribution, choosing its travel path based on the generalized cost function. The price criterion is taken into account only to distribute the trips between alternative routes with or without toll.

According to this assignment method, the model compares the routes from each origin to each destination on the basis of the Generalized Cost of each alternative route. This is an industry standard approach and is a frequently used assignment algorithm for situations where a toll is being charged on a route where there is a close and free competing route.

The steps followed in the development of the Buro Happold model were as follows:

- Run the model for 2010 and validate the output against observed data – link counts from CDOT, speeds from INRIX and I-25 Express Lane usage data. The model was validated for 5 time periods – an AM peak hour, an AM shoulder peak hour, an Interpeak hour, a PM peak hour and a PM shoulder peak hour.
- Once the 2010 model was validated, we moved on to deriving forecasts. As the DRCOG US36 sub model growth assumptions (Population and Employment) were similar to those derived for this study, we used the trip table growth rates from 2010 to 2015, 2025 and 2035 from the DRCOG US36 sub model, although we made slight adjustments to reflect the small differences between assumptions on population and employment growth.

It should be noted that the Buro Happold model works in real 2010 dollars, with an assumption that tolls will be indexed to inflation (in addition to any real price increase in response to changing traffic levels or real income growth). This means all toll rates and all revenues reported in this document need to be adjusted to reflect inflation. This inflation adjustment is made in the Plenary Financial Model.

The Buro Happold model also includes a number of other assumptions with regard to use of the Managed Lanes:

- It is assumed all HOV that can use the Managed Lanes for free will use them if it is a benefit to them. This is a conservative assumption because it is proposed to adopt a system where by HOV users must have a transponder (TAG) if they wish to take advantage of toll-free use. In reality, a proportion of potential HOV users won't obtain a TAG, and therefore, such users would in fact either pay a toll or add to the congestion of the GPL.
- It is assumed that the current truck toll premium will be retained vehicles with four or more axles (who have to pay an \$18 fee) and that it is sufficiently high that virtually all trucks will not use the lane, as currently occurs on the I-25 Express Lanes. However, in the Buro Happold model trucks are assumed to not be able to use the Managed Lanes, which is a conservative assumption as we exclude the possibility of obtaining any (even infrequent) truck toll revenue in the forecasts.

The outputs from the network model, which are taken forward into the spreadsheet based revenue model, are:

- The number of vehicles passing under each Managed Lane toll gantry sub divided by three vehicle types - SOV, HOV2 and HOV3+, and which gives the number of "gantry transactions"
- The Toll Rate at each toll gantry for each of the 3 vehicle types, which when combined with the gantry transactions allows one to calculate revenue
- The total number of vehicles passing under any toll gantry by each vehicle type to obtain the number of "trip transactions"

All this information is provided separately for the five model time periods of AM peak, AM shoulder, Interpeak, PM peak and PM shoulder.

3.2 The Buro Happold Spreadsheet Revenue Model

This revenue model takes the above "period" traffic and revenue results from the network model and converts them into the formats and outputs required. Specifically:

- The five hourly values are factored up to represent a typical weekday
- Then estimates for Saturday and Sunday are derived based on the relationship between an average weekday and weekend traffic
- Finally, the weekday and weekend forecasts are converted to yearly totals.

This whole process is termed "annualization". Forecasts beyond 2035 are derived using yearly growth factors applied to the 2035 values. In addition, the calendar year forecasts from the Buro Happold model are also divided into Fiscal Year forecasts (July to June) for use by others.

To provide maximum flexibility during the bid preparation period, revenue forecasts were prepared for a range of Phasing and HOV tolling policies, and exclude ramp up, allowing the opening dates, phasing and ramp up sensitivities to be addressed by others in the Plenary Financial Model, as well as sensitivity testing of inflation assumptions. Finally, it should be noted that the Buro Happold forecasts represent Gross Revenue, which need to be adjusted downward for technology loss/failure as well as issues of non-payment in the Plenary Financial Model.

3.3 Values of Time

3.3.1 The Estimation of Values of Time

A key input into the forecasting process is the assumed Value of Time (VoT) for drivers when faced with the choice between time and money (i.e. paying a toll to avoid delay). For this study we required values of time for:

- Journey to Work Trips
- Other Trips

The HOV trip tables from the DRCOG US36 sub-model were not split between trip purpose and therefore, when required, the HOV2 trips were assumed (in terms of VoT) to be Journey to Work Trips in the Peak and Shoulder Peak periods, and Other Trips in the Interpeak period. As mentioned above, trucks have been excluded from the Managed Lanes in the model and therefore VoT were not required for them. Also, as no scenarios considered tolling HOV3, VoT were not required for this trip segment either.

The VoT parameters for the Buro Happold US36 Traffic Model have been derived following a review of several recent studies as well as published research and US Department of Transportation (USDOT) guidelines for the valuation of travel time.

The review of available studies and research paper gave us a range of VoT values that differed by mode, purpose, time of day, occupancy and income levels, and with most of the values relevant to the project scheme concentrated between \$10/hour and \$15/hour.

The values used in the DRCOG US36 sub-model, which are derived from a stated preference survey in the corridor, were as follows (in 2010 US\$):

- Peak Work Car - \$14.83
- Peak Non Work Car - \$13.13
- Off Peak Work Car – \$13.56
- Off Peak Non Work Car - \$12.77
- Aggregate - \$14.31

As can be seen, these are within, although at the upper end, of the \$10-\$15 range observed from other studies. This is not surprising given that median household income in Colorado is around 20% higher than the US average.

Given there was already extensive research into values of time in the corridor, for the Buro Happold model we decided to use data that was relevant to Denver via the Wage Rate Method recommended by USDOT, and contrast these with the values used in the DRCOG US36 sub-model.

The USDOT issued “the Value of Travel Time: Departmental Guidance for Conducting Economic Evaluation” note in 1997, and issued an updated version in 2003. Based on the method described in these papers, and using parameters specific to the various counties within metropolitan Denver, we derived values for use in the Buro Happold model. A description of the Wage Rate method and the assumptions Buro Happold adopted are provided below:

- This approach assumes that the VoT is a percentage of the hourly wage rate depending on the trip characteristics
- USDOT provides guidance on Central (as plausible Low and High) values to be used to derive the VoT
- The hourly wage rate is calculated by dividing the median annual household income by 2000 hours

For the counties within metropolitan Denver the median annual household income in 2010 was \$52,800, with the highest in Douglas County (\$83,000) and the lowest in the City and County of Denver (\$39,500).

We then adopted the principle, as outlined in the USDOT guidance, that local home based travel (home based work and home based other) had a VoT derived assuming 50% of the wage rate (the hourly wage rate being calculated by dividing the median annual household income by 2000 hours), while the non-home based business trips had a VoT assuming 100% of the wage rate. We then assumed Journey to Work consisted of 100% home based trips, while “Other” consisted of 90% home based and 10% non-home based trips. As a consequence, “Other” would have a slightly higher VoT than Journey to work, which is consistent with other US VoT studies that the Buro Happold team are familiar with.

The resultant values of time were as follows:

- Journey to Work – Central value of \$13.2, with a low to high range of \$9.2 to \$15.8
- Other – Central value of \$14.5, with a low to high range of \$10.4 to \$17.4

These values are also consistent with the values used in the DRCOG US36 sub-model, which had been derived from stated preference survey in the US36 corridor, and were therefore adopted for this study.

3.3.2 The Distribution of Values of Time

The assignment method used in the Buro Happold model requires the input of a “distribution of time” around the average value. The calculations for those various average values of time have already been described above. This section outlines the method used to derive a distribution around those average values.

Data from Woods&Poole (independent forecasts of population, employment and income) provides the distribution of household incomes (by income bands) for the Denver – Aurora – Broomfield Metropolitan Statistical Area. This area is consistent with the location of the I-25 and US36 Managed Lanes.

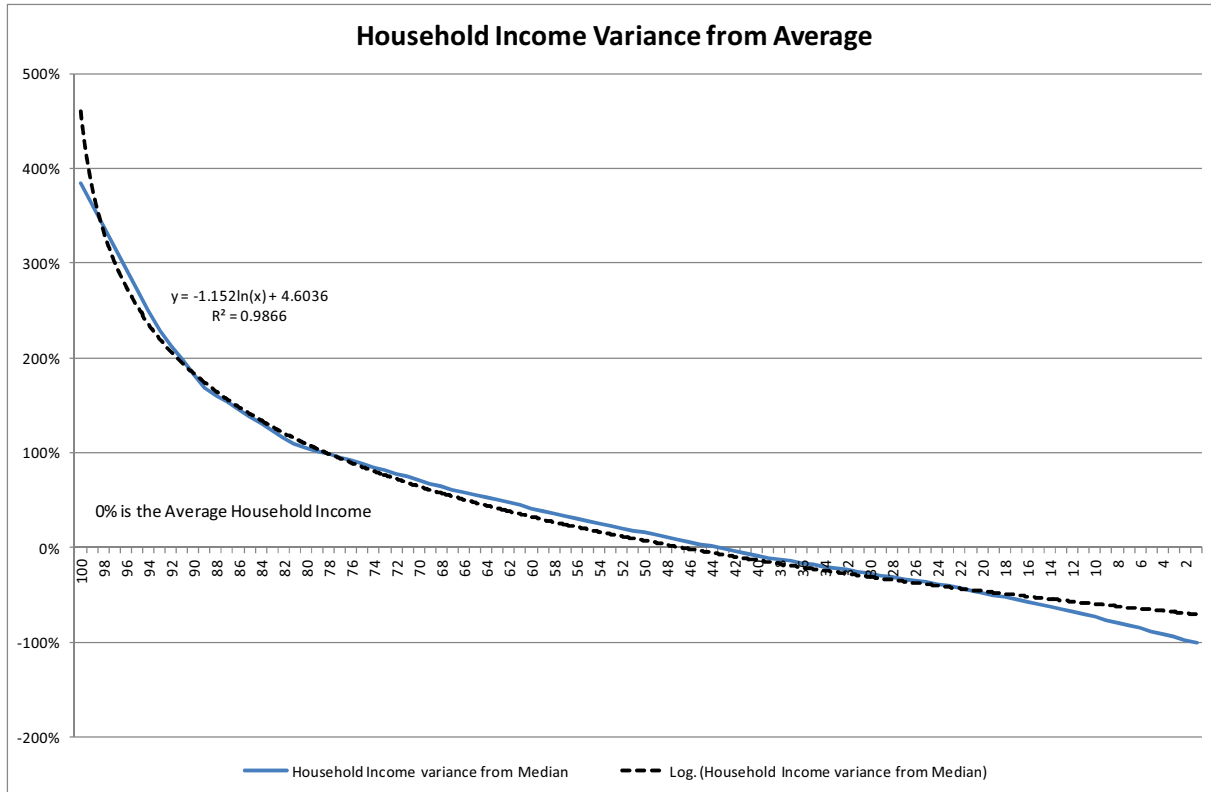
To obtain an income distribution curve we did the following:

- We excluded the lowest income band as they were unlikely to own a car and the highest band because it was difficult to define a value (these two bands together only represented 8% of all households)
- It was assumed income was evenly distributed between the “median” income of each band
- The income values were for 2009 (but were assumed to be applicable to the 2010 Values of Time calculated above) and the values were adjusted from a 2000 price base to 2010 price base using inflation over that period (26%)
- The average household income value for the region was taken from the value of time calculation above - \$52,800 in 2010 prices

The resultant distribution of income was plotted and a curve fitted. This is shown in the figure below, with the fitted curve labeled “Log (Household income variance from Median)” in the figure. It can be noted from this analysis that:

- The curve has a good fit to the data – the R2 is 0.9866 (1.0 being a perfect fit)
- The curve shows 44% of households are below the average income and 56% are above the average income level

Figure 3—1 Distribution of Values of Time



3.4 Base Year Model Validation

3.4.1 Background

Utilizing the data available from the existing pre validated DRCOG US36 sub-model, the Buro Happold model was developed for 5 time periods:

- AM Shoulder Peak - 50% of the 6-7am traffic and 50% of the 7-8am traffic
- AM Peak - 75% of 7-8am traffic and 25% of 8-9am traffic
- Midday – an Average Hour between 12.00 and 3pm
- PM Shoulder Peak – 3pm to 4pm
- PM Peak – 33.3% of 4pm to 5pm and 66.6% of 5pm to 6pm

An important stage in any traffic model development is the validation of the base year model to reflect observed traffic conditions. The following validation tests were conducted on the Buro Happold model:

- Flows on the US36
- Journey Times on the US36
- I-25 Express Lane Traffic

The DRCOG US36 sub-model, used as the starting point for the Buro Happold model (in the sense it provided the initial networks and trip tables), was developed from the full Regional Traffic Model which had been developed and validated by DRCOG. In addition, the DRCOG US36 sub-model sub-model itself had, as we understand it, undergone additional independent validation before being used in support of the TIFIA loan application for Phase 1 of the US36 project.

However, when we compared US36 model flows and actual traffic count data from CDOT we found the sub-model trip tables predicted traffic levels which were, overall, slightly high. We therefore reduced the base year trip tables from the sub-model as part of the Buro Happold model development process, to improve the flow validation. The reductions by time period were:

- **AM Shoulder Peak** = 10%
- **AM Peak** = 10%
- **Midday** = 5%
- **PM Shoulder Peak** = 5%
- **PM Peak** = 10%

This reduction in the trip tables gave a slightly more conservative forecast than that obtained from the original DRCOG US36 sub-model base year trip tables. We also made some minor changes to the model speed/flow curves during the validation process to reflect the observed speeds on the US36 as defined by the INRIX data. Again, these adjustments are likely, in our opinion, to have resulted in forecasts that were slightly lower than might have been expected from the DRCOG US36 sub-model.

3.4.2 Flow Validation on the US36

Traffic flow data for 2010 from CDOT for the US36 was available for the links between the interchanges in the corridor (Boulder to the I-25). The comparison between the observed flow and the model flow is presented as both a percentage difference (model/observed – i.e. a positive percentage means the model flow is higher than the observed) and the GEH statistic.

The GEH Statistic is a measure of “goodness of fit” and is used to compare two sets of hourly traffic volumes (observed and modeled). It is of a mathematical form similar to a chi-squared test but is not a true statistical test. GEH values below 12 are usually considered acceptable and values below 5 are considered good.

The validation tables (Tables 3-1 to 3-5) below contrast observed hourly flows on the US36 (for the 5 modeled periods) with the model flows for the same locations.

Figure 3-2 shows the location of the validation points described in Tables 3-1 to 3-5, with site 1 being at the Boulder end of the corridor and site 11 being at the I-25 end.

Figure 3—2 Location of the US36 Flow Validation Count sites

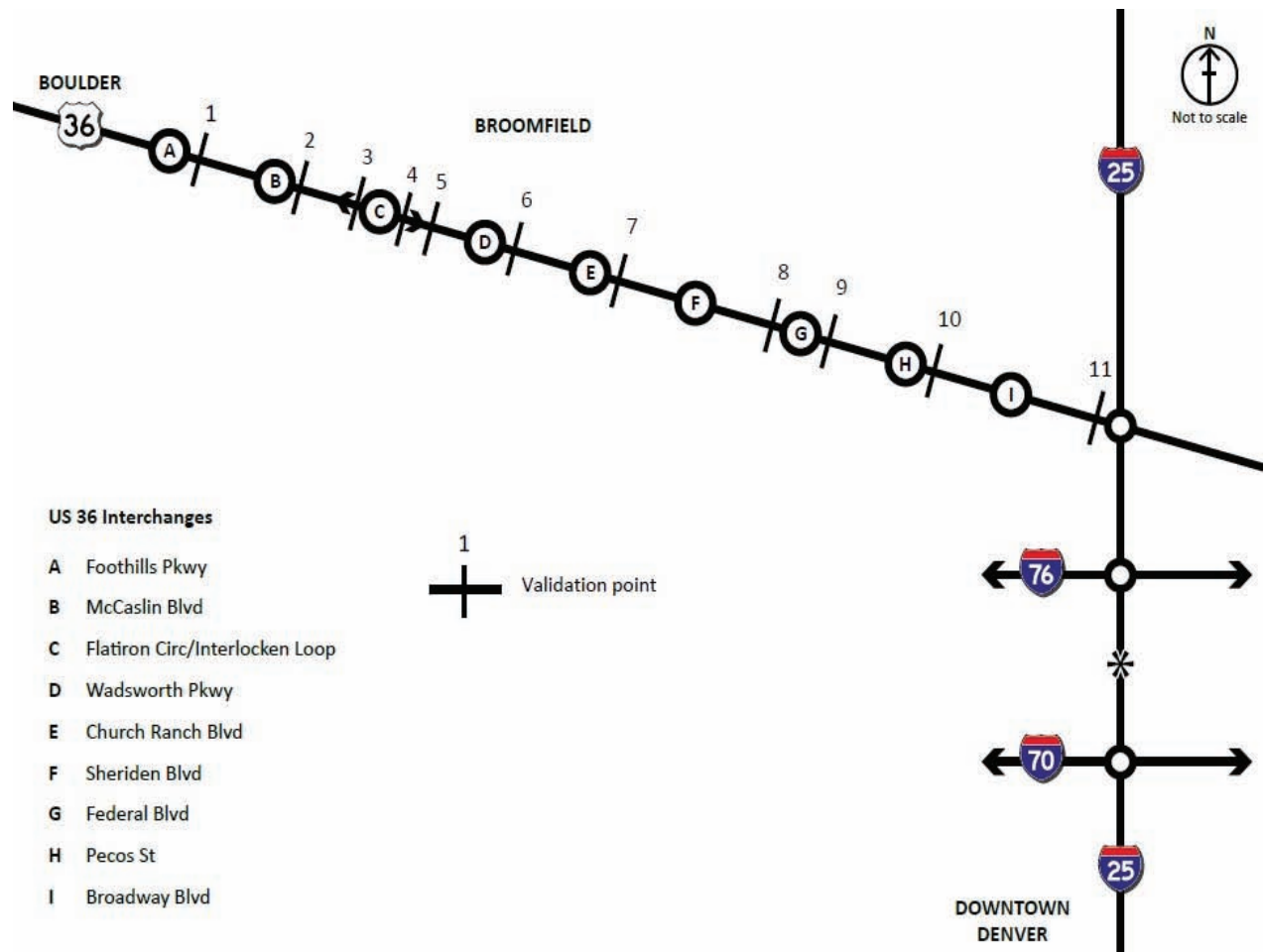


Table 3—1 AM Shoulder Peak Hour Flow Validation

| Count | Eastbound | | | | Westbound | | | |
|---------|-----------|-------|--------|------|-----------|-------|--------|-----|
| | Observed | Model | % Diff | GEH | Observed | Model | % Diff | GEH |
| US36-1 | 1431 | 1533 | 7% | 2.6 | 2890 | 3284 | 14% | 7.1 |
| US36-2 | 1815 | 1986 | 9% | 3.9 | 3270 | 3483 | 7% | 3.7 |
| US36-3 | 1845 | 1821 | -1% | 0.6 | 3145 | 3427 | 9% | 4.9 |
| US36-4 | 1923 | 1959 | 2% | 0.8 | 3553 | 3552 | 0% | 0.0 |
| US36-5 | 2021 | 2131 | 5% | 2.4 | 3857 | 4290 | 11% | 6.8 |
| US36-6 | 2231 | 2670 | 20% | 8.9 | 3554 | 4067 | 14% | 8.3 |
| US36-7 | 2631 | 3154 | 20% | 9.7 | 3442 | 3808 | 11% | 6.1 |
| US36-8 | 3409 | 3901 | 14% | 8.1 | 3946 | 3515 | -11% | 7.1 |
| US36-9 | 4812 | 4231 | -12% | 8.6 | 3501 | 3734 | 7% | 3.9 |
| US36-10 | 5022 | 4800 | -4% | 3.2 | 4346 | 3896 | -10% | 7.0 |
| US36-11 | 4862 | 4170 | -14% | 10.3 | 4274 | 4398 | 3% | 1.9 |

Table 3—2 AM Peak Hour Flow Validation

| Count | Eastbound | | | | Westbound | | | |
|---------|-----------|-------|--------|-----|-----------|-------|--------|------|
| | Observed | Model | % Diff | GEH | Observed | Model | % Diff | GEH |
| US36-1 | 1877 | 2100 | 12% | 5.0 | 3095 | 3754 | 21% | 11.3 |
| US36-2 | 2296 | 2683 | 17% | 7.8 | 3549 | 3890 | 10% | 5.6 |
| US36-3 | 2391 | 2467 | 3% | 1.5 | 3510 | 3812 | 9% | 5.0 |
| US36-4 | 2403 | 2488 | 4% | 1.7 | 3710 | 3855 | 4% | 2.4 |
| US36-5 | 2501 | 2728 | 9% | 4.4 | 4287 | 4699 | 10% | 6.2 |
| US36-6 | 2583 | 2924 | 13% | 6.5 | 3838 | 4241 | 11% | 6.3 |
| US36-7 | 2918 | 3363 | 15% | 7.9 | 3552 | 3841 | 8% | 4.8 |
| US36-8 | 3838 | 4122 | 7% | 4.5 | 4122 | 3635 | -12% | 7.8 |
| US36-9 | 4921 | 4379 | -11% | 8.0 | 3913 | 3896 | 0% | 0.3 |
| US36-10 | 4865 | 4857 | 0% | 0.1 | 5025 | 4163 | -17% | 12.7 |
| US36-11 | 4646 | 4045 | -13% | 9.1 | 4906 | 4643 | -5% | 3.8 |

Table 3—3 Midday Hour Flow Validation

| Count | Eastbound | | | | Westbound | | | |
|---------|-----------|-------|--------|-----|-----------|-------|--------|-----|
| | Observed | Model | % Diff | GEH | Observed | Model | % Diff | GEH |
| US36-1 | 2661 | 2788 | 5% | 2.4 | 2525 | 2251 | -11% | 5.6 |
| US36-2 | 2669 | 2789 | 4% | 2.3 | 2449 | 2540 | 4% | 1.8 |
| US36-3 | 2458 | 2499 | 2% | 0.8 | 2143 | 2304 | 7% | 3.4 |
| US36-4 | 2593 | 2681 | 3% | 1.7 | 2385 | 2252 | -6% | 2.8 |
| US36-5 | 3014 | 2985 | -1% | 0.5 | 2679 | 2662 | -1% | 0.3 |
| US36-6 | 2675 | 2916 | 9% | 4.6 | 2512 | 2565 | 2% | 1.1 |
| US36-7 | 2917 | 3040 | 4% | 2.3 | 2728 | 2810 | 3% | 1.6 |
| US36-8 | 3128 | 3375 | 8% | 4.3 | 3285 | 3126 | -5% | 2.8 |
| US36-9 | 3615 | 3553 | -2% | 1.0 | 3554 | 3775 | 6% | 3.7 |
| US36-10 | 4189 | 3794 | -9% | 6.3 | 3957 | 3842 | -3% | 1.8 |
| US36-11 | 4098 | 3522 | -14% | 9.3 | 3892 | 3664 | -6% | 3.7 |

Table 3—4 PM Shoulder Peak Hour Flow Validation

| Count | Eastbound | | | | Westbound | | | |
|---------|-----------|-------|--------|-----|-----------|-------|--------|-----|
| | Observed | Model | % Diff | GEH | Observed | Model | % Diff | GEH |
| US36-1 | 3451 | 3715 | 8% | 4.4 | 2390 | 2251 | -6% | 2.9 |
| US36-2 | 3581 | 3786 | 6% | 3.4 | 2448 | 2554 | 4% | 2.1 |
| US36-3 | 3378 | 3506 | 4% | 2.2 | 2192 | 2329 | 6% | 2.9 |
| US36-4 | 3772 | 3789 | 0% | 0.3 | 2468 | 2225 | -10% | 5.0 |
| US36-5 | 4222 | 4254 | 1% | 0.5 | 2748 | 2618 | -5% | 2.5 |
| US36-6 | 3605 | 3965 | 10% | 5.9 | 2664 | 2667 | 0% | 0.1 |
| US36-7 | 3561 | 3871 | 9% | 5.1 | 3087 | 3179 | 3% | 1.6 |
| US36-8 | 3956 | 3855 | -3% | 1.6 | 4092 | 3834 | -6% | 4.1 |
| US36-9 | 4292 | 4055 | -6% | 3.7 | 4723 | 4629 | -2% | 1.4 |
| US36-10 | 4832 | 4527 | -6% | 4.5 | 5321 | 4679 | -12% | 9.1 |
| US36-11 | 4792 | 4200 | -12% | 8.8 | 5248 | 4662 | -11% | 8.3 |

Table 3—5 PM Peak Hour Flow Validation

| Count | Eastbound | | | | Westbound | | | |
|---------|-----------|-------|--------|------|-----------|-------|--------|------|
| | Observed | Model | % Diff | GEH | Observed | Model | % Diff | GEH |
| US36-1 | 3433 | 4011 | 17% | 9.5 | 2893 | 2853 | -1% | 0.7 |
| US36-2 | 3669 | 4151 | 13% | 7.7 | 2992 | 3370 | 13% | 6.7 |
| US36-3 | 3472 | 3840 | 11% | 6.1 | 2590 | 3134 | 21% | 10.2 |
| US36-4 | 4177 | 4056 | -3% | 1.9 | 2806 | 2770 | -1% | 0.7 |
| US36-5 | 4174 | 4625 | 11% | 6.8 | 3090 | 3320 | 7% | 4.1 |
| US36-6 | 3621 | 4239 | 17% | 9.9 | 3081 | 3510 | 14% | 7.5 |
| US36-7 | 3681 | 4134 | 12% | 7.2 | 3736 | 4108 | 10% | 5.9 |
| US36-8 | 5110 | 3879 | -24% | 18.4 | 4223 | 4903 | 16% | 10.1 |
| US36-9 | 4517 | 3982 | -12% | 8.2 | 5914 | 5961 | 1% | 0.6 |
| US36-10 | 5044 | 4522 | -10% | 7.6 | 6697 | 5953 | -11% | 9.4 |
| US36-11 | 4964 | 4118 | -17% | 12.5 | 6529 | 5691 | -13% | 10.7 |

It can be seen from these tables that the modeled and observed flows by section compare well along the corridor. Looking at each period we see:

- **AM Shoulder Peak** – all link flows have a GEH below 12 and 50% have a GEH less than 5.
- **AM Peak** – Just one link has a GEH above 12 (12.7) and 50% have a GEH less than 5.
- **Midday** – All link flows have a GEH below 12 and 90% have a GEH less than 5.
- **PM Shoulder Peak** – All link flows have a GEH below 12 and 77% have a GEH less than 5.
- **PM Peak** – Just two link flows have a GEH above 12 and 23% have a GEH less than 5.

Overall, the PM peak shows the least good fit of all the time periods, although the fit is still reasonable, with most sites showing a GEH below 12. Further, there is no obvious model bias in the results, with some sites showing an overestimation and some sites showing an underestimation.

To further show the underlying robustness of the flow validation we have plotted below the model and actual flows along the US36 corridor in each direction for each period (See Figures 3-3 to 3-7). These show how the model reflects the differing pattern of traffic by direction and from east to west along the corridor.

Figure 3—3 Model and Observed Link Flows per Hour - AM Shoulder

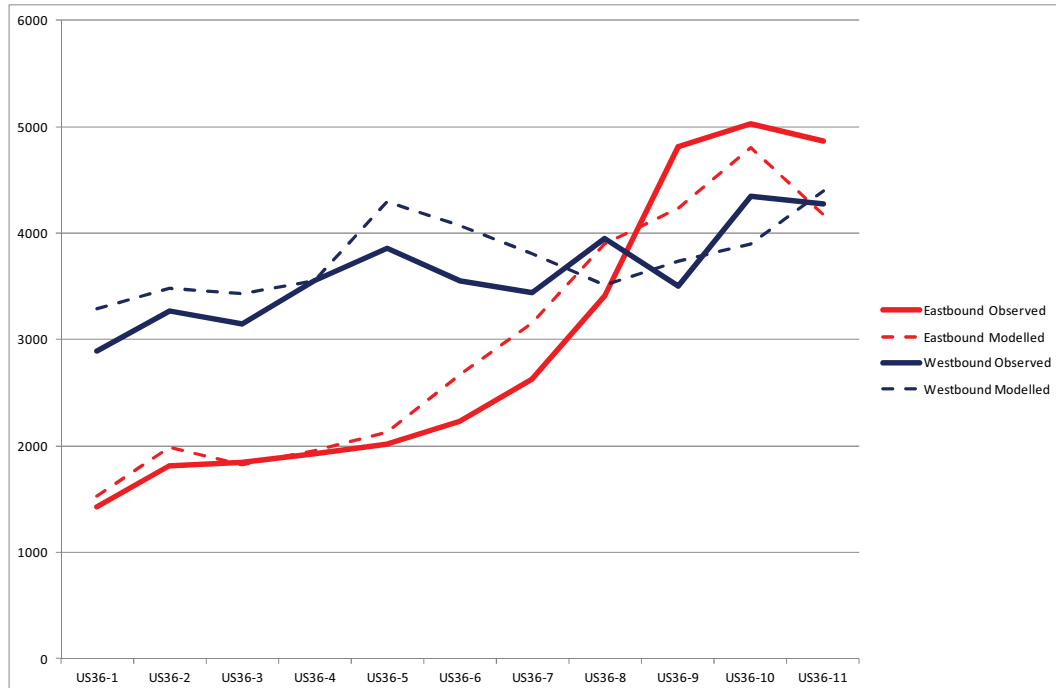


Figure 3—4 Model and Observed Link Flows per Hour - AM Peak

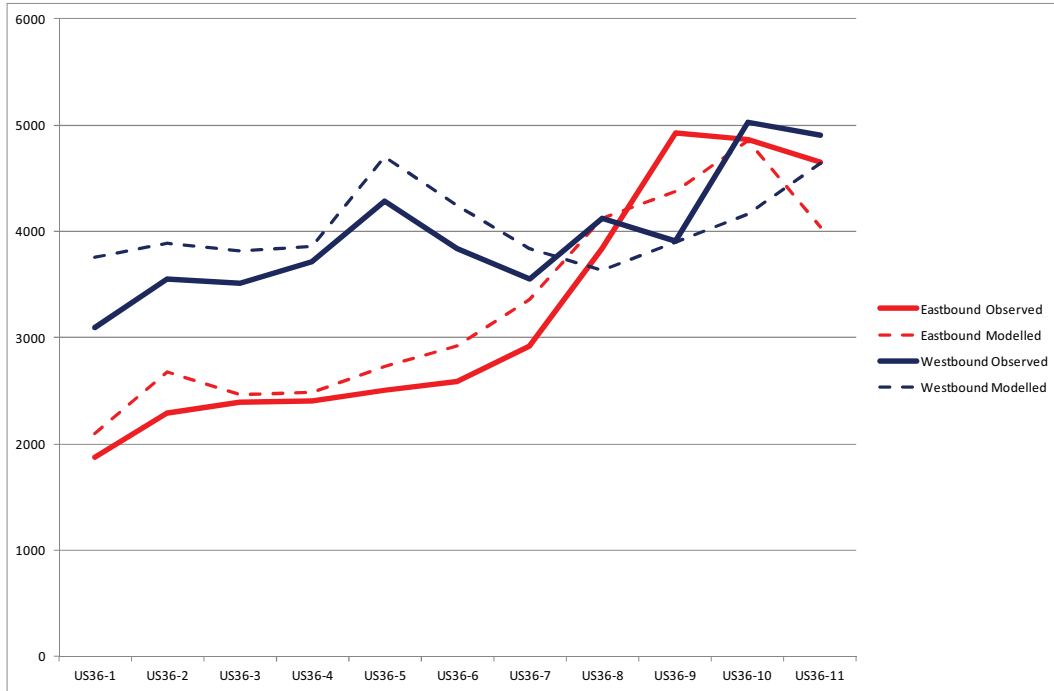


Figure 3—5 Model and Observed Link Flows per Hour - Midday

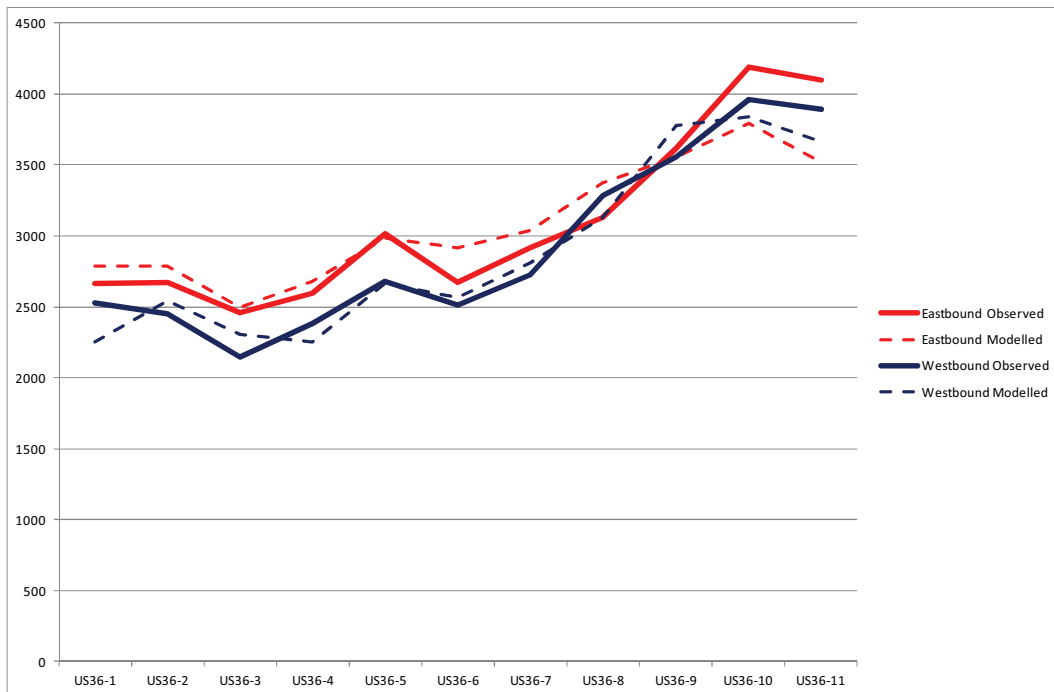


Figure 3—6 Model and Observed Link Flows per Hour - PM Shoulder

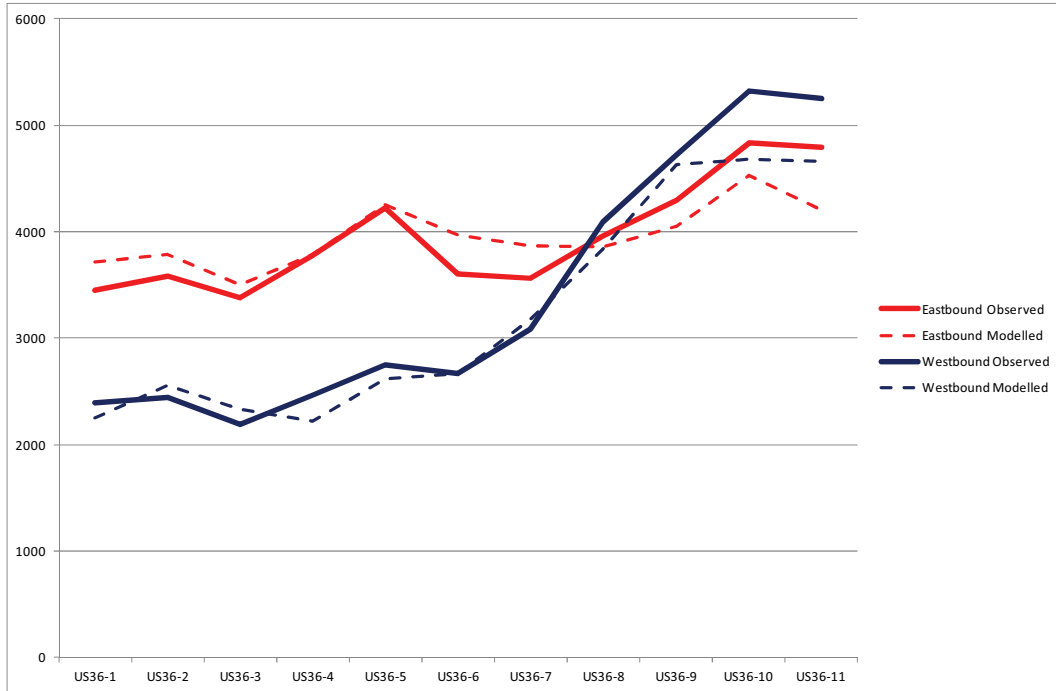


Figure 3—7 Model and Observed Link Flows per Hour - PM Peak



3.4.3 Journey Time Validation on the US36

The following analysis show the modeled peak period average speeds by period in the eastbound and westbound directions along the US36 between Boulder and the I-25 compared to the observed average speeds in 2010 (as collected by INRIX and provided to Buro Happold).

- **AM Shoulder Peak** – the Eastbound observed average is 19.4 minutes and the model time is 17.8 minutes – the Westbound observed average is 19.3 minutes and the model time is 18.6 minutes.
- **AM Peak** – the Eastbound observed average is 19.5 minutes and the model time is 17.9 minutes. The Westbound observed average is 19.8 minutes and the model time is 19.3 minutes.
- **PM Shoulder Peak** – the Eastbound observed average is 19.2 minutes and the model time is 19.1 minutes – the Westbound observed average is 22.1 minutes and the model time is 17.7 minutes.
- **PM Peak** – the Eastbound observed average is 18.9 minutes and the model time is 19.9 minutes. The Westbound observed average is 19.3 minutes and the model time is 18.4 minutes.

It can be seen from the above that overall journey times match well for all peak directions and time periods.

3.4.4 I-25 Express Lane Traffic Validation

Traffic flows on the I-25 Express Lanes as they pass under the toll gantry (which is between the I-70 and the I-76), split between toll paying vehicles and HOV vehicles, has also been validated (using again the percentage difference and the GEH statistic). This is shown in the table below.

Table 3—6 I-25 Express Lane Flow Validation

| Time | HOV | | | | Toll Paying | | | |
|------------------|----------|-------|--------|-----|-------------|-------|--------|-----|
| | Observed | Model | % Diff | GEH | Observed | Model | % Diff | GEH |
| AM Shoulder Peak | 716 | 814 | 14% | 3.5 | 689 | 702 | 2% | 0.5 |
| AM Peak | 775 | 917 | 18% | 4.9 | 837 | 800 | -4% | 1.3 |
| Midday | 280 | 224 | -20% | 3.5 | 100 | 94 | -6% | 0.6 |
| PM Shoulder Peak | 578 | 526 | -9% | 2.2 | 257 | 260 | 1% | 0.2 |
| PM Peak | 867 | 831 | -4% | 1.2 | 586 | 559 | -5% | 1.1 |

The above table shows a very good match for both HOV and Toll Paying traffic with all GEH below 5. We also discuss later in this Chapter the validation of the I-25 Express Lane flows by reference to the calculation of annual revenues.

We have also looked at the capture rate of the I-25 Express Lanes as represented by the traffic in the Managed Lane divided by the traffic in both the General Purpose and Managed lanes. When considering this value one should note that the I-25 Express Lanes run parallel to several different sections of GPL and therefore one can measure capture at a number of different locations and get different results. This rate is taken at the location of the I-25 gantry, and is the location used to report forecast capture rates later in the report. The capture rates are:

- AM Shoulder Peak Southbound – 18%
- AM Peak Southbound – 22%
- Midday/Interpeak Northbound - 5%
- PM Shoulder Peak Northbound - 10%
- PM Peak Northbound - 18%

In addition to looking at the flows on the I-25 Express Lanes at the toll gantry we have also looked at observed and modelled flows on the I-25 north and south of the I-25 Express Lanes where data is available (Source CDOT).

The first site is north of the US36 (north of Thornton Parkway). The validation results were as follows:

- **AM Shoulder Peak** – 9,126 observed, 10,009 modeled, a difference of 10% and a GEH of 9.0.
- **AM Peak** – 9,293 observed, 10,766 modeled, a difference of 16% and a GEH of 14.7.
- **Midday** – 9,461 observed, 9,718 modeled, a difference of 3% and a GEH of 2.6.
- **PM Shoulder Peak** – 10,505 observed, 10,812 modeled, a difference of 3% and a GEH is 2.0.
- **PM Peak** – 10,628 observed, 11,646 modeled, a difference of 10% and a GEH is 9.6.

The second site is south of the downtown area (north of Speer Boulevard). The results were:

- **AM Shoulder Peak** – 12,326 observed, 11,987 modeled, a difference of 3% and a GEH of 3.1.
- **AM Peak** – 12,185 observed, 12,097 modeled, a difference of 1% and a GEH of 0.8.
- **Midday** – 12,299 observed, 11,538 modeled, a difference of 6% and a GEH of 7.0.
- **PM Shoulder Peak** – 12,075 observed, 11,456 modeled, a difference of 5% and a GEH of 5.7.
- **PM Peak** – 12,144 observed, 12,146 modeled, a difference is 0% and the GEH is 0.0.

The validation at these locations shows a good fit between modeled and observed flows, further suggesting the overall traffic levels in the model are reasonable.

3.4.5 Conclusions on the Base Year Traffic Model Validation

Based on the above analysis we would conclude that:

- The period model traffic flows on the US36 match well with observed data. The model predicts journey times on the US36 that correlate well with observed speeds along the whole length of the corridor.
- The model predicts existing capture of HOV and toll paying traffic on the I-25 Express Lanes and the flow validation on the I-25 north and south of the I-25 Express Lanes suggests the model has the correct overall traffic levels.

Overall, we believe the model provides a robust base from which to derive forecasts of future traffic and revenues on the US36/I-25 Managed Lanes project.

3.5 Annualization

3.5.1 Deriving the Factors

As discussed earlier, the Buro Happold traffic model addresses 5 specific time periods. From these model values we need to derive annual totals of traffic and revenue. To do this we have utilized annual traffic data from the US36 at Broomfield (collected by CDOT as part of its on-going traffic monitoring program). This was the site with the most consistent data set of the available continuous count sites and, sitting in the middle of the corridor, provides a reasonable proxy for the corridor as a whole. Also, as discussed below, it has proved to be a reliable source for annualizing data on the I-25 Express Lanes.

The observed traffic in 2010 was analyzed and factors were calculated to increase the five individual model hours to 24 hours. These factors were derived assuming the following:

- The AM Shoulder covered 6am to 9am but excluded the AM Peak Hour
- The PM Shoulder covered 3pm to 6pm but excluding the PM Peak Hour
- The Midday covered midnight to 6am, 9am to 3pm and 6pm to midnight.

The factors were calculated taking into account direction of travel, and were as follows:

- Eastbound AM Peak – 1.0, Westbound AM Peak – 1.0
- Eastbound AM Shoulder -2.0, Westbound AM Shoulder – 1.9
- Eastbound Midday – 8.4, Westbound Midday – 9.2
- Eastbound PM Shoulder – 2.9, Westbound PM Shoulder – 3.1
- Eastbound PM Peak – 1.0, Westbound PM Peak – 1.0

These factors, when applied to the outputs from the Buro Happold traffic model, to give the 24 hour total, by direction, for an average weekday (Tuesday to Thursday). We then analyzed the count data to see how Monday and Fridays varied in comparison to an average day between Tuesday and Thursday. Not unsurprisingly, they were similar, and the resultant factor to convert an average Tuesday to Thursday to an average Monday to Friday was 0.97. This means that, on average, Mondays and Fridays have slightly less traffic than Tuesdays to Thursdays.

We also needed to derive a factor for converting the model output to Saturday and Sunday traffic. To do this we derived a factor to apply to the Midday flows from the traffic model. The factors were:

- Saturday – 12.2
- Saturday – 10.9

Using these factors we were able to calculate traffic (and revenue) on an average weekday, Saturday and Sunday. These three daily values are then factored up to a full year as follows:

- Weekday * 251
- Saturday * 57
- Sunday * 57

3.5.2 Validating the Annualization Factors

To validate these factors, which have been derived from the observed existing traffic on the US36 at Broomfield, we have applied them to the model output values for the 5 model periods from the I-25 Express Lanes in 2010 (and noting some of the factors had to be amended to reflect the reduced hours of operation of the I-25 Express Lanes).

Using these values we derived an estimate of:

- 1.14m toll transactions, compared with an actual value of 1.16m
- \$2.4m of revenue compared with an actual value of \$2.4m

The very close match between the predicted and actual values for 2010 provides confidence that the model validates well and the process adopted is robust and can be applied to the hourly model output to derive yearly totals.

4 Future Year Model Inputs

4.1 Forecasts of Population and Employment in the DRCOG US36 Sub-Model

As it was our intention to utilize the DRCOG US36 sub-model trip table growth rates as the starting point for developing the Buro Happold traffic model trip tables, we initially reviewed the population and employment forecasts that had been adopted in the sub-model for the period 2010 to 2035 and contrasted these with the independent forecasts produced by Woods & Poole Economics, Inc (W&P).

W&P is an experienced independent firm that specializes in long-term county economic and demographic projections. Their database for every county in the U.S. contains historic data and projections through to 2040 for more than 900 variables. They have been making county projections since 1983 and users of the data include public utilities, state and local government, consultants, retailers, market research firms and planners.

The analysis was for the counties within the DRCOG area (Adams, Arapahoe, Boulder, Broomfield, Clear Creek, Denver, Douglas, Gilpin and Jefferson) although noting the W&P data does not include the new Broomfield County as a separate entity, and hence all the values in this analysis are aggregated to regional totals. The values quoted are compound annual growth rates (CAGR).

A summary comparison for population growth can be seen below:

- DRCOG US36 sub-model – 2010 to 2035 CAGR of 1.34%
- W&P – 2010 to 2035 CAGR of 1.35%

A similar summary comparison of employment growth is:

- DRCOG US36 sub-model – 2010 to 2035 CAGR of 1.43%
- W&P – 2010 to 2035 CAGR of 1.47%

In both cases one can see that the DRCOG US36 sub-model and W&P have similar values, although in both cases the DRCOG values are slightly lower than the W&P values.

Both forecasts have employment growing faster than population. This is consistent with recent past decades in the USA, although this phenomena is believed to be slowing. At the CAGR outlined above, the W&P population forecast assumes 40% growth in 25 years, while the equivalent employment growth is 44%.

The DRCOG US36 sub-model population and employment forecast was underpinned by a “bottom up” analysis specific to the Project and Traffic Analysis Zones (TAZs) in the study area, and was performed by Economic & Planning Systems, Inc. (EPS) as part of a T&R Study performed for CDOT. As shown above, this “bottom up” analysis, when contrasted with a “top down” county level comparison of populations and employment forecasts undertaken by Woods & Poole (W&P). The overall conclusion of this analysis was that the W&P and EPS forecasts were very similar, although the DRCOG US 36 sub-model forecasts were slightly more conservative than the W&P forecasts.

Given the above, we reviewed the underlying DRCOG US36 sub-model forecasts for population and employment against both past growth trends in growth and the more recent evidence of growth that was becoming apparent earlier in 2013.

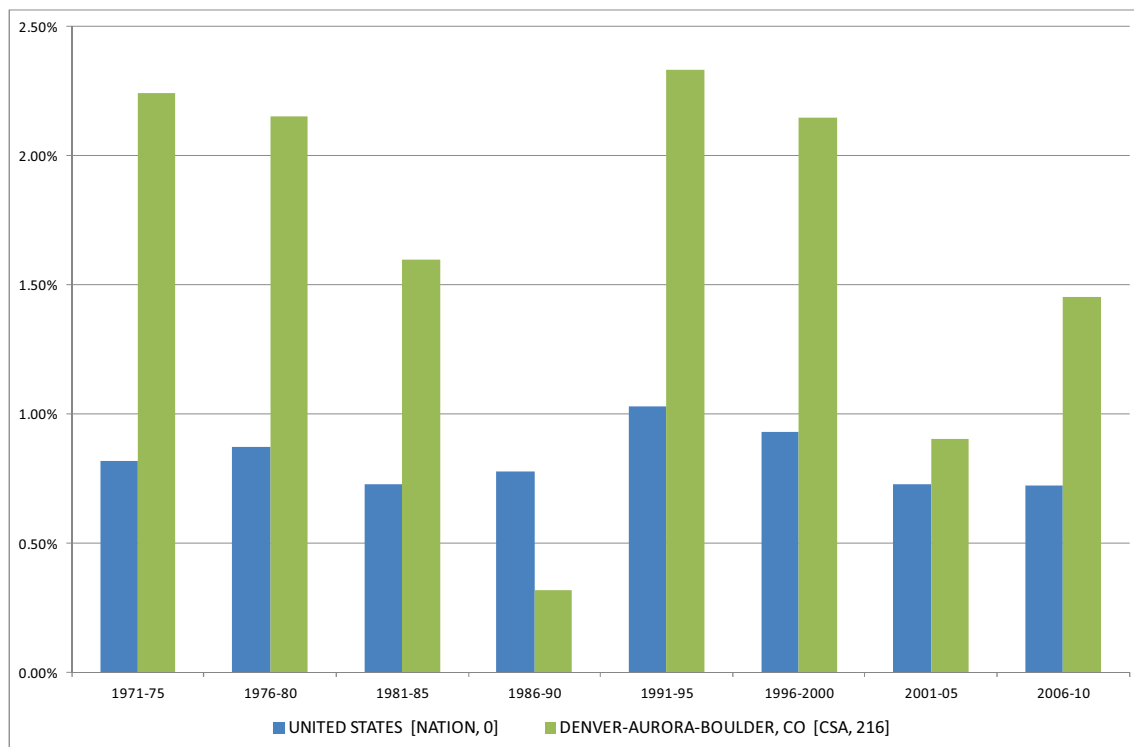
4.2 Historic Population and Employment Growth

We have reviewed the historic trends in the growth of population and employment (source W&P) over the last 40 years. This analysis has focused on the US as a whole in comparison with the Aurora-Denver-Broomfield Statistical Area (ADBSA). We have not gone to a smaller area to ensure the analysis addresses general population and employment trends in the region rather than profiles dictated by land availability in specific counties.

Also, given the nature of the data, we have presented our analysis in terms of compound Average Annual Growth Rates (CAGR) over 5 year Periods (i.e. where we give a value of 0.82% for population growth in the whole of the US between 1971 and 1975 this means that, on average, the CAGR for that period was 0.82%, or 4.2% for the whole 5 year period).

Looking at population first (Figure 4-1), we can see that historically the ADBSA has grown faster than the US in every five year period except 1986 to 1990.

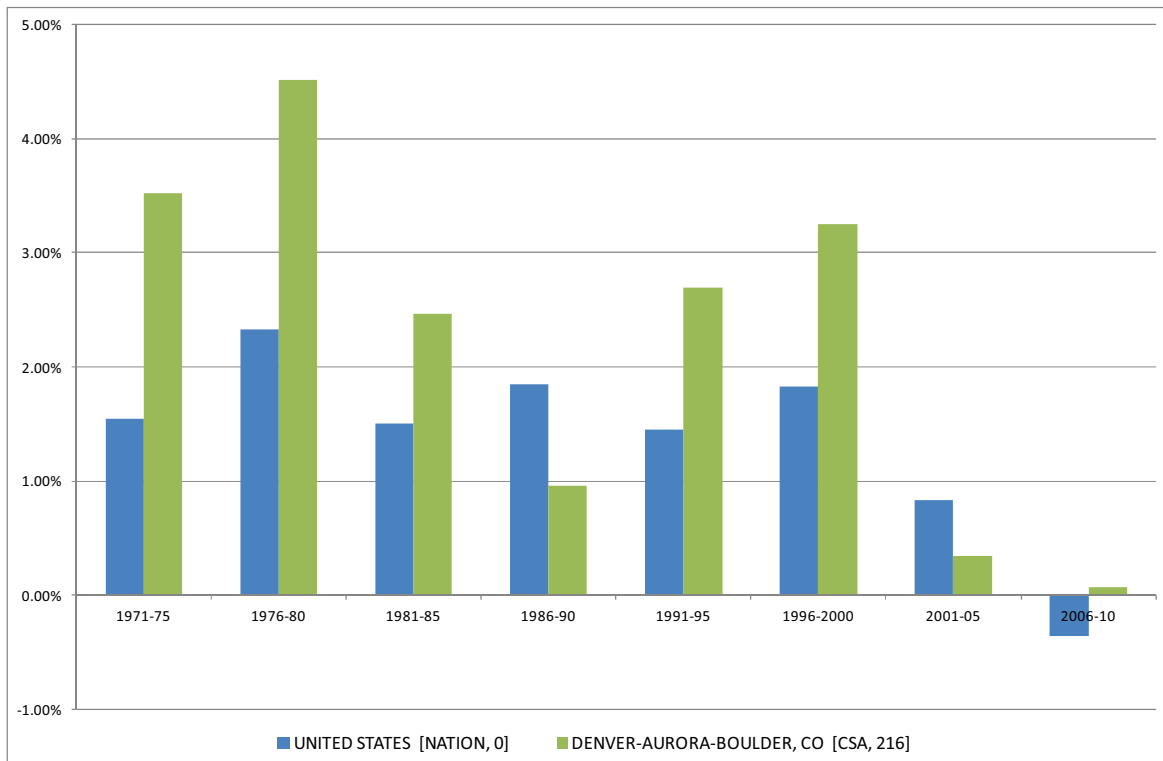
Figure 4—1 Historic Population Growth



Overall, the ADBSA population increased by 117% over the period 1971 to 2010 (2.0% CAGR), while the US as a whole grew by only 50% (1.1% CAGR). This large differential in historic population growth can be contrasted with the Woods and Poole forecasts, which show population in the ADBSA increasing by only 41% over the period 2010 to 2035 (1.4%), while the forecast for the US as a whole for the same period is 26% (1.0% CAGR).

Looking at Employment (Figure 4-2) we see a similar profile, with 1986 to 2000 being the 5 year period when employment growth in the ADBSA was dramatically lower than the USA as a whole, but this difference is more pronounced than for population. However, employment is different to population in that there is a second period, 2001 to 2005, when growth in the ADBSA was lower than the US as a whole (0.34% v 0.84% a year).

Figure 4—2 Historic Employment Growth



However, in the period 2006 to 2010, when we might have expected the ADBSA to do less well (based on experiences during the recessions of the late 1980s) we actually see ADBSA employment growing at 0.08% a year, while the US as a whole declined by an average of 0.36% a year. It would seem that in the 5 years (2006-2010) the ADBSA has done better than the US (from a job creation perspective). This would appear to reflect the significant restructuring to the ADBSA economy over the period between 1990 and 2010.

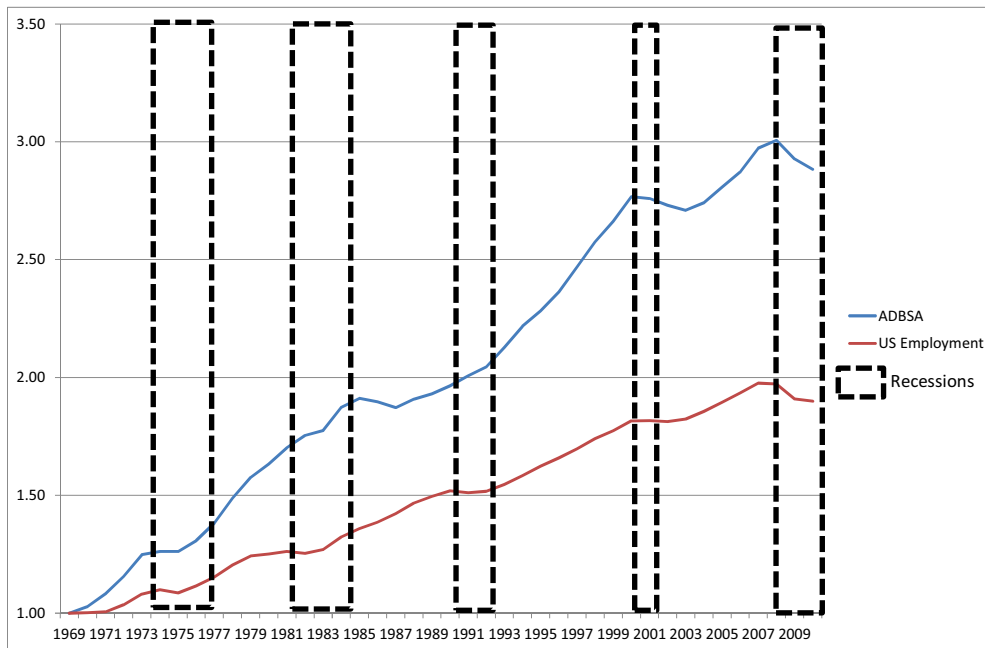
Over the whole period (1971 to 2010) the ADBSA increased employment by 166% (2.5% CAGR), while the US as a whole increased employment by just 89% (1.6% CAGR). These can be contrasted with the (W&P) forecasts, which show employment in the ADBSA increasing by only 44% over the period 2010 to 2035 (1.5% CAGR), while the forecast for the US as a whole for the same period is 38% (1.3% CAGR).

Overall, one can see on a CAGR basis, that the (W&P) forecasts assume year on year average population growth rates in the US staying similar to historic levels, but the rate of growth occurring in the ADSBA slowing significantly. For employment, one sees a similar pattern to population, with the forecast US CAGR being similar to the historic rate, but the ADSBA growth rate being significantly lower.

4.3 Employment and Recessions

Given the historic data outlined above, we have reviewed in more detail the employment rate against the recessionary periods in the US over the last 40 years (see Figure 4-3 below). This analysis has focused on the US as a whole in comparison with the ADBSA – with both data sets indexed to 1.00 in 1969.

Figure 4—3 Employment and Recessions (1969-2010)



Looking at the employment rate we can see the ADBSA has grown significantly faster than the US, and specifically:

- There was strong growth in employment rate in the early 1970's in the ADBSA (when contrasted with the US) but the recession of 1973-75 resulted in stagnation of growth during that period in both the cases.
- However after that recessionary period was over, unlike the US as a whole, the ADBSA saw a sharp rise in the employment, and during the next two recessions (1980-82 and 1990- 1991) the ADBSA still had constantly growing employment, while the employment figures of US as a whole dropped.

- However, the pattern following the 2001 recession was different, with the employment rate of ADBSA falling, while the US as a whole flat lined and it wasn't until 2005 that the ADBSA recovered from this dip, although growth between 2005 and 2008 was stronger than the US as a whole.
- The 2007-09 recession showed a sharp fall in employment across the US, although the decline in the ADBSA, at 1.6% between 2009 and 2007, was far less than the US as a whole (which fell by 3.4% over the same period).

It appears that the ADBSA is following a different post-recession pattern to 2001, with a strong recover in employment recently (the 2010 employment level in the ADBSA is now higher than the 2006 level, while for the US as a whole the level is still below the 2006 level). Overall, it would appear that the 2001 recession was a typical, and that in general, the ADBSA is more resilient to, and recovers more quickly, from recessions, than the US as a whole.

4.4 More Recent Evidence on Growth

The analysis shown in the above sections suggests the ADBSA has, on average, grown significantly faster than the US as a whole, and has in general, recovered from recessions more quickly than the country as a whole. The DRCOG US36 sub model and W&P forecasts seem slightly at odds with this historic pattern.

It was therefore decided to undertake a review of more recent growth trends to see if alternative assumptions were appropriate for the Sponsors Base Case. This review found:

- Employment in the ADBSA region has averaged 1.78% a year from 1990 to 2012. At the time of the DRCOG US36 sub model study into population and employment forecasts, employment had declined for 2 consecutive years. However, following the study, employment has increased by 1.40% and 2.91% over 2011 and 2012 respectively, significantly ahead of growth estimates. The forecast for 2013 is for at least 2% growth.
- Metro Denver EDC's Chief Economist Patty Silverstein recently highlighted the region will achieve full economic recovery in 2013 (meaning that all jobs lost during the recent recession will be regained), saying "*Employment growth in the region is projected to exceed that of the state and nation. Several sectors in the area should perform well, including education and health services, professional and business services, and natural resources, mining, and construction*"

Overall, it was concluded that the DRCOG US36 sub model and W&P estimates, while both plausible, were slightly conservative, as neither estimate predicted the recent macroeconomic improvement in the region, and were developed at a time when the scope and extent of the recession was less clear. This conclusion was further supported by analysis that showed that once the more recent post-recession was recovery was considered, these forecasts were well below the historic long employment term trend for the region. While it was not felt that a dramatic change to the growth assumptions was necessary, it was decided that for the Sponsor Base Case, a modest uplift of traffic in the growth rates to 2015 and 2025 would be appropriate.

The DRCOG US36 sub model assumed traffic (which is closely correlated to employment) increased, on average across all the periods and vehicle types, by 7.4% from 2010 to 2015 (1.5% a year). Given the recent recovery in employment seen in the region it was decided to increase this in the Sponsors Base Case to a traffic growth rate of 8.8% (or 1.7% a year). This is still relatively modest when one considers that it is anticipated that region wide employment will have increased by an average of 2.1% a year between 2010 and 2013.

The DRCOG US36 sub model also assumed traffic increased, on average across all time periods and vehicle types, by 14.3% from 2015 to 2025 (1.4% a year). Given the long much higher historic long term employment growth in the ADBSA it was decided to increase this in the Sponsors Base Case to a traffic growth rate of 18.4% (or 1.7% a year).

For the period beyond 2025 to 2035, traffic growth rates were assumed to be the same as the DRCOG US36 sub model.

4.5 Trip Table Growth

The resultant trip tables in the Buro Happold traffic model are summarized below by trip type and vehicle type.

Table 4—1 Trip Table Growth Rates from 2010 to 2035

| | % Growth 2010-2015 | | | | % Growth 2015-2025 | | | | % Growth 2025-2035 | | | |
|-----|--------------------|-------|-------|-------|--------------------|-------|-------|-------|--------------------|-------|-------|-------|
| | SOV | HOV2+ | Truck | TOTAL | SOV | HOV2+ | Truck | TOTAL | SOV | HOV2+ | Truck | TOTAL |
| AMS | 8.8% | 7.6% | 8.6% | 8.7% | 8.8% | 7.6% | 8.6% | 8.7% | 8.8% | 7.6% | 8.6% | 8.7% |
| AMP | 8.6% | 9.5% | 8.3% | 8.7% | 8.6% | 9.5% | 8.3% | 8.7% | 8.6% | 9.5% | 8.3% | 8.7% |
| MD | 10.3% | 3.8% | 8.0% | 9.3% | 10.3% | 3.8% | 8.0% | 9.3% | 10.3% | 3.8% | 8.0% | 9.3% |
| PMS | 9.4% | 8.3% | 8.3% | 9.1% | 9.4% | 8.3% | 8.3% | 9.1% | 9.4% | 8.3% | 8.3% | 9.1% |
| PMP | 9.1% | 7.9% | 8.6% | 8.9% | 9.1% | 7.9% | 8.6% | 8.9% | 9.1% | 7.9% | 8.6% | 8.9% |

Note: AMS = AM Shoulder, AMP = AM Peak, MD = Midday, PMS = PM Shoulder, PMP = PM Peak and JTW = Journey to Work

4.6 Toll Optimisation and Minimum Gantry Toll Levels

As previously explained, CDOT had already undertaken a Traffic and Revenue Study that had included extensive analysis of future toll level optimisation on both the I-25 and US36. Buro Happold initially adopted the tolls rates from this CDOT study and then undertook a range of sensitivity tests (plus or minus 5%) on these future toll rates on both the I-25 and US36. This analysis showed that changes in the toll levels resulted in some gantries generating slightly more revenue, and some generating slightly less, but that overall the total revenues varied by only a few percent. This finding was consistent with the CDOT traffic study view that their toll levels were close to the revenue maximising point. It was therefore decided to, in principle, adopt these toll rates for this study.

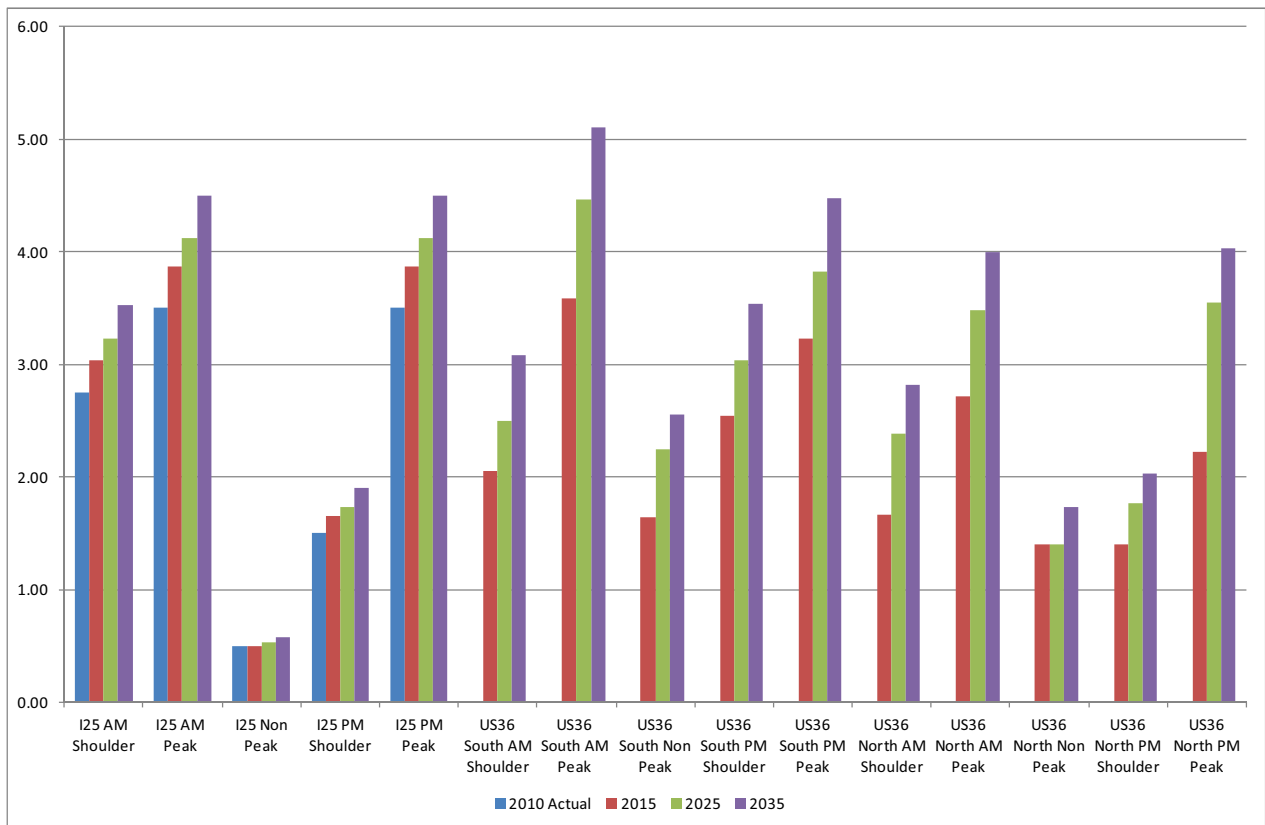
However, in discussion with Plenary it was also agreed that as the cost to process a “Trip Transaction” (for a vehicle with a TAG) was likely to be around \$0.20 (2010 prices), and it was possible some “Trip Transactions” would only involve 1 gantry on the US36, we would investigate the impact of setting a minimum toll of \$0.20 on any gantry.

This was not an issue for the I-25 gantry (the minimum toll today is already \$0.50), and hence did not impact the forecasts for I-25 revenue, but it did have implications for the US36, especially in non-peak periods and on the less busy sections towards Boulder.

Tests suggested that while the impact on transactions of the introduction of a minimum gantry toll of \$0.20 (2010 prices) was significant, especially in the non-peak periods, it had only a limited impact (of just a few percent) on total revenues due to the very low toll levels in the non-peak periods. The overall net impact on revenues (revenues minus collection costs) was considered positive, and it was adopted for the Sponsor Base Case.

The resultant gantry tolls in the model for 2015, 2025 and 2035 on the I-25 and the US36 Northbound and Southbound (an end to end trip) are shown in the figure below. A full listing of tolls (\$ 2010) by year, gantry, and time period, are given in Appendix A.

Figure 4—4 Sponsor Base Case Toll Rates for the I-25 and US36 (2010 Dollars)



The figure above is in 2010 dollars. To get a feel for what the TAG tolls will actually be in 2015 we compare below the 2010 toll rates for a few selected periods with the anticipated rate (i.e. including an assumption for inflation) in 2015:

- AM Shoulder Peak (06.45 to 07.15) - \$2.75 to \$4.00 (45% increase)
- AM Peak (07.15 to 08.15) – \$3.50 to \$4.45 (27% increase)
- Inter Peak (12.00 to 15.00) - \$0.50 to \$0.60 (20% increase)

Firstly, it should be noted that the concession agreement allows any toll to be set by the concessionaire so long as the peak tolls are equal or greater than the comparative bus fare, buses are not being regularly delayed, and the maximum end to end toll is not greater than the value submitted in the bid. The maximum submitted in the bid was substantially higher than the value assumed in the model. This, in theory, means should traffic be higher than expected, or drivers have a higher value of time than assumed (either now or in the future), the tolls can still be set to maximize revenue. We also believe that over time there will be significant opportunity to optimize the tolls further (for example by 15 minute extensions of the current peak and shoulder periods and, ultimately, by some form of dynamic tolling). However, for the purposes of deriving revenue forecast for the bid, none of these upsides were included.

However, we were also of the view that, in reality, achieving true “full optimization” is not practical on any scheme. We therefore did not run the model over and over until we obtained the maximum revenue level. We therefore believe that at some gantries our tolls are slightly below the model’s revenue optimizing position and at some gantries our tolls are slightly above the model’s revenue optimizing point. As a consequence, we believe we have a prudent and realistic position on toll levels in the model.

4.7 Other Future Year Model Inputs and Assumptions

There are two other model inputs and assumptions worthy of reference as follows:

- **Real VoT growth over time** – The model works on 2010 US\$ prices. However, over time, as incomes rise, values of time will also increase in real terms. We have assumed VoT increase at 1% a year in real terms. This is based on the assumption that real incomes increase at around 2%, but VoT only increases at about 50% of that rate.
- **Future year networks and mode impacts** – The DRCOG US36 sub model trip tables were based on the 4 stage DRCOG regional model (trip generation, trip distribution, mode split and assignment), and therefore already include the impact of any wider network changes and the impact of the development of other modes (such as rail and bus rapid transit services). We have made no allowance for any network improvements in the model area other than the US36 Managed Lanes project.

The use of the models described above, and the various assumptions listed, to derive the Sponsor Base Case forecasts, plus a number of sensitivity tests on key inputs and assumptions, is discussed in the next chapter.

5 Traffic and Revenue Forecasts

5.1 Introduction

The Sponsor Base Case Forecasts represent, in the opinion of Buro Happold, the most likely outcome taking into account the balance of probabilities of all the different risks and uncertainties in the modeling and forecasting process. However, a forecast is never simply a single value or line, but, a range of outcomes around the Base Case (sometimes termed the envelope of uncertainty around the base case). This "envelope" is defined by the risks and uncertainties within both the project and the forecasting processes adopted. The analysis by Buro Happold in this report does not attempt to address the issue of confidence around the Base Case through the generation of defined high and low scenarios. Instead, issues of downside risk and upside reward are addressed through individual sensitivity tests.

Further, as it is anticipated that the full network of I-25, Phase 1 and Phase 2 (P1&P2) operating under a HOV3+ regime (i.e. HOV2 pay a toll) will be in operation for the longest period of time it was decided to adopt this arrangement for the majority of the model runs, and then to look at how alternative scenarios in terms of phasing and HOV policy would impact on revenues in the very early concession years. Also, the Buro Happold forecasts presented in this report often extend for longer periods than they would actually exist, to allow for sensitivity testing of phasing.

Finally, it should be noted that all revenue calculations have been undertaken with a 2010 dollar price base (2010\$) and hence assumes all tolls (and hence revenues) increase in line with inflation, in addition to any increase as a consequence of real toll increases assumed with the Buro Happold forecasts. Also, as others undertaken analysis on a year ending June basis, the calendar year results from the traffic model were converted in Fiscal Year results. The assumed proportion on yearly traffic in each month is as follows; January 8.2%, February 7.9%, March 8.2%, April 8.7%, May 8.5%, June 8.5%, July 8.1%, August 8.5%, September 8.7%, October 9.4%, November 8.1% and December 7.2%.

5.2 Summary of the Key Assumptions in the Sponsor Base Case Forecasts

The table below summarizes the key assumptions for the Sponsor Base Case forecasts.

Table 5—1 Key Sponsor Base Case Assumptions

| Assumption | Sponsor Base Case | Additional Comment |
|----------------------|--|--|
| Years Modeled | The Buro Happold traffic model was run for 2015, 2025 and 2035. Values were be interpolated between these years. | For Phase 1 HOV2+ and Phase 2 HOV2+ only 2015 and 2025 model years were run. |
| Traffic Growth | The growth rates, on average for all vehicle types, were 8.9% 2010 to 2015, 17.3% 2015 to 2025, and 9.5% 2025 to 2035. Revenue growth beyond 2035 was assumed to be 2% (1% traffic growth and 1% real income growth a year). | Sensitivity tests on the rate of growth and the impact of no growth for 5 years and flat v differential growth are presented later in this report. |
| Toll Rates | The toll rates are in 2010 \$ values. It is assumed toll will automatically be indexed to inflation in addition the real increases assumed within the model. | Sensitivity tests on toll levels are also presented later in this report. |
| Values of Time (VoT) | The VoT are in 2010 \$ values (Journey to work \$13.2 and Other \$14.5) plus real VoT increase by 1% a year from 2010 due to growth in real incomes. | Sensitivity tests on the values of time are presented later in the report. |
| HOV Tolling Policy | The main assumption is HOV3+, but the model was also run with HOV2+ to allow early year forecasts to be derived. | The forecasts allow the financial team to select the HOV3+ trigger date. |
| Annualization | It is undertaken in steps – 5 model hours to 24 hours average Tuesday to Thursday, factor for Friday and Monday, factor to weekends, and factor for numbers of weekdays and weekend days in a year. | Uncertainty around annualization is discussed under the general data error sensitivity later in this report. |

5.3 The Sponsor Base Case

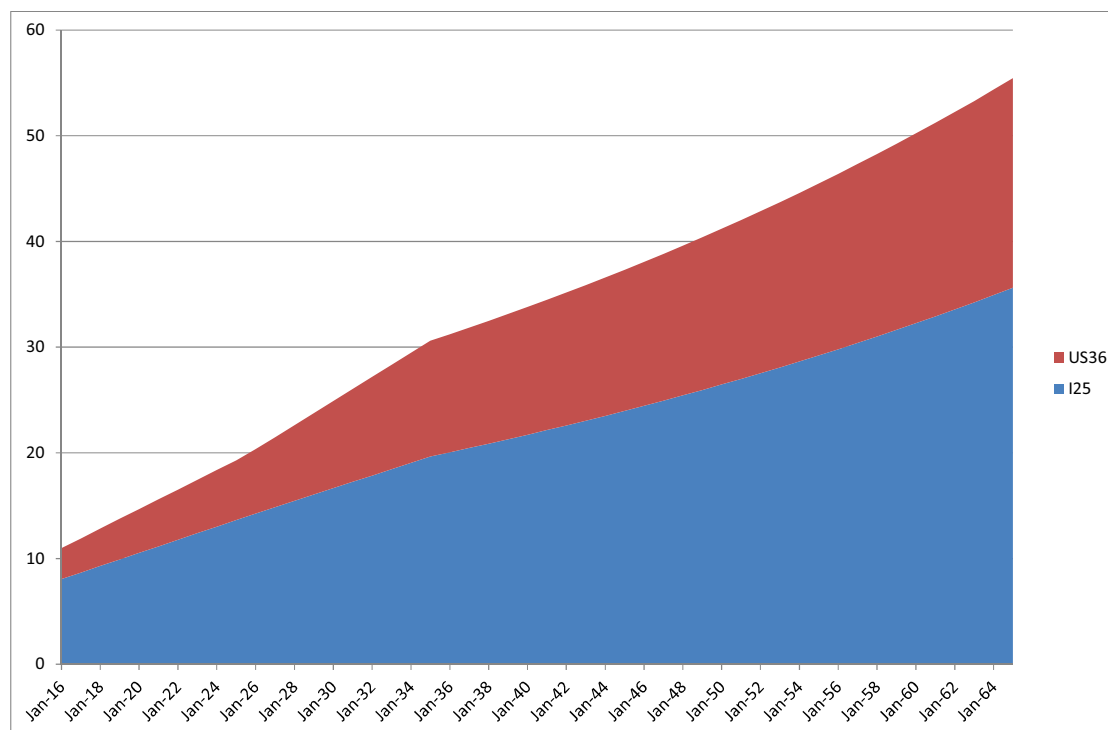
5.3.1 Phases 1 and 2 with HOV3+ Toll Policy

The Sponsor Base Case results for the full scheme (P1&P2 with a HOV3+ toll policy) are summarized in the table and figure below. Full details can be found in Appendix B. In the year ending June 2016 the I-25 Express Lanes represents 74% of total revenue, but this declines over time to 66% by year ending June 2036. US36 phase 2 alone accounts for only 2% of revenues.

Table 5—2 Summary of the Sponsor Base Case (P1&P2 and HOV3+) Results

| Year Ending | Annual Revenue (2010\$) |
|-----------------------------|-------------------------|
| June 2016 | 10.98m |
| June 2026 | 20.34m |
| <i>Growth over 10 years</i> | 85% |
| June 2036 | 31.22m |
| <i>Growth over 10 years</i> | 54% |
| June 2046 | 38.06m |
| <i>Growth over 10 years</i> | 22% |
| June 2056 | 46.39m |
| <i>Growth over 10 years</i> | 22% |

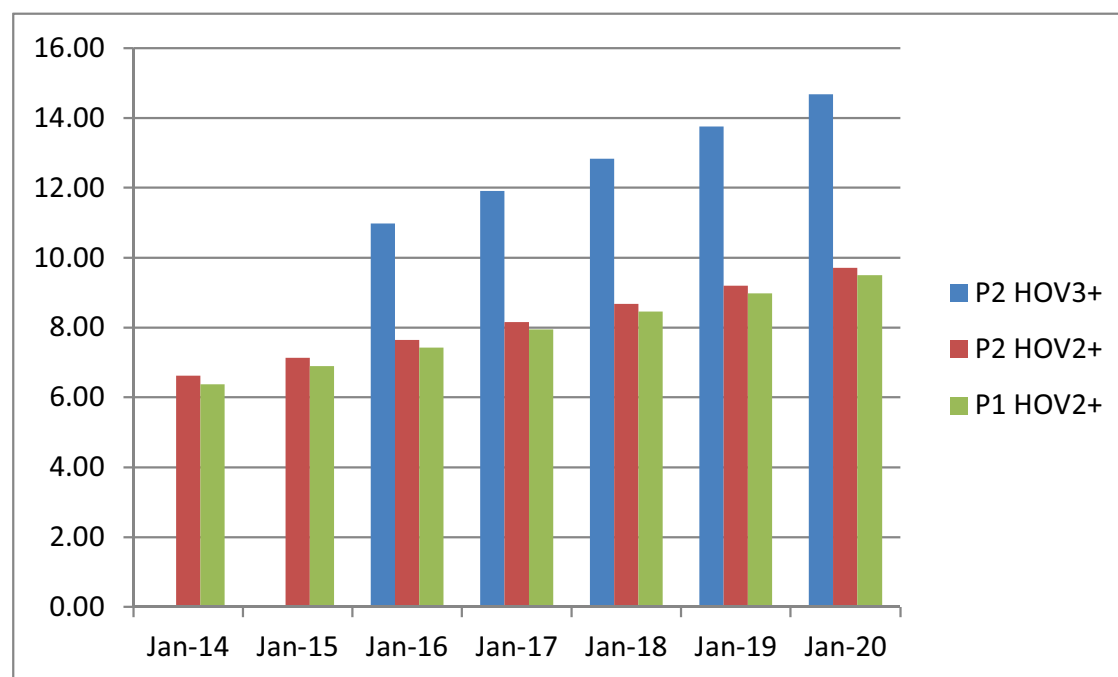
Figure 5—1 Sponsor Base Case (P1&P2 and HOV3+) Revenues in 2010 Dollars



5.3.2 Early Year Project Scenarios

The Sponsor Base Case results for the years prior to the anticipated long term scenario following the triggering of the HOV3+ policy are shown in Appendix C (Phases 1 and 2 with HOV2+ and Phase 1 only with HOV2+) and as discussed above, have been presented over longer periods than anticipated to allow sensitivity testing. A comparison of the revenues (Calendar year starting January) for these two early year scenarios, along with the Phases 1 and 2 and HOV3+ policy scenario is shown in the figure below.

Figure 5—2 Comparison of Early Year Revenues (2010 \$million) for the Various Sponsor Base Case Scenarios



The figure above shows two steps in revenue growth (and noting that the previous and current impacts on traffic growth such as the Union Station works and the US36 Phase 1 construction are excluded).

The first is from 2010 revenue of \$2.4m for just the I-25 Express Lanes to just over \$6m when the US36 opens. This arises as a consequence of a number of factors:

- the increase in all I-25 Express Lane toll rates across the day
- growth in traffic, which both increases the potential market for the I-25 Express Lanes, and increases the congestion on the GPL (and thus making the Managed Lanes more attractive)
- an increase in real willingness to pay tolls
- the opening of the US36 which generates a significant amount of additional income

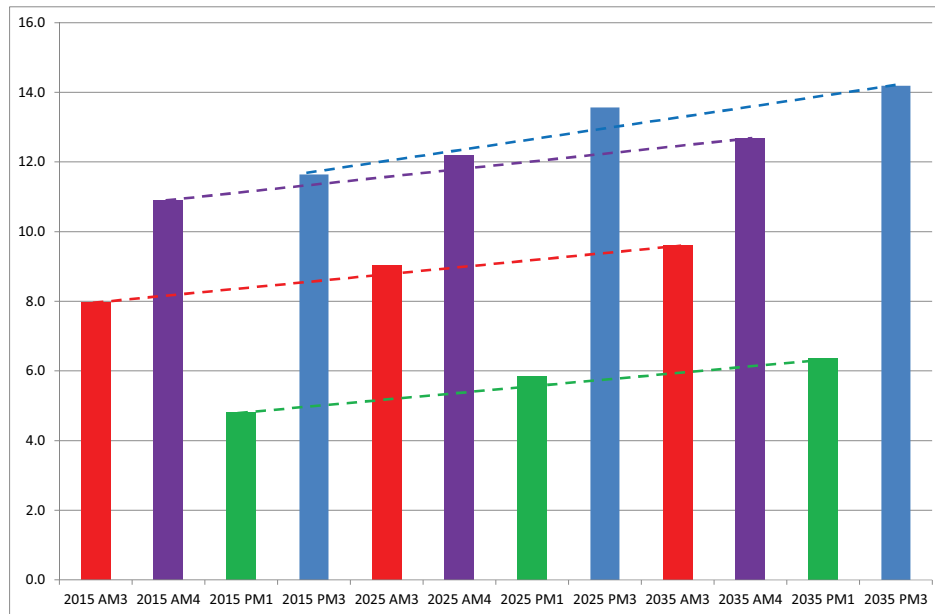
The second increase to around \$11m arises as a consequence of a switch from HOV2+ to HOV3+. While there are on-going steady increases in traffic growth, real toll levels and willingness to pay tolls, this increase to \$11m largely arises out of the requirement for HOV2+ vehicles to either exit the toll lanes (thus make congestion worse on the GPL and encouraging other drivers to pay the toll) or they pay a toll themselves. Both impacts boost revenues.

The scale of this impact can be understood when one considers that the Buro Happold model has traffic growth of under 2% a year, so the switch of all the HOV2+ traffic to the GPL would be similar to over 6 years of growth occurring instantly on the GPL.

5.3.3 Time Savings

We have extracted from the model the time savings to traffic using the Managed Lanes, in comparison with the parallel GPL. This was done for two origin-destination pairs, Downtown Denver – Thornton (which are locations at either end of the existing I-25 Express Lanes) and Downtown Denver – Boulder (which address use of both the I-25 and US36 Managed Lanes). In all cases we have only presented the peak direction (i.e. AM into Denver and PM out of Denver). The results are shown for 2015, 2025 and 2035 in the graphs below, and look at both the peak (AM4 and PM3) and shoulder peak time periods (AM3 and PM1).

Figure 5—3 Time Saving (minutes) using the Managed Lane for Downtown Denver - Thornton

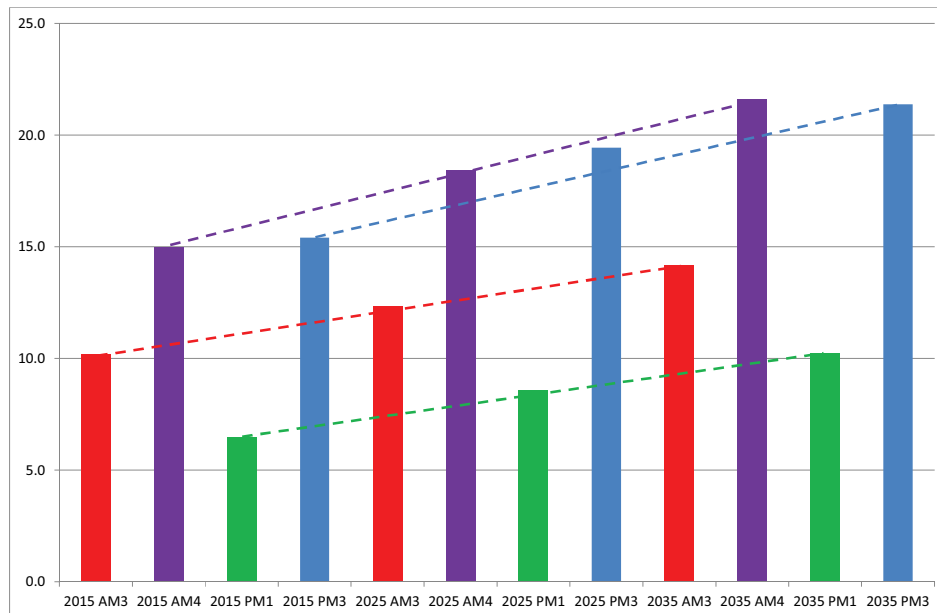


Note 1: All data relates to the peak direction of into Denver in the AM and out of Denver in the PM.

Note 2: AM3 and PM1 are shoulder peak periods and AM4 and PM3 are peak periods.

Note 3: Red is AM3 period, Purple is AM4 period, Green is PM1 Period and Blue is PM3 period.

Figure 5—4 Time Saving (minutes) using the Managed Lane for Downtown Denver - Boulder



Note 1: All data relates to the peak direction of into Denver in the AM and out of Denver in the PM.

Note 2: AM3 and PM1 are shoulder peak periods and AM4 and PM3 are peak periods.

Note 3: Red is AM3 period, Purple is AM4 period, Green is PM1 Period and Blue is PM3 period.

For Downtown Denver - Thornton, one can see the time savings in 2015 are around 5 to 8 minutes in the shoulder peaks and 10 to 12 minutes in the peaks. This is consistent with the RTD who currently believe “*Bus/HOV commuters typically save as much as 5 to 10 minutes travel time during rush hour, with even greater savings when accidents or severe weather slow general auto traffic*”.

For Downtown Denver - Boulder the time savings in 2015 are only a few minutes greater than for Denver to Thornton, reflecting the fact that the lower congestion levels on the US36 mean initially time savings are small (and as reflected in the distribution of revenue between the I-25 and the US36). However, over time, the delays increase as traffic on the US36 grows, such that by 2035 an end to end trip in the peak is expected to save over 20 minutes by using the Managed Lanes.

As well as the time savings described above, journey time reliability from guaranteed congestion-free driving is another factor that will encourage the use of the Managed Lanes. Using the Managed Lanes reduces the travel time uncertainty brought about by congestion in the adjacent GPL.

5.3.4 Capture Rates

The final presentation of the Sponsor Base Case results looks at the “toll capture” of traffic by the Managed Lanes at each toll gantry (defined as toll paying Managed Lane traffic as a percentage of both Managed Lane and GPL traffic at the same location). The results presented in the figures below are 2025 for Phase 1&Phase 2 with the HOV3+ toll policy by direction and time period for each toll gantry. The gantries are references as shown in Figure 1-2 of this report, with S1 and N1 being the I-25 and then the remaining gantries being for the US36, with the numbers increasing from east to west (i.e. S2 and N2 are the gantries closest to the I-25 and S9 and N8 being the gantries closest to Boulder). Also, as discussed earlier, when reviewing the I-25 Express Lane capture rates (S1 and N1) it should be noted that the I-25 Express Lanes run parallel to several different sections of GPL and therefore one can measure capture at a number of different locations and get different results. This rate shown is taken at the location of the I-25 gantry.

Southbound, one can see the AM capture rates are highest east to west, emphasizing the commute into Denver, and with virtually no capture beyond Sheridan Blvd. In the PM (remembering the I-25-Express Lanes do not operate southbound at this time), the highest capture rates are again around Sheridan Blvd, although they remain high along the whole route.

Northbound one can see how the I-25 Express Lane capture rate increases from midday, to the PM shoulder and then on to their highest level in the PM peak. On the US36, AM capture is high out to Interlocken loop, and one can also see capture of traffic heading west in the AM peak to the Interlocken loop area. Once again, the highest capture rates on the US36 are around Sheridan Blvd although PM capture rates remain high out to the Interlocken loop.

Figure 5—5 Managed Lane Toll Traffic Capture Rates in 2025 Southbound (P1&P2 HOV3+)

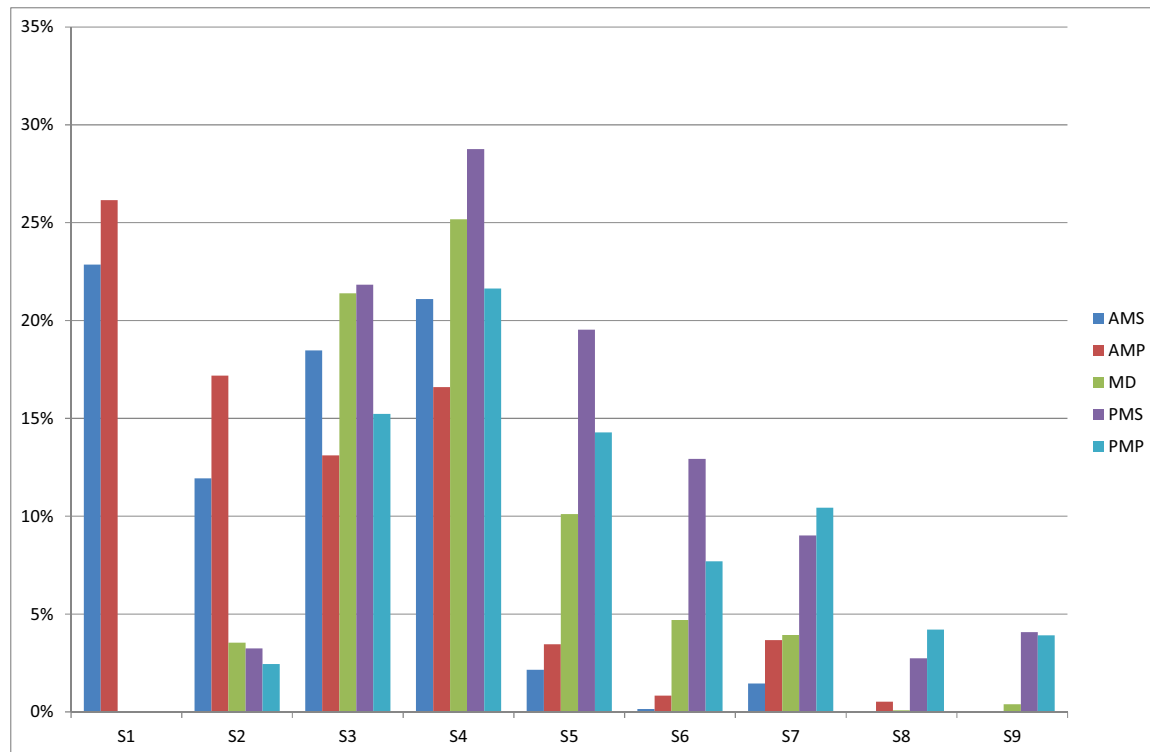
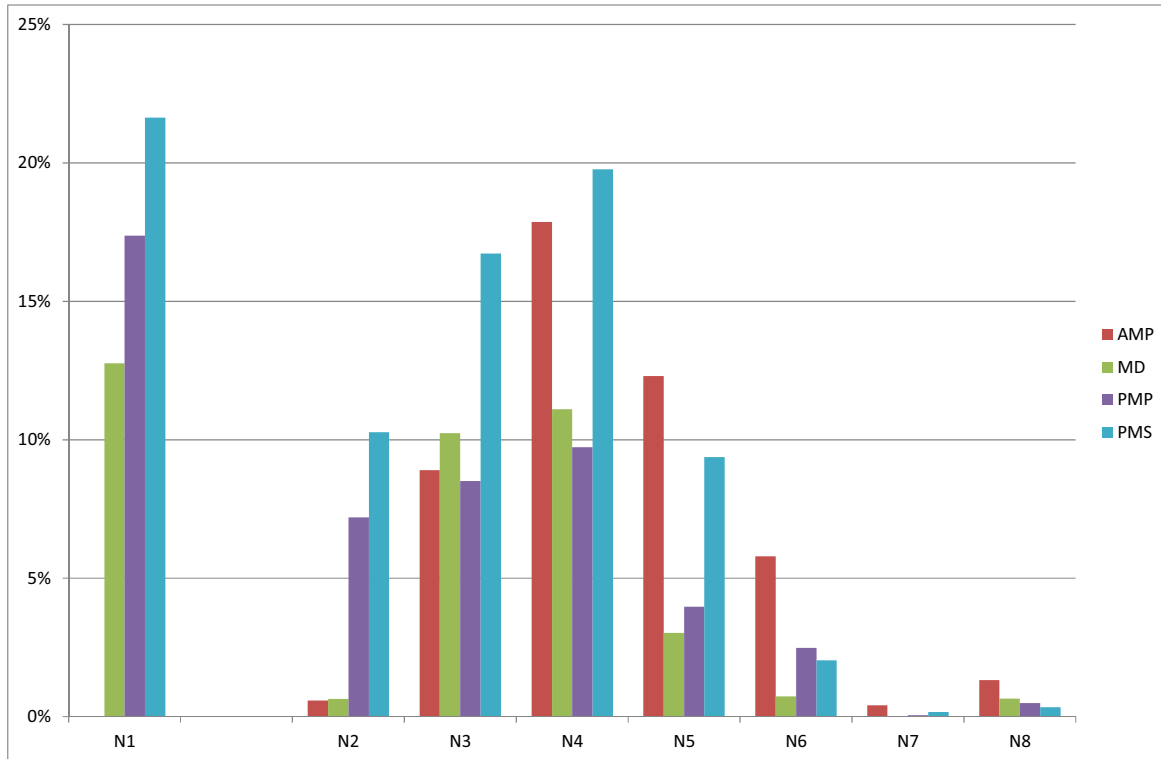
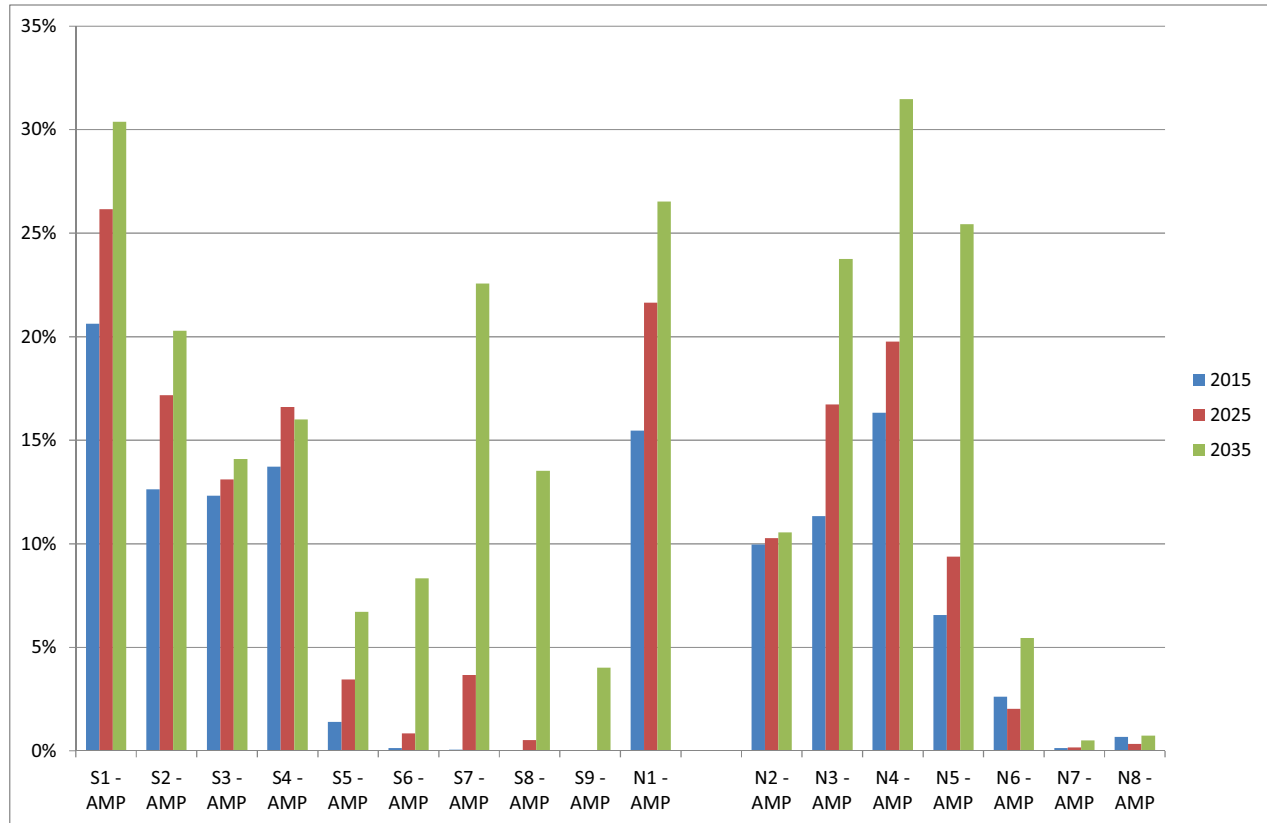


Figure 5—6 Managed Lane Toll Traffic Capture Rates in 2025 Northbound (P1&P2 HOV3+)



Finally, the way in which the capture rates increase over time can be seen in the figure below, which shows, for 2015, 2025 and 2035 the capture rate at the southbound gantries in the AM Peak and the northbound gantries in the PM Peak. Virtually all the capture rates increase over time.

Figure 5—7 AM Peak Hour Southbound and PM Peak Hour Northbound Capture Rates in 2015, 2025 and 2035



5.4 Growth Sensitivity Tests

5.4.1 Overview

We have undertaken a number of “traffic growth” sensitivity tests as experience from other projects would suggest this is the parameter that the forecasts will be the most sensitive to. These sensitivity tests are:

- DRCOG US36 Sub-Model Growth
- Flat Growth
- Slower and Faster Growth Rates

The results for each are presented below.

5.4.2 DRCOG US36 Sub-Model Growth

The first growth sensitivity looked at the anticipated revenue levels had the traffic growth in the DRCOG Sub-Model been adopted, rather than the very slightly higher Sponsor Base Case scenario. A comparison of the two sets of forecasts is given in the table below.

Table 5—3 DRCOG Growth Sensitivity Test

| Fiscal Year Ending | DRCOG Growth Annual Revenue (2010\$) | Sponsor Base Case Annual Revenue (2010\$) | Percentage Difference |
|--------------------|--------------------------------------|---|-----------------------|
| June 2016 | 10.18m | 10.98m | 7.9% |
| June 2026 | 17.25m | 20.34m | 17.9% |
| June 2036 | 26.87m | 31.22m | 16.2% |

5.4.3 Flat Growth

The Buro Happold model trip tables show growth varying between individual locations over time, with some areas that are currently under developed, growing far faster than other areas where there is currently already significant development (and hence less room to accommodate future development). To assess the sensitivity of the forecasts to the allocation of this growth between various locations, we have undertaken a sensitivity test where we increased the 2010 trip tables by the average growth rate to 2025, thus creating a “flat growth” trip table for 2025 (i.e. every origin and destination in the trip table increased over the period 2010 to 2025 at exactly the same rate).

The overall effect of this sensitivity was to increase annual revenue by over 10%. This increase in revenue with a “flat growth” trip table provided reassurance that the differential growth assumptions in the model (i.e. some areas growing faster than others over time) have not biased the revenues upward.

5.4.4 Slower and Faster Growth Rates

The next tests undertaken increased and decreased the number of trips in the 2025 trip tables by 5%. As the I-25 and US36 respond differently to this sensitivity test, especially in the plus 5% scenario, the revenue results are presented separately in the table below.

Table 5—4 Different Size Trip Table (5%) Sensitivity Tests for 2025

| Scenario | I-25 Revenues | US36 Revenues | Total Revenues in 2025 |
|-----------------------|---------------|---------------|------------------------|
| Trip Table 5% Smaller | -17.6% | -26.4% | -20.3% |
| Trip Table 5% Larger | +18.9% | +33.3% | +23.3% |

The stronger revenue response seen on the US36 in the 5% larger test is consistent with the current lower levels of congestion on the US36 corridor, relative to the I-25.

5.5 Other Sensitivity Tests

5.5.1 Overview

While not specifically requested to prepare “upside” or “downside” forecasts we have undertaken two other sensitivity tests to assist the reader in understanding the scale of potential “upside” and “downside” issues. The sensitivity tests are for the P1&P2 and HOV3+ toll policy scenario.

5.5.2 Value of Time Sensitivity

The first sensitivity tests involved increasing and decreasing all of the Values of Time (VoT) in the model by 10% in the 2015 model. This sensitivity test showed that a 10% reduction in VoT reduced revenues by 9%, while a 10% increase in VoT increased revenues by 12%. It should be noted in both cases we did not alter toll rates downward, so this can be seen as a worst case test (i.e. in reality some of the revenue loss would be mitigated by adopting different toll levels in response to the evidence that willingness to pay tolls, as defined by VoT, was not as anticipated).

5.5.3 Sensitivity to Toll Levels

The next test looked at sensitivity of the forecasts to different toll levels. These results have been presented for the I-25 and US36 separately as the tests showed the I-25 and US36 reacted differently, in terms of direction of revenue change. As discussed earlier, while the system as a whole has been optimized to a level where total revenues showed only limited change in response to small toll changes, we have not endeavored to fully revenue optimize every single gantry, and this accounts for the results seen in the test.

The revenue results in response to a plus and minus 15% across the board change in 2025 toll rates are as follows:

- I-25 Revenue – minus 4.1% and plus 2.7%
- US36 Revenue – plus 2.8% and minus 2.6%
- Total Revenue – minus 2.0% and plus 1.1%

5.6 Other Uncertainties

There are a number of other general uncertainties in the forecasting process that should also be born in mind when considering the Sponsor Base Case forecasts:

- All traffic data has an inherent error. For example, the UK Department recommends a plus and minus range of between 5% and 10% depending on the data type
- Conversion from hourly data to yearly data is reliant on data on the current profile of traffic on the US36 and this profile may change over time
- The model assumes the basic cost of motoring remains broadly constant in real terms and there are no significant changes in working practices, especially home working
- The forecasts exclude any “force majeure” type events

Further, the DRCOG US36 sub model was developed from the full DRCOG regional transportation model which included a number of assumptions on future changes to the transport system of the area, including improvements to the transit system in the area. As the Buro Happold model is reliant on the DRCOG US 36 sub model as its base, the forecasts are consistent with those assumptions.

Given the nature of Managed Lanes in general, and the US36 / I-25 corridor in particular, we would expect the only major threat to the forecasts would arise as a consequence of widening of the GPL on those highways (the likelihood of a new parallel route in either corridor being extremely unlikely). However, we did not undertake a sensitivity tests on this because we understand the concession company would receive compensation should the GPL ever be expanded. This relief is encompassed in the Unplanned Revenue Facility provisions of the Concession Agreement. We understand that the compensation would be sufficient to put the concession company on equal economic terms should the expansion not have occurred. Similarly under the same provisions, we understand the concession company would be compensated for a competing facility that is currently not planned. Note no significant competing facilities are currently planned.

5.7 Benchmarking

To gain a further appreciation of the revenue forecasts we have contrasted both existing and forecast revenues for the I-25 and US36 with other Managed Lane schemes in the US. The information we have obtained for other comparable schemes (i.e. HoV3+ toll policy) is as follows:

- I95 Miami XL – FY 2011, \$15m of revenues from 7.5 miles of lanes.
- SR91 in California – FY2011, \$33m of revenues from 10 miles of lanes

These schemes have two Managed Lanes per direction. They currently generate between \$2.0m and \$3.3m a mile a year. If we assume the I-25/US36 will be 18.5 miles (15 miles of US36 and 7 divided by 2 miles for I-25 to reflect the reversible nature of the I-25) then the 2015 forecast (in 2010\$) would give just over \$0.59m a mile.

The only other comparable scheme is the VA495 in Virginia. Unfortunately, the road only opened in November 2012, and the results published so far suggest the road is still ramping up. However, the results for the last quarter available (to June 2013) suggest annualized revenues of around \$30m a year, and with a length of 12 miles, this would indicate around \$2.50m a mile.

The US36/I-25 forecasts benchmark favorable (in the sense that they are significantly lower), on a revenue per mile basis, with other similar existing Managed Lane projects in the US.

5.8 Sponsor Base Case Transactions

In the 2016 forecasts there are 4.48 million trip transactions and an average toll per transaction of \$2.28 (2010 \$), with each trip transaction on average going under just over 3 gantries. However, to forecast the cost of processing of tolls (which is undertaken by others) it was necessary to identify the number of “trip transactions” for those who are a “TAG transaction” and the number of “gantry transactions” for those with who are a “Plate transaction”. Plenary have provided the split between “TAG transactions” and “Plate transactions” and using this information, as well as information from the Buro Happold model, we have derived forecasts of the number of “Trip Transactions for TAG users” and the number of “Gantry Transactions for Plates”. These are shown in the Table 5-5 below.

Table 5—5 Sponsor Base Case Transaction Forecasts

| Year Ending June | Gantry Transactions for Plates | Trip Transactions for TAGs |
|------------------|--------------------------------|----------------------------|
| 2014 | 1,836,035 | 1,759,778 |
| 2015 | 1,829,658 | 1,956,989 |
| 2016 | 1,883,489 | 2,263,740 |
| 2017 | 2,414,504 | 3,514,188 |
| 2018 | 3,216,846 | 4,675,726 |
| 2019 | 3,447,904 | 5,012,949 |
| 2020 | 3,678,963 | 5,350,171 |
| 2021 | 3,910,021 | 5,687,394 |
| 2022 | 4,141,080 | 6,024,617 |
| 2023 | 4,372,138 | 6,361,840 |
| 2024 | 4,603,197 | 6,699,062 |
| 2025 | 4,834,256 | 7,036,285 |
| 2026 | 5,147,273 | 7,412,828 |
| 2027 | 5,460,290 | 7,828,690 |
| 2028 | 5,773,307 | 8,244,553 |
| 2029 | 6,086,324 | 8,660,416 |
| 2030 | 6,399,341 | 9,076,278 |
| 2031 | 6,712,358 | 9,492,141 |
| 2032 | 7,025,375 | 9,908,003 |
| 2033 | 7,338,392 | 10,323,866 |
| 2034 | 7,651,409 | 10,739,729 |
| 2035 | 7,964,426 | 11,155,591 |
| 2036 | 8,123,714 | 11,378,703 |
| 2037 | 8,286,188 | 11,606,277 |
| 2038 | 8,451,912 | 11,838,403 |
| 2039 | 8,620,950 | 12,075,171 |
| 2040 | 8,793,370 | 12,316,674 |
| 2041 | 8,969,237 | 12,563,008 |
| 2042 | 9,148,622 | 12,814,268 |
| 2043 | 9,331,594 | 13,070,553 |
| 2044 | 9,518,226 | 13,331,964 |
| 2045 | 9,708,590 | 13,598,603 |
| 2046 | 9,902,762 | 13,870,576 |
| 2047 | 10,100,818 | 14,147,987 |
| 2048 | 10,302,834 | 14,430,947 |
| 2049 | 10,508,891 | 14,719,566 |
| 2050 | 10,719,068 | 15,013,957 |
| 2051 | 10,933,450 | 15,314,236 |
| 2052 | 11,152,119 | 15,620,521 |
| 2053 | 11,375,161 | 15,932,931 |
| 2054 | 11,602,664 | 16,251,590 |
| 2055 | 11,834,718 | 16,576,622 |
| 2056 | 12,071,412 | 16,908,154 |
| 2057 | 12,312,840 | 17,246,317 |
| 2058 | 12,559,097 | 17,591,244 |
| 2059 | 12,810,279 | 17,943,068 |
| 2060 | 13,066,485 | 18,301,930 |
| 2061 | 13,327,814 | 18,667,968 |

5.9 Adjusting Revenues for Different Proportions of Plate Transactions

The Buro Happold forecasts have a 2010 baseline. In 2010, around 15% of paying traffic was a Plate Transaction, with the remaining 85% being a TAG transaction. However, since 2010 the proportion of transactions that are Plate Transactions has increased. When interpreting the Buro Happold revenue forecasts, one should assume 15% of revenue coming from Plate Transactions as the “baseline”, and then adjust revenues if one expects the proportion of Plate Transactions to be different to 15%.

As a consequence of the proposed strategy of increasing the Plate Transaction premium, along with other marketing campaigns around use of TAGs (including the assumption that HOV will need a TAG in 2017), the proportion of Plate Transactions are expected to be 18%. This means that even without an increase on the Plate Transaction premium one should add 3% (additional Plate Transactions) of 25% (Plate Transaction premium) more revenue to the Buro Happold revenue forecasts. This translates to 0.75% more revenue.

In addition, if one were to assume an increase the Plate Transaction premium to 50% (rather than the current 25%) one should add a further 18% (proportion of Plate Transactions) of 25% (50%-25%) to the revenue, which would add a further 4.5% more to the Buro Happold revenue forecasts.

Appendix A Detailed Toll Rates by Year, Time Period and Gantry for the I-25 and US36 (2010 Dollars)

| I25 Toll Rates by Period and Year - 2010\$ | | | | | | | | | | | | |
|--|-------------|------|------|------|------|------|------|------|------|------|------|------|
| | 2010 Actual | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | |
| | 0.00-6.00 | 0.50 | 0.50 | 0.50 | 0.51 | 0.51 | 0.51 | 0.52 | 0.52 | 0.52 | 0.52 | 0.53 |
| | 6.00-6.45 | 1.75 | 1.91 | 1.92 | 1.93 | 1.95 | 1.96 | 1.97 | 1.98 | 1.99 | 2.01 | 2.02 |
| AM Shoulder | 6.45-7.15 | 2.75 | 3.04 | 3.06 | 3.08 | 3.10 | 3.12 | 3.14 | 3.15 | 3.17 | 3.19 | 3.21 |
| AM Peak | 7.15-8.15 | 3.50 | 3.88 | 3.90 | 3.92 | 3.95 | 3.97 | 4.00 | 4.02 | 4.05 | 4.07 | 4.10 |
| | 8.15-8.45 | 2.75 | 3.04 | 3.06 | 3.08 | 3.10 | 3.12 | 3.14 | 3.15 | 3.17 | 3.19 | 3.21 |
| | 8.45-10.00 | 1.25 | 1.35 | 1.36 | 1.36 | 1.37 | 1.38 | 1.39 | 1.40 | 1.41 | 1.41 | 1.42 |
| Midday | 10.00-15.00 | 0.50 | 0.50 | 0.50 | 0.51 | 0.51 | 0.51 | 0.52 | 0.52 | 0.52 | 0.52 | 0.53 |
| PM Shoulder | 15.00-15.30 | 1.50 | 1.65 | 1.66 | 1.67 | 1.68 | 1.69 | 1.69 | 1.70 | 1.71 | 1.72 | 1.73 |
| | 15.30-16.30 | 2.00 | 2.21 | 2.22 | 2.23 | 2.24 | 2.26 | 2.27 | 2.28 | 2.30 | 2.31 | 2.32 |
| PM Peak | 16.30-18.00 | 3.50 | 3.88 | 3.90 | 3.92 | 3.95 | 3.97 | 4.00 | 4.02 | 4.05 | 4.07 | 4.10 |
| | 18.00-19.00 | 1.50 | 1.65 | 1.66 | 1.67 | 1.68 | 1.69 | 1.69 | 1.70 | 1.71 | 1.72 | 1.73 |
| | 19.00-24.00 | 0.50 | 0.50 | 0.50 | 0.51 | 0.51 | 0.51 | 0.52 | 0.52 | 0.52 | 0.52 | 0.53 |
| | | | | | | | | | | | | |
| | 2025 | 2026 | 2027 | 2028 | 2029 | 2030 | 2031 | 2032 | 2033 | 2034 | 2035 | |
| | 0.00-6.00 | 0.53 | 0.53 | 0.54 | 0.54 | 0.55 | 0.55 | 0.56 | 0.56 | 0.57 | 0.57 | 0.58 |
| | 6.00-6.45 | 2.03 | 2.05 | 2.07 | 2.09 | 2.11 | 2.12 | 2.14 | 2.16 | 2.18 | 2.20 | 2.22 |
| AM Shoulder | 6.45-7.15 | 3.23 | 3.26 | 3.29 | 3.32 | 3.35 | 3.38 | 3.41 | 3.44 | 3.47 | 3.50 | 3.53 |
| AM Peak | 7.15-8.15 | 4.12 | 4.16 | 4.20 | 4.23 | 4.27 | 4.31 | 4.35 | 4.39 | 4.42 | 4.46 | 4.50 |
| | 8.15-8.45 | 3.23 | 3.26 | 3.29 | 3.32 | 3.35 | 3.38 | 3.41 | 3.44 | 3.47 | 3.50 | 3.53 |
| | 8.45-10.00 | 1.43 | 1.44 | 1.46 | 1.47 | 1.48 | 1.50 | 1.51 | 1.52 | 1.54 | 1.55 | 1.56 |
| Midday | 10.00-15.00 | 0.53 | 0.53 | 0.54 | 0.54 | 0.55 | 0.55 | 0.56 | 0.56 | 0.57 | 0.57 | 0.58 |
| PM Shoulder | 15.00-15.30 | 1.74 | 1.75 | 1.77 | 1.79 | 1.80 | 1.82 | 1.84 | 1.85 | 1.87 | 1.88 | 1.90 |
| | 15.30-16.30 | 2.33 | 2.36 | 2.38 | 2.40 | 2.42 | 2.44 | 2.46 | 2.48 | 2.51 | 2.53 | 2.55 |
| PM Peak | 16.30-18.00 | 4.12 | 4.16 | 4.20 | 4.23 | 4.27 | 4.31 | 4.35 | 4.39 | 4.42 | 4.46 | 4.50 |
| | 18.00-19.00 | 1.74 | 1.75 | 1.77 | 1.79 | 1.80 | 1.82 | 1.84 | 1.85 | 1.87 | 1.88 | 1.90 |
| | 19.00-24.00 | 0.53 | 0.53 | 0.54 | 0.54 | 0.55 | 0.55 | 0.56 | 0.56 | 0.57 | 0.57 | 0.58 |

| US36 SOUTHBOUND - Toll Rates by Period and Year - 2010\$ | | | | | | | | | | | | |
|--|-------------|------|------|------|------|------|------|------|------|------|------|------|
| | 2010 Actual | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | |
| | 0.00-6.00 | 1.64 | 1.70 | 1.76 | 1.82 | 1.88 | 1.95 | 2.01 | 2.07 | 2.13 | 2.19 | |
| | 6.00-6.45 | 1.87 | 1.92 | 1.97 | 2.02 | 2.08 | 2.13 | 2.18 | 2.23 | 2.28 | 2.34 | |
| AM Shoulder | 6.45-7.15 | 2.05 | 2.10 | 2.14 | 2.19 | 2.23 | 2.28 | 2.32 | 2.37 | 2.41 | 2.46 | |
| AM Peak | 7.15-8.15 | 3.59 | 3.68 | 3.77 | 3.85 | 3.94 | 4.03 | 4.12 | 4.21 | 4.29 | 4.38 | |
| | 8.15-8.45 | 2.05 | 2.10 | 2.14 | 2.19 | 2.23 | 2.28 | 2.32 | 2.37 | 2.41 | 2.46 | |
| | 8.45-10.00 | 1.78 | 1.83 | 1.89 | 1.94 | 2.00 | 2.06 | 2.11 | 2.17 | 2.22 | 2.28 | |
| Midday | 10.00-15.00 | 1.64 | 1.70 | 1.76 | 1.82 | 1.88 | 1.95 | 2.01 | 2.07 | 2.13 | 2.19 | |
| PM Shoulder | 15.00-15.30 | 2.54 | 2.59 | 2.64 | 2.69 | 2.74 | 2.79 | 2.84 | 2.89 | 2.94 | 2.99 | |
| | 15.30-16.30 | 2.71 | 2.76 | 2.82 | 2.87 | 2.92 | 2.97 | 3.03 | 3.08 | 3.13 | 3.18 | |
| PM Peak | 16.30-18.00 | 3.23 | 3.29 | 3.35 | 3.41 | 3.47 | 3.53 | 3.58 | 3.64 | 3.70 | 3.76 | |
| | 18.00-19.00 | 2.54 | 2.59 | 2.64 | 2.69 | 2.74 | 2.79 | 2.84 | 2.89 | 2.94 | 2.99 | |
| | 19.00-24.00 | 1.64 | 1.70 | 1.76 | 1.82 | 1.88 | 1.95 | 2.01 | 2.07 | 2.13 | 2.19 | |
| | | | | | | | | | | | | |
| | 2025 | 2026 | 2027 | 2028 | 2029 | 2030 | 2031 | 2032 | 2033 | 2034 | 2035 | |
| | 0.00-6.00 | 2.25 | 2.26 | 2.26 | 2.27 | 2.27 | 2.28 | 2.29 | 2.29 | 2.30 | 2.30 | |
| | 6.00-6.45 | 2.39 | 2.42 | 2.45 | 2.47 | 2.50 | 2.53 | 2.56 | 2.59 | 2.62 | 2.64 | 2.67 |
| AM Shoulder | 6.45-7.15 | 2.50 | 2.55 | 2.59 | 2.64 | 2.69 | 2.74 | 2.78 | 2.83 | 2.88 | 2.92 | 2.97 |
| AM Peak | 7.15-8.15 | 4.47 | 4.46 | 4.46 | 4.45 | 4.45 | 4.44 | 4.43 | 4.43 | 4.42 | 4.42 | 4.41 |
| | 8.15-8.45 | 2.50 | 2.55 | 2.59 | 2.64 | 2.69 | 2.74 | 2.78 | 2.83 | 2.88 | 2.92 | 2.97 |
| | 8.45-10.00 | 2.33 | 2.35 | 2.37 | 2.39 | 2.41 | 2.43 | 2.45 | 2.47 | 2.49 | 2.50 | 2.52 |
| Midday | 10.00-15.00 | 2.25 | 2.26 | 2.26 | 2.27 | 2.27 | 2.28 | 2.28 | 2.29 | 2.29 | 2.30 | 2.30 |
| PM Shoulder | 15.00-15.30 | 3.04 | 3.08 | 3.12 | 3.16 | 3.20 | 3.24 | 3.27 | 3.31 | 3.35 | 3.39 | 3.43 |
| | 15.30-16.30 | 3.24 | 3.28 | 3.32 | 3.37 | 3.41 | 3.46 | 3.50 | 3.54 | 3.59 | 3.63 | 3.68 |
| PM Peak | 16.30-18.00 | 3.82 | 3.88 | 3.94 | 4.00 | 4.06 | 4.12 | 4.17 | 4.23 | 4.29 | 4.35 | 4.41 |
| | 18.00-19.00 | 3.04 | 3.08 | 3.12 | 3.16 | 3.20 | 3.24 | 3.27 | 3.31 | 3.35 | 3.39 | 3.43 |
| | 19.00-24.00 | 2.25 | 2.26 | 2.26 | 2.27 | 2.27 | 2.28 | 2.28 | 2.29 | 2.29 | 2.30 | 2.30 |

NOTE: THESE ARE 2010 DOLLAR VALUES AND WILL NEED TO BE ADJUSTED FOR INFLATION, PLUS ANY ROUNDING, WHEN ACTUALLY APPLIED IN THE FUTURE

| US36 NORTHBOUND Toll Rates by Period and Year - 2010\$ | | | | | | | | | | | | |
|--|-------------|-------------|------|------|------|------|------|------|------|------|------|------|
| | | 2010 Actual | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 |
| | 0.00-6.00 | | 1.40 | 1.40 | 1.40 | 1.40 | 1.40 | 1.40 | 1.40 | 1.40 | 1.40 | 1.40 |
| | 6.00-6.45 | | 1.55 | 1.59 | 1.63 | 1.67 | 1.71 | 1.75 | 1.79 | 1.83 | 1.87 | 1.91 |
| AM Shoulder | 6.45-7.15 | | 1.67 | 1.74 | 1.81 | 1.89 | 1.96 | 2.03 | 2.10 | 2.17 | 2.25 | 2.32 |
| AM Peak | 7.15-8.15 | | 2.72 | 2.80 | 2.87 | 2.95 | 3.02 | 3.10 | 3.18 | 3.25 | 3.33 | 3.40 |
| | 8.15-8.45 | | 1.67 | 1.74 | 1.81 | 1.89 | 1.96 | 2.03 | 2.10 | 2.17 | 2.25 | 2.32 |
| | 8.45-10.00 | | 1.49 | 1.51 | 1.54 | 1.56 | 1.59 | 1.61 | 1.63 | 1.66 | 1.68 | 1.71 |
| Midday | 10.00-15.00 | | 1.40 | 1.40 | 1.40 | 1.40 | 1.40 | 1.40 | 1.40 | 1.40 | 1.40 | 1.40 |
| PM Shoulder | 15.00-15.30 | | 1.40 | 1.44 | 1.47 | 1.51 | 1.55 | 1.59 | 1.62 | 1.66 | 1.70 | 1.73 |
| | 15.30-16.30 | | 1.61 | 1.67 | 1.73 | 1.79 | 1.85 | 1.91 | 1.97 | 2.03 | 2.09 | 2.15 |
| PM Peak | 16.30-18.00 | | 2.22 | 2.35 | 2.49 | 2.62 | 2.75 | 2.89 | 3.02 | 3.15 | 3.28 | 3.42 |
| | 18.00-19.00 | | 1.40 | 1.44 | 1.47 | 1.51 | 1.55 | 1.59 | 1.62 | 1.66 | 1.70 | 1.73 |
| | 19.00-24.00 | | 1.40 | 1.40 | 1.40 | 1.40 | 1.40 | 1.40 | 1.40 | 1.40 | 1.40 | 1.40 |
| | | 2025 | 2026 | 2027 | 2028 | 2029 | 2030 | 2031 | 2032 | 2033 | 2034 | 2035 |
| | 0.00-6.00 | 1.40 | 1.43 | 1.45 | 1.48 | 1.51 | 1.54 | 1.56 | 1.59 | 1.62 | 1.64 | 1.67 |
| | 6.00-6.45 | 1.95 | 1.99 | 2.02 | 2.06 | 2.09 | 2.13 | 2.17 | 2.20 | 2.24 | 2.27 | 2.31 |
| AM Shoulder | 6.45-7.15 | 2.39 | 2.43 | 2.48 | 2.52 | 2.56 | 2.61 | 2.65 | 2.69 | 2.73 | 2.78 | 2.82 |
| AM Peak | 7.15-8.15 | 3.48 | 3.53 | 3.58 | 3.63 | 3.69 | 3.74 | 3.79 | 3.84 | 3.89 | 3.94 | 4.00 |
| | 8.15-8.45 | 2.39 | 2.43 | 2.48 | 2.52 | 2.56 | 2.61 | 2.65 | 2.69 | 2.73 | 2.78 | 2.82 |
| | 8.45-10.00 | 1.73 | 1.76 | 1.79 | 1.83 | 1.86 | 1.89 | 1.92 | 1.96 | 1.99 | 2.02 | 2.05 |
| Midday | 10.00-15.00 | 1.40 | 1.43 | 1.45 | 1.48 | 1.51 | 1.54 | 1.56 | 1.59 | 1.62 | 1.64 | 1.67 |
| PM Shoulder | 15.00-15.30 | 1.77 | 1.79 | 1.82 | 1.84 | 1.86 | 1.89 | 1.91 | 1.93 | 1.95 | 1.98 | 2.00 |
| | 15.30-16.30 | 2.22 | 2.23 | 2.25 | 2.26 | 2.28 | 2.29 | 2.31 | 2.32 | 2.34 | 2.35 | 2.37 |
| PM Peak | 16.30-18.00 | 3.55 | 3.54 | 3.54 | 3.53 | 3.52 | 3.51 | 3.50 | 3.49 | 3.49 | 3.49 | 3.48 |
| | 18.00-19.00 | 1.77 | 1.79 | 1.82 | 1.84 | 1.86 | 1.89 | 1.91 | 1.93 | 1.95 | 1.98 | 2.00 |
| | 19.00-24.00 | 1.40 | 1.43 | 1.45 | 1.48 | 1.51 | 1.54 | 1.56 | 1.59 | 1.62 | 1.64 | 1.67 |

NOTE: THESE ARE 2010 DOLLAR VALUES AND WILL NEED TO BE ADJUSTED FOR INFLATION, PLUS ANY ROUNDING, WHEN ACTUALLY APPLIED IN THE FUTURE

Appendix B Sponsor Base Case – P1 & P2 With HOV3+ Tolls

| | | | | | |
|-----------------------------|---|---------------------|---------------------|------------|--|
| Title | SPONSORS BASE CASE - HOV3+ TOLL POLICY | | | | |
| Network | P1 AND P2 | | | | |
| Units | MILLIONS 2010 DOLLARS | | | | |
| Ramp Up | EXCLUDED | | | | |
| Toll Revenue Profile | | | | | |
| | TOTALS | | | | |
| Year Ending | I25 | US36 Phase 1 | US36 Phase 2 | ALL | |
| 30-Jun-16 | 8.06 | 2.68 | 0.24 | 10.98 | |
| 30-Jun-17 | 8.68 | 2.98 | 0.24 | 11.90 | |
| 30-Jun-18 | 9.30 | 3.29 | 0.24 | 12.83 | |
| 30-Jun-19 | 9.92 | 3.59 | 0.25 | 13.76 | |
| 30-Jun-20 | 10.54 | 3.89 | 0.25 | 14.68 | |
| 30-Jun-21 | 11.16 | 4.20 | 0.25 | 15.61 | |
| 30-Jun-22 | 11.78 | 4.50 | 0.25 | 16.53 | |
| 30-Jun-23 | 12.40 | 4.80 | 0.25 | 17.46 | |
| 30-Jun-24 | 13.02 | 5.11 | 0.26 | 18.38 | |
| 30-Jun-25 | 13.64 | 5.41 | 0.26 | 19.31 | |
| 30-Jun-26 | 14.25 | 5.82 | 0.27 | 20.34 | |
| 30-Jun-27 | 14.85 | 6.33 | 0.30 | 21.48 | |
| 30-Jun-28 | 15.45 | 6.84 | 0.33 | 22.62 | |
| 30-Jun-29 | 16.05 | 7.35 | 0.36 | 23.76 | |
| 30-Jun-30 | 16.66 | 7.86 | 0.38 | 24.90 | |
| 30-Jun-31 | 17.26 | 8.38 | 0.41 | 26.05 | |
| 30-Jun-32 | 17.86 | 8.89 | 0.44 | 27.19 | |
| 30-Jun-33 | 18.46 | 9.40 | 0.47 | 28.33 | |
| 30-Jun-34 | 19.06 | 9.91 | 0.49 | 29.47 | |
| 30-Jun-35 | 19.67 | 10.42 | 0.52 | 30.61 | |
| 30-Jun-36 | 20.06 | 10.63 | 0.53 | 31.22 | |
| 30-Jun-37 | 20.46 | 10.84 | 0.54 | 31.85 | |
| 30-Jun-38 | 20.87 | 11.06 | 0.55 | 32.48 | |
| 30-Jun-39 | 21.29 | 11.28 | 0.57 | 33.13 | |
| 30-Jun-40 | 21.71 | 11.51 | 0.58 | 33.80 | |
| 30-Jun-41 | 22.15 | 11.74 | 0.59 | 34.47 | |
| 30-Jun-42 | 22.59 | 11.97 | 0.60 | 35.16 | |
| 30-Jun-43 | 23.04 | 12.21 | 0.61 | 35.86 | |
| 30-Jun-44 | 23.50 | 12.46 | 0.62 | 36.58 | |
| 30-Jun-45 | 23.97 | 12.70 | 0.64 | 37.31 | |
| 30-Jun-46 | 24.45 | 12.96 | 0.65 | 38.06 | |
| 30-Jun-47 | 24.94 | 13.22 | 0.66 | 38.82 | |
| 30-Jun-48 | 25.44 | 13.48 | 0.68 | 39.60 | |
| 30-Jun-49 | 25.95 | 13.75 | 0.69 | 40.39 | |
| 30-Jun-50 | 26.47 | 14.03 | 0.70 | 41.20 | |
| 30-Jun-51 | 27.00 | 14.31 | 0.72 | 42.02 | |
| 30-Jun-52 | 27.54 | 14.59 | 0.73 | 42.86 | |
| 30-Jun-53 | 28.09 | 14.89 | 0.75 | 43.72 | |
| 30-Jun-54 | 28.65 | 15.18 | 0.76 | 44.59 | |
| 30-Jun-55 | 29.22 | 15.49 | 0.78 | 45.48 | |
| 30-Jun-56 | 29.81 | 15.80 | 0.79 | 46.39 | |
| 30-Jun-57 | 30.40 | 16.11 | 0.81 | 47.32 | |
| 30-Jun-58 | 31.01 | 16.44 | 0.82 | 48.27 | |
| 30-Jun-59 | 31.63 | 16.76 | 0.84 | 49.23 | |
| 30-Jun-60 | 32.26 | 17.10 | 0.86 | 50.22 | |
| 30-Jun-61 | 32.91 | 17.44 | 0.87 | 51.22 | |
| 30-Jun-62 | 33.57 | 17.79 | 0.89 | 52.25 | |
| 30-Jun-63 | 34.24 | 18.15 | 0.91 | 53.29 | |
| 30-Jun-64 | 34.92 | 18.51 | 0.93 | 54.36 | |
| 30-Jun-65 | 35.62 | 18.88 | 0.95 | 55.45 | |

Appendix C Sponsors Base Case – Phase 1 and 2 and HOV2+

| | | | | | |
|-----------------------------|---|---------------------|---------------------|-------------|--|
| Title | SPONSORS BASE CASE - HOV2+ TOLL POLICY | | | | |
| Network | P1 ONLY | | | | |
| Units | MILLIONS 2010 DOLLARS | | | | |
| Ramp Up | EXCLUDED | | | | |
| Toll Revenue Profile | | | | | |
| | TOTALS | | | | |
| Year Ending | I25 | US36 Phase 1 | US36 Phase 2 | ALL | |
| 30-Jun-14 | 5.15 | 1.23 | 0.00 | 6.38 | |
| 30-Jun-15 | 5.53 | 1.37 | 0.00 | 6.90 | |
| 30-Jun-16 | 5.91 | 1.51 | 0.00 | 7.42 | |
| 30-Jun-17 | 6.30 | 1.64 | 0.00 | 7.94 | |

| | | | | | |
|-----------------------------|---|---------------------|---------------------|-------------|--|
| Title | SPONSORS BASE CASE - HOV2+ TOLL POLICY | | | | |
| Network | P1 AND P2 | | | | |
| Units | MILLIONS 2010 DOLLARS | | | | |
| Ramp Up | EXCLUDED | | | | |
| Toll Revenue Profile | | | | | |
| | TOTALS | | | | |
| Year Ending | I25 | US36 Phase 1 | US36 Phase 2 | ALL | |
| 30-Jun-14 | 5.09 | 1.39 | 0.14 | 6.62 | |
| 30-Jun-15 | 5.47 | 1.53 | 0.14 | 7.13 | |
| 30-Jun-16 | 5.85 | 1.67 | 0.13 | 7.65 | |
| 30-Jun-17 | 6.24 | 1.81 | 0.12 | 8.16 | |

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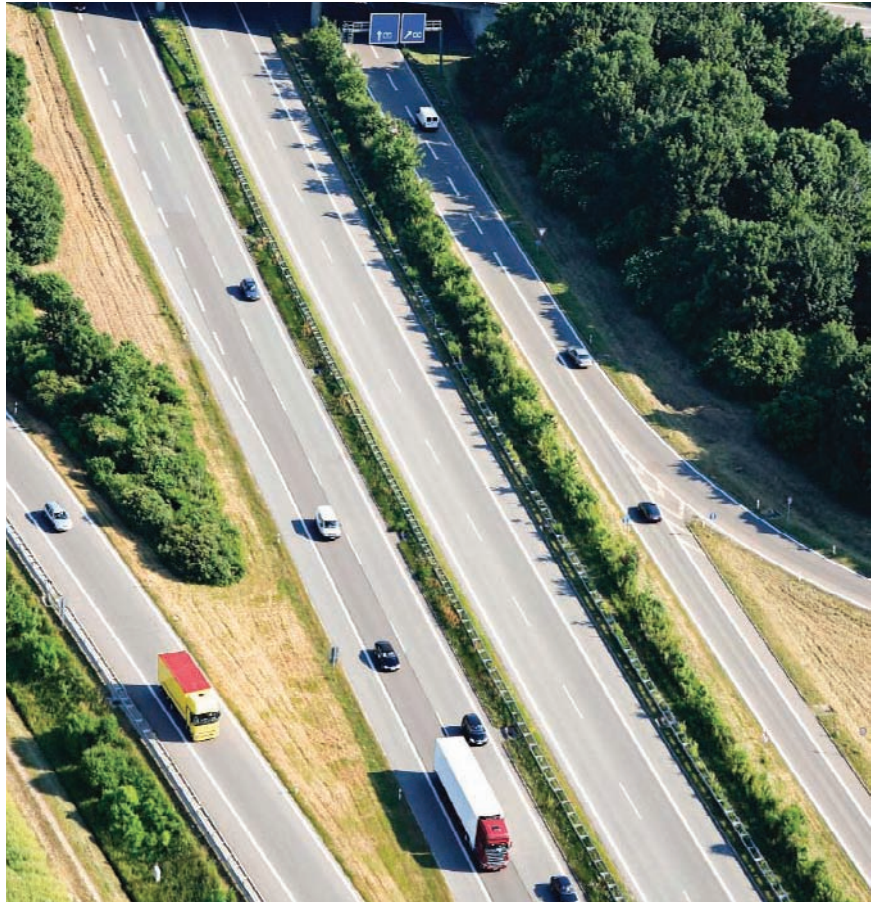
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APPENDIX I

LENDERS' TECHNICAL ADVISOR REPORT

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PEOPLE TO COUNT ON. KNOWLEDGE TO BUILD WITH.



US 36 MANAGED LANES TOLL CONCESSION PROJECT

Lenders' Technical Advisor Services
Pre-FC Technical Due Diligence Report v2.6

February 18, 2014

VANCOUVER • TORONTO • CALGARY • EDMONTON • SASKATOON • ST.CATHARINES • OTTAWA • MONTRÉAL

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GLOSSARY OF TERMS

| | |
|---------------|--|
| AFP | Alternative Financing and Procurement |
| Ames | Ames Construction Inc. |
| AASHTO | American Association of State Highway and Transportation Officials |
| ATC | Alternative Technical Concept |
| ASTM | American Society of Testing and Materials |
| ASX | Australian Securities Exchange |
| BRT | Bus Rapid Transit |
| BTPD | Black-Tailed Prairie Dog |
| BTY | BTY Group |
| CA | Concession Agreement |
| CDOT | Colorado Department of Transportation |
| CDOW | Colorado Division of Wildlife |
| CSP | Colorado State Patrol |
| DBA | Design-Build Agreement |
| DBE | Disadvantaged Business Enterprise |
| DBFM | Design-Build Finance Maintain |
| DBJV | Design-Build Joint Venture |
| E-470 | E-470 Public Highway Authority |
| EP | Equator Principles |
| ETCS | Electronic Toll Collection System |
| FC | Financial Close |
| FEIS | Final Environmental Impact Statement |
| FHWA | Federal Highway Administration |
| Granite | Granite Construction Inc. |
| GP | General Purpose |
| HDR | HDR Engineering Inc. |
| HMA | Hot Mix Asphalt |
| HOV | High Occupancy Vehicles |
| Colorado HPTE | Colorado High Performance Transportation Enterprise |
| IFC | International Finance Corporation |
| ITS | Intelligent Transportation System |
| LD | Liquidated Damages |
| LTA | Lenders' Technical Advisor |
| MBTA | Migratory Bird Treaty Act |
| MEPDG | Mechanistic-Empirical Pavement Design Guide |
| MOMS | Maintenance Online Management System |
| MOT | Maintenance of Traffic |
| MSE | Mechanically Stabilized Earth |
| NBIS | National Bridge Inspection Standard |
| NEPA | National Environmental Policy Act |
| NHPA | National Historic Preservation Act |
| NTD | Note to Draft |
| O&M | Operations and Maintenance |
| OC | Operating Contract |
| OECD | Organisation for Economic Co-operation and Development |
| OMP | Operations Maintenance Plan |

GLOSSARY OF TERMS (Cont'd)

| | |
|------------|--|
| OPEX | Operating Period Expenditure |
| P3 / PPP | Public-Private Partnership |
| PABs | Private Activity Bonds |
| PCCP | Portland Cement Concrete Pavement |
| PRD | Plenary Roads Denver |
| QAHS | Quality Assurance Health and Safety and Environmental |
| QMP | Quality Management Plan |
| RFP | Request for Proposal |
| RHM | Recognized Hazardous Materials |
| ROD | Record of Decision |
| ROW | Right of Way |
| SOV | Single Occupancy Vehicles |
| SPV | Special Purpose Vehicle |
| TBC | To Be Confirmed |
| TIFIA | Transportation Infrastructure Finance and Innovation Act |
| Transfield | Transfield Services Ltd |
| US(A) | United States (of America) |
| USACE | U.S. Army Corps.of Engineers |
| USDOT | U.S. Department of Transportation |
| VTMS | Vessel Traffic Management System |
| Yeh | Yeh and Associates, Inc. |

1.0 INTRODUCTION

1.1 *Instructions Received*

- 1.1.1 This report has been prepared by BTY Group (the Lenders' Technical Advisor or the "LTA") at the request of Plenary Group (Canada) Ltd, in forming the consortium Plenary Roads Denver ("Project Co").
- 1.1.2 Plenary Roads Denver has been formed for the purposes of responding to a request for proposal (the "RFP") to finance, design and construct the US36 General Purpose and Managed Lanes from 88th Street to Table Mesa Drive (the "Phase 2 Corridor") and provide the systems, operations and services related to the Managed Lanes on the Phase 2 Corridor, the Phase 1 Corridor (US36 Pecos Boulevard to 88th Street) and the I-25 Managed Lanes. Toll Revenue that is generated will be collected from those Managed Lanes.
- 1.1.3 The RFP, dated February 12, 2013, has been issued by the Colorado High Performance Transportation Enterprise ("HPTE") to a pre-qualified group of proponents. Each proponent is to submit its proposal in response to the RFP, containing both its technical and financial submission, by March 1, 2013.
- 1.1.4 On April 5, 2013 Plenary Roads Denver was named as the Preferred Proponent to perform the works (as per Section 1.1.2). Project Co and HPTE entered into a Concession Agreement for the US 36 and the I-25 Managed Lanes Project on June 27, 2013.
- 1.1.5 This report is intended to provide a review of the fundamental technical features of the Project and HPTE's RFP submission.

1.2 *Reliance Upon the Report*

- 1.2.1 This report has been prepared in accordance with the scope of BTY Group's engagement with Project Co and is subject to the terms of that appointment.
- 1.2.2 This report is for the sole and confidential use and reliance of Plenary Group USA Ltd, the Finance Parties (United States Department of Transportation, an agency of the United States of America, acting by and through the Federal Highway Administrator, in such capacity, the "TIFIA Lender", in respect of the Loan Agreements entered into between the TIFIA Lender and Project Co and its affiliates in connection with the US 36 Project), Northleaf ("PRD Lender Co LP") and Underwriter and PABs Investors.
- 1.2.3 BTY Group authorizes distribution of their LTA Reports to the following Parties:
- Shearman and Sterling LLP; and
 - Infrastructure Management Group;

Authorization must be sought from BTY Group if our report is to be distributed to any other employees, officers, directors, and agent attorneys, accountants, trustees, and other professional advisors of TIFIA. If our report is distributed without full consent of BTY Group then the content may not be relied up until full consent is provided.

1.0 INTRODUCTION

- 1.2.4 BTY Group, its directors, staff or agents do not make any representation or warranty as to the completeness or factual accuracy of the information provided to us on behalf of Project Co and its sub-contractors or agents, or HPTE and its sub-contractors or agents, upon which this report is based.
- 1.2.5 This report shall not be reproduced or distributed to any party other than the recipients outlined above, without the express permission of BTY Group.
- 1.2.6 Any advice, opinions, or recommendations within this document should be read and relied upon only in the context of this report as a whole. The contents of this report do not provide legal, insurance or tax advice or opinion.

1.3 *Project Background*

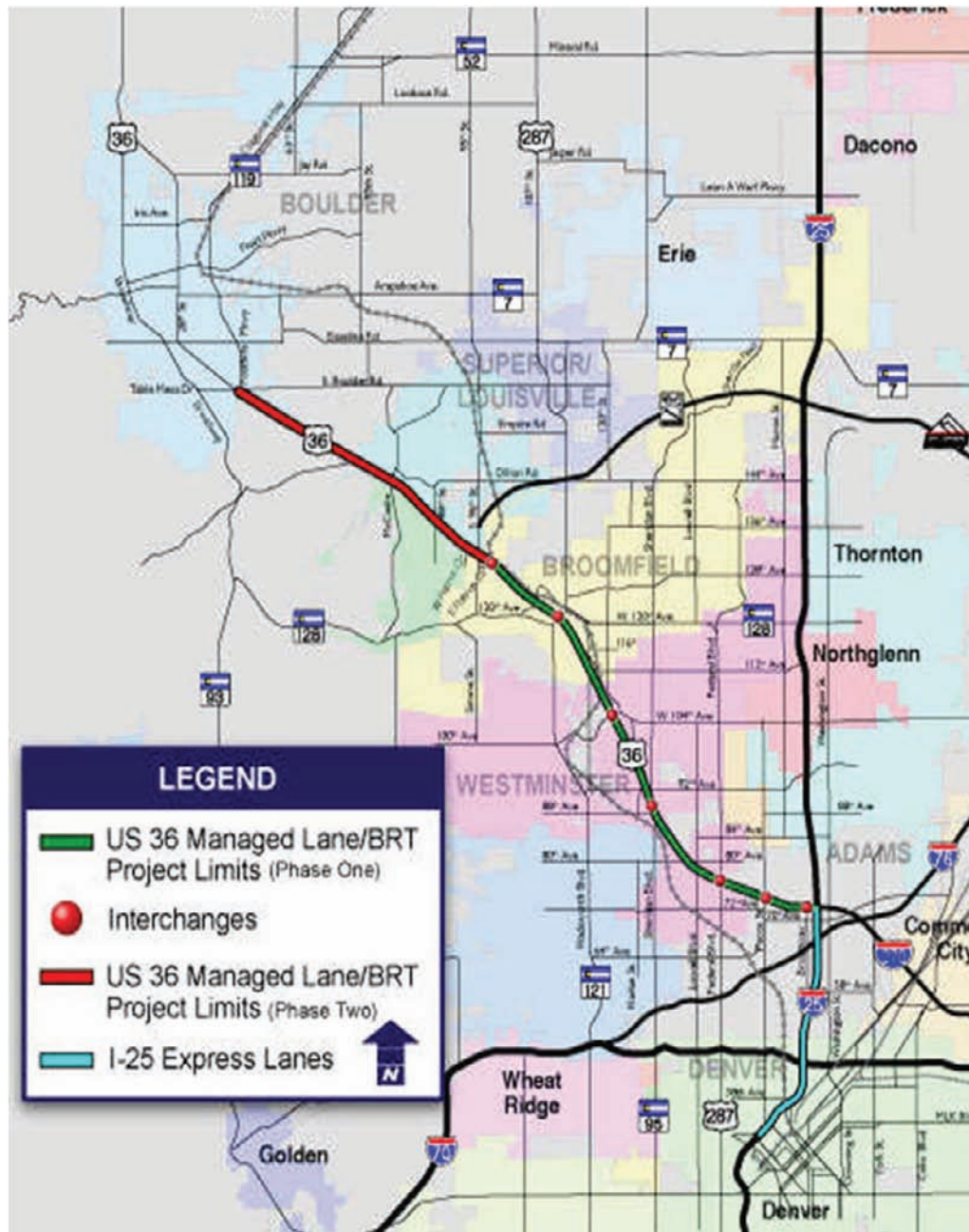
- 1.3.1 In December, 2009, the Colorado Department of Transportation completed an Environmental Impact Statement which described a preferred alternative for improvements to the US36 corridor between Denver and Boulder.
- 1.3.2 The Phase 1 Works are being procured separately as a Design-Build project which involves the reconstruction of the general ("GP") lanes and introduction of an additional express lane in each direction on US36 from Federal Boulevard to 88th Street. An Ames / Granite Joint Venture was selected as the design-build contractor in February 2012.

1.4 *Project Description*

- 1.4.1 The Phase 2 works will be procured through a Public-Private Partnership (P3) to reconstruct six miles of US36 between 88th Street in Louisville/Superior to Table Mesa/Foothills Parkway in Boulder, Colorado. The project is an extension on Phase 1 which is currently under construction (see 1.3.2 above).
- 1.4.2 The scope of works will be to add an express lane in each direction of the US36 for Bus Rapid Transit (BRT), High Occupancy Vehicles (HOV) and tolled Single Occupancy Vehicles (SOV); reconstruct the existing pavement on US36 and widen the highway to accommodate 12 foot inside and outside shoulders; add BRT improvements that include new electronic signage and bus improvements at ramps; install Intelligent Transportation Systems (ITS) for tolling, transit, traveler information and incident management; install a separate commuter bike lane along much of the corridor; and improved RTD stations along the corridor, including new canopies with enhanced weather protection.
- 1.4.3 Project Co will finance, design and construct the Phase 2 Works and then operate and provide routine maintenance and life cycle maintenance on the Phase 1, Phase 2 and the Existing I-25 Express Lanes; and provide snow and ice control services on the Managed Lanes and the US36 General Purpose Lanes under a 50-year agreement.

1.0 INTRODUCTION

Figure 1.1: US36 Managed Lanes Toll Concession Project Overview



1.5 Definitions

1.5.1 In this report, capitalized terms have the same meaning as ascribed to them in the either the RFP, Concession Agreement (“CA”) and Design-Build Contract (“DBC”), as determined by the context of the section being read.

1.0 INTRODUCTION

1.6 Further Information

1.6.1 All queries concerning the contents of this report should be addressed to:-

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2.0 EXECUTIVE SUMMARY

2.1 Introduction

- 2.1.1 We have completed this review based on an examination of contract documents, preliminary design, proposed construction methodology and scheduling, operation, maintenance and rehabilitation plans, and meetings with key personnel from Project Co and the Design-Build Joint Venture (the “DBJV”).
- 2.1.2 The general technical aspects presently known have been assessed against experience of P3 projects, as well as generally considered market positions.
- 2.1.3 The reference numbers and corresponding descriptions in the table below refer to the major sub-sections of this report with significant points thereafter summarized.
- 2.1.4 The status rating for the following table should be interpreted as follows:

Table 2.1: Executive Summary Stoplight Interpretation

| Draft or Pre-Bid Report | Final or Pre-FC Report | |
|---|--|----------|
| Project aspect that requires further assessment, information or mitigation prior to the Final Report. A red item indicates points to be considered with substantial Project impact. | Project aspect with a red rating should be considered by the Lender as a significantly higher than expected risk profile that could have significant impact on the Project from a technical perspective. | R |
| Project aspect that requires further assessment, information or mitigation prior to the Final Report, but is not anticipated having significant Project impact. | Project aspect with an amber rating should be noted by the Lender as a higher than expected risk profile, but should not have significant impact on the Project from a technical perspective. | A |
| Project aspect that has an acceptable risk profile and therefore acceptable from a technical perspective. | Project aspect with a green rating is considered typical or an acceptable Project risk or suitable full technical mitigation has been received to ensure minimal technical Project effects. | G |

2.0 EXECUTIVE SUMMARY

| Ref. | Description | Status/Comments | |
|------|--|---|---|
| 3.0 | The Consortium | <p>BTY Group considers Project Co's Consortium credentials very positive to develop and deliver the best solution to the HTPe's RFP for the US36 Managed Lanes Project.</p> <p>The major parties' substantial experience in highway and transportation projects is sure to instill confidence in the team and provides the LTA with certainty that the Project's critical path schedule activities will be overseen in a superior manner.</p> <p>We note that each of the Joint-Venture members are major construction firms in their own right and have extensive experience in large civil projects across North America.</p> <p>We note that each possess the financial resources and technical capabilities to individually complete the Project. We consider the DBJV's collaborative experience and strength a major asset in bidding this Project.</p> <p>Overall, Project Co's partner companies should have no issues carrying out their respected responsibilities ensuring smooth delivery, offering the most cost-efficient solution to HTPe.</p> | G |
| 4.4 | Contract Period, Conditions Precedent and Financial Close | The LTA considers the content of Section 2 of the CA appropriate and in-line with similar agreements in North America. | G |
| 4.5 | Undertakings, Representations and Warranties | The LTA considers these warranties of the CA as appropriate and in-line with similar agreements in North America. | G |
| 4.6 | Representations of the Parties and the Concessionaire's Personnel | The LTA considers these representations in the CA as appropriate and in-line with similar agreements in North America. | G |

2.0 EXECUTIVE SUMMARY

| Ref. | Description | Status/Comments | |
|------|--|---|---|
| 4.7 | Ownership and Use of Property | The LTA considers the provisions of Section 8 of the CA, Ownership and User of Property appropriate and in-line with similar agreements in North America. | G |
| 4.8 | Environmental Requirements | The LTA considers these provisions within the CA appropriate for P3 Projects and in-line with similar agreements in North America. | G |
| 4.9 | Construction | The LTA considers these provisions appropriate for P3 Projects. The CA is in-line with similar agreements in North America. | G |
| 4.10 | Site and Site Conditions | The LTA considers the scope of Construction, Site and Site Conditions in the CA to be adequately defined and typical of P3 Projects in North America. These obligations have been transferred to the DBJV through the Design-Build Contract, thus transferring the responsibility and risk. | G |
| 4.14 | Monitoring and Inspection | The LTA considers the scope of the Monitoring and Inspection regime in the CA to be adequately defined and typical of P3 Projects in North America. | G |
| 4.16 | Completion of Phase 2 Construction Work | The LTA highlights the importance of the completion of the Phase 2 construction Work procedures as it provides a satisfactory staged completion to the Works to ensure that Project Co complies with the technical requirements and specification of the CA. | G |
| 4.17 | Liquidated Damages and First Share of I-25 and Phase 1 Revenues | Refer to Conclusion 5.20 | G |

2.0 EXECUTIVE SUMMARY

| Ref. | Description | Status/Comments | |
|------|--|---|---|
| 4.18 | Warranties in Relation to the Phase 2 GP Lanes | The LTA considers these warranties within the CA as appropriate and in line with similar agreements in North America. | G |
| 4.19 | Operation and Maintenance | The LTA believes the O&M requirements and transition from design and construction provisions in the CA are appropriate for this Project. | G |
| 4.20 | The Phase 1 Services Commencement Date and interface with the Phase 1 DB Contract | The LTA considers the scope for the interface in the CA with the Phase 1 Services Commencement Date and Phase 1 DB Contract to be adequate for a Project of this nature. | G |
| 4.21 | Procedures Relating to Life Cycle Maintenance Work | The LTA considers that the scope for managing, reporting and implementing Life Cycle Maintenance Work in the CA to be adequate for this Project and similar to P3 Projects in North America. | G |
| 4.23 | HPTE Step-In | The Step-in provisions within the CA in respect to emergency actions as a result of a serious risk to health and safety, people, property or the environment are standard and reasonable. | G |
| 4.25 | Tolling | The provisions for Tolling in the CA appear to be adequate and will allow satisfactory mitigation to Project Co in the event of loss of tolling revenues. | G |
| 4.27 | Performance Monitoring | The provisions for self-monitoring of the performance of the Services and HPTE's ability to implement their own independent monitoring in the CA are adequate and typical of projects of this nature. | G |

2.0 EXECUTIVE SUMMARY

| Ref. | Description | Status/Comments | |
|------|--|---|---|
| 4.29 | Compensation Events | The LTA regards the provisions for Project Co's Compensation Events in the CA as acceptable for the recovery of time, relief of costs. | G |
| 4.30 | Relief Events | The LTA regards the provisions for Project Co Relief in the CA as acceptable for a Project of this nature and typical of P3 Projects in North America. | G |
| 4.31 | Change Procedure | The LTA regards the provisions for the Change Procedure in the CA as acceptable for a Project of this nature and typical of P3 Projects in North America. | G |
| 4.34 | Handback | The LTA regards the provisions for Handback in the CA as acceptable and typical for a Project of this nature and typical of P3 Projects in North America. | G |
| 4.35 | Consequences of Termination or Expiration | We consider such termination terms and processes in the CA appropriate and in line with similar agreements in North America. | G |
| 4.36 | Dispute Resolution and Jurisdiction | The provisions for dispute resolution in the CA are standard for projects in North America. Strict time frames are to be complied with and enforced, however this should not pose a problem for a well sourced and organized Project Co. | G |
| 5.1 | Design-Build Contract | <p>The LTA considers such terms appropriate and in-line with similar P3 agreements in North America.</p> <p>From our review of the CA and DBC, it appears that the DBC is back to back with the CA in respect of the design and construction obligations of Project Co given by the CA.</p> | G |

2.0 EXECUTIVE SUMMARY

| Ref. | Description | Status/Comments | |
|------|--|---|---|
| 5.2 | Contract Period, Conditions Precedent & Financial Close | The LTA considers the conditions for the Contract Period, Conditions Precedent and Financial Close in the DBC appropriate and in-line with similar agreements in North America. | G |
| 5.4 | DBJV Warranties | The LTA considers these warranties in the DBC appropriate and in-line with similar agreements in North America | G |
| 5.5 | Project Co Warranties | The LTA considers these warranties in the DBC as appropriate and in-line with similar agreements in North America. | G |
| 5.6 | The DBJV's Investigation | The LTA considers these obligations in the DBC as appropriate and in-line with similar agreements in North America. | G |
| 5.7 | DBJV Securities and Guarantees | The Parent Guarantee and 100% Performance & Payment Bond provides adequate security coverage and in line with what we expect to see on P3 Projects | G |
| 5.9 | Ownership and Use of Property | The LTA considers the stipulations surrounding the provision of a non-exclusive licence to the I-25 Managed Lanes, Phase 1 Managed Lanes, and the Phase 2 managed Lanes and the US36 General Purpose Lanes and the 70th Avenue Maintenance Facility appropriate for this project. | G |
| 5.10 | Environmental Requirements | We consider the provisions surrounding the environmental responsibilities in the DBC to be appropriate and robust. | G |
| 5.11 | Construction | The LTA considers the scope of the construction works in the DBC to be adequately defined and in-line with expectations. | G |

2.0 EXECUTIVE SUMMARY

| Ref. | Description | Status/Comments | |
|------|---|--|---|
| 5.12 | Site and Site Conditions | The LTA considers the responsibilities in relation to the site and hazardous substances in the DBC appropriate and reasonable. | G |
| 5.13 | Reinstatement and Necessary Consents | The LTA considers the DBJV's obligations for obtaining all Necessary Consents in the DBC fair and reasonable. | G |
| 5.16 | Supervising and Reporting | The LTA considers the provisions for supervising and reporting and the role of the Payment Certifier in the DBC as typical and standard for P3 Projects in North America. | G |
| 5.18 | Delays | The LTA considers the DBJV's obligations with respect to the required actions if a delay occurs in the DBC as adequate and robust and similar to other P3 Projects in North America. | G |
| 5.19 | Completion of the Phase 2 Construction Work | The LTA considers the obligations for the DBJV to complete the Phase 2 Construction Work in accordance with the DBC to be robust and appropriate for the P3 Transportation Project. The staged completion and inspections allow HPTE and Project Co to ensure that all of the Phase 2 Work Requirements have been implemented and met by the DBJV. | G |
| 5.20 | Liquidated Damages | In our opinion 100% Performance and Payment Bond and the 11 month look-forward retention mechanism ("Concessionaire's LD's Provisional Allowance) provides more than adequate liquidity to cover the Liquidated Damages. | G |
| 5.21 | Warranties in Relation to Phase 2 GP Lanes and Phase 2 Managed Lanes | The LTA considers these representations and warranties in the DBC as appropriate and in-line with similar agreements in North America. | G |

2.0 EXECUTIVE SUMMARY

| Ref. | Description | Status/Comments | |
|------|--|--|---|
| 5.23 | Payment of Contract Price | We consider the contract Payment mechanisms in the DBC to be in line with similar P3 projects in North America, with sufficient allowance for early design works, potential additional works (McCaslin Underpass) and for the failure to reach FC. | G |
| 5.25 | Compensation and Relief Events | The LTA regards the provisions for the DBJV's Relief and Compensation events in the DBC as acceptable for the recovery of time and relief of costs and typical of P3 Projects in North America. | G |
| 5.29 | Dispute Resolution and Jurisdiction | The provisions for dispute resolution in the DBC are standard for projects in North America. Strict time frames are to be complied with and enforced, however this should not pose a problem for a well sourced and organized DBJV. | G |
| 5.30 | Operations and Maintenance Agreement | The LTA considers such terms in the OC appropriate and in-line with similar P3 agreements in North America. From our review of the CA and OC it appears that the OC is back to back with the CA in respect of the operations and maintenance obligations of Project Co given by the CA. | G |
| 5.31 | Contract Period, Conditions Precedent and Financial Close | The LTA considers the conditions for the Contract Period, Conditions Precedent and Financial Close in the OC appropriate and in-line with similar agreements in North America. | G |
| 5.33 | The Operating Contractor Warranties | The LTA considers these warranties in the OC appropriate and in-line with similar agreements in North America. | G |
| 5.34 | Project Co Warranties | The LTA considers these warranties in the OC as appropriate and in-line with similar agreements in North America. | G |

2.0 EXECUTIVE SUMMARY

| Ref. | Description | Status/Comments | |
|------|--|---|---|
| 5.35 | The Operating Contractor's Investigation | The LTA considers these obligations in the OC as appropriate and in-line with similar agreements in North America. | G |
| 5.36 | The Operating Contractor's Security and Guarantee | A Letter of Credit equivalent to three months provides security coverage at a slightly lower level of what we expect to see on P3 Projects. However, Project Co has informed us that they believe three months of coverage is sufficient to allow them to replace the Operating Contractor and/or self-perform the services themselves. Plenary Group are currently self-performing the Maintenance and Rehabilitation services on the Disraeli Bridges project in Winnipeg, Canada. The LTA was involved in that project during procurement and design & construction stages, so we are aware of their depth of experience. A Parent Guarantee of \$18,000,000 will also be provided by the Operating Contractor. Whilst this is not immediate "liquid" security, it provides long term cover for over 3 years of operations and rehabilitation costs. | G |
| 5.38 | Ownership and Use of Property | The LTA considers the stipulations in the OC surrounding the provision of a non-exclusive licence to the I-25 Managed Lanes, Phase 1 Managed Lanes, and the Phase 2 managed Lanes and the US36 General Purpose Lanes, the Node 1 Building and the 70th Avenue Maintenance Facility appropriate for this project. | G |
| 5.39 | Environmental Requirements | We consider the provisions surrounding the environmental responsibilities in the OC to be appropriate and robust. | G |

2.0 EXECUTIVE SUMMARY

| Ref. | Description | Status/Comments | |
|------|---|---|---|
| 5.40 | Construction | The LTA considers the scope of the construction works in the OC to be adequately defined and in-line with expectations. | G |
| 5.41 | Site and Site Conditions | The LTA considers the responsibilities in relation to the site and hazardous substances in the OC appropriate and reasonable | G |
| 5.44 | Operations and Maintenance | The LTA believes the O&M requirements and transition from design and construction is appropriate for this Project. The OC effectively subcontracts the obligations and liabilities of Project Co in respect of the Services to the Operating Contractor. The terms and conditions are compatible with the terms and conditions of the CA. | G |
| 5.45 | Transitional Arrangements in respect to I-25 Managed Lanes | These provisions in the OC provide adequate coverage to both Project Co and the Operating Contractor for relief from accruing Noncompliance Points due to defects associated with the I-25 Managed Lanes and the recovery of reasonable loss and damage through a Compensation event. | G |
| 5.47 | Procedures Relating to Life Cycle Maintenance Work | The LTA considers that the scope for managing, reporting and implementing Life Cycle Maintenance Work in the OC to be adequate for this Project and similar to P3 Projects in North America. | G |
| 5.49 | HPTE Step-In Rights | The Step-in provisions in respect to emergency actions as a result of a serious risk to health and safety, people, property or the environment in the OC are standard and reasonable. | G |

2.0 EXECUTIVE SUMMARY

| Ref. | Description | Status/Comments | |
|------|---|--|---|
| 5.50 | Payments | We consider the structure of the invoicing and payment arrangements in the OC to be in line with similar P3 projects in North America. | G |
| 5.52 | Compensation and Relief Events | The LTA regards the provisions for the Operating Contractor's Relief and Compensation Events in the OC as acceptable for the recovery of time and relief of costs and typical of P3 Projects in North America. | G |
| 5.53 | Handback Requirements | The LTA regards the provisions for Handbacks in the OC acceptable and typical for a Project of this nature and typical of P3 Projects in North America. | G |
| 5.54 | Consequences of Termination Expiration | We consider such termination terms and processes in the OC appropriate and in line with similar P3 Agreements in North America. | G |
| 5.55 | Dispute Resolution and Jurisdiction | The provisions for dispute resolution in the OC are standard for projects in North America. Strict time frames are to be complied with and enforced, however this should not pose a problem for a well sourced and organized Project Co and Operating Contractor. | G |
| 6.0 | Regulatory Approvals | The Major Environmental Approvals, acquisition of which is the responsibility of the DBJV, are typical environmental plans required for any large civil infrastructure project including sediment and erosion, contamination containment and storm water discharge permits. We do not anticipate that the permits to be acquired by the DBJV should cause significant difficulty to the experienced DBJV members or delay the construction schedule. | G |

2.0 EXECUTIVE SUMMARY

| Ref. | Description | Status/Comments | |
|------|-------------------------------------|---|---|
| 7.2 | Environmental Investigations | <p>The Project passes through an area where numerous special status bird, mammal, fish, amphibian and plant species exist. However, as the Project is the redevelopment of an existing highway, impacts to these species is far less than were this a greenfield project. Many of the adjacent species have been identified within the study area of the FEIS but still remain far enough removed from the Project so that construction works should not have significant impact. Where species do exist within the Project ROW, appropriate plans are in place for identification, relocation or mitigation so as to minimize any impact.</p> <p>The FEIS and NEPA Re-evaluations have raised numerous constraints and areas of attention that need to be addressed. However, experienced contractors forming part of the DBJV, who are already conducting works in on Phase 1 of the same corridor, should be more than capable of diligently carrying out and appropriately managing the work restrictions where they may arise and otherwise perform in conformity with the CA and NEPA requirements.</p> | G |

2.0 EXECUTIVE SUMMARY

| Ref. | Description | Status/Comments | |
|------|---------------------------------------|---|---|
| 7.3 | Geotechnical Reports | <p>The number of exploratory holes and samples tested provide adequate information for the DBJV to carry out preliminary design and cost estimations. Further ground investigations will be required ahead of detailed design which is normal practice for a project of this nature.</p> <p>The ground conditions encountered throughout the Project should not provide significant technical challenges to the design and construction of the Project. Structures will be adequately founded in the bedrock which is neither excessively shallow which might require rock breaking over large sections nor at significant depths which would add cost to foundation solutions.</p> <p>Care will have to be taken to ensure moisture treatment of clay subgrade is carried out diligently so as to avoid differential settlement caused by swelling and contracting of the clay. The DBJV have a significant advantage with this regard, having its experience on the US 36 Phase 1 to refine exactly what treatments will be required to maintain the clays.</p> | G |
| 7.4 | Archaeology and Built Heritage | Based on the archaeological information that has been collated and made available, we are of the opinion that archaeological considerations are Low risk. | G |

2.0 EXECUTIVE SUMMARY

| Ref. | Description | Status/Comments | |
|------|--------------------------|--|---|
| 8.3 | Pavement Design | <p>We consider the approach to pavement design by the DBJV as appropriate whereby both rigid and flexible pavement designs will be implemented. The design team has also made appropriate consideration of the infrastructure lifecycle and handback requirements and has incorporated this into its pavement design.</p> <p>It is our opinion that pavement design represents a low risk to the Project.</p> | G |
| 8.4 | Bridge Structures | <p>Bridge superstructure and substructure designs have been standardized to the extent possible throughout the Project. By doing so, procurement of structure elements will be more cost effective, construction can be expedited and overall cost kept to a minimum.</p> <p>The scope of works involving bridge structure is relatively small on this Project and does not include any significantly challenging design or construction elements. We have noted that the foundation design on a number of structures appears to be unclear from preliminary design drawings; however the experience on the adjacent US 36 Phase 1 has been that piling requirements have not been at excessive depths.</p> <p>It is our opinion that bridge design and construction represents a low risk to the Project.</p> | G |
| 8.5 | Noise Attenuation | <p>It is our opinion that noise attenuation represents a low risk to the Project.</p> | G |
| 8.6 | Drainage Design | <p>It is our opinion that drainage design represents a low risk to the Project</p> | G |

2.0 EXECUTIVE SUMMARY

| Ref. | Description | Status/Comments | |
|------|---|---|---|
| 8.7 | Intelligent Transportation System (ITS) and Electronic Toll Collection (ETC) | It is our opinion that installation of ITS/ETC hardware represents a low risk to the Project. | G |
| 9.3 | Pre-Construction Works | Project Co has highlighted the aforementioned works to be performed immediately post Financial Close and prior to the start of the Construction Work. Durations and lead-in times for these works appear to be satisfactory in terms of duration and logic. This prudent approach to planning enables Project Co and the DBJV to commence construction activities (Phase 0 – Section 1) on January 27, 2014, thus triggering the 24 month construction period window. | G |
| 9.6 | Schedule Review | <p>The DBJV’s schedule contains sufficient logic, float and activities to allow the Project to be designed and constructed as per its intent. The schedule provides appropriate sequence and timing of works so that Traffic Availability is achieved by the Traffic Availability Target Date.</p> <p>The DBJV’s schedule has incorporated critical items such as utility relocations, sequencing of structures and environmental issues in a structured manner. The schedule is a dynamic document and will be reviewed and updated throughout the duration of the Project. We will continue to review this document as design and construction progresses ensuring the schedule intentions and guidelines set out in the RFP and CA are followed.</p> | G |

2.0 EXECUTIVE SUMMARY

| Ref. | Description | Status/Comments | |
|------|-------------------------|---|---|
| 10.2 | Project Co Costs | <p>The level of detail provided by Project Co is suitable to provide confidence in the cost projections made over the length of the Project Term.</p> <p>Overall, the LTA has no concerns with the level of expenditure projected by Project Co and considers the level of contingency held within the total pricing to be in line with normal industry practice.</p> | G |
| 10.4 | Benchmarking | <p>We consider the DBJV's breakdown of capital costs as sufficiently detailed to allow it to carry out the Project as required by the Technical Provisions.</p> <p>We consider the Project costs per linear km of a single lane to be appropriate and in line with expectations for a project of this type and scope and consider the indicated costs to be sufficient to complete the Project. The DBJV have broken out the costs for the McCaslin Bridge Underpass against suitable line times in the divisional breakdown. These costs can be added into the Capex should this work be added to the scope.</p> <p>We consider the DBJV's method to arrive at construction contingency to be a sound approach. We consider it appropriate that contingency was maintained as the estimate was reconciled and that the contingency value of approximately three percent, not including DBJV profit, to be ahead of market norms.</p> | G |

2.0 EXECUTIVE SUMMARY

| Ref. | Description | Status/Comments | |
|------|------------------------------|---|---|
| 10.6 | Project Cash Flow | <p>We have reviewed the project cash flow and reconciled the cumulative and monthly draw values for each scenario against our own Cash Flow and S-Curve analysis and we consider that the project cash flow (as shown in the following chart) is reasonable and in line with what we would expect for similar projects, with similar construction activity restraints.</p> | G |
| 10.7 | Operating Expenditure | <p>We have received a cost model from Project Co which clearly outlines operational expenditure (OPEX) for each component of the Project such as pavements, drainage, traffic services, snow and ice control, land bridge maintenance and routine inspections. The OPEX cost model provides significant detail within each Project component, providing detailed costs for all activities and material required for preventative maintenance for all aspects of the Project within the O&M Limits. We are satisfied that the level of detail and respective pricing is robust and will enable Project Co to operate and maintain the Project within the O&M limits as required by the CA.</p> <p>We note that the cost model does not include any general contingency or profit margin at this current stage.</p> | G |

2.0 EXECUTIVE SUMMARY

| Ref. | Description | Status/Comments | |
|------|--|---|---|
| 10.8 | Rehabilitation Capital Expenditure | Project Co has provided detailed cost model for rehabilitation capital expenditure over the Term the Project similar to that received for OPEX. Again, we consider the level of detail to be adequate to accurately identify the pricing against each component of the Project. As a general statement, we consider the cost models for all expenditure over the Term of the Project to be of a high quality with good level of detail. Further to this, we consider the cost and timing attributed to the rehabilitation works to be appropriate for the intended scope of works | G |
| 11.2 | Scope of O&M Work | The O&M Work, as prescribed by the CA is in line with our expectations for a project of this size and nature. In our opinion, a reasonable operating and maintenance regime managed by competent and experienced personnel, as proposed by Project Co for this Project, should be able to meet the requirements with minimal cost premiums | G |
| 11.4 | Routine Maintenance & Life Cycle Plan | The Consortium's approach to maintenance appears to be very bespoke and specific to the contractual needs of the Project. The Lifecycle Maintenance Plan proposed by Project Co will be comprehensive and robust base for the Operations and Maintenance Plan and identifies appropriate tasks to be completed during the Services Period. | G |

2.0 EXECUTIVE SUMMARY

| Ref. | Description | Status/Comments | |
|-------|---|---|---|
| 11.5 | Electronic Toll Collection System Maintenance (ETCS) | It is evident that Project Co has placed detailed consideration on the assessment and planning of maintenance requirements for the Tolling System. A comprehensive program of monitoring and controlling is proposed which will support developing accurate and appropriate maintenance activities that is consistent with good industry practice | G |
| 11.6 | Periodic Maintenance | It is evident that Project Co has placed detailed consideration on the assessment and planning of maintenance requirements. A comprehensive program of inspection and assessment is proposed which will support developing an accurate and appropriate periodic maintenance schedule that is consistent with good industry practice. | G |
| 11.7 | Winter Maintenance Operations | The requirements for Winter Maintenance activities are standard for a project of this nature. Project Co's Winter Maintenance Plan should result in no monetary penalties or events of default if implemented correctly | G |
| 11.8 | Emergency Response | Emergency response is adequately addressed by Project Co. | G |
| 11.9 | Snow & Ice Control Services | We consider the approach to Snow and Ice Control Services to be appropriate for the Project Co to perform the O&M Work of the Project | G |
| 11.10 | Project Co Resourcing during the Operating Period | We consider the approach to staffing to be appropriate for the Project Co to perform the O&M Work of the Project. | G |

2.0 EXECUTIVE SUMMARY

| Ref. | Description | Status/Comments | |
|------|---------------------------|--|---|
| 12.0 | Revenue Analysis | <p>In general, based on our probability analysis the risk to Project Co incurring HPTE remedies is low. The following mitigating factors support this assumption:</p> <p>Project Co would need to incur Noncompliance deductions at a failure rate over 10%, which is highly unlikely.</p> <p>Project Co's experience managing, maintaining and operating large PPP Projects throughout North America and Australia; the O&M Contractor's extensive experience maintaining over 20,000km of roads and E-470's proven experience collecting tolls and back office support should not trigger the noncompliance point levels for the proposed remedies.</p> <p>There is an allowance for a staged transition through Periods I – III as Project Co takes on more scope of the O&M and Toll Collection works. This will allow Project Co, the O&M Contractor and E-470 to implement their procedures efficiently and cleanly.</p> | G |
| 13.0 | Equator Principles | We consider that an appropriate categorization for this project is Category C, where the project has. | G |

3.0 CONSORTIUM

3.1 Key Members

3.1.1 The key members of the Consortium are set out below. Descriptions of each Consortium member are provided in the remainder of this section of the report

Table 3.1: Key Consortium Members

| Role | Company |
|------------------------------------|---|
| Equity Owners | Plenary Group (Canada) Ltd |
| Design-Build Joint Venture | Ames Construction Inc. / Granite Construction |
| Design Partners | HDR Engineering Inc. |
| Operation and Maintenance Provider | Transfield Services Ltd. |
| Financial Advisor | Goldman, Sachs & Co. |
| Legal Advisor | Fasken Martineau LLP |
| Local Counsel | Spencer Fane and Grimshaw LLP |
| Insurance Advisor | Marsh Ltd |
| Lenders' Legal Advisor | Shearman & Sterling LLP |
| Lenders' Technical Advisor | BTY Group |
| Lenders' Insurance Advisor | Marsh Ltd |

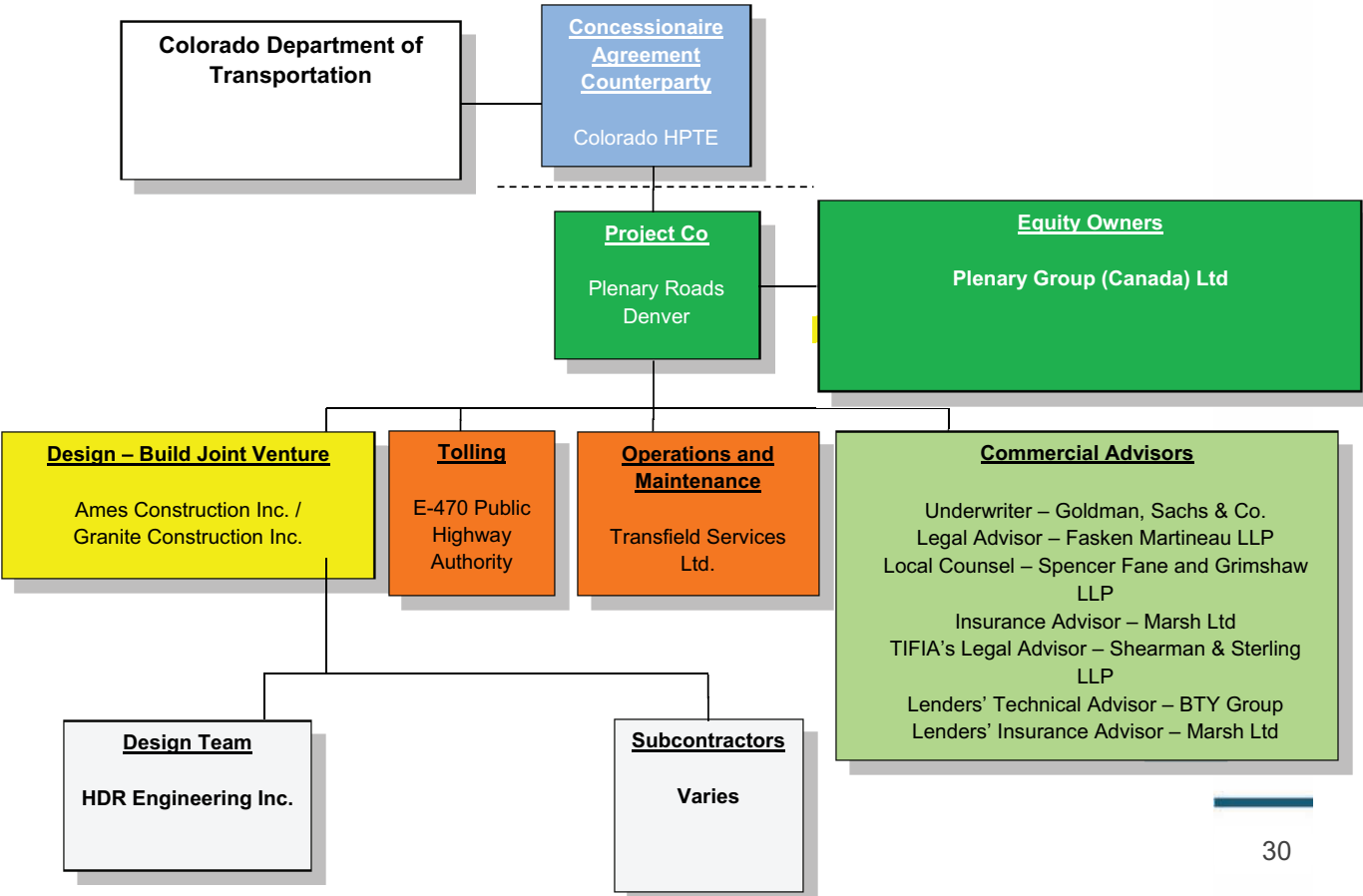
3.0 CONSORTIUM

3.2 Consortium Structure

- 3.2.1 The Project team consists of six (6) fundamental entities:
- The design-build-finance-operate contractor – Project Co;
 - The design-build joint venture – DBJV;
 - The design partner;
 - Named subcontractors to the DBJV;
 - The Operations and Maintenance Provider; and
 - The back office services provider.

3.2.2 The general structure of the Project team is illustrated in Figure 3.2 below:

Figure 3.1: Project Team Organizational Chart



3.0 CONSORTIUM

3.3 *Project Co*

- 3.3.1 Plenary Roads Denver (“PRD”) is led by Plenary Group (Canada) Ltd (“Plenary Group”) who has formed a Colorado limited liability company, which will act as a single point of contact for Colorado High Performance Transportation Enterprise (“HPTE”) for the purposes of delivering the Project during the construction and operating periods. Plenary Group will ensure that PRD is staffed appropriately so that it can function as a standalone entity.
- 3.3.2 Plenary Group will serve as the Consortium lead, providing management services as consortium manager throughout all phases of the project (i.e. procurement, finance, design, construction, operation and maintenance). Plenary Group was established in 2004 in Australia, and shortly thereafter commenced operations in North America. In Canada, Plenary Group have twelve (12) active DBFM projects, with six (6) in operations phase, and a further six (6) under construction. Plenary Group has extensive experience in the development, financial structuring and long-term asset management of P3 infrastructure in the North America and internationally. Plenary Group is proud of its holistic approach to management of P3 projects, which it defines as absolute, comprehensive and complete.
- 3.3.3 In Canada, Plenary Group achieved substantial completion on the North Bay Regional Hospital; the MGS New Data Centre; Niagara Health System Health-Care Complex and Walker Family Cancer Centre and the Archives of Ontario; all located in Ontario; BCCA Cancer Centre for the North in British Columbia; and Disraeli Bridges in Manitoba. Plenary Group are currently in the construction phase of the Humber River Regional Hospital, St. Joseph’s Hamilton Hospital; Thunder Bay Consolidated Courthouse; Bridgepoint Hospital; the CSEC Long Term Accommodation Project, all in Ontario, and the Interior Heart and Surgical Centre in British Columbia.

3.4 *The DBJV Team*

- 3.4.1 The Design-Build Joint Venture (“DBJV”) consists of an integrated JV with joint and several liability between Ames Construction Inc. and Granite Construction Inc. The DBJV will develop and implement a complete design-build solution in close association with the design team. Both companies have a significant presence in the United States.
- 3.4.2 Both DBJV team members have extensive experience in the construction of complex and large infrastructure and heavy civil projects, the DBJV have completed many highway and highway expansion projects that are comparable to this project.
- 3.4.3 Of note, both of the parties to the DBJV are major construction firms in their own right with extensive experience in large civil projects across North America. We would consider that each possesses the financial resources and technical capabilities to individually complete the project and that the ability and experience of the DBJV will be a major strength in bidding for the project.

3.0 CONSORTIUM

3.4.4 The DBJV members are part of a separate joint venture partnership which is currently building Phase 1 of the US36 Managed Lanes Project through a separate Design-Build Contract. Colorado Department of Transportation and Colorado HPTE will both benefit from having a familiar and proven team, capable of managing and mitigating risks, and communicating effectively on a similar project.

Ames Construction Inc.

3.4.5 Ames Construction Inc. (“Ames”), are a family owned heavy civil and general contractor founded in 1960. Ames specializes in large, complex industrial and civil projects, with a full spectrum of past project experience across sectors including highways, bridges, railroads, airports and power plants. Ames has five (5) offices across the Mid-West and Western USA, with its corporate headquarters located in Minnesota.

3.4.6 Ames has successfully completed many highway projects both in Colorado and across the US. These highway projects have been procured using both design-build and traditional routes. Ames has vast experience using the design-build procurement route, both as the sole contractor and as part of a joint venture. This previous experience will be a huge asset when coupled with their substantial local knowledge.

3.4.7 Ames’ experience includes:

- US36 Managed Lanes Phase 1, Colorado (Design-Build Joint Venture with Granite Construction to widen the existing highway and add an express lane in each direction);
- Arizona SR-51, Phoenix, Arizona (Design-Build contract widening a narrow corridor of State Route 51 and addition of High Occupancy Vehicle (HOV) lanes;
- Prima Parkway expansion, Phoenix, Arizona (addition of a 7km 6-lane freeway, and associated frontage roads, constructed within the busy Phoenix metropolitan area);
- County Road J Reconstruction, Anoka and Ramsey counties, Minnesota (2 miles of road widening works and associated utility realignment. Note - Extensive regulatory coordination was required due to location of the road); and
- Ames has also been awarded repeat contracts by leading US transportation departments, including the Colorado Department of Transportation, Arizona Department of Transportation and the Utah department of Transportation.

Granite Construction Inc.

3.4.8 Granite Construction Inc. (“Granite”) a heavy civil contractor founded in 1922, which has fifteen (15) offices across the USA with its corporate headquarters in

3.0 CONSORTIUM

Watsonville California. Granite is currently listed on the New York Stock Exchange (NYSE) under the ticker GVA.

- 3.4.9 Granite has extensive experience throughout the USA in all areas of heavy civil contracting, successfully delivering challenging Highway, Bridge, Power and Rail projects amongst others. In 2012, Granite ranked twenty-fifth (25th) on the list of Top 400 Contractors in the U.S. (Engineering News-Record, Top 400 Contractors 2012).
- 3.4.10 Granite has successfully completed approximately fifty (50) design-build contracts worth in excess of \$10 billion, with more currently under construction. Granite has also successfully delivered many horizontal infrastructure projects using various other delivery methods.
- 3.4.11 Granite's public sector clients include California Department of Transportation; US Bureau of Reclamation; Port Authority of New York and New Jersey; and the Bureau of Indian Affairs.
- 3.4.12 Granite's experience includes:
- US36 Managed Lanes Phase 1, Colorado (Design-Build Joint Venture with Granite Construction to widen the existing highway and add an express lane in each direction);
 - Camino Colombia Tollway, Texas (design and construction of the first toll road in Texas to be funded through the private sector);
 - I-15 Corridor Reconstruction Salt Lake City, Utah (joint venture Design-Build which included the reconstruction and widening of I-15 in addition to reconstructing 146 bridges, ramps and viaducts); and
 - I-17 Thomas to Peoria Design-Build, Phoenix, Arizona (redevelopment of both carriageways, providing HOV and auxiliary lanes, replacement of 2 bridges and associated irrigation and landscaping works.

3.5 *Design Team members subcontracted to the DBJV*

HDR Engineering Inc.

- 3.5.1 HDR Engineering Inc. ("HDR") will be responsible for providing full design and engineering services to the US36 Managed Lanes Project Phase 2. Founded in 1917, HDR is a full service architecture and engineering firm with more than 8,000 professional staff across 185 locations worldwide. HDR's corporate headquarters are located in Omaha, Nebraska.
- 3.5.2 HDR is one of the largest design firms operating in the US. In 2012 HDR ranked #4 in Areas of Expertise – Engineering (Building Design Magazine), while ranking #7 in Top 50 Transportation (Engineering News Record). These awards reflect the extensive expertise HDR possesses in the design and engineering of major transportation projects.

3.0 CONSORTIUM

- 3.5.3 HDR has experience working in all 50 states of the USA and 60 countries internationally. Having opened its Colorado office in 1957 HDR will provide additional local knowledge to the design and construction team. HDR's local knowledge and experience coupled with its extensive environmental and sustainable works will be a valuable asset when traversing the complex permitting application process.
- 3.5.4 Within HDR's significant US design-build experience, they have nurtured a good working relationship between themselves and both parties to the DBJV, having built this relationship over four (4) Highway design-build projects.

3.6 *Subcontractors to the DBJV*

- 3.6.1 Within the Project team there are identified sub-contractors who will be engaged by the DBJV. No subcontracts will be executed before Financial Close. However, the following are key larger packages that have been procured, with award pending. We understand that the specific obligation of the DBA will be passed through to these sub-contractors; which will be procured as fixed price contracts.
- Castle Rock Construction Company will construct the PCCP. PCCP is the rigid layer of the concrete pavement that has the direct contact with the traffic. Castle Rock Construction Company is Colorado based and since 1981 specializes in grading, stabilized subgrades, curb and gutter, flatwork, concrete median barrier and design-build construction works.
 - Sturgeon Electric will be providing the ITS. Sturgeon Electric has been providing comprehensive electrical construction services since 1912 and is a subsidiary of the MYR Group. MYR Group is a national leader in electrical construction with over 3,000 employees across the United States.
 - Martin Marietta will be providing aggregates (e.g. crushed stone, sand and gravel) for the project. Martin Marietta is the second largest producer of aggregates in the United States.
 - Jalisco Constructors will be providing the supply and installation of the overhead signs.

3.7 *Operations and Maintenance*

Transfield Services Ltd.

- 3.7.1 Transfield Services Ltd. ("Transfield") will be responsible for the operation and maintenance of the asset for the duration of the Operating Period, ensuring a high level of asset performance and user satisfaction. With 200 locations active across the Americas, Transfield has over 4,100 directly employed personnel. Transfield is currently listed on the Australian Securities Exchange (ASX) under the ticker TSE.
- 3.7.2 Transfield currently maintains 20,000km of roads and tunnels (including toll roads) globally, approximately 17,000km of which make up part of their diverse and growing North America infrastructure portfolio. The make-up of their worldwide

3.0 CONSORTIUM

portfolio, in addition to road and bridges shows extensive experience and expertise across rail, maritime, water and telecommunications.

3.7.3 With a global maintenance portfolio of complex assets and infrastructure, including 30 across North America, Transfield has a highly skilled and disciplined workforce with global maintenance knowledge to draw on.

3.7.4 Transfield has a proven track record on asset management, maintenance and safety whilst delivering value added services within the strict parameters of their contractual responsibilities.

3.7.5 Transfield will be taking on the operations of not only the Operation portion of the US36 Managed Lanes Phase 2 works contained within the scope of this project, they will also take over the operational phase of US36 Managed Lanes Phase 1 Corridor (which will be built by the DBJV) and I25 Express Lanes.

3.7.6 At this stage of the Project, Jalisco Contractors have been identified as the subcontractors that will be providing the I-15 Bridge Rehabilitation works.

E-470 Public Highway Authority

3.7.7 E-470 Public Highway Authority (E-470) is a political sub-division of the State of Colorado. E-470 will be performing all tolling back-office services including toll transactions, collection of tolls, toll disputes and helpdesk services. E-470 currently process approximately 157,000 transactions per day on E-470, N-W Parkway and I-25. As E-470 have all these systems in place already; then this can only add value to their Service on this project.

3.8 *Project Co/ DBJV /Maintenance Provider Experience*

3.8.1 The various Project Co Consortium members and their parent companies have been involved previously or at present on significant P3 and Design-Build Projects, both in North American and around the world. Lessons learned and project expertise from previous and existing projects provides the Project Co Consortium with an extensive array of skills at hand for the US36 Managed Lanes Project.

3.8.2 The current team members have a history of past success when delivering complex highway projects both under the PPP and Design-Build procurement methods. Collectively the team members have developed a significant number of transportation Projects in North America. The technical and financial strength of Project Co members should provide Colorado HPT & CDOT and the financial markets with the confidence for high level delivery, communication and design and construction techniques.

3.0 CONSORTIUM

3.9 ***Project Co Advisors***

3.9.1 The Consortium has engaged the following Advisors:

- Goldman, Sachs & Co. – Underwriter;
- Fasken Martineau LLP - Legal Advisors;
- Spencer Fane and Grimshaw – Local Counsel;
- Marsh Ltd – Insurance Advisor;
- Shearman & Sterling LLP - TIFIA’s Legal Advisor;
- BTY Group, Inc.– Lenders’ Technical Advisor;
- Marsh Ltd – Lenders’ Insurance Advisors;

Conclusions:

BTY Group considers Project Co’s Consortium credentials very positive to develop and deliver the best solution to the HTPE’s RFP for the US36 Managed Lanes Project.

The major parties’ substantial experience in highway and transportation projects is sure to instill confidence in the team and provides the LTA with certainty that the Project’s critical path schedule activities will be overseen in a superior manner.

We note that each of the Joint-Venture members are major construction firms in their own right and have extensive experience in large civil projects across North America.

We note that each possess the financial resources and technical capabilities to individually complete the Project. We consider the DBJV’s collaborative experience and strength a major asset in bidding this Project.

Overall, Project Co’s partner companies should have no issues carrying out their respected responsibilities ensuring smooth delivery, offering the most cost-efficient solution to HPTE.

4.0 COMMERCIAL COMMENTARY – CONCESSION AGREEMENT AGREEMENT

4.1 **Introduction**

- 4.1.1 The LTA has been provided with a copy of the executed Concession Agreement (“CA”) (dated June 27, 2013) together with the Schedules and associated addendums for the Project.
- 4.1.2 The LTA limits comments below to potential areas of technical risk and their mitigation.

4.2 **Project and Ancillary Documents**

- 4.2.1 The CA sets out the rights and obligations of The Concessionaire (“Project Co”) and the Colorado High Performance Transportation Enterprise (“HPTE”), a government owned business and a division of the Colorado Department of Transportation (“CDOT”) in respect to the financing, development, design, construction, insurance, management, operations, maintenance, repair and rehabilitation on and for the US36 and the I-25 Managed Lanes Project. This is the principal contract which Project Co will enter into with HPTE.
- 4.2.2 The LTA understands that Project Co will pass down obligations incurred under the CA through a separate Design-Build Contract.
- 4.2.3 This version of the report is based on the CA and the Schedules to the CA (dated February 12, 2013). Please refer to these documents for definitions of Capitalized terms used in this Report. References to Sections or Schedules are references to the Sections and Schedules of the CA, unless otherwise noted.
- 4.2.4 Project Co’s intent is that all significant areas of project risk during the design and construction period will be transferred to the DBJV through the Design-Build Contract.
- 4.2.5 The CA is subdivided into a total of seventy-six (76) sections:

Section 1 – Interpretation of the Contract
Section 2 – Contract Period, Conditions Precedent and Financial Close
Section 3 – Undertakings, Representations and Warranties
Section 4 – Information provided by HPTE
Section 5 – Escrowed Base Case Financial Model and Source Code
Section 6 – Amendment Documents
Section 7 - Representations of the Parties and the Concessionaire’s Personnel
Section 8 – Ownership and Use of Property
Section 9 – Environmental Requirements
Section 10 – Provisions Applicable to the Performance of the Phase 2 Work
Section 11 – Construction
Section 12 – Site and Site Conditions
Section 13 – Reinstatement and Necessary Consents
Section 14 – Project Documentation
Section 15 – Management of the Site
Section 16 – Supervision and Reporting
Section 17 – Monitoring and Inspection
Section 18 – Delays

4.0 COMMERCIAL COMMENTARY – CONCESSION AGREEMENT AGREEMENT

- Section 19 – Completion of the Phase 2 Construction Work*
- Section 20 – Liquidated Damages and First Share of I-25 and Phase 1 Revenues*
- Section 21 – Warranties in Relation to Phase 2 GP Lanes*
- Section 22 – Operation and Maintenance*
- Section 23 – The Phase 1 Services Commencement Date and Interface with the Phase 1 DB Contract*
- Section 24 – Procedures Relating to the Life Cycle Maintenance Work*
- Section 25 – Quality*
- Section 26 – Safety*
- Section 27 – HPTE Step-In*
- Section 28 – HPTE Capital Payments*
- Section 28A – The Concessionaire Capital Payment*
- Section 29 – Tolling*
- Section 30 – HPTE Payments for GP Routine Maintenance Services and for Snow and Ice Control Services and the Concessionaire’s Payments of Sub-Contractors*
- Section 31 – Refurbishment of HPTE Costs*
- Section 32 – HPTE-CDOT Agreement*
- Section 33 – Cash flow Sharing*
- Section 34 – Base Case Financial Model*
- Section 35 – Performance Monitoring*
- Section 36 – Not Used*
- Section 37 – Required Insurances*
- Section 38 – Reinstatement*
- Section 39 – Uninsurability*
- Section 40 – Unavailable Terms and Conditions*
- Section 41 – Compensation Events*
- Section 42 – Relief Events*
- Section 43 – Force Majeure*
- Section 44 – Change in Law*
- Section 45 – Change Procedure*
- Section 46 – Sub-Contracts*
- Section 47 – Change of Control*
- Section 48 – Handback*
- Section 49 – Consequences of Termination on Expiration*
- Section 50 – Termination for Concessionaire Default*
- Section 51 – Persistent Breach*
- Section 52 – Termination for Commission of Prohibited Act*
- Section 53 – Voluntary Termination by HPTE*
- Section 54 – Termination for HPTE Default*
- Section 55 – Confidentiality*
- Section 56 – The Concessionaire’s Records and Provision of Information; Colorado Open Record Act*
- Section 57 – Remedies and Liability*
- Section 58 – The Concessionaire Not an Agent of HPTE*
- Section 59 – Intellectual Property Rights*
- Section 60 – Assignment*
- Section 61 – Indemnification*
- Section 62 – Entire Agreement*
- Section 63 – Waiver and Consequences of Review; Acceptance, etc. of Documents by HPTE*

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Section 64 – Notices
Section 65 – Severability
Section 66 – Limitation on Third-Party Beneficiaries
Section 67 – Further Assurances
Section 68 – Governing Law
Section 69 – Dispute Resolution and Jurisdiction
Section 70 – Amendments
Section 71 – Costs and Expenses of the Parties
Section 72 – No Personal Liability
Section 73 – Copies of the Correspondence to HPTE
Section 74 – Default Interest
Section 75 – Special Provisions
Section 76 - Counterparts

4.2.6 There are twenty-eight (28) Schedules to the CA:-

Schedule 1- Definitions
Schedule 2 - Conditions Precedent
Schedule 3 - Concessionaire Warranted Information
Schedule 4 - Project Documents and Funding Agreements
Schedule 5 - HPTE Phase 2 Construction Work Requirements
Schedule 5A - Applicable Standards, Data and Reports
Schedule 5B - Contract Drawings
Schedule 5C - HPTE Phase 2 ETCS Requirements
Schedule 5D - List of Reference Documents
Schedule 6 - HPTE Service Requirements
Schedule 7 - Concessionaire's Phase 2 Work Proposals
Schedule 8 - Concessionaire's Service Proposals
Schedule 9 - Initial Phase 2 DB Schedule and Certificates on Phase 2 Work Completion
Schedule 10 - Noncompliance Points System
Schedule 11 - Base Case Financial Model
Schedule 12 - HPTE Capital Payment
Schedule 13 - Federal Requirements and DBE Provisions
Schedule 14 - Cash flow Sharing
Schedule 15 - Payment for GP Routine Maintenance Services/Snow and Ice Control Services
Schedule 16 - Tolling and Civil Penalty Provisions
Schedule 17 - Required Insurances
Schedule 18 - Direct Agreement
Schedule 19 - HPTE-Sub-Contractor Agreements
Schedule 20 - Hand back Requirements
Schedule 21 - Change Procedure
Schedule 22 - Utilities and Access
Schedule 23 - Compensation on Termination
Schedule 24 - Dispute Resolution Procedure
Schedule 25 - HPTE Snow and Ice Control Services Requirements
Schedule 26 - Concessionaire's Snow and Ice Control Services Proposals
Schedule 27 - Access to Certain Facilities
Schedule 28 - Intentionally Omitted

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4.3 *Other Documents*

4.3.1 Section 1.5 states that Project Co is not entitled to rely on the Reference Documents and that they are for information only and is not part of the CA, bar merely being listed in Schedule 5D.

4.4 *Section 2.0 – Contract Period, conditions Precedent and Financial Close*

4.4.1 The Contract Period will commence on the Commencement Date and will end on either the Termination Date or the Expiration Date (whichever is earlier).

4.4.2 Any Senior Debt (except Private Activity Bonds (“PABs”) issued by HPTE) must be caveated that payment of the principle and interest does not constitute a claim against CDOT’s title or any other real property interest in the Project; or is not an obligation of any HPTE or any HPTE Related Party to repay the principle or the interest of the instrument.

4.4.3 Section 2.3 (b) (iv) sets out the specific obligation of PABs that have been issued by HPTE. Each bond must be caveated to meet HPTE’s specific requirements.

4.4.4 No Funding Agreement may Secure Senior Debt that prohibits prepayment or defeasance in the event of a termination of the CA. Neither HPTE nor any HPTE Related Party will have any liability for payment of debt under and Funding Agreement.

4.4.5 Section 2.4 sets out the procedures for Financial Close. Between the dates that Project Co and HPTE signs the CA and the Commencement Date, Project Co will provide HPTE any updates that may be reasonably requested regarding the status of the financing of the Project for the conditions precedent to Financial Close and Commencement Dates. Project Co will provide to HPTE complete and transparent information regarding the marketing and pricing of PABs (and the ability to partake in that process), a draft of the Adjusted Financial Model, a complete draft set of Funding Agreements, Financial Model Audit Letter from the Auditor. The aforementioned information will be delivered to the Escrow Agent as Escrow Documents in the form of 1 CD ROM no later than ten (10) Business Days after the Adjusted Proposal Financial Model has been determined.

4.4.6 Project Co is entitled to enter into a Financing Assignment (at their own cost and expense). No person other than the Qualifying Institution is entitled to the benefits and protections afforded by the Financing Assignment. PABs may be issued, acquired and held by parties other than the Qualifying Institutions so long as a Qualifying Institution acts as an Indenture Trustee for the PABs. Project Co is prohibited from pledging or encumbering all of their rights under the CA to secure any indebtedness in relation to the Project. No Financing Assignment or other instrument against Project Co’s Rights will affect or be extended to CDOT, HPTE or any HPTE Related Party. All Financing Assignments shall contain an express term in which the Financing Assignment will give the Collateral Agent and the Senior Lenders no greater Rights to or interest in the Project than Project Co has. HPTE has no obligation to join in, execute o guarantee any Financing Assignment. Neither the Collateral Agent nor the Senior Lenders will seek any damages from HPTE for a breach of this Contract. No Financing Assignment will

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grant any right to apply funds in the Handback Reserve Fund to in the Joint Insurance Account, except for the express purposes for which the reserve account has been established.

4.4.7 Section 2.6 sets out the requirements for the Financial Close Deadline. Project Co can submit written notice to HPTE to request an extension to the Financial Close Deadline. This request will specify if there is a change to the Planned Full Services Commencement Date and the Full Services commencement Longstop Date, and that the Financial Close Security will remain in full force up to the new proposed date. HPTE can agree, discuss or decline any such request.

4.4.8 If the Commencement Date fails to occur by the Financial Close Deadline Date then either party may terminate the CA by written notice and HPTE may draw the full amount available from the Financial Close Security unless such failure has been caused by the following:

- The refusal or unreasonable delay by HPTE to issue the PABs (if PABs are used as per the Financial Plan);
- An outbreak of hostilities or other national crisis;
- The failure of TIFIA to execute an agreement providing the amendment and restatement of the Phase 1 TIFIA Loan;
- The failure of TIFIA to close the Phase 2 Loan prior to the Financial Close Deadline;
- Litigation challenging any Necessary Consent under the National Environmental Protection Act;
- A breach by HPTE under the CA;
- A failure of HPTE to enter into a Direct Agreement with the Collateral Agent;
- An HPTE Default;
- The issuance of a temporary restraining order or other form of injunction which prohibits;
- Litigation on any proceeding brought against HPTE which precludes the ability to achieve Financial Close by the deadline or Commencement Date.
- The credit rating is downgraded to A- or lower by S&P or A3 or lower by Moody's; or
- HPTE exercises its rights to terminate the CA if the Financial Close Adjustment results in an HPTE Capital Payment exceeds the HPTE Capital Payment Maximum Allowance.

If the Commencement Date occurs on or before the Financial Close Deadline Date, or if Financial Close does not occur by the Financial Close Deadline Date (subject to one of the aforementioned causes - see above) then HPTE shall return the Financial Close Security to Project Co.

Project Co has confirmed via email (dated November 19, 2013) that they have participated in numerous progress calls and meetings on the Conditions Precedent to Financial Close and confirm that all are on schedule or will be met prior to FC.

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4.4.9 HPTE will share the outcome of changes between Project Co's Financial Plan at the Proposed Due Date and Financial Close. Both Project Co's and HPTE's Capital Payment will be adjusted to incorporate the Financial Close Adjustment based on the following procedure:

All Parties agree that the model has been finally amended to reflect the debt and equity structure and the other T&C's of the Funding Agreements and it has been amended to remove any difference between the Proposal financial Model and the Adjusted Proposal Financial Model, including removing any such differences in the amount and timing of:

- (i) Payments to be made under the Construction Sub-Contract;
- (ii) Payments to be made in relation to the delivery of the Services (including lifecycle maintenance and costs payable under any tolling agreement);
- (iii) Payment of any other costs in relation to the Project (e.g. cost of maintaining offices, overheads, insurances etc..) and
- (iv) Toll Revenues forecasted to be received.

4.4.10 Project Co and HPTE shall both agree on the amount of the HPTE Capital Payment of Project Co Capital Payment so that the Equity IRR in the Financial Close Adjustment Financial Model equals the Initial Equity IRR.

4.4.11 The Financial Close Adjustment shall be calculated as follows:

$$A - (B \times 0.67) = C$$

Where:

A = HPTE Capital Payment set out in the definition of that term in Schedule 1(i.e. \$44,100,000)

B = the Financial Close Adjustment

C = the adjusted HPTE Capital Payment

4.4.12 If the HPTE Capital Payment exceeds the HPTE Capital Payment Maximum Amount (as per Schedule 12 to the CA - \$49,650,000) then within one business day post the Financial Close Adjustment has been agreed, then HPTE may terminate the CA.

4.4.13 Project Co will not commence any part of the Phase 2 Work or delivery of the Services on I-25 Managed Lanes and Shared Bridge Decks prior to the Commencement Date.

4.4.14 On the Commencement Date, HPTE will issue NTP1 which allows Project Co to commence the Phase 2 Works and the delivery of the Services (including Snow and Ice Control) on the I-25 Managed Lanes and Shared Bridge Decks. They will also start to receive Toll Revenues in relation to I-25 Managed Lanes.

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4.4.15 On the Phase 1 Services Commencement Date, Project Co will commence with the delivery of the Services (including Snow and Ice Control) on Phase 1 Managed Lanes and General Purpose Lanes. On the Full Services Commencement Date i.e., (Completion of Phase 2 Works) Project Co will commence the delivery of the Services (including Snow and Ice Control) in relation to the US 36 Managed Lanes as an integrated system. Note – Conditions precedent may be adjusted whether Routine Maintenance is to be provided to the US 36 General Purpose Lanes. HPTE may waive any of the Conditions Precedent to the aforementioned Commencement Dates.

4.4.16 Table 4.1 illustrates the phasing of the design and construction work in relation to the operation and maintenance services.

Table 4.1: Design & Construction and Operations & Maintenance Phasing

| | 2013 | | | 2014 | | | | | 2015 | | | | | 2016 | | | | |
|-------------------------------|---|---|---|------|---|---|---|---|------|---|---|---|---|------|---|--|--|---|
| | O | N | D | J | F | M | A | M | J | J | A | S | O | N | D | J | F | M |
| NTP1 / Commencement Date | Phase 2 Design and Construction | | | | | | | | | | | | | | | | | |
| | I-25 Managed Lanes Services & Tolling Revenue | | | | | | | | | | | | | | | | | |
| Phase 1 Services Commencement | Phase 1 Design and Construction | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | US36 Phase 1 Services Managed and GP Lanes | | |
| Phase 2 Services Commencement | | | | | | | | | | | | | | | | | US36 Phase 2 Services Managed and GP Lanes | |

Conclusion:

The LTA considers the content of Section 2 of the CA appropriate and in line with similar agreements in North America.

4.5 Section 3.0 – Undertakings, Representations and Warranties

4.5.1 Section 3 sets out the provisions for both Project Co’s and HPTE’s Undertakings, Representation and Warranties.

4.5.2 Project Co will not carry out any business or activities that are not solely related to the Project, unless approved otherwise by HPTE. Project Co will inform HPTE if any litigation, arbitration or administrative proceedings may be threatened or pending against them.

4.5.3 Project Co will ensure that copies of the Project Documents and Funding Agreements are provided to HPTE after the Contract Date and that it will not commit any Prohibited Acts.

4.5.4 Project is incorporated as an existing limited liability company in accordance with the laws of the State of Colorado and is authorized to transact business and is

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registered with the Secretary of State in the State of Colorado. Each person that executes the CA on behalf of Project Co has been duly authorized.

- 4.5.5 Project Co's undertakings will be valid and enforceable and they will ensure that the Project Documents are executed on or before the Contract Date. Project Co will ensure that their Warranted Information (Schedule 3) is true and complete and that there is no Project Co Default or litigation / other dispute resolutions pending.
- 4.5.6 Project Co will perform its own analysis and review of the Disclosed Data to be satisfied with its accuracy, completeness and fitness for purpose. Project Co will provide HPTE copies of all the Project Documents and Funding Agreements, and they will comply will all Laws and Necessary Consents to ensure that they or any of their Related Parties do not commit any Prohibited Acts.
- 4.5.7 HPTE and its authorized persons have full authority to perform all obligations of the CA. HPTE are not aware of any litigation, arbitration or other dispute resolution proceedings are pending.
- 4.5.8 HPTE will not enter into any agreement (with exception of the Phase 1 TIFIA Loan) or exercise any other rights that sells, transfers, conveys, disposes or encumbers all or any part of the Project.
- 4.5.9 HPTE will authorize the CA and all other Project Documents and will comply with all Laws and Necessary Consents. HPTE's notes its Advisors will not wilfully mislead Project Co in respect of any of the Disclosed Data.
- 4.5.10 CDOT has good and sufficient title and interest to the Project Right of Way that is free and clear of all Encumbrances, other than permitted Encumbrances.
- 4.5.11 Project Co recognizes and agrees to comply with the "Program Fraud Civil Remedies Act of 1986" and the USDOT Regulation.
- 4.5.12 HPTE will make available to Project Co certain materials, documents and data related to the Project, the Site and the Managed Lanes, including the Reference Documents and other documents that are collectively known as "Disclosed Data".

Conclusion:

The LTA considers these warranties in the CA as appropriate and in-line with similar agreements in North America.

4.6 **Section 7.0 – Representatives of the Parties and the Concessionaire's Personnel**

- 4.6.1 HPTE's Representative will be identified in a notice given to Project Co. This Representative will exercise their functions and powers of HPTE in line with the scope identified in the CA. All written action or instruction by HPTE's Representative will be authorized.
- 4.6.2 Project Co will ensure that all individuals named as Key Personnel in their proposals continue to be engaged in their respective roles post the Contract Date.

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4.6.3 Project Co shall ensure that all design and engineering work is performed under the supervision of persons licenced to practice architecture, engineering or surveying in the State of Colorado and that all personnel are competent in their profession and are qualified to perform the relevant work in accordance with the CA.

Conclusion:

The LTA considers these representations in the CA as appropriate and in-line with similar agreements in North America.

4.7 Section 8.0 – Ownership and Use of Property

4.7.1 HPTE will grant Project Co (subject to the terms and conditions of Section 8 of the CA – Ownership and Use of Property) a non-exclusive licence over, under and upon the Site, I-25 Managed Lanes, the Phase 1 Managed Lanes and the Phase 2 Managed Lanes for the purpose of exercising its rights and obligations under the CA. HPTE can revoke the licence upon termination of the CA.

4.7.2 HPTE reserves the rights of the use, occupancy and ownership over, upon or under the lands mentioned in 4.4.30.

4.7.3 The periods for which HPTE grants a licence to the Site to Project Co are for that period which commence in accordance with Section 8 of Schedule 5 of the CA (HPTE Phase 2 Work Requirements) for the parts of the Site which are scheduled to complete upon Phase 2 Work Completion. This schedule can be revised provided Project Co and HPTE agree in writing.

4.7.4 HPTE will grant a licence to the Managed Lanes to Project Co as follows:

- I-25 Managed Lanes upon the Commencement Date;
- The Phase 1 Managed Lanes and the Phase 1 GP Lanes upon the Phase 1 Services Commencement Dates; and
- The Phase 2 Managed Lanes and the Phase 2 GP Lanes upon the Full Services Commencement Date.

4.7.5 At the end of the Services Period, Project Co will deliver back the Managed Lanes to HPTE in accordance with the Handback Requirements.

4.7.6 HPTE shall ensure that they grant access to Project Co to the Node 1 Building and access to 70th Avenue Maintenance Facility for the purpose of performing the Services.

4.7.7 Project Co may request the assistance of HPTE to remove protesters or trespassers where they can demonstrate to HPTE's reasonable satisfaction that it has exercised all legal remedies available to it to remove them.

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Conclusions:

The LTA considers the provisions of Section 8 of the CA, Ownership and User of Property in the CA appropriate and in-line with similar agreements in North America.

4.8 Section 9.0 – Environmental Requirements

4.8.1 Project Co shall, at all times during the Contract Period fully comply with all Environmental Requirements. They shall employ and engage a suitably qualified Environmental Manager; prevent or minimize at all times any pollution which may cause harm to the environment and only use explosives where absolutely necessary; and retain responsibility for certain hazardous materials.

4.8.2 Project Co will recognize and comply with the “Comprehensive Environmental Response, Compensation and Liability Act”.

Conclusions:

The LTA considers these provisions in the CA appropriate for P3 Projects and in-line with similar agreements in North America.

4.9 Section 11.0 – Construction

4.9.1 Project Co will carry out and complete the Phase 2 Works in accordance with the provisions set out in the CA to achieve the Phase 2 Work Completion by the Planned Full Services Commencement Date.

4.9.2 Project Co will ensure that all employees will be skilled and experienced, with adequate level so supervision, and keep the Work in good order, safe and protected from damage. The “responsible charge” will be a registered professional licenced engineer in the State of Colorado.

4.9.3 During the Phase 2 Work, Project Co will not occupy or permit the site or the land for work for any purpose other than carrying out the Phase 2 Work; they will not deposit or manufacture any materials which are not required for the Phase 2 Work; they will arrange at their own cost the transportation of all surplus materials and arrange for the disposal of such materials lawfully; they will ensure that all vehicles that leave site are cleaned to prevent either materials and debris depositing on the adjoining property or any highway; they will not (without written permission from HPTE) erect or permit to be erected any temporary structure (except site accommodation), not any signs or trade boards without prior consent of HPTE.

Conclusions:

The LTA considers the scope of DB Works to be adequately defined in the CA and typical of P3 Projects in North America.

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4.10 *Section 12.0 – Site and Site Conditions*

- 4.10.1 The condition of the Site shall be the sole responsibility of Project Co. Project Co shall carry out a ground, physical and geophysical investigation of the site and its surroundings to satisfy the nature of the conditions at the site; the adequacy of the means and rights of access to and through the Site and any accommodation it may require for the purposes of fulfilling its obligations; and the precautions and methods of working that are necessary to prevent any nuisance or interference caused by third parties.
- 4.10.2 Project Co shall not be entitled to make any claim in relation to the conditions of the site against HPTE on any grounds.
- 4.10.3 Project Co shall be responsible for, and shall compensate HPTE for any losses that they may incur in relation to cleaning up or otherwise dealing with any ground contamination.
- 4.10.4 Project Co shall be responsible for ensuring that the Design and Construction Documents accurately depict all governing and adjoining dimensions and conditions.
- 4.10.5 Upon the discovery of an on-site material that material that contains Hazardous Substances or any Differing Site Conditions, then Project co shall promptly notify HPTE and stop work and secure the affected area. HPTE will inspect the area within two (2) Business Days and will advise Project Co either to recommence with the work or to investigate further. Any delay incurred up to the two (2) Business dates shall not be considered a Compensation Event nor shall it trigger the Change Procedure.
- 4.10.6 HPTE has the right to require Project Co to recommence work even when investigation is still ongoing (so long as there is no legal violation).
- 4.10.7 If there are Differing Site Conditions recognized by HPTE then HPTE will be responsible for and will agree to operate the Change Procedure to compensate Project Co for additional costs and losses caused in the Phase 2 Construction Work and extend the Planned Full Services Commencement Date and Full Services commencement Longstop Date as a result of any delay caused by such Differing Site Conditions.
- 4.10.8 Project Co is responsible for obtaining all Necessary Consents (all permissions, consents, approvals, certifications, permits, licenses and authorizations of a Relevant Authority required for the performance of any of Project Co's obligations under the CA). When required, HPTE will use all reasonable endeavours to assist Project Co in obtaining the Necessary Consents. Project Co will provide to HPTE's Representative (within 30 Business Days post the Commencement Date) a comprehensive list of all Necessary Consents.

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Conclusions:

The LTA considers the scope of Construction, Site and Site Conditions in the CA to be adequately defined and typical of P3 Projects in North America. These obligations have been transferred to the DBJV through the Design-Build Contract, thus transferring the responsibility and risk.

4.11 Section 14.0 – Project Documentation

- 4.11.1 HPTE have prepared the existing design as part of the RFQ and RFP processes. Project Co will be responsible for the design and execution of the Phase 2 Construction work. They will produce all further drawings necessary for carrying out the completion of the Phase 2 Construction work; submit Design and construction Documents to HPTE for review and acceptance; and allow HPTE's Representative reasonable opportunity to view and make copies of any design material.
- 4.11.2 Project Co shall not amend or change their proposal except by way of a Concessionaire Change.
- 4.11.3 Project Co shall comply with CDOT's Design-Build Disadvantaged Business Enterprises requirements and shall facilitate and incorporate participation by small businesses throughout the Project.

4.12 Section 15.0 – Management of the Site

- 4.12.1 Project Co will facilitate the work of CDOT employees and provide reasonable access to any Utility that needs to be carried out. Project Co recognises that certain Persons have right of access to the Managed Lanes, which is regulated by CDOT.
- 4.12.2 Project Co shall act reasonably to coordinate work with the Phase 1 DB Contractor and put in place and maintain a traffic crossover so that all traffic between the Phase 1 and Phase 2 Works will travel on the eastbound lane of US36.

4.13 Section 16.0 – Supervision and Reporting

- 4.13.1 HPTE's Representative may specifically appoint a person as the Technical Representative to carry out certain functions of HPTE. They will have the right to attend progress meetings with Project Co and their sub-contractors and obtain copies of the design and construction documentation.
- 4.13.2 Project Co will prepare a Recovery Schedule if they become aware at any time that the progress of the Phase 2 works may become significantly delayed or have actually fallen behind schedule.
- 4.13.3 Project Co will prepare and deliver to HPTE a Monthly Progress Report that will include the requirements set out in Section 2 of Schedule 5.

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4.13.4 During the Construction Period HPTE have the rights to receive all test results, progress reports and design reports, notices of force majeure or default between Project Co and its Sub-Contractor, relevant correspondence, invoices, certifications, designs, notices for formal communication, attend progress meetings as an observer or participant and participate in inspections prior to the issuance of the Notice of the Phase 2 Work completion.

4.14 **Section 17.0 – Monitoring and Inspection**

4.14.1 HPTE shall have the right to enter the Site in order to inspect the state and progress of the Phase 2 Works, upon reasonable notice and request to Project Co, if they believe that a part or parts of the works do not comply with the CA.

4.14.2 HPTE shall at all times comply with any health, safety and security requirements when entering and inspecting the Site.

4.14.3 If Project Co fails to comply with HPTE's requirements, then HPTE may increase the level of monitoring until Project Co demonstrates that it is capable of performing its obligations under the CA.

Conclusions:

The LTA considers the scope of the Monitoring and Inspection regime in the CA to be adequately defined and typical of P3 Projects in North America.

4.15 **Section 18.0 – Delays**

4.15.1 Once Project Co becomes aware that the Phase 2 Works will not likely achieve the completion date by the Planned Full Services Commencement Date, it shall as soon as practicable and in any event within twenty (20) Business Days give notice to HPTE the reason for the delay and an estimate of the effect of the delay and proposed mitigation measures that will be implemented.

4.16 **Section 19.0 – Completion of the Phase 2 Construction Work**

4.16.1 The Preliminary Requirements for the completion of the Phase 2 Work include: Project Co has completed all Phase 2 Construction work except the Punch List Items and final clean up; all work has been performed in accordance with the CA; Project Co has received all applicable Necessary Consents required to lawfully open to traffic; Project Co's Design Manager, Project Manager and Quality Manager certifies that the design and construction works meets the requirements of the CA; Project Co has completed all Commissioning and has passed the required information relating to the Phase 2 ETCS with the Phase 1 ETCS and the I-25 ETCS to enable the ETCS to operate as one system; and the project is ready to be safely opened for traffic.

4.16.2 Project Co will give notice to HPTE twenty (20) Business Days in advance when they expect the requirements summarized in Section 4.16.1 have been complete.

4.16.3 Within a further fifteen (15) days HPTE will give notice to Project Co of any areas of the Preliminary Requirements that they deem to have not been fulfilled. The

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notice will confirm what needs to be corrected as a condition prior to Phase 2 Completion or if it is to be corrected as a Punch List item post Phase 2 Completion. Once complete, then HPTE will re-inspect the items to close them off.

- 4.16.4 Project Co shall provide HPTE with an executed sworn Affidavit of Phase 2 Work Completion when all of the following Phase 2 Work Completion Requirements have been completed:
- HPTE has received all releases for Construction, Design and As-Built Documents, right-of-way record maps, surveys, test data and other deliverables required under the CA;
 - All of Project Co's and the Sub-Contractor's personnel, supplies, equipment, waste materials, rubbish and temporary facilities have been removed from Site;
 - Project Co has provided the Source Code and Documentation for the ETCS;
 - The bond in support of Project Co's obligations have been delivered and is in full force and effect; and
 - The Phase 2 Work Completion Preliminary Requirements have been achieved.
- 4.16.5 Within five (5) Business Days post the issue of the Affidavit of Phase 2 Work Completion, HPTE will make a final inspection and will issue either a Notice of Phase 2 Work Completion or notify Project Co regarding any Phase 2 Work remaining to be performed.
- 4.16.6 IF HPTE and Project Co disagree on the assessment of the Phase 2 Completion Requirements then they shall refer the matter to the Dispute Resolution Procedure.
- 4.16.7 At the same time as it issues the Notice of Phase 2 Work Completion to Project Co, they will also issue a list of relevant Punch List Items (the "Punch List"). Within five (5) Business Days of receiving the Punch List, Project Co will provide HPTE a reasonable program for making good each item.
- 4.16.8 If Project Co fails to implement the repairs as per the Punch List Program then HPTE is entitled to make the required repairs and the costs of doing so will be paid by Project Co.

Conclusions:

The LTA highlights the importance of the completion of the Phase 2 Construction Work procedures as it provides a satisfactory staged completion to the Works to ensure that Project Co complies with the technical requirements and specification of the CA.

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4.17 **Section 20.0 – Liquidated Damages and First Share of I-25 and Phase 1 Revenues**

4.17.1 HPTE will suffer substantial losses and damages if Project Co fails to achieve Phase 2 Work Completion by the Planned Full Services Commencement Date. In that event, Project Co must pay to HPTE liquidated damages of \$3,000 per day (or portion of a day) for each day from when the Planned Full Services Commencement Date until the date of the Phase 2 Work Completion. Project Co's share of the Toll revenues from the I-25 Managed Lanes and the Phase 1 Managed Lanes will be reduced collectively amounting to \$15,000 per day or portion of a day.

4.17.2 The total aggregate amount of liquidated damages shall not exceed \$1,095,000. The total aggregate amount of the share of Toll Revenues payable to HPTE shall not exceed \$5,475,000.

4.18 **Section 21.0 – Warranties in Relation to Phase 2 GP Lanes**

4.18.1 Project Co warrants in relation to the Phase 2 GP Lanes that the design work prepared, the completed Phase 2 GP Lanes, the materials and equipment, and the specification and/or drawings selected or prepared during construction will be in accordance with the CA.

4.18.2 The warranty period for the Phase 2 GP Lanes shall remain in effect until one year after Phase 2 Work Completion. If the Phase 2 GP Lanes have not met the required standards the Corrective Work will be taken, as per the following process:

- Within seven (7) Business Days of receipt of Project Co's notice from HPTE specifying a failure of any of the work to comply with the warranties, then Project Co shall agree when and how they shall remedy such non-compliance.
- If Project Co does not use its reasonable endeavours to proceed to remediate within the agreed time then HPTE shall have the right to perform the works by third parties at the cost of Project Co.
- IF HPTE and Project Co cannot agree on the process and activities above then the matter may be deferred to Dispute Resolution.

4.18.3 HPTE and Project Co shall conduct a walk through of the Phase 2 GP Lanes twenty (20) Business Days prior to the expiration of the warranty period.

4.18.4 Project Co shall bear the costs of correcting the work during the warranty period, including additional testing and inspections.

4.18.5 Project Co shall obtain from all Sub-Contractors and cause to be extended to HPTE, representation, warranties, guarantees and obligations with respect to the design, materials, workmanship, equipment, tools and supplies furnished by the Sub-Contractors. Project Co will "pass through" all warranties to their Sub-Contractors in relation to the performance of the Works. All representations,

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warranties, guarantees and obligations of the Sub-Contractors will survive all HPTE and Project Co inspections, tests and approvals and will run directly and be enforceable by Project Co and or HPTE and their respective successors.

- 4.18.6 Project Co shall perform maintenance and other obligations in relation to the Intelligent Transportation Systems.

Conclusions:

The LTA considers these CA warranties as appropriate and in line with similar ageements in North America.

4.19 Section 22.0 – Operation and Maintenance

- 4.19.1 Project Co shall make the Managed Lanes available for use by vehicles and shall provide the Services and the Snow and Ice Control Services from the Commencement Date and throughout the contract period in relation to the I-25 Managed Lanes and the I-25 Shared Bridge Decks; from the Phase 1 Services Commencement Date throughout the contract period in relation to the Phase 1 Managed Lanes and the Phase 1 GP Lanes; and from the full Services commencement Date and throughout the Services Period in relation to the Managed Lanes and the US36 General Purpose Lanes, as an integrated system.
- 4.19.2 Project Co shall ensure that at all times its maintenance and operating procedures are compliant with Schedule 6 of the CA (HPTE Service Requirements).
- 4.19.3 Project Co shall submit a Maintenance Management Plan, Transition Management Plan, Operations Management Plan, Safety Plan and the Communications & Marketing Plan to HPTE for acceptance. This will be submitted at least forty (40) Business Days prior to the projected Commencement Date in relation to the I-25 Managed Lanes and Shared Bridge Deck; at least sixty (60) Business Days prior to the Projected Phase 1 Services Commencement Date in relation to the Phase 1 Managed and GP Lanes; at least ninety (90) Business Days prior to the projected Full Services Commencement Date in relation to the Managed Lanes and the US36 General Purpose Lanes as an integrated system; and no less than annually if Project Co wishes to change any matter within any plan, more frequently, but no more frequently than once every three (3) months. HPTE will review the plans and either accept or not accept within twenty (20) Business Days.
- 4.19.4 Once a year HPTE may carry out a survey of the Managed Lanes by a suitably qualified independent expert and an audit of Project Co's records and operations. HPTE will notify Project Co in writing a minimum of ten (10) Business Days in advance of any survey. When carrying out a survey or audit, HPTE shall use reasonable endeavours to minimize any disruption caused to the provision of the Services. If the survey shows any non-compliance then HPTE will notify Project Co and specify a reasonable period within which Project Co must carry out such rectification and/or maintenance work. HPTE will be entitled to be reimbursed by Project Co for reasonable cost of the survey.

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- 4.19.5 In the event of any failure by Project Co to comply with the CA, with the consequence that the Managed Lanes are not available for use by vehicles in accordance with the CA for a period of five (5) days following notice to Project Co, then HPTE shall be entitled to exercise its right of access and take such reasonable steps to make the Managed Lanes available for use, and Project Co shall pay any costs or expenses incurred in doing so to HPTE.

Conclusions:

The LTA believes the O&M requirements and transition from design and construction provisions in the CA are appropriate for this Project.

4.20 **Section 23.0 – The Phase 1 Services Commencement Date and Interface with the Phase 1 DB Contract**

- 4.20.1 Project Co shall be furnished with a copy of the Phase 1 DB Contract, the Phase 1 ETCS Installation Contract and all Phase 1 Change Orders in place, prior to the execution of the CA.
- 4.20.2 Section 23.0 - The Phase 1 Services Commencement Date and Interface with the Phase 1 DB Contract sets out the terms and conditions for Project Co's involvement in any changes or amendments to the Phase 1 ETCS Installation, the Phase 1 DB Contract that may impact the Phase 1 Services Commencement Date, and ultimately Project Co's commencement of their O&M and Life Cycle services under the CA. If Project Co encounters any Latent Defects from the Phase 1 Works then it shall be treated as a Compensation Event.

Conclusions:

The LTA considers the scope for the interface with the Phase 1 Services Commencement Date and Phase 1 DB Contract to be adequate for a Project of this nature.

4.21 **Section 24.0 – Procedures Relating to Life Cycle Maintenance Work**

- 4.21.1 No later than ninety (90) days before the beginning of each calendar year after the Full Services Commencement Date, Project Co will prepare a full five (5) year Life Cycle Maintenance Plan to HPTE for review. Project Co will consider any reasonable changes or additions proposed by HPTE to the Life Cycle Maintenance Plan. If no agreement is made within sixty (60) days then either Party may refer the Dispute to the Dispute Resolution Procedure.
- 4.21.2 If Project Co fails to complete any Non-Separable Task (a task comprising Life Cycle Maintenance for a component that is within both the US 36 Managed Lanes and the US 36 General Purpose Lenses) in accordance with the CA or the Life Cycle Maintenance Plan, then within twenty (20) Business Days must present a proposal to HPTE to rectify the situation; or HPTE will self-perform the task. HPTE will be entitled to demand that Project Co pay HPTE an amount equal to HPTE's good faith estimate of the costs it incurs to complete such corrections.

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4.21.3 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 in accordance with good industry practice. Project Co shall carry out and complete the I-25 Initial Work Package as part of the Phase 1 Construction Work; the Routine Maintenance and Life Cycle Maintenance on the I-25 Bridge Deck Superstructure; the I-25 Preventative Maintenance Program to the I-25 Bridge Deck Superstructure. HPTE through CDOT shall carry out the maintenance of the I-25 Bridge Substructures.

4.21.4 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, the sub-grade supporting the pavement for the I-25 Managed Lanes or structures within that sub-grade,; then such a closure shall be a Compensation Event provided it relates to Project Co's loss of revenue.

Conclusions:

The LTA considers that the scope for managing, reporting and implementing Life Cycle Maintenance Work to be adequate for this Project and similar to P3 Projects in North America.

4.22 Section 25.0 – Quality & Section 26.0 – Safety

4.22.1 Project Co shall prepare, implement and continually maintain in respect of each phase of the Project Quality Management Documentation its quality assurance and quality control system in accordance with Good Industry Practice.

4.22.2 Project Co shall comply with and shall ensure that all Related Parties comply with Law regulating work safety.

4.23 Section 27.0 HPTE Step-In

4.23.1 If HPTE reasonably believes that it needs to take action in connection with the Services because of serious risk to the health and safety of people, property or the environment; or to discharge a constitutional or statutory duty, then HPTE is entitled to “step-in” and take additional action as it believes is reasonably necessary.

Conclusions:

The Step-in provisions in the CA in respect to emergency actions as a result of a serious risk to health and safety, people, property or the environment are standard and reasonable.

4.24 Section 28.0 – HPTE Capital Payments

4.24.1 Whenever a Construction Sub-Contract Price Payment is due, Project Co may also apply for an Interim Capital Payment. Only one (1) Capital Payment may be made each calendar month. When submitting an application Project Co will submit all supporting documentation required by the TIFIA Lender pursuant to the terms of the Phase 2 TIFIA Loan.

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4.24.2 The Concessionaire Capital Payment shall be made within two (2) Business Days after Financial Close.

4.25 **Section 29.0 – Tolling**

4.25.1 Tolling of the Managed lanes will commence from and after the Commencement Date in relation to the I-25 Managed lanes; the Phase 1 Services Commencement Date in relation to the Phase 1 Managed Lanes; and the full Services Commencement Date in relation to the Managed Lanes as an integrated system.

4.25.2 The tolling will continue during the Services Period during which Project Co will have exclusive rights to receive tolls from HPTE in accordance with the CA.

4.25.3 Schedule 16 of the CA sets out the provisions for Tolling and Civil Penalties. Project Co acknowledges and agrees that all Established Toll and Penalty Schedules must be designed to ensure that Motor Vehicle speeds for the portion of the US 36 Managed Lanes from Table Mesa to Broomfield Park-n-Ride are an average of 55 MPH; for the portion of the US 36 Managed Lanes from Broomfield Park-n-Ride to Pecos Street are an average of 50 MPH; and for the portion of the US 36 Managed Lanes from Pecos Street to Denver Union Station, that they maintain a travel time of no less than 8.75 minutes. Project Co has the right to initially submit to HPTE a proposed toll and penalty schedule for the Managed Lanes and acknowledges and agrees that all Established Toll and Penalty Schedules must be designed to ensure that Bus Standards are satisfied and that average Motor Vehicle speeds throughout the Managed Lanes are not less than 45 miles per hour during Peak Periods (the “Managed Lanes Goals”).

4.25.4 Project Co shall propose a Proposed Toll and Penalty Schedule at least 60 days prior to the expected date of each of the Commencement Date, the Phase 1 Services Commencement Date and the full Services Commencement Date. Project Co has informed the LTA (via email Nov 19, 2013) that this has been submitted.

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

- HOV 2+ Vehicles (unless changed through a HOV Change Event);
- Motorcycles;
- ILEV's (hybrids);
- RTD (Regional Transport District) Buses;
- Support Vehicles; and
- Public Safety and Emergency Vehicles.

Project Co has informed the LTA (via email Nov 19, 2013) that HPTE approves any tolling increase that have been proposed. They are only able to deny such increases in very limited circumstances e.g safety reasons, outside the maximum or minimum levels.

4.25.6 If data gathering indicates that Regional Transport District (“RTD”) Buses are travelling at a speed less than an average of 45 mph in any Tolling Segment during Peak Periods after the HOV Change Event has occurred then a “Bus Delay Event” shall have occurred. If the Bus Delay Event occurs two times or less in the

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same hour, or 3 times or more in same hour but less than 1 day of every week, then Project Co is not obliged to take any action. If the Bus Delay Event occurs 3 times or more in same hour and such an occurrence happens 1 day or more of every week then Project Co must promptly submit a Proposed Toll and Penalty Schedule that eliminates future Bus Delay Events from occurring.

- 4.25.7 No later than 30 days after the end of each calendar quarter then Project Co will provide to the RTS and HPTE an “Quarterly Report” which includes:
- The number and type of transactions with the Vehicle Reporting System in all Tolling Segments;
 - Vehicle speeds between all 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, broken down by the categories described in paragraph 4.1 for each month in the applicable quarter; and
 - The number of Tolled Vehicles.
- 4.25.8 During the Services Period, Project Co will operate the ETCS (Electronic Toll Collection System) and will be responsible for all toll transaction account management services provided to users of the Managed Lanes. Project Co may only enter into a new Tolling Services Agreement that has been accepted by HPTE.
- 4.25.9 Project Co may enter into Contracts with the Colorado State Patrol (“CSP”) to deter users of the Managed Lanes from wrongfully declaring that they are not a Tolled Vehicle. Project Co may contract with the Tolling Services Provider or another Person for the provision of services to enforce the collection of Tolls and Civil Penalties.
- 4.25.10 If the Managed Lanes or another portion of the Managed Lanes is temporarily ordered to be close pursuant to applicable law then HPTE will have no liability to Project Co for the loss of toll Revenues or the increase in costs or expense attributable to such a closure. HPTE may by notice to Project Co require suspension of toll collection on, or closure of, the Managed Lanes with immediate effect either for a specified period or until they give notice that the closure has ended.
- 4.25.11 In all cases where payments are due to be made to Project Co by HPTE, then HPTE will make payment to Project Co in relation to each day during the closure or suspension within 3 Business Days after that day.
- 4.25.12 Emergency and other suspension of Tolls or closure of Managed Lanes shall not apply to closures or suspensions brought about as a consequence of Force Majeure or Relief Events and shall not apply to I-25 North Permitted Closure Events.
- 4.25.13 HPTE may require three I-25 North Permitted Closure Events without paying compensation or Relief to Project Co unless the relevant portion of the closure

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does not re-open by 0500. In this instance HPTE shall pay Project Co the I-25 North Liquidated Damages.

- 4.25.14 HPTE will not have any risk related to actual traffic volume that is not less than the projected volume in the Base Case Financial Model, except for its specific obligations to Project Co under the CA.

Conclusions:

The provisions for Tolling appear to be adequate and will allow satisfactory mitigation to Project Co in the event of loss of tolling revenues.

4.26 **Section 30.0 – HPTE Payments for GP Routine Maintenance Services and for Snow and Ice control Services and the Concessionaire’s Payments of Sub-Contractors**

- 4.26.1 Schedule 15 of the CA sets out the payment provisions for GP Routine Maintenance Services and Snow and Ice Control Services. HPTE shall reimburse Project Co for the Non-Separable Percentage of the cost of routine Maintenance on the I-25 Shared Bridge Decks.

4.27 **Section 35.0 – Performance Monitoring**

- 4.27.1 Project Co shall monitor the provision of the Services in accordance with the CA and shall compile a Monthly Service Report and an Annual Performance Report in accordance with Schedule 6 (Service Requirements).
- 4.27.2 At any time during the Services Period, at its own cost, HPTE may carry out checks on Project Co in relation to the performance of its obligations under the CA.

Conclusions:

The provisions for self-monitoring of the performance of the Services and HPTE’s ability to implement their own independent monitoring in the CA are adequate and typical of projects of this nature.

4.28 **Section 37.0 – Required Insurances**

- 4.28.1 Before the Commencement Date, Project Co shall take out and maintain the insurances described in Part 1 of Schedule 17 [NTD: Schedule 17 not received] and any other insurances as may be required by Law.
- 4.28.2 If a risk usually covered by builders’ all risk insurance, property damage insurance, general liability insurance (but not loss of profits) or workers compensation becomes uninsurable then Project Co shall notify HPTE within five (5) Business Days of the risk becoming Uninsurable and the Parties shall meet to discuss how to best manage or share the risk.

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4.29 Section 41.0 – Compensation Events

4.29.1 A Compensation Event means any of the following events:

- A breach by HPTE of any provision of this Contract;
- The existence of any Encumbrance affecting the Site or the Managed Lanes apart from :
 - those Encumbrances held by third parties as disclosed in the Disclosed Data;
 - the Permitted Encumbrances; and
 - rights of third parties as required by Law;
- The circumstances described as such in Section 8.2 of the CA, when HPTE fails to grant a license to Project Co and fails to make the site available;
- The circumstances described as such in Section 17.2(c) of the CA, when a relevant part or parts of the Phase 2 Construction Work does not comply with the requirements of the CA, causing Project Co make good the works, thus causing a delay or increased costs;
- The circumstances described as such in Section 23.5 of the CA, when there is a delay to the acceptance of Phase 1 DB Contract and Phase 1 ETCS;
- A Phase 1 Latent Defect;
- The circumstances described as such in Section 24.4(k)(ii) of the CA when HPTE does not wish to incur the cost of a work package, including a Non-Seperable Task;
- The circumstances described as such in Section 38.4(h)(ii) of the CA when an HPTE action fails (in relation to Non-Seperable Reinstatement Work) and additional costs are incurred by Project Co in addressing the Non-Seperable 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 the 3rd Cash Flow Sharing Threshold;
- The construction and operation of an Unplanned Revenue Impacting Facility;
- An order issued by a Governmental 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

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relating to the acceptance or processing of applications or the issuance of Necessary Consents generally;

- Any other matter which this Contract refers to as or deems to be a Compensation Event, or which is to be treated as if it were a Compensation Event.

4.29.2 If Project Co is unable to commence the Services for the Phase 1 Managed Lanes on or before Phase 1 Services Commencement Completion Date; or they are unable to achieve Full Services Commencement Date on or before the Planned Full Services Commencement Date, or following the Planned Full Services Commencement Date, before the Full Services Commencement Longstop Date; or Project Co is unable to comply with its CA obligations; or Project Co incurs costs or loses revenue then they are entitled to apply for relief.

4.29.3 The process for obtaining relief in relation to any Compensation Event shall be processed through a Change Order.

4.29.4 Within fifteen (15) Business Days after Project Co becomes aware of the Compensation event they will give notice to HPTE of its claim for payment of compensation. Within ten (10) Business Days of receipt by HPTE of the notice they will then give full details of the Compensation Event and the extension of time / relief / estimate of change in costs.

4.29.5 HPTE shall compensate Project Co for the actual Change in Costs within twenty (20) Business Days of receipt of the claim. In the case of the Estimated Change in Costs anticipated then HPTE shall compensate Project Co by making Revenue Compensation Payments as per Part 2 of Schedule 11 (i.e. Updating and Revising the Base Case Financial Model).

4.29.6 Compliance with the requirements set out in in Section 4.29.4 (above) shall be a condition precedent to Project Co's right to any extension of time, compensation or relief.

Conclusions:

The LTA regards the provisions for Project Co's Compensation Events in the CA as acceptable for the recovery of time, relief of costs.

4.30 Section 42.0 – Relief Events

4.30.1 A Relief Event means any of the following events:

- 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 Schedule 22, Part 1 of the CA;
- Any unforeseeable accidental loss or damage to the Phase 2 Work, the Managed Lanes [or the us 36 General Purpose Lanes];

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- 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;
 - Other labour dispute; or
 - 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;
- 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; or
- 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.

4.30.2 If a Relief Event is the cause of a delay in achieving the Planned Full Services Commencement Date or adversely affects the ability of Project Co to perform any of its obligations under the CA, then Project Co is entitled to apply for relief.

4.30.3 The process for obtaining relief in relation to any Relief Event shall be processed through a Change Order.

4.30.4 As soon as practicable within twenty (20) Business Days after they become aware, Project Co will give notice to HPTE of its claim for relief including full details of the nature of the Relief Event, the date of occurrence and its likely duration. Within five (5) Business Days of giving notice, Project Co will give full details of the nature of the Relief Event.

4.30.5 Project Co will demonstrate that the Relief Event was the cause of any breach of the CA's obligations and that they took all reasonable steps to mitigate the need for relief. Project Co and its Sub-Contractors shall not be entitles to remedies if they did not take all reasonable steps to mitigate or recover the Relief Event which they are reasonably expected to have taken.

4.30.6 To the extent that the Relief Event prevents or diminishes the performance of the Snow and Ice Services then HPTE shall be entitles to a fair and reasonable deduction in the Snow and Ice Services Fee.

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Conclusions:

The LTA regards the provisions for Project Co Relief in the CA as acceptable for a Project of this nature and typical of P3 Projects in North America.

4.31 Section 45.0 – Change Procedure

- 4.31.1 Schedule 21 of the CA sets out the provisions for Change Procedure.
- 4.31.2 Project Co or HPTE may serve a Change Notice proposing a Change. HPTE Low, Medium and High Value Changes will be administered separately in line with the terms set out in Parts 2, 3 & 4 of Schedule 21. These aforementioned Parts apply to HPTE Changes affecting the Services or the Snow and Ice Control Services. A Concessionaire Change will be processed in accordance with Part 5 of Schedule 21. A Material Change will be processed as an HPTE Change (see above). An HPTE Change in relation to the Phase 2 Work will be processed in accordance with Part 6 of Schedule 21.
- 4.31.3 In the case of a Medium Value Change, a High Value Change or a construction Change HPTE may request Project Co shall use its reasonable endeavours to obtain funding for the whole of the estimated Capital Expenditure. If Project Co uses all reasonable endeavours to obtain funding but was unable to do so within forty (40) Business Days of the date that HPTE issued a HPTE Change Notice then they shall have no obligation to carry out the HPTE Change, unless HPTE confirms to pay for the funding that is unavailable. HPTE shall pay the Capital Expenditure incurred of any Low Value Change.
- 4.31.4 The Senior Lenders have the right to carry out legal, financial, technical and insurance due diligence for any proposal for an HPTE Change.
- 4.31.5 Project Co shall promptly implement any Change within the timescales set out in the Change Order and shall notify HPTE when it believes the Change has been completed.

Conclusions:

The LTA regards the provisions in the CA for the Change Procedure as acceptable for a Project of this nature and typical of P3 Projects in North America.

4.32 Section 46.0 – Sub-Contracts

- 4.32.1 Project Co shall not sub-contract, assign, charge, sell, bargain, pledge, transfer or create a line over the benefit of the CA in whole or in part except with the prior written consent of HPTE.
- 4.32.2 HPTE acknowledges and consents that Project Co has entered into agreements with the Sub-Contractors and HPTE. Project Co shall enter into Sub-Contracts with the Sub-contractors identified in the Proposal.

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4.32.3 Project Co shall not terminate any Sub-Contract, substitute or replace any Sub-Contractor except in the case of material default by the Sub-Contractor without HPTE's prior written approval.

4.32.4 Project Co's sub-contracting of any of the Phase 2 Work or Services shall not relieve them of their obligations under the CA for any breach of the obligations that may arise.

4.33 *Section 47.0 – Change of Control*

4.33.1 Project Co represents to HPTE that at the date of the CA the legal and beneficial ownership of Project Co is set out in Schedule 3 of the CA (Concessionaire Warranted Information) and that no arrangements are in place that have or may have or result in any sale, transfer or disposal of any legal, beneficial, equitable or other interest in any or all of the shares in the Concessionaire, other than the arrangements that were previously disclosed to HPTE in the letter from Project Co (dated June 27, 2013). In summary, the letter (dated June 27, 2013) summarizes Plenary Group's process of analyzing and selecting potential equity co-investors who have expressed an interest in potentially investing equity into the Project. Plenary Group (as current equity investor) have set out the reasoning and rationale on how they approach selecting such a co-investor. Plenary Group have confirmed that any potential co-investors will conform to the requirements of the CA, in particular Section 47.0 – Change of Control.

4.34 *Section 48.0 – Handback*

4.34.1 Project Co will ensure that the Maintained Elements will meet the Residual Life Requirements at the Expiration Date.

4.34.2 Project Co shall prepare a Handback Plan that contains the methodologies and activities to be undertaken to meet the Handback Requirements and obtain Acceptance from HPTE. This document will be issued for review no later than the first date of the fifteenth (15th) full calendar year before the Expiration Date. Project Co shall perform an initial, intermediate and final Residual Life inspection that covers all Maintained Elements within the Managed Lanes and submit the findings, test results and calculations to HPTE. On the Expiration Date, Project Co will certify to HPTE that all Maintained Elements of the Managed Lanes meet or exceed their respective Residual Life Requirements.

4.34.3 The inspections will be performed by a suitably qualified independent expert, known as the "Residual Life Expert".

4.34.4 Within six (6) months after agreement or determination of the Renewal Account Project Co will either pay 20% of the Renewal Amount into an interest bearing account (the "Handback Reserve Fund") that is opened and maintained by HPTE until the CA expires or terminates or provide an irrevocable letter of credit for the same amount.

4.34.5 After receipt of the Final Inspection report, within sixty (60) days HPTE will either issue a Handback Certificate to Project Co, or notify Project Co in writing of the decision not to issue a Handback Certification and the reasons for the decision.

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- 4.34.6 If a Handback Certificate is released, then the amounts held in the Handback Reserve Account will be release also. If further work is necessary for the Maintained Elements the HPTE will give notice to Project Co allowing them forty-five (45) Business days to complete the work, after which they have the right to draw upon the and back Reserve Fund or the letter of credit.

Conclusions:

The LTA regards the provisions for Handbacks in the CA acceptable and typical for a Project of this nature and typical of P3 Projects in North America.

4.35 Section 49.0 – Consequences of Termination or Expiration

- 4.35.1 Within twenty days (20) post the Expiry (or if earlier the Termination) Date hand over to HPTE all documents, records, books etc. relating to the Project; assign and transfer all contracts and intellectual property; transfer its rights tile and interest to the Assets; and fully cooperate with the transfer of responsibility for the Services to HPTE or a new Concessionaire.
- 4.35.2 If a Concessionaire Default occurs and HPTE wishes to terminate the CA then they must service Project Co with a Termination Notice that specifies the type and nature of the Concessionaire Default as per the obligations set out in Section 50 of the CA. Project Co can also terminate the CA at any time if HPTE Default has occurred and must serve a Termination notice within thirty (30) days of becoming aware of the HPTE Default.

Conclusions:

We consider such termination terms and processes in the CA appropriate and in line with similar agreements in North America.

4.36 Section 69.0 – Dispute Resolution

- 4.36.1 The Dispute Resolution Procedure is set out in Schedule 24 of the CA and follows similar procedures established in PP transactions in North America.

Conclusions:

The provisions for dispute resolution are standard for projects in North America. Strict time frames are to be complied with and enforced, however this should not pose a problem for a well sourced and organized Project Co.

5.0 COMMERCIAL COMMENTARY – ANCILLARY DOCUMENTS

5.1 *Design-Build Contract*

- 5.1.1 BTY Group has been provided with a Final Design-Build Contract, dated June 27, 2013.
- 5.1.2 The parties of the Design-Build Contract (“DBC”) will be Plenary Roads Denver (“Project Co”) and a joint venture consisting of Granite Construction Inc. and Ames Construction Inc. / Ames/Granite JV (the “DBJV”).
- 5.1.1 The proposed DBC will be back to back with the CA in respect of the construction obligations of Project Co. All of the obligations and liabilities of Project Co under the CA in relation to designing and building the Project will be passed to the DBJV.
- 5.1.2 Back to back principles include:
- DBJV is obliged to Project Co under the DBC to the same extent as Project Co is obliged to HPTE under the CA in respect to performing the Phase 2 Work;
 - DBJV is entitled to exercise, pursue, enforce, satisfy and perform all duties, obligations, rights, benefits, warranties and representations of Project Co under the CA;
 - DBJV is only entitled to and will only receive compensation to the same extent Project Co actually receives corresponding compensation under the CA; and
 - DBJV is only entitled to, and will only receive relief if HPTE provides Project Co with the corresponding relief under the CA.

Conclusions:

The LTA considers such terms in the DBC appropriate and in-line with similar P3 agreements in North America.

From our review of the CA and DBC, it appears that the DBC is back to back with the CA in respect of the design and construction obligations of Project Co given by the CA.

5.2 *Contract Period, Conditions Precedent and Financial Close*

- 5.2.1 The provisions of the DBC will come into effect when the corresponding provisions of the CA have also come into effect. However, Sections 4, 7, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 25, 26, 28, 37 and 37 to 46 inclusive shall become effective on the Commencement Date as they relate to provisions relative to work post the Commencement Date. The balance of the DBC sections relate to Phase 1 interface works and the I-25 Initial Works Package.
- 5.2.2 The provisions of the DBC will terminate on the Termination Date, with exception of Sections 1.4, 3, 4, 14.1, 59.5, 52, 54.4, 55, 56, 57, 59, 64, 69 and 75. Sections 9.6 and 12 will survive termination provided that they only survive with respect to

5.0 COMMERCIAL COMMENTARY – ANCILLARY DOCUMENTS

Hazardous Substances and Losses that both Project Co and HPTE incur in relation to cleaning up any ground contamination resulting from the DBJV's performance of the Phase 2 work.

- 5.2.3 All indemnities provided by the DBJV shall survive termination provided they are covered by the specific insurance policies as described in Schedule 17.
- 5.2.4 During the period between the date of the DBC and the Commencement Date, the DBJV agrees to provide Project Co with any requested updates regarding the fulfilment of the conditions precedent to Financial Close and the Commencement Date.
- 5.2.5 Project Co acknowledges and agrees that as per the CA if the Commencement Date fails to occur by the Financial Close Deadline Date or either Project Co or HPTE terminates the CA and upon such termination HPTE may draw the full amount available pursuant to the Financial Close Security. If HPTE draws on the Financial Close Security due to a failure by the DBJV to satisfy the Conditions Precedent, then the DBJV shall indemnify Project Co for the costs associated with HPTE drawing on the security in the full amount of directly attributable to the DBJV.
- 5.2.6 In the event that HPTE pays the stipend to Project Co, then Project Co will pay the DBJV 50% of the Stipend.
- 5.2.7 The DBJV will not commence any part of the Phase 2 Work (except for design work which they may commence at their own risk) until Project Co has advised them that the Conditions Precedent have been satisfied.
- 5.2.8 Once the Commencement Date has occurred then HPTE will issue NTP1 to the DBJV who will then commence the Phase 2 Work in order to complete the design and construction work by the Planned Full Services Commencement Date.
- 5.2.9 Project Co will, as directed by the DBJV enforce those rights and claim those defences under the CA which are for the benefit of Project Co.
- 5.2.10 Project Co and the DBJV acknowledge that there may be amendments to the DBC to accommodate HPTE and/or the Senior Lenders in order to reach Financial Close. Both Project Co and the DBJV will act in good faith to agree to any amendments as a requirement for Financial Close.

Conclusions:

The LTA considers the conditions for the Contract Period, Conditions Precedent and Financial Close in the DBC appropriate and in-line with similar agreements in North America.

5.3 Undertakings, Representations and Warranties

- 5.3.1 The DBJV will inform Project Co promptly if they become aware of any litigation, arbitration or administrative proceedings pending against them.

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- 5.3.2 The DBJV will acquire any and all Necessary Consents to perform its obligations under the DBC.
- 5.3.3 Each person executing the DBC on behalf of the DBJV will be duly authorized to execute such documentation on behalf of the DBJV.
- 5.3.4 Project Co will provide the DBJV with copies of the DBC Documents after the Contract Date.
- 5.3.5 The DBJV will not commit any Prohibited Acts.
- 5.3.6 The DBJV will ensure that the DVJV partners will all be members of the DBJV with appropriate joint and several declarations entered into, which will not be modified in any manner that would eliminate or diminish the joint and several nature of the liability of each member.

5.4 *DBJV Warranties*

Note – This section of the DBC will be revised pending finalization of the DBJV's structure.

- 5.4.1 The DBJV represents and warrants to Project Co from the Contract Date as follows:
- a. The DBJV is a joint venture partnership formed in accordance with the state of Minnesota and is authorized to transact business in the State of Colorado.
 - b. Each person executing the DBC on behalf of the DBJV has been duly authorized to do so.
 - c. Any undertakings of the DBJV arising from the DBC have been executed on or before the Contract Date represent valid and enforceable undertakings of the DBJV.
 - d. The DBC Document does not contravene any Law; any organization documents of the DBJV; or any obligation which is binding on the DBJV.
 - e. There is no DBJV Default and no fact or event exists that over time would constitute a DBJV Default.
 - f. No litigation, arbitration or other dispute Resolution proceedings involving the DBJV are present or pending.
 - g. The DBJV has conducted its own analysis and review of the Disclosed Data and it has satisfied itself to accuracy, completeness and fitness for purpose.
 - h. Copies of the DBC Documents provided by the DBJV to Project Co are true and complete.

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- i. There has been no failure by the DBJV to comply with the Laws and Necessary Consents.
- j. The DBJV has not committed any Prohibited Acts prior to the execution of the DBC.

Conclusions:

The LTA considers these warranties in the DBC appropriate and in-line with similar agreements in North America.

5.5 Project Co Warranties

- 5.5.1 Project Co will be incorporated as an existing Colorado Limited Liability Company in accordance with the laws of the State of Colorado and is authorized to transact business and is registered with the Secretary of State in the State of Colorado. Each person that executes the CA on behalf of Project Co has been duly authorized.
- 5.5.2 Both Project Co and the DBJV persons on executing the DBC have been duly authorized to do so. The DBC has been executed by both the DBJV and Project Co and does not contravene any Law or obligation which is binding to Project Co.
- 5.5.3 There is no litigation, arbitration or other dispute resolution proceedings involving Project Co.
- 5.5.4 Project Co will comply with all Laws and Necessary Consents applicable to its obligations in connection with the DBC.
- 5.5.5 Neither Project Co nor its agents have wilfully misled the DBJV in respect of any Disclosed Data.

Conclusions:

The LTA considers these warranties in the DBC as appropriate and in-line with similar agreements in North America.

5.6 The DBJV's Investigation

- 5.6.1 The DBJV shall be deemed to have satisfied itself as to the assets to which it will acquire the rights and the nature and extent of the risks under the DBC.
- 5.6.2 The DBJV acknowledges that no representation or warranty is made by HPTE or Project Co and that they will have no remedy or relief from its DBC obligations.
- 5.6.3 The DBJV will take full responsibility for the performance of the Phase 2 work, the adequacy of the design and any other information provided to the DBJV.

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Conclusions:

The LTA considers these obligations in the DBC as appropriate and in-line with similar agreements in North America.

5.7 **DBJV Security and Guarantees**

5.7.1 Each DBJV member will provide Project Co with a Parent Guarantee that covers all obligations of the DBJV under the DBC, including Project Co LD's, LD's and losses caused by the DBJV's performance under the DBC. The Parent Guarantees shall continue through to the expiry of the DBJV's obligations under the DBC. In an email (dated Novemembr 19, 2013) Project Co has informed us that the Lenders would be named as a obligee on the bond being provided for the DBC.

5.7.2 On or before Financial Close the DBJV shall obtain a Payment Bond and Performance Bond for the benefit of HPTE, the Senior Lenders and Project Co from a surety with a credit rating at, or better than the Ratings Standard or is rated VIII or better according to A.M. Best's Financial Strength Rating with a financial strength to cover the completion of the Phase 2 Construction Work.

5.7.3 The Performance Bond will be equal to 100% of the contract value. Both Ames and Granite will be jointly and severally liable for 100% of the Contract value.

Conclusions:

The Parent Guarantee and 100% Performance & Payment Bond provides adequate security coverage and in line with what we expect to see on P3 Projects.

5.8 **Representatives of the Parties and the DBJV Personnel**

5.8.1 The DBJV's Representative shall be a person identified from time to time as the DBJV's Representative in a notice given by the DBJV to Project Co and has full authority to act on behalf of the DBJV.

5.8.2 The DBJV shall ensure that all individuals named as Key Personnel in the DBJV's Proposals on the Contract Date continue to be engaged in their respective roles on the Project.

5.8.3 If any individual in a Key Personnel role resigns, retires, dies, becomes disabled or is terminated the DBJV shall designate a replacement with equivalent expertise and experience.

5.8.4 The DBJV shall ensure that all design and engineering work is performed by or under the supervision of personnel that is licenced to practice architecture, engineering or surveying in the State of Colorado.

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5.9 *Ownership and Use of Property*

- 5.9.1 Project Co will grant the DBJV a non-exclusive licence for the Contract Period over, under, and upon the Site, the I-25 Managed Lanes, the Phase 1 Managed Lanes, the Phase 2 Managed Lanes and the US36 General Purpose Lanes. The licence will be automatically revoked upon termination of the DBC. The DBJV has the right to issue sub-licences to sub-contractors as necessary to carry out the obligations under the DBJV.
- 5.9.2 HPTE shall ensure Project Co is granted access to the Node 1 Building (CDOT's building in the Denver Maintenance Yard) for the purpose of performing its obligations under the DBC. In turn Project Co shall grant access to the DBJV for the same purpose.
- 5.9.3 The DBJV acknowledges that Project Co can request the assistance of HPTE to remove protesters or trespassers where they demonstrate to HPTE's reasonable satisfaction that it has exercised all legal remedies to remove these persons when they have a material adverse effect on their ability to conduct the Phase 2 Works.

Conclusions:

The LTA considers the stipulations in the DBC surrounding the provision of a non-exclusive licence to the I-25 Managed Lanes, Phase 1 Managed Lanes, and the Phase 2 managed Lanes and the US36 General Purpose Lanes, the Node 1 Building and the 70th Avenue Maintenance Facility appropriate for this project.

5.10 *Environmental Requirements*

- 5.10.1 During the Contract Period the DBJV will comply with all Environmental Requirements.
- 5.10.2 The DBJV will employ a suitably qualified Environmental Manager to advise on and coordinate all environmental issues through the Contract Period until the Full Services Commencement Date.
- 5.10.3 The DBJV will ensure that all sub-contractors use appropriate measure in accordance with HPTE's Requirements to prevent and minimize any pollution caused by the Phase 2 Work.
- 5.10.4 HPTE or CDOT may assert that certain third parties or persons may rightfully bear the ultimate legal responsibility for any and all Hazardous Substances which may be present on the site and the Managed Lanes.
- 5.10.5 HPTE (not Project Co) shall be responsible for and shall ensure that CDOT will be responsible for matters arising out of HPTE Hazardous Substances Circumstances.
- 5.10.6 If Remediation Work is required in relation to any HPTE Hazardous Substances Circumstances then the DBJV shall be entitled to payment of its Change in Costs,

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to an extension to the Planned Full Services Commencement Date and/or to such relief from its obligations under the DBC.

- 5.10.7 Project Co shall be responsible for and shall reimburse the DBJV in respect of any and all claims, proceedings, suits, demands, damages, losses, liabilities, costs and expenses, the DBJV's attorney's fees arising from the existence of HPTE Hazardous Circumstances or Bodily injury to persons, damage to property, environmental removal or response costs, in each case arising out of HPTE Hazardous Substances Circumstances.
- 5.10.8 The DBJV are to comply with the obligations of the Comprehensive Environmental Responses, Compensation and Liability Act (CERCLA), 42 U.S.C. Section 9607(e).
- 5.10.9 The DBJV acknowledges and agrees that is shall be responsible for all claims, proceedings, suits, demands, damages, losses, liabilities, costs and expenses, attorney's fees arising from the existence of Hazardous Substances except to the extent directly attributable to the gross negligence of Project Co.

Conclusions:

We consider the provisions in the DBC surrounding the environmental responsibilities to be appropriate and robust.

5.11 Construction

- 5.11.1 The DBJV will carry out and complete the Phase 2 Work in accordance with the provisions of the DBC, the HPTE Phase 2 Work Requirements, the DBJV Contractor's Phase 2 Work Proposals and Good Industry Practice, all Necessary Consents and all applicable Law; and to achieve Phase 2 Work Completion by the Planned Full Services Commencement Date.
- 5.11.2 The DBJV will ensure that:
- All persons employed in connection with the performance of the Phase 2 Work will be skilled and experienced in their several professions, trades and callings or adequately supervised;
 - All aspects of the Phase 2 Work will be supervised by sufficient numbers of persons having adequate knowledge of such matters for the satisfactory and safe performance of the Phase 2 Work in accordance with the DBC;
 - The Phase 2 Work is maintained in good order, kept in a safe condition and protected from damage, and working areas of the Site are secure against trespassers and clean and tidy, in each case so far as is practicable having regard to the nature of the Phase 2 Work; and
 - An individual who is a registered licensed professional engineer in the State of Colorado will be "responsible charge" of the Phase 2 Work. As used in the preceding sentence, "responsible charge" means personal responsibility for

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the control and direction of engineering work within a professional engineer's scope of competence.

- 5.11.3 Project Co shall have the right to determine in its sole discretion acting in good faith that any individual employed by the DBJV or by any sub-contractor is acting so as to cause a material risk of damage to health, safety or property or is under the influence of alcohol or drugs or is acting or threatening to act in a violent manner.
- 5.11.4 There is a NTD that confirms that the DBJV will enter into the E-470 Installation Agreement for Phase 2 Construction Works, and related provisions.
- 5.11.5 The DBJV will comply with the HPTE Phase 2 Work Requirements but not the DBJV's Phase 2 Work Proposals shall not be a defense to an allegation that the DBJV has not satisfied the DBJV's Phase 2 Work Proposals.
- 5.11.6 The fact that the DBJV has complied with the DBJV's Phase 2 Work Proposals but not HPTE's Requirements shall not be a defense to an allegation that the DBJV has not satisfied the HPTE Phase 2 Work Requirements.
- 5.11.7 During the carrying out of the Phase 2 Work the DBJV shall and shall ensure that its sub-contractors and/or consultants shall:
- 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;
 - 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;
 - At the DBJV'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 DBJV 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;
 - 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 DBJV 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;
 - Not without the written consent of HPTE and Project Co 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 DBJV's Proposals; and

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- 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 Project Co as well as HPTE pursuant to Section 11.3(f) of the CA.

Conclusions:

The LTA considers the scope of the construction works in the DBC to be adequately defined and in-line with expectations.

5.12 **Site and Site Conditions**

- 5.12.1 The condition of the Site shall be the sole responsibility of the DBJV and accordingly (but without prejudice to any other obligation of the DBJV under the DBC), the DBJV shall be 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;
 - Satisfied itself as to the nature of the conditions at the Site, the adequacy of the means and rights of access to and through the Site, and the precautions and times and methods of working necessary to prevent any nuisance or interference,.
- 5.12.2 The DBJV is not entitled to make any claim in relation to the conditions of the Site against HPTE or Project Co on any grounds.
- 5.12.3 The DBJV is responsible for and shall compensate Project Co for any losses that it and HPTE may incur in relation to cleaning up and dealing with any ground contamination from the Site.
- 5.12.4 Before commencing an element of the Phase 2 work, the DBJV shall verify all governing dimensions and conditions at the Site and shall examine all adjoining work, which may impact the Phase 2 Work.
- 5.12.5 If the DBJV becomes aware of any on-site material that may contain Hazardous Substances that is required to be removed or treated or any differing site conditions then as a Condition Precedent to the DBJV's right to instigate the Change Procedure, the DBJV shall promptly notify Project Co and HPTE.
- 5.12.6 The DBJV shall then promptly conduct further investigations as Project Co deems to be reasonably appropriate. Project Co shall have the right to require that the DBJV recommenced with in the area at any time even though an investigation may still be going on.
- 5.12.7 Upon fulfilment of the DBJV's notification requirements, Project Co shall be responsible for and will agree to operate the Change Procedure to Compensate the DBJV for additional costs and losses caused by changes in the Phase 2 Work arising from Differing Site Conditions; extend the Planned Full Services

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Commencement Date and the Full Services Commencement Sunset Date as the result of any delay caused by any such Differing Site Conditions.

Conclusions:

The LTA considers the responsibilities in the DBC in relation to the site and hazardous substances appropriate and reasonable.

5.13 Reinstatement and Necessary Consents

5.13.1 The DBJV shall at all times ensure that it 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 DBJV previously to their original condition or equivalent or to the form specified in HPTE's Requirements (whichever is the higher standard).

5.13.2 The DB JV is responsible for obtaining all Necessary Consents and for arranging any necessary amendments to any Necessary Consents and such responsibility shall not be in any way diminished by any Law placing responsibility for the same upon HPTE or another Person. When reasonably requested by the DBJV, Project Co will use reasonable endeavours to assist the DBJV (including seeking similar assistance from HPTE) in obtaining any Necessary Consent.

5.13.3 The DBJV shall:

- Within twenty-five (25) Business Days of the Commencement Date and thereafter five (5) Business Days prior to each anniversary of the Commencement Date provide to Project Co's Representative, a comprehensive list of all Necessary Consents which are required in respect of the Phase 2 Work, which have been or will be applied for and/or all the Necessary Consents obtained ("Necessary Consents List"). The Necessary Consents List shall identify the:
 - Date on which each such Necessary Consent application was made;
 - Date on which each such Necessary Consent is expected or was obtained;
 - Date for any renewal for each such Necessary Consent;
 - Any accompanying documents; and
- As soon as reasonably practicable following a request to do so, supply free of charge to Project Co's Representative a copy of any document or documents referred to in the Necessary Consents List.

Conclusions:

The LTA considers the DBJV's obligations for obtaining all Necessary Consents in the DBC fair and reasonable.

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5.14 *Project Documentation*

- 5.14.1 The DBJV acknowledges that the Existing Design has been prepared on behalf of HPTE and provided to the Project Co and DBJV as part of the RFQ and RFP processes. The DBJV is fully responsible for the design and execution of the Phase 2 Construction Work.
- 5.14.2 The DBJV represents and warrants that it has employed licensed engineers who have used and will continue to use the degree of skill and care in the design of the Phase 2 Construction Work that would reasonably be expected of a competent professional, experienced in carrying out design activities.
- 5.14.3 The DBJV shall produce all further drawings necessary for the carryout and completion of the Phase 2 Construction Work. The Design Documentation created by the DBJV shall be submitted to Project Co for review and Acceptance. The DBJV will allow HPTE's Representative and the Project Co Representative reasonable opportunity to view and make copies of any Design Documentation.
- 5.14.4 The DBJV shall comply with CDOT's Design-Build Disadvantaged Business Enterprises.

5.15 *Management of the Site*

- 5.15.1 The DBJV will facilitate the work of employees or contractors of CDOT, Project Co and Utility Companies work that needs to be carried out on the Site.
- 5.15.2 The DBJV acknowledges that certain Persons (including Utilities) have a right of access to the Managed Lanes in accordance with Law, and that this access is regulated by CDOT by the issuance of Access Permits.
- 5.15.3 The DBJV will make available to Project Co and HPTE (and other persons acting on behalf of HPTE or Project Co on the Site) facilities and equipment required by HPTE to exercise its rights and obligations under CA.
- 5.15.4 The DBJV shall act reasonably to coordinate its work with the work of the Phase 1 DB Contractor.

5.16 *Supervision and Reporting*

- 5.16.1 The DBJV acknowledges that, by exercise of his right to delegate pursuant to Section 7.3 of the Concession Agreement, HPTE's Representative may specifically appoint a person from time to time to act as the Technical Representative.
- 5.16.2 The DBJV acknowledges that the DB Contract Payment Certifier has been appointed.

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- 5.16.3 The DBJV acknowledges HPTE's Technical Representative and, upon the direction of the Concessionaire, the DB Contract Payment Certifier, shall also have the right to attend progress meetings.
- 5.16.4 During the Construction Period, copies of the following documents shall be submitted to the DB Contract Payment Certifier and Technical Representative:
- Approved Construction Documents and Design Documents;
 - Upon request, any DBJV or sub-contractor claims and any further documents;
 - Upon request, any technical instructions, sampling and qualification plans;
 - Qualification test results (for example, laboratory tests, geodetic survey results, quality clearances, other certificates, etc.);
 - Qualification Documentation and As-Built Documents; and
 - Any other documents agreed by Project Co and the DBJV in advance and/or as notified from time to time by the Technical Representative or the DB Contract Payment Certifier to the extent available.
 - Any documents listed in Section 16.1(d) shall be delivered to the address of the Technical Representative or the DB Contract Payment Certifier, as applicable, within five (5) Business Days of their preparation, or within a reasonable period of time from the receipt of the notice of the Technical Representative or Payment Certifier requiring such documents as appropriate.
- 5.16.5 The DBJV shall prepare the Phase 2 DB Schedule in accordance with the requirements of Section 2 of Schedule.
- 5.16.6 The DBJV will notify Project Co if it becomes aware at any time that the actual progress of the Phase 2 Construction Work may become or has been significantly delayed or has fallen behind the Phase 2 DB Schedule; actual progress has been significantly delayed or has fallen behind the Phase 2 DB Schedule, and Project Co requests the DBJV to do so, then the DBJV shall prepare a Recovery Schedule in accordance with the requirements of Section 2 of Schedule 5.
- 5.16.7 The DBJV shall prepare and deliver to Project Co Monthly Progress Reports in accordance with the requirements of Section 2 of Schedule 5.
- 5.16.8 In addition to the other rights granted to Project Co under the DBC, during the course of the Construction Period, Project Co shall have the right to:
- Receive a list of all test results;
 - If requested by Project Co receive relevant correspondence, invoices, certifications, designs, test results, notices and any other formal communication relating to the DBC; and

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- Participate in the inspections held prior to the issuance of the Notice of Phase 2 Work Completion.

Conclusions:

The LTA considers the provisions for supervising and reporting and the role of the Payment Certifier in the DBC as typical and standard for P3 Projects in North America.

5.17 Monitoring and Inspection

- 5.17.1 The DBJV shall ensure that HPTE and Project Co and any authorized Representative or Advisor shall have the right to enter the Site in order to inspect the state and progress of the Phase 2 Construction Work.
- 5.17.2 HPTE, Project Co and any Related Party shall at all times comply with the health, safety and security requirements notified to it by the DBJV.
- 5.17.3 If, following any viewing, visit or inspection made by HPTE or Project Co, it is discovered that there are material defects in the Phase 2 Construction Work or that the DBJV has materially failed to comply with HPTE's Requirements or the DBJV's Proposals, either HPTE or Project Co may (without prejudice to any other right or remedy available to either of them) by notice to the DBJV, increase the level of its monitoring.

5.18 Delays

- 5.18.1 Without prejudice to the DBJV's obligations under Section 2 of Schedule 5 (DB Contractor Scope – Exclusions from HPTE Phase 2 Work Requirements), if at any time the DBJV becomes aware that the Phase 2 Work will not or is unlikely to achieve Phase 2 Work Completion by the Planned Full Services Commencement Date, it shall as soon as reasonably practicable and in any event within fifteen (15) Business Days of becoming aware of the likely delay give notice to Concessionaire to that effect specifying the reason for the delay or likely delay; and an estimate of the likely effect of the delay on the receipt of the Notice of Phase 2 Work Completion.
- 5.18.2 The DBJV shall take all reasonable steps to mitigate the consequences of any delay.
- 5.18.3 If the carrying out of the Phase 2 Work or any part thereof is delayed and the delay is notified to Project Co and such delay is attributable to:
- A Compensation Event, then the provisions of Section 41 (Compensation Events affecting the Phase 2 Work) of the DBC shall apply; or
 - A Relief Event, then the provisions of Section 42 (Relief Events) of the DBC shall apply; or

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- A Force Majeure Event, then the provisions of Section 43 (Force Majeure) of the DBC shall apply.

5.18.4 In addition to any other provisions of this CA, including the payment of Liquidated Damages by the DBJV, if Phase 2 Work Completion is not achieved by the Planned Full Services Commencement Date and such failure is not directly attributable to an act or omission of Concessionaire, DBJV shall pay to Project Co, Project Co Liquidated Damages on a monthly basis as determined pursuant to Schedule 31 – Liquidated Damages from the Planned Full Services Commencement Date until Phase 2 Work Completion to a maximum amount of \$1,011,989 per year that will be deposited into the Project Co LD Account.

Conclusions:

The LTA considers the DBJV's obligations with respect to the required actions if a delay occurs in the DBC as adequate and robust and similar to other P3 Projects in North America.

5.19 Completion of the Phase 2 Construction Work

5.19.1 The Phase 2 Work Completion Preliminary Requirements are that:

- The DBJV has completed all Phase 2 Construction Work (except for Punch List items, final).
- The DBJV has ensured that the Phase 2 Construction Work has been performed in accordance with the requirements of the DBC.
- The DBJV has received all applicable Necessary Consents required for the Phase 2 Construction Work to be lawfully open to traffic.
- The DBJV has furnished Project Co with certifications from the DBJV's design manager, in the form appearing as Part 2 of Schedule 9, certifying that the Design Documents meet the requirements of the DBC.
- The DBJV has furnished Project Co with certifications from the DBJV's project manager, in the form appearing as Part 2 of Schedule 9, certifying that the construction meets the requirements of the DBC.
- The DBJV has furnished Project Co with certifications from the DBJV's quality manager, in the form appearing as Part 2 of Schedule 9, certifying that there are no outstanding non-conformances other than those identified on the Punch List.
- The DBJV has completed the toll commissioning process described in the Project Co Phase 2 ETCS Requirements/DBJV's Phase 2 ETCS Proposals developed in accordance with those documents, and the components of the Phase 2 ETCS are complete, have passed all required demonstration testing (including demonstrating successful integration of the Phase 2 ETCS with the Phase 1 ETCS and the I-25 ETCS to enable the ETCS to be operated as a

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single system), and including demonstrating full integration with and compatibility with the Tolling Services Provider;

- The DBJV has ensured that the Project is ready to be safely opened for traffic and that no further work is required for such opening which would involve any lane or shoulder closure.

5.19.2 Upon receipt of the DBJV's notice under Section 19.1, within 15 days Project Co and HPTE will conduct such inspections, surveys, and/or testing as each deems desirable in respect of confirming compliance. Project Co and HPTE will promptly advise the DBJV as to:

- Nonconforming Phase 2 Work (including incomplete Phase 2 Work) necessary to be corrected as a condition to Phase 2 Work Completion;
- Nonconforming Phase 2 Work (including incomplete Phase 2 Work), which may be corrected after Phase 2 Work Completion as Punch List Items; and/or
- Whether the DBJV shall reassess the accuracy and completeness of its notice.

5.19.3 Upon correction of the Nonconforming Phase 2 Work (including incomplete Phase 2 Work) identified as a prerequisite to Phase 2 Work Completion, the DBJV shall provide written notification to Project Co and Project Co and HPTE will conduct additional inspections.

5.19.4 The DBJV shall provide Project Co with an executed sworn Affidavit of Phase 2 Work Completion in accordance with Section 19.4 when all of the following have occurred (the "Phase 2 Work Completion Requirements"):

- Project Co has received all releases for Construction Documents, Design Documents, As-Built Documents, right-of-way record maps, surveys, test data, and other deliverables required under the DBC Documents for the Project.
- All of the DBJV's and sub-contractors' personnel, supplies, equipment, waste materials, rubbish, and temporary facilities related to construction have been removed from the Site, the DBJV has restored and repaired all damage or injury arising from such removal and the Site is in good working order and condition save to the extent that any such matter is a Punch List Item;
- The bond in support of the DBJV's obligations under Section 13.5 of Schedule 5 has been delivered and is in full force and effect; and
- The Phase 2 Work Completion Preliminary Requirements have been achieved.

5.19.5 Within 5 Business Days after Project Co's receipt of the Affidavit of Phase 2 Work Completion, Project Co shall forward such notice to HPTE and HPTE and Project Co will make a final inspection, and, Project Co will either issue a Notice of Phase 2 Work Completion, which shall state the date on which Phase 2 Work Completion

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has been achieved or notify the DB JV regarding any Phase 2 Work remaining to be performed

Conclusions:

The LTA considers the obligations for the DBJV to complete the Phase 2 Construction Work in accordance with the DBC to be robust and appropriate for the P3 Transportation Project. The staged completion and inspections allow HPTE and Project Co to ensure that all of the Phase 2 Work Requirements have been implemented and met by the DBJV.

5.20 Liquidated Damages

5.20.1 The DBJV understands and agrees that if the DBJV fails to achieve Phase 2 Work Completion by the Planned Full Services Commencement Date:

- HPTE and Project Co will suffer substantial losses and damages. The DBJV acknowledges and agrees that such Liquidated Damages are intended to compensate HPTE solely for the DBJV's failure to achieve Phase 2 Work Completion by the Planned Full Services Commencement Date; and
- DBJV acknowledges that Project Co was granted the right to receive HPTE's Toll Revenues generated by the I-25 Managed Lanes and by the Phase 1 Managed Lanes for (amongst other things) the purpose of performing its obligations under the CA.

5.20.2 If the DBJV fails to achieve Phase 2 Work Completion by the Planned Full Services Commencement Date, in addition to the Project Co Liquidated Damages the DBJV agrees to pay to Project Co the liquidated damages of **[\$18,000]** per day (or portion of a day) for each day from the Planned Full Services Commencement Date until the date of the Phase 2 Work Completion.

5.20.3 The total aggregate amount of Liquidated Damages payable shall not exceed **[\$TBC]**.

5.20.4 The projected Liquidated Damages are calculated as per Table 5.1 below.

Table 5.1: Liquidated Damages Calculation

| Item | Monthly | Daily |
|--------------------------------------|-----------------|----------------|
| Lost Revenue (projected for Phase 2) | \$12,167 | \$400 |
| Project Management | \$20,833 | \$683 |
| Independent Certifier | \$23,667 | \$776 |
| Finance Management/Advisory/Tax | \$13,999 | \$459 |
| Other Insurance/Overhead/Admin | \$21,333 | \$699 |
| Total | \$91,999 | \$3,017 |

The above calculation is based on inputs received from Project Co based on it's the executed DBC.

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- 5.20.5 Section 28.10 of the DBC outlines the provisions for Project Co's Liquidated Damages Provisional Allowance. Within the period of 11 months prior to the Planned Full Services Commencement Date, the DB Contract Payment Certifier reasonably determines that the Phase 2 Work Completion is unlikely to be achieved by the Planned Full Services Commencement Date, then they shall estimate the amount of time, in days, that the Phase 2 Work Completion will actually occur after the Planned Full Services Commencement Date and assess the amount of Liquidated Damages applicable to the estimate time over run ("Concessionaire LD's Provisional Allowance"). The Payment Certifier will retain such an amount plus any amount retained pursuant to the Construction Schedule Account from the DBJV's Payment.
- 5.20.6 Project Co or the Trustee will hold the Concessionaire's LD's Provisional Allowance in the LD Provisional Allowance Account and shall pay the allowance or relevant part to the DBJV.
- 5.20.7 If the Payment Certifier issues a payment certificate that includes the Concessionaire's LD's Provisional Allowance then they shall continue to do so on a monthly basis until earlier of when the Concessionaire's LD's Provisional allowance is certified as zero, or when the Phase 2 Work Completion is achieved.

Conclusions:

In our opinion 100% Performance and Payment Bond and the 11 month look-forward retention mechanism ("Concessionaire's LD's Provisional Allowance) provides more than adequate liquidity to cover the Liquidated Damages.

5.21 **Warranties in relation to Phase 2 GP Lanes and Phase 2 Managed Lanes**

- 5.21.1 The DBJV warrants in relation to the Phase 2 GP Lanes and the Phase 2 Managed Lanes that:
- All design work furnished pursuant to the DBC shall be in accordance with the requirements of the DBC;
 - The completed Phase 2 GP Lanes shall be in accordance with the requirements of this DBC;
 - Materials and equipment furnished under this DBC shall be in accordance with the requirements of the DBC; and
 - The specifications and/or drawings selected or prepared for use during construction shall be in accordance with the requirements of the DBC.

The DBJV shall cause the Phase 1 DB Contractor to enter into an agreement with CDOT and Project Co in relation to the warranties relating to the Phase 1 GP and Managed Lanes in form and substance that is satisfactory to both Project Co and the DBJV. Project Co has informed us via email (dated November 19, 2013) that there is no current formal executed agreement with the Phase 1 DB Contractor, CDOT and Project Co in relation to warranty protection of the Phase 1 GP and

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Managed Lanes. The LTA expects that Project Co should have this in place by FC. Section 23.4 of the CA provides protection to Project Co by CDOT against any non-compliant work that form part of the Phase 1 DB Contract.

- 5.21.2 The DBJV shall correct promptly, at their own expense, any deficiency or non-compliance in carrying out the design or construction of the Phase 2 Managed Lanes which appears prior to the expiry of one (1) year following Phase 2 Work Completion, (the “**Phase 2 Warranty Period**”).

Conclusions:

The LTA considers these representations and warranties in the DBC as appropriate and in-line with similar agreements in North America.

5.22 **Quality, Safety and HPTE / Project Co and Intervention**

- 5.22.1 The DBJV shall prepare, implement and continually maintain in respect of the Project Quality Management Documentation to evidence its quality assurance and quality control system in accordance with Good Industry Practice. The DBJV acknowledges that HPTE and Project co may from time to time carry out a reasonable audit of the DBJV’s quality management procedures
- 5.22.2 The DBJV shall comply with and shall ensure that the DBJV Related Parties comply with Law regulating work safety.
- 5.22.3 The DBJV shall be entirely responsible for the safety of any design which forms part of the Phase 2 Construction Work.
- 5.22.4 The DBJV shall at all times and from time-to-time designate a person to be responsible for the health and safety.
- 5.22.5 The DBJV shall ensure that it and any DBJV Related Parties at all times take such precautions as are appropriate in accordance with Good Industry Practice.
- 5.22.6 The DBJV shall cooperate in any investigation carried out by HPTE or Project Co or on HPTE’s or Project Co’s behalf and/or any Governmental Authority’s behalf related to the breach of work safety or safety of operation in the performance of the Phase 2 Work.

5.23 **Payment of Contract Price**

- 5.23.1 The Contract Price is a fixed lump-sum price of \$120,600,000 inclusive of all design fees and costs, insurance, construction costs, Necessary Consents, Taxes, utilities costs, development and building permits. DB Contractor acknowledges that the Contract Price is adequate to enable it to meet Phase 2 Work Completion, by the Planned Full Services Commencement Date and satisfy all of its obligations hereunder.

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- 5.23.2 Project Co shall make monthly progress payments to DBJV on account of the Contract Price in the amounts and on the dates established in the Drawdown Schedule;
- 5.23.3 The DBJV shall provide written notice to Project Co and the DB Contractor Payment Certifier upon becoming aware of a claim from a subcontractor or supplier, and state the amount and substance of such claim.
- 5.23.4 Project Co shall retain any reasonable amounts to protect them from the DBJV's failure to make payments which arise out of the Phase 2 Works (the "Retention Amount"). The Retention Amount may not aggregately exceed the lesser of the amounts claimed and five percent (5%) of the total payments made to the DBJV.
- 5.23.5 Project Co shall upon the resolution of any lien or claim of lien filed against the Phase 2 Works; any third party claim that is enforceable against Project Co, release the DB Contractor amounts held in the Retention Account in respect of such claim within five (5) days upon resolution.
- 5.23.6 Upon issuance of the final Payment Certificate, Project Co shall pay the DBJV the unpaid balance of the Contract Price when due.
- 5.23.7 Project Co may retain Retention Amounts until satisfactory resolution is given by the DBJV of for its full or partial release. The following my result in a Retention Amount being retained:
- An amount claimed as a result of an error of fact or false statement;
 - Anticipated measureable, accrued losses or other damages for which the DBJV is responsible;
 - Estimated measurable or actual accrued losses, liability or other damages for which the DBJV is responsible, including defective Phase 2 Work or damage to completed Phase 2 Work;
 - Amount of any outstanding claim, lien, stop notice or other statutory claim against the DBJV; and
 - Any other sums which Project co is entitled to recover set-off or recoup from the DBJV under the terms of the DBC.
- 5.23.8 Project Co has the right to have checks made to the Retention Account that is payable jointly to the DBJV or any subcontractor.
- 5.23.9 Any payment made by Project Co directly to any party pursuant to a court order may be deducted from amounts due to the DBJV under the terms of the DBC.
- 5.23.10 Pay the DBJV the unpaid balance of the [Lien Holdback]; and upon the issuance of the final Payment Certificate pursuant, but subject to any holdbacks, pay to DBJV the unpaid balance of the Contract Price when due together with such taxes as may be applicable to such payment.

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- 5.23.11 The DBJV shall submit to Project Co and the DB Contract Payment Certifier applications for DBJV Payments and the Monthly Progress Report and a statement, (a “**Payment Application**”) that details, among other things:
- the contract value of Phase 2 Work completed since the last monthly statement and since commencement of the Phase 2 Work, less applicable Retention amounts, plus any Retention Amounts released;
 - any claimed Change amount;
 - the amounts previously paid to DBJV and the corresponding net amount then claimed as owing;
 - Remaining Contract Value estimate;
 - provide a statement that the CPM Schedule is currently on schedule (or the number of days that is behind schedule) and the value of the work performed equated to the DBJV payment;
 - submit an estimate of the date that Phase 2 Work Completion will be achieved;
 - submit a statement as to whether Phase 2 Work Completion will be achieved by the Planned Full Services Commencement Date, as such date may be adjusted pursuant to the CA;
 - provide details of any delay to the Phase 2 Work occurring during the previous month for which it intends to claim relief in accordance with the DBC;
 - submit a statement as to whether there is any outstanding DBJV Default or any event or circumstance that is likely, with the passage of time or otherwise, to constitute or give rise to a DBJV Default;
 - provide an affidavit from the DBJV that confirms that no person has any right to any lien for materials, labour, supplies, equipment, tools or other items plus appropriate back-up that verifies that payment has been made in full for all applicable subcontractors. The affidavit will also set out the details of any lien or subcontractor claim and any proposed Retention Account amount.
 - provide certification from the DBJV that all materials for which payment is being requested have been delivered to site and securely stored;
 - provide any such other appropriate documentation requested by Project Co or HPTE as back up to the Payment Application; and
 - Submit with the first application a completed IRS W-9 form and other customary vendor set up documentation as require by Project Co or the law.

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- 5.23.12 The DB Contract Payment Certifier must, within five Business Days of receipt of each complete and satisfactory Payment Application, issue a payment certificate (“**Payment Certificate**”) certifying:
- any amount payable to DBJV for Phase 2 Work performed during that month and in agreement with Project Co the amount of applicable Retention Amount that is to be deposited into the Retention Account;
 - DBJV’s Payments paid previously;
 - the difference between the amount payable by Project Co to the DBJV pursuant to the Drawdown Schedule and the gross amount payable for the Phase 2 Work that is actually completed before retention deduction or other deductions (“the Deferred Payment Amount”)
 - the gross value amount payable for any Phase 2 Work for which amounts were previously held back that have now been complete;
 - the Remaining Contract Value estimate;
 - the CPM Schedule is on schedule; and
 - the amount of any Project Co LD’s Provisional Allowance.
- 5.23.13 The Deferred Payment Amount shall be deposited in to the deferred Payment Account.
- 5.23.14 Where the DB Contract Payment Certifier certifies that DBJV’s updated CPM Schedule reflects a delay in excess of 30 days compared to the current CPM Schedule, Project Co may withhold a retention amount equal to 10% of the deferred Payment Amount without duplication to any Holdback or LD retention. An amount equal to Additional Delay Retention will be retained in the Construction Schedule Account. The DBJV shall prepare a Recovery Schedule with respect to achieving the Full Services Commencement date by the Planned Full Services Commencement Date, for approval by Project Co.
- 5.23.15 Project Co will cause the DBJV Payments to be made according to the Drawdown Schedule and will not exceed the amount certified by the DB Contract Payment Certifier as being payable and the cumulative amount in the Drawdown Schedule plus additional amounts.
- 5.23.16 The DBJV will submit a remaining Contract Value estimate with every claim for payment for review by the DB Contract Payment Certifier.
- 5.23.17 The Drawdown schedule will not be altered during the Project Term and where the DBJV has not completed the Phase 2 Work in accordance with the Drawdown Schedule or if the Phase 2 Work outstanding does not meet the remaining Contract value test, any shortfall amount will be drawn from the Construction Account and placed in the Deferred Payment Account.

5.0 COMMERCIAL COMMENTARY – ANCILLARY DOCUMENTS

- 5.23.18 Amounts in the Deferred Payment Account will accrue interest for the benefit of the DBJV and Project Co.
- 5.23.19 Project Co will have sufficient committed funding from and after Financial Close to pay the Contract Price and all other budgeted development expenses.
- 5.23.20 Following the issuance of the Notice of Phase 2 Work Completion by HPTE in accordance with Section 19.5 of the CA and subject to the Drawdown Schedule, Project Co shall make payment to DBJV no later than 5 Business Days after the receipt of a final Payment Certificate issued by the DB Contract Payment Certifier.
- 5.23.21 If the Payment Certifier reasonably determines that the Phase 2 work Completion is unlikely to be achieved by the Planned Full Services Commencement Date, the DB Contract Payment Certifier shall:
- acting reasonably, estimate the amount of time, in days, that Phase 2 Work Completion will occur after the Planned Full Services Commencement Date;
 - assess the amount of Liquidated Damages and Project Co Liquidated Damages applicable to the estimated time overrun (“Concessionaire LD’s Provisional Allowance”); and
 - certify in such Payment Certificate the Project Co LD’s Provisional Allowance amount and Project Co may retain such amount from DBJV Payment such that the sum of the said retained amount plus any amount then retained pursuant to the Construction schedule Account, together equals the Project Co LD’s Provisional Allowance as most currently calculated.
- 5.23.22 The DBJV acknowledges that HPTE and Project Co have entered in to an agreement in respect to the underpass under McCaslin Boulevard. HPTE and Project Co agree that if the obligations and references to the McCaslin Underpass work under the DBC are removed from the CA (through a change Order) then they shall also be removed from the DBC and shall be of no force and effect.
- 5.23.23 If the Funding Commitment (as set forth in a letter dated June 27, 2013 that outlines the terms and conditions relating to the underpass at McCaslin Boulevard) is received prior to FC, then the following payment process form Project Co to the DBJV shall apply. We have been informed by Project Co via email (dated November 19, 2013) that the City of Superior has voted in favour of the Project:
- Upon receipt of the first HPTE Capital Payment, Project Co shall pay the DBJV \$300,000 in respect of Phase 2 Work relating to the McCaslin Underpass;
 - Provided Project Co has received the final HPTE Capital Payment then Project Co shall pay the DBJV an additional \$550,000 once all Phase 2 Construction Work related to the McCaslin Underpass has been completed and certified complete by the DB Contract Payment Certifier;

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- If all of the Phase 2 Construction Work related to the McCaslin Underpass has been completed prior to Project Co receiving the final HPTE Capital Payment then Project Co shall pay the DBJV out of funds from the Deferred Payment Account and the Construction Schedule Account. If this occurs then upon receipt of funds from HPTE then Project Co shall transfer the appropriate portion of funds to both the Deferred Payment Account and the Construction Schedule Account (the “Account Replenishment Amount”). If applicable, Project Co will pay the DBJV the balance of the \$550,000 less the Account Replenishment Amount.
- Project Co will have no payment obligation if all the funds in the Deferred Payment Account and the Construction Schedule Account have been applied towards the DBJV until at such time that they receive all of the HPTE Capital Payments, as schedule by the CA.

- 5.23.24 The DBJV’s proposal includes provisions for certain critical design work prior to FC (“Early Design Work”).
- 5.23.25 The DBJV will be entitled to receive payment for Early Design Work if Project Co is unable to reach FC or if the DBJV is unable to issued NTP1 to commence with the Phase 2 Work, subject to a maximum amount of \$3,000,000.
- 5.23.26 Without duplication, if Project Co receives compensation from HPTE for failing to reach FC, then they shall pay such amounts pursuant to section 5.23.25 (above).
- 5.23.27 If Project Co is unable to achieve FC solely as an act or omission of the DBJV, then the DBJV shall pay Project Co an amount equal to out of pocket expenses that have been paid by Project Co to Third Parties up to a maximum of \$3,000,000.
- 5.23.28 Project Co acknowledges and agrees to make payments to its subcontractors in compliance with the terms of Colorado Revised Statute 24-91-103 (2).

Conclusions:

We consider the Contract Payment mechanisms in the DBC to be in line with similar P3 projects in North America, with sufficient allowance for early design works, potential additional works (McCaslin Underpass) and for the failure to reach FC.

5.24 Insurance

- 5.24.1 No later than the Commencement Date, the DBJV shall, prior to the carrying out of any building or demolition work on the Managed Lanes, take out and maintain or ensure the maintenance of the insurances described in Part 1 of Schedule 17 of the CA (Required Insurances) and any other insurances as may be required by Law.

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- 5.24.2 The DBJV will take out insurance in respect of a risk which is Uninsurable, except where the predominant cause of risk being Uninsurable is any acts or omissions of the DBJV or a DBJV Related Party.
- 5.24.3 If a risk usually covered by builders' all risks insurance, property damage insurance, general liability insurance, (but not loss of profits) or workers compensation insurance in each case required under the DBC becomes Uninsurable then the DBJV shall notify Project Co within three (3) Business Days of the risk becoming Uninsurable.

5.25 **Compensation & Relief Events**

- 5.25.1 If, as a result of the occurrence of a Compensation Event:
- The DBJV is unable to achieve Phase 2 Work Completion on or before the Planned Full Services Commencement Date or, following the Planned Full Services Commencement Date, before the Full Services Commencement Sunset Date;
 - The DBJV is unable to comply with any of its obligations under the DBC; and/or
 - The DBJV incurs costs or loses revenue,
- then the DBJV is entitled to apply for relief (unless the compensation Event was solely caused by the DBJV) from its obligations and/or Relief from any right which Project Co would otherwise have to assert that circumstances amounted to a DBJV Default.
- 5.25.2 The process for obtaining compensation and relief in relation to any Compensation Event affecting the Phase 2 Work shall be the process for obtaining a Change Order.
- 5.25.3 If and to the extent that a Relief Event is the direct cause of a delay in achieving Phase 2 Work Completion on or before the Planned Full Services Commencement Date; or it adversely affects the ability of the DBJV to perform any of its obligations under the DBC then the DBJV is entitled to apply for Relief from its obligations. The process for obtaining relief in relation to any Relief Event affecting the Phase 2 Work shall be the process for obtaining a Change Order.

Conclusions:

The LTA regards the provisions for the DBJV's Relief and Compensation events as acceptable for the recovery of time and relief of costs and typical of P3 Projects in North America.

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5.26 ***Sub-Contracts and Assignment***

- 5.26.1 The DBJV shall not sub-contract, assign, charge, sell, bargain, pledge, transfer or create a lien over the benefit of the DBC in whole or in part except with the prior written consent of Project Co and HPTE.
- 5.26.2 The sub-contracting by the DBJV of any of the Phase 2 Work shall not relieve the DBJV of any obligations under the DBC for any breach of the obligations arising under the DBC.

5.27 ***Change of Ownership and Control***

- 5.27.1 The DBJV represents to Project Co that at the date of this DBC the legal and beneficial ownership of the DBJV and its Contract Members is as set out in Schedule 3 (DBJV Warranted Information) and that no arrangements are in place that have or may have or result in any sale, transfer or disposal of any legal, beneficial, equitable or other interest in any or all of the shares in the DBJV.

5.28 ***Consequences of Termination or Expiration***

- 5.28.1 The DBJV shall within fifteen (15) Business Days of the Expiration Date (or, if earlier, the Termination Date, if applicable) hand over to Project Co all documents (or complete and accurate copies to the extent originals are not required), records, books, data and/or information in the possession, custody or power of the DBJV relating to and/or touching upon the Phase 2 Construction Work.
- 5.28.2 On the Expiration Date the DBJV shall assign and transfer to Project Co or any Person nominated by Project Co the benefit of all and any contracts or arrangements.

5.29 ***Dispute Resolution and Jurisdiction***

- 5.29.1 The Dispute Resolution Procedure is set out in Schedule 24 of the CA and follows similar procedures established in PP transactions in North America.

Conclusions:

The provisions for dispute resolution in the DBC are standard for projects in North America. Strict time frames are to be complied with and enforced, however this should not pose a problem for a well sourced and organized DBJV.

5.0 COMMERCIAL COMMENTARY – ANCILLARY DOCUMENTS

5.30 **Operation & Maintenance Agreement**

5.30.1 BTY Group has been provided with the Operating Contract, dated June 27, 2013.

5.30.2 The parties of the Operating Contract (“OC”) will be Plenary Roads Denver LLC (“Project Co”) and Transfield Services Infrastructure Inc (the “Operating Contractor”).

5.30.3 The proposed OC will be back to back with the CA in respect of the operations and maintenance obligations of Project Co. All of the obligations and liabilities of Project Co under the CA in relation to operating and maintaining the Project will be passed to the OC.

5.30.4 Back to back principles include:

- The Operating Contractor is obliged to Project Co under the OC to the same extent as Project Co is obliged to HPTE under the CA in respect to performing the Operations and Maintenance Services;
- The Operating Contractor is entitled to exercise, pursue, enforce, satisfy and perform all duties, obligations, rights, benefits, warranties and representations of Project Co under the CA;
- The Operating Contractor is only entitled to and will only receive compensation to the same extent Project Co actually receives corresponding compensation under the CA; and
- The Operating Contractor is only entitled to, and will only receive relief if HPTE provides Project Co with the corresponding relief under the CA.

Conclusions:

The LTA considers such terms in the OC appropriate and in-line with similar P3 agreements in North America.

From our review of the CA and OC it appears that the OC is back to back with the CA in respect of the operations and maintenance obligations of Project Co given by the CA.

5.31 **Contract Period, Conditions Precedent and Financial Close**

5.31.1 The provisions of the OC will terminate on the Termination Date. Twelve months prior to the Expiration Date, Project Co and the Operating Contractor will decide if the term is to be extended. The termination of the OC shall be without prejudice and shall not affect all representations, warranties and indemnities of the OC which are expressed to survive termination.

5.31.2 During the period between the date of the OC and the Commencement Date, the Operating Contractor agrees to provide Project Co with any requested updates regarding the status of the financing of the Project (and vice-versa) and of the fulfilment of conditions precedent to Financial Close and the Commencement Date.

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- 5.31.3 The Operating Contractor acknowledges and agrees that as per the CA if the Commencement Date fails to occur by the Financial Close Deadline Date or either Project Co or HPTE terminates the CA and upon such termination HPTE may draw the full amount available pursuant to the Financial Close Security. If HPTE draws on the Financial Close Security due to a failure by the Operating Contractor to satisfy the Conditions Precedent, then the Operating Contractor shall indemnify Project Co for the costs associated with HPTE drawing on the security in the full amount of directly attributable to the Operating Contractor.
- 5.31.4 The Operating Contractor will not commence the delivery of the Services in respect of the I-25 Managed Lanes and the I-25 Shared Bridge Deck until Project Co has advised them that the Conditions Precedent have been satisfied.
- 5.31.5 Once the Commencement Date has occurred then HPTE will issue NTP1 to the Operating Contractor who will then 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.
- 5.31.6 The Operating Contractor will not commence the delivery of the Services and the Snow and Ice Control Services in respect of the Phase 1 Managed Lanes or the Phase 1 GP Lanes until the Conditions Precedent to the Phase 1 Services Commencement have been met in accordance with the CA.
- 5.31.7 The Operating Contractor will not commence delivery of the Services and the Snow and Ice Control Services in respect of the Managed Lanes as an integrated system and the [US36 General Purpose Lanes] until the Conditions Precedent to the Full Services Commencement Date have been met in accordance with the CA
- 5.31.8 Project Co will, as required by the Operating Contractor enforce those rights and claim those defences under the CA which are for the benefit of Project Co.
- 5.31.9 Project Co will use commercially reasonable efforts to enforce their rights and entitlements under the CA that correspond to the rights and entitlements of the Operating Contractor under the OC.
- 5.31.10 Project Co and the Operating Contractor shall execute the Interface Agreement on or prior to August 1, 2013 (or at such an agreed later date). Project Co has informed us via email (dated November 19, 2013) that the Interface Agreement will be executed before FC.

Conclusions:

The LTA considers the conditions for the Contract Period, Conditions Precedent and Financial Close in the OC appropriate and in-line with similar agreements in North America.

5.32 ***Undertakings, Representations and Warranties***

- 5.32.1 The Operating Contractor will inform Project Co promptly if they become aware of any litigation, arbitration or administrative proceedings pending against them.

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- 5.32.2 The Operating Contractor will acquire any and all Necessary Consents to perform its obligations under the OC.
- 5.32.3 Each person executing the OC on behalf of the Operating Contractor will be duly authorized to execute such documentation on behalf of the Operating Contractor.
- 5.32.4 Project Co will provide the Operating Contractor with copies of the OC Documents after the Contract Date.
- 5.32.5 The Operating Contractor will not commit any Prohibited Acts.

5.33 *The Operating Contractor's Warranties*

Note – This section of the OC will be revised pending finalization of the Operating Contractor's structure.

- 5.33.1 The Operating Contractor represents and warrants to Project Co from the Contract Date as follows:
 - 5.33.1.1 The Operating Contractor is duly incorporated and is an existing Colorado limited liability company in accordance with the laws of the state of Colorado.
 - 5.33.1.2 Each person executing the OC on behalf of the Operating Contractor has been duly authorized to do so.
 - 5.33.1.3 Any undertakings of the Operating Contractor arising from the OC have been executed on or before the Contract Date represent valid and enforceable undertakings of the Operating Contractor.
 - 5.33.1.4 The OC Document does not contravene any Law; any organization documents of the Operating Contractor; or any obligation which is binding on the Operating Contractor.
 - 5.33.1.5 There is no Operating Contractor Default and no fact or event exists that over time would constitute an Operating Contractor Default.
 - 5.33.1.6 No litigation, arbitration or other dispute Resolution proceedings involving the Operating Contractor is present or pending.
 - 5.33.1.7 The Operating Contractor has conducted its own analysis and review of the Disclosed Data and it has satisfied itself to accuracy, completeness and fitness for purpose.
 - 5.33.1.8 Copies of the OC Documents provided by the Operating Contractor to Project Co are true and complete.
 - 5.33.1.9 There has been no failure by the Operating Contractor to comply with the Laws and Necessary Consents.

5.0 COMMERCIAL COMMENTARY – ANCILLARY DOCUMENTS

- 5.33.1.10 The Operating Contractor has not committed any Prohibited Acts prior to the execution of the OC.

Conclusions:

The LTA considers these warranties in the OC appropriate and in-line with similar agreements in North America.

5.34 **Project Co Warranties**

- 5.34.1 Project Co will be incorporated as an existing Colorado limited liability company in accordance with the laws of the State of Colorado and is authorized to transact business and is registered with the Secretary of State in the State of Colorado. Each person that executes the CA on behalf of Project Co has been duly authorized.
- 5.34.2 Both Project Co and the Operating Contractor persons on executing the OC have been duly authorized to do so. The OC has been executed by both the Operating Contractor and Project Co and does not contravene any Law or obligation which is binding to Project Co.
- 5.34.3 There is no litigation, arbitration or other dispute resolution proceedings involving Project Co.
- 5.34.4 Project Co will comply with all Laws and Necessary Consents applicable to its obligations in connection with the OC.
- 5.34.5 Neither Project Co nor its agents have wilfully misled the Operating Contractor in respect of any Disclosed Data.

Conclusions:

The LTA considers these warranties in the OC as appropriate and in-line with similar agreements in North America.

5.35 **The Operating Contractor's Investigation**

- 5.35.1 The Operating Contractor shall be deemed to have satisfied itself as to the assets to which it will acquire the rights and the nature and extent of the risks under the OC.
- 5.35.2 The Operating Contractor acknowledges that no representation or warranty is made by HPTE or Project Co and that they will have no remedy or relief from its OC obligations.
- 5.35.3 The Operating Contractor will take full responsibility for the performance of the Services and Snow and Ice Control Services, the adequacy of the design and any other information provided to the Operating Contractor.

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Conclusions:

The LTA considers these obligations in the OC as appropriate and in-line with similar agreements in North America.

5.36 The Operating Contractor Security and Guarantee

- 5.36.1 On or before FC, the Operating Contractor shall deliver to Project Co a Letter of Credit (“LOC”) in favour of Project Co and the Collateral Agent in an amount equal to the average Monthly Operating Contractor Payment (indexed) and the average Monthly Operating Contractor Lifecycle Payment (indexed) for the current month and the following two months. The LOC shall be irrevocable, unconditional and provide for partial drawdowns. Upon such partial or full drawdowns the Operating Contractor must immediately provide replacement of the LOC for the same amount, prior to the drawdown.
- 5.36.2 The Operating Contractor may pay a cash security to Project Co in substitution to the LOC. Any interest earned on the cash security shall be payable to the Operating Contractor as and when received by Project Co. Project Co has informed the LTA (via email Nov 19, 2013) that the OC will provide a LOC as their security.
- 5.36.3 On or before FC the Operating Contractor shall have their guarantor deliver to Project Co an irrevocable and unconditional guarantee of all obligations of the Operating Contractor under the OC and the Interface Agreements in the form of a “Parent Guarantee”. The Operating Contractor’s maximum liability under the Parent Guarantee shall be \$18,000,000 (indexed). This covers approximately 3 years and 3 months of Operations and Lifecycle indexed payments.

Conclusions:

A Letter of Credit equivalent to three months of payments provides security coverage at a slightly lower level of what we expect to see on P3 Projects. However, Project Co has informed us that they believe three months of coverage is sufficient to allow them to replace the Operating Contractor and/or self-perform the services themselves. Plenary Group are currently self-performing the Maintenance and Rehabilitation services on the Disraeli Bridges Project in Winnipeg, Canada. The LTA was involved in that project during procurement and design & construction stages, so we are aware of their depth of experience. A Parent Guarantee of \$18,000,000 will also be provided by the Operating Contractor. Whilst this is not immediate “liquid” security, it provides long term cover for over 3 years of Operations and Rehabilitation costs.

5.37 Representatives of the Parties and the Operating Contractor’s Personnel

- 5.37.1 The Operating Contractor’s Representative shall be a person identified from time to time as the Operating Contractor’s Representative in a notice given by the Operating Contractor to Project Co and has full authority to act on behalf of the Operating Contractor.

5.0 COMMERCIAL COMMENTARY – ANCILLARY DOCUMENTS

- 5.37.2 The Operating Contractor shall ensure that all individuals named as Key Personnel in the Operating Contractor's Proposals on the Contract Date continue to be engaged in their respective roles on the Project.
- 5.37.3 If any individual in a Key Personnel role resigns, retires, dies, becomes disabled or is terminated the Operating Contractor shall designate a replacement with equivalent expertise and experience.

5.38 *Ownership and Use of Property*

- 5.38.1 Project Co will grant the Operating Contractor a non-exclusive licence for the Services Period over, under, and upon the Site, the I-25 Managed Lanes, the Phase 1 Managed Lanes, the Phase 2 Managed Lanes and the US36 General Purpose Lanes. The licence will be automatically revoked upon termination of the OC. The Operating Contractor has the right to issue sub-licences to sub-contractors as necessary to carry out the obligations under the OC.
- 5.38.2 Project Co shall grant the Operating Contractor and their Related Parties non-exclusive access rights to the Site prior to the Full Services commencement Date for the purposes of applicable Project Operations.
- 5.38.3 The Operating Contractor acknowledges that pursuant to the CA, the periods for which HPTE grants a license to the Managed Lanes and the US 36 General Purpose Lanes to Project Co pursuant to Section 8.1(a) of the CA, and which Project Co in turn grants a sub-license to Operating Contractor pursuant to Section 8.1(a) of the OC, commence in respect of:
- The I-25 Managed Lanes upon the Commencement Date;
 - The Phase 1 Managed Lanes and the Phase 1 GP Lanes upon the Phase 1 Services Commencement Date; and
 - The Phase 2 Managed Lanes and the Phase 2 GP Lanes upon the Full Services Commencement Date;
- and last for the remainder of the term of the OC.
- 5.38.4 Project Co shall also ensure that the Operating Contractor is granted access to 70th Avenue Maintenance Facility for the purpose of performing Snow and Ice Control Services.
- 5.38.5 The Operating Contractor acknowledges that Project Co can request the assistance of HPTE to remove protesters or trespassers where they demonstrate to HPTE's reasonable satisfaction that it has exercised all legal remedies to remove these persons when they have a material adverse effect on their ability to deliver the Services.

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Conclusions:

The LTA considers the stipulations in the OC surrounding the provision of a non-exclusive licence to the I-25 Managed Lanes, Phase 1 Managed Lanes, and the Phase 2 managed Lanes and the US36 General Purpose Lanes and the 70th Avenue Maintenance Facility appropriate for this project.

5.39 Environmental Requirements

- 5.39.1 During the Contract Period the Operating Contractor will comply with all Environmental Requirements.
- 5.39.2 The Operating Contractor will employ a suitably qualified Environmental Manager to advise on and coordinate all environmental issues from the Full Services Commencement Date throughout the balance of the Operating Contract Period.
- 5.39.3 The Operating Contractor will ensure that all sub-contractors use appropriate measure in accordance with HPTE's Requirements to prevent and minimize any pollution caused by the maintenance and/or operation of the Project.
- 5.39.4 HPTE or CDOT may assert that certain third parties or persons may rightfully bear the ultimate legal responsibility for any and all Hazardous Substances which may be present on the site and the Managed Lanes.
- 5.39.5 HPTE and Project Co shall be responsible for and shall ensure that CDOT will be responsible for matters arising out of HPTE Hazardous Substances Circumstances.
- 5.39.6 If Remediation Work is required in relation to any HPTE Hazardous Substances Circumstances then the Operating Contractor shall be entitled to payment of its Change in Costs, as is reasonably required to perform its obligations under the OC.
- 5.39.7 Project Co shall be responsible for and shall reimburse the Operating Contractor in respect of any and all claims, proceedings, suits, demands, damages, losses, liabilities, costs and expenses, attorney's fees arising from the existence of HPTE Hazardous Circumstances or bodily injury to persons, damage to property, environmental removal or response costs, in each case arising out of HPTE Hazardous Substances Circumstances.
- 5.39.8 The Operating Contractor are to comply with the obligations of the Comprehensive Environmental Reponses, Compensation and Liability Act (CERCLA), 42 U.S.C. Section 9607(e).
- 5.39.9 The Operating Contractor acknowledges and agrees that it shall be responsible for all claims, proceedings, suits, demands, damages, losses, liabilities, costs and expenses, attorney's fees arising from the existence of Hazardous Substances except to the extent directly attributable to the gross negligence of Project Co.

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Conclusions:

We consider the provisions in the OC surrounding the environmental responsibilities to be appropriate and robust.

5.40 Construction

5.40.1 If at any time during the Operating Contract Period, any of the Phase 2 Construction Work carried out by or on behalf of Project Co do not fully satisfy the HPTE Phase 2 Work Requirements (as defined in the CA), including any design and construction specifications, and/or any other term or condition of the CA, the Operating Contractor shall, at its own expense, rectify the Phase 2 Construction Work so that: (i) the Phase 2 Construction Work complies with and satisfies the HPTE Phase 2 Work Requirements (as defined in the CA) and the other terms and conditions of the CA, and (ii) the Phase 2 Work Requirements be able to meet the structural, mechanical and other performance standards set out in the HPTE Phase 2 Work Requirements. The Parties to the Interface Agreement acknowledge their rights under said agreement and agree that the Operating Contractor's obligations shall not derogate from the rights against the DB Contractor.

Conclusions:

The LTA considers the scope of the construction works in the OC to be adequately defined and in-line with expectations.

5.41 Site and Site Conditions

5.41.1 The condition of the Site shall be the sole responsibility of the Operating Contractor and accordingly (but without prejudice to any other obligation of the Operating Contractor under the OC), the Operating Contractor shall be 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;
- Satisfied itself as to the nature of the conditions at the Site, the adequacy of the means and rights of access to and through the Site, and the precautions and times and methods of working necessary to prevent any nuisance or interference.

5.41.2 The Operating Contractor is not entitled to make any claim in relation to the conditions of the Site against HPTE or Project Co on any grounds.

5.41.3 The Operating Contractor is responsible for and shall compensate Project Co for any losses that it and HPTE may incur in relation to cleaning up and dealing with any ground contamination from the Site.

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- 5.41.4 If the Operating Contractor becomes aware of any on-site material that may contain Hazardous Substances that is required to be removed or treated or any differing site conditions then as a Condition Precedent to the Operating Contractor's right to instigate the Change Procedure, the Operating Contractor shall promptly notify Project Co and HPTE.
- 5.41.5 The Operating Contractor shall then promptly conduct further investigations as Project Co deems to be reasonably appropriate. Project Co shall have the right to require that the Operating Contractor recommenced with in the area at any time even though an investigation may still be going on.
- 5.41.6 Upon fulfilment of the Operating Contractor's notification requirements, Project Co shall be responsible for and will agree to operate the Change Procedure to Compensate the Operating Contractor for additional costs and losses caused by changes in the Phase 2 Work arising from Differing Site Conditions; e extend the Planned Full Services Commencement Date and the Full Services Commencement Sunset Date as the result of any delay caused by any such Differing Site Conditions.

Conclusions:

The LTA considers the responsibilities in the OC in relation to the site and hazardous substances appropriate and reasonable.

5.42 Management of the Site

- 5.42.1 The Operating Contractor will facilitate the work of employees or contractors of CDOT, Project Co and Utility Companies work that needs to be carried out on the Site.
- 5.42.2 The Operating Contractor acknowledges that certain Persons (including Utilities) have a right of access to the Managed Lanes in accordance with Law, and that this access is regulated by CDOT by the issuance of Access Permits.
- 5.42.3 The Operating Contractor will make available to Project Co and HPTE (and other persons acting on behalf of HPTE or Project Co on the Site) facilities and equipment required by HPTE to exercise its rights and obligations under CA.

5.43 Monitoring and Inspection

- 5.43.1 The Operating Contractor acknowledges and agrees that HPTE has certain access, monitoring and inspection rights.

5.44 Operations and Maintenance

- 5.44.1 The Operating Contractor shall make the Managed Lanes available for use by vehicles and shall provide the Services and the Snow and Ice Control Services from the Commencement Date and throughout the contract period in relation to

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the I-25 Managed Lanes and the I-25 Shared Bridge Decks; from the Phase 1 Services Commencement Date throughout the contract period in relation to the Phase 1 Managed Lanes and the Phase 1 GP Lanes; and from the full Services commencement Date and throughout the Services Period in relation to the Managed Lanes and the US36 General Purpose Lanes, as an integrated system.

- 5.44.2 The Operating Contractor shall ensure that at all times its maintenance and operating procedures are compliant with Schedule 6 (HPTE Service Requirements).
- 5.44.3 The Operating Contractor shall submit a Maintenance Management Plan, Transition Management Plan, Operations Management Plan, Safety Plan and the Communications & Marketing Plan to Project Co (and ultimately HPTE) for acceptance. This will be submitted at least forty (40) Business Days prior to the projected Commencement Date in relation to the I-25 Managed Lanes and Shared Bridge Deck (Project Co has informed the LTA, via email Nov 19, 2013 that all of the aforementioned documents have been issued); at least sixty (60) Business Days prior to the Projected Phase 1 Services Commencement Date in relation to the Phase 1 Managed and GP Lanes; at least ninety (90) Business Days prior to the projected Full Services Commencement Date in relation to the Managed Lanes and the US36 General Purpose Lanes as an integrated system; and no less than annually if Project Co wishes to change any matter within any plan, more frequently, but no more frequently than once every three (3) months. Project Co and HPTE will review the plans and either accept or not accept within twenty (20) Business Days.
- 5.44.4 Once a year HPTE or Project Co may carry out a survey of the Managed Lanes by a suitably qualified independent expert and an audit of the Operating Contractor's records and operations. HPTE or Project Co will notify the Operating Contractor in writing a minimum of ten (10) Business Days in advance of any survey. When carrying out a survey or audit, HPTE or Project Co shall use reasonable endeavours to minimize any disruption caused to the provision of the Services. If the survey shows any non-compliance then HPTE or Project Co will notify the Operating Contractor and specify a reasonable period within which the Operating Contractor must carry out such rectification and/or maintenance work. HPTE or Project Co will be entitled to be reimbursed by the Operating Contractor for reasonable cost of the survey.
- 5.44.5 In the event of any failure by the Operating Contractor to comply with the OC, with the consequence that the Managed Lanes are not available for use by vehicles in accordance with the OC for a period of two days following notice to the Operating Contractor, then HPTE or Project Co shall be entitled to exercise its right of access and take such reasonable steps to make the Managed Lanes available for use, and the Operating Contractor shall pay any costs or expenses incurred in doing so to HPTE or Project Co. In the event that the Managed Lanes are not available for use, then the Operating Contractor shall pay Project Co an amount calculated in accordance with the Payment Mechanism, also known as the "Lane Unavailability Payment".

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Conclusions:

The LTA believes the O&M requirements and transition from design and construction in the OC is appropriate for this Project. The OC effectively subcontracts the obligations and liabilities of Project Co in respect of the Services to the Operating Contractor. The terms and conditions are compatible with the terms and conditions of the CA.

5.45 Transitional arrangements in respect to I-25 Managed Lanes

- 5.45.1 For the purpose of determining whether there is any defect in the I-25 Managed Lanes and for the purpose of determining the Asset Condition Score in relation to I-25 paragraph 1.4.1.1 of Schedule 6 shall apply to set the average International Roughness Index requirements for five years after the Commencement Date.
- 5.45.2 If the initial inspection of the I-25 Managed Lanes reveals any Category 1 Defect or Category 2 Defect (as those terms are defined in Schedule 6 of the CA) then, to the extent that they are not corrected before the Commencement Date, either the Operating Contractor shall correct those defects in each case, provided that the period for such correction work shall commence on the Commencement Date, or, Project Co may waive the requirement to correct such defect. In either case, no Noncompliance Points shall be allocated in relation to such defects unless the obligation to correct the defect has not been waived and the Operating Contractor shall fail to correct those defects. Project Co shall reimburse the Operating Contractor for the reasonable cost incurred in the correction of such defects to the extent Project Co receives reimbursement from HPTE.
- 5.45.3 If, prior to the Commencement Date, there shall have been any loss or damage to the I-25 Managed Lanes Assets or the Node 2 Building and the relevant I-25 Managed Lane Asset or the Node 2 Building, in each case which would cause a failure to comply with HPTE's Service Requirements, and such loss or damage has not been repaired or replaced by the Commencement Date then such loss and damage shall be treated as if it had been caused by a Compensation Event to the extent that HPTE waives or modifies the obligation to comply with HPTE's Service Requirements under the Concession Agreement.

Conclusions:

These provisions in the OC provide adequate coverage to both Project Co and the Operating Contractor for relief from accruing Noncompliance Points due to defects associated with the I-25 Managed Lanes and the recovery of reasonable loss and damage through a Compensation event.

5.46 The Phase 1 Services Commencement Date and Interface with the Phase 1 DB Contract

- 5.46.1 The Operating Contractor acknowledges that HPTE will give notice to the Project Co stating the expected date for acceptance of the Phase 1 Managed Lanes under the Phase 1 DB Contract and the Phase 1 ETCS:

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- No later than one (1) year prior to the Planned Phase 1 Services Commencement Date;
- After that, at intervals of two (2) months until four (4) months before the expected due date for acceptance of the Phase 1 Managed Lanes under the Phase 1 DB Contract; and
- After that, at intervals of one (1) week until the Full Services Commencement Date.

Project Co shall provide a copy of such notices to Operating Contractor promptly upon receipt of same from HPTE.

- 5.46.2 If the Operating Contractor encounters any Phase 1 Latent Defect, then that shall be treated as a Compensation Event provided and to the extent that such defect is treated as a Compensation Event under the CA.

5.47 *Procedures Relating to Life Cycle Maintenance Work*

- 5.47.1 No later than one hundred and twenty (120) days before the beginning of each calendar year after the Full Services Commencement Date, the Operating Contractor will prepare a full five (5) year Life Cycle Maintenance Plan to Project Co for review. The Operating Contractor will consider any reasonable changes or additions proposed by Project Co to the Life Cycle Maintenance Plan. If no agreement is made within ninety (90) days then either Party may refer the Dispute to the Dispute Resolution Procedure.

- 5.47.2 If the Operating Contractor fails to complete any Non-Separable Task (a task comprising Life Cycle Maintenance for a component that is within both the US 36 Managed Lanes and the US 36 General Purpose Lenses) in accordance with the CA or the Life Cycle Maintenance Plan, then within fifteen (15) Business Days must present a proposal to Project Co to rectify the situation; or Project Co will self-perform the task. Project Co will be entitled to demand that the Operating Contractor pay Project Co an amount equal to what Project Co is required to pay HPTE to complete such corrections.

- 5.47.3 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 in accordance with good industry practice. The Operating Contractor shall carry out and complete the I-25 Initial Work Package as part of the Phase 1 Construction Work; the Routine Maintenance and Life Cycle Maintenance on the I-25 Bridge Deck Superstructure; the I-25 Preventative Maintenance Program to the I-25 Bridge Deck Superstructure. HPTE through CDOT shall carry out the maintenance of the I-25 Bridge Substructures.

- 5.47.4 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, the sub-grade supporting the pavement for the I-25 Managed Lanes or structures within that sub-grade; then such a closure shall be a Compensation Event. The Operating Contractor shall pay Project Co an amount equal to Project Co's losses

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as a result of the Compensation Event as a consequence of any act or omission of the Operating Contractor under the OC.

Conclusions:

The LTA considers that the scope for managing, reporting and implementing Life Cycle Maintenance Workin the OC to be adequate for this Project and similar to P3 Projects in North America.

5.48 **Quality, Safety and HPTE / Project Co Intervention**

- 5.48.1 The Operating Contractor shall prepare, implement and continually maintain in respect of the Project Quality Management Documentation to evidence its quality assurance and quality control system in accordance with Good Industry Practice. The Operating Contractor acknowledges that HPTE and Project Co may from time to time carry out a reasonable audit of the Operating Contractor's quality management procedures.
- 5.48.2 The Operating Contractor shall comply with and shall ensure that the Operating Contractor Related Parties comply with Law regulating work safety.
- 5.48.3 The Operating Contractor shall be entirely responsible for the safety of any design which forms part of the Services.
- 5.48.4 The Operating Contractor shall at all times and from time-to-time designate a person to be responsible for the health and safety.
- 5.48.5 The Operating Contractor shall ensure that it and any Operating Contractor Related Parties at all times take such precautions as are appropriate in accordance with Good Industry Practice.
- 5.48.6 The Operating Contractor shall cooperate in any investigation carried out by HPTE or Project Co or on HPTE's or Project Co's behalf and/or any Governmental Authority's behalf related to the breach of work safety or safety of operation in the performance of the Services.

5.49 **HPTE Step-In Rights**

- 5.49.1 If HPTE reasonably believes that it needs to take action in connection with the Services because of serious risk to the health and safety of people, property or the environment; or to discharge a constitutional or statutory duty, then HPTE is entitled to "step-in" and take additional action as it believes is reasonably necessary.

Conclusions:

The Step-In provisions in the OC in respect to emergency actions as a result of a serious risk to health and safety, people, property or the environment are standard and reasonable.

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5.50 *Payments*

- 5.50.1 Subject to and in accordance with the OC, Project Co shall pay to the Operating Contractor the all-inclusive Monthly Operating Contractor Payments for the performance of all of the Services
- 5.50.2 Commencing on the Payment Commencement Date, Project Co shall pay the Operating Contractor the Monthly Operating Contractor Payments for each Payment Period.
- 5.50.3 The Operating Contractor has delivered to Project Co a budget for Lifecycle costs for maintenance, replacement, refreshment and/or refurbishment of the Assets (the “Original Lifecycle Budget”). Project Co will pay the Operating Contractor in accordance with the Payment Mechanism (Schedule 31).
- 5.50.4 Yearly, Project Co and the Operating Contractor will meet to review the Life Cycle Work completed in the prior year, the associated costs, the monthly payment made to the Operating Contractor and to review and improve the Lifecycle Replacement Schedule for the next calendar year.
- 5.50.5 The Operating Contractor will undertake all Lifecycle Work to ensure Project Co complies with the lifecycle obligations under the CA. If the Monthly Lifecycle Payments are not sufficient to cover the Lifecycle costs incurred then the Operating Contractor is liable to provide any additional capital for those costs, which is non-reimbursable.
- 5.50.6 All payment shall be paid into the “Lifecycle Account”. The “Released Lifecycle Amounts” will be paid to the Operating Contractor once all Life Cycle Work is complete and all allocated funds have been deposited. Project Co may call upon an independent certifier to validate the completion of the works, if required.
- 5.50.7 Invoicing and Payment Arrangements
- Within 3 Business Days following the end of each Payment Period, the Operating Contractor shall issue to Project Co an invoice for the amount of the Monthly Operating Contractor Payment owing by Project Co to the Operating Contractor for such Payment Period, with such adjustments as provided in the Payment Adjustment Report issued in the previous Payment Period.
 - The Operating Contractor shall comply with all requirements of OC in respect of invoices and shall include with each invoice such supporting documentation as Project Co may reasonably require in connection with payments hereunder.
 - Each invoice shall be in a form agreed by the Parties, acting reasonably and shall include as a minimum:
 - the Monthly Operating Contractor Payment payable in respect of the applicable Payment Period;
 - any adjustments set out in the Payment Adjustment Report issued in the previous Payment Period that have been approved by Project Co;

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- any other adjustments to reflect overpayments and underpayments, as agreed between the Parties or determined in accordance with Schedule 24 - Dispute Resolution Procedure;
- any amount owing to Project Co under the OC;
- any amount owing to the Operating Contractor under this Operating Contract; and
- the net amount owing by Project Co to the Operating Contractor, or by the Operating Contractor to Project Co, as applicable.
- Upon agreement of the Parties, the form of invoice may be changed from time to time.
- Project Co shall not be obligated to make any payment to the Operating Contractor unless all conditions precedent applicable to such payment under this Operating Contract has been satisfied by the Operating Contractor. Further, Project Co shall not be obligated to pay an invoice delivered by the Operating Contractor after the second Payment Period following the Payment Commencement Date until the Operating Contractor has delivered the Payment Adjustment Report for the previous Payment Period. In the event that the Operating Contractor delivers any Payment Adjustment Report later than the stipulated date, Project Co's obligation to pay the invoice issued by the Operating Contractor for the immediately following Payment Period shall be extended by the number of days by which the Operating Contractor was late in delivering the applicable Payment Adjustment Report to Project Co.
- Within 3 Business Days following the end of each Payment Period, the Operating Contractor shall also submit to Project Co:
 - a Performance Monitoring Report in respect of the Payment Period just ended; and
 - a report (a "Payment Adjustment Report") setting out any adjustments required between the actual Monthly Operating Contractor Payment determined by the Operating Contractor to be owing by Project Co to the Operating Contractor in respect of the Payment Period just ended and the amount that was paid by Project Co during such Payment Period, including details of all Noncompliance Points.
- The Operating Contractor shall include with each Payment Adjustment Report such supporting documentation as is reasonably required to substantiate and confirm the adjustments set out in each Payment Adjustment Report.
- Within 15 Business Days of receipt by Project Co of the Payment Adjustment Report, the Project Co Representative shall:
 - determine and advise the Operating Contractor that the Payment Adjustment Report is approved by Project Co, in which case the

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adjustments set out therein will be reflected by the Operating Contractor in the invoice next issued by the Operating Contractor; or

- if Project Co disputes the Operating Contractor's entitlement to any part of the amounts set out therein, or the Operating Contractor disputes any amounts with respect to which Project Co is claiming an adjustment, then the disputing Party shall notify the other in writing of that part of the amounts (insofar as at the time of such notice the disputing party is reasonably able to quantify it) which such party disputes and submit to the other party such supporting documentation as is reasonably required to substantiate and confirm such claim. In such event, Project Co shall withhold payment of any disputed amount pending agreement or determination of the Operating Contractor's entitlement to the disputed amount.

5.50.8 Payment of the GP Routine Maintenance Fee, Snow and Ice Control Services Fee and reimbursement in relation to the I-25 Shared Bridge Decks.

- The Operating Contractor acknowledges and agrees that pursuant to the CA that if HPTE accepted Project Co's GP Routine Maintenance Fee for the GP Routine Maintenance Services prior to the Contract Date, then HPTE shall pay to Project Co the GP Routine Maintenance Fee and Project Co will pay such amount to Operating Contractor within 3 Business Days of receipt of such payment from HPTE.
- The Operating Contractor acknowledges and agrees that pursuant to the CA HPTE shall pay to Project Co the Snow and Ice Control Services Fee for each month [and Project Co will pay such amount to Operating Contractor within 3 Business Days of receipt of such payment from HPTE.
- The Operating Contractor acknowledges and agrees that pursuant to the CA HPTE shall reimburse Project Co the Non-Separable Percentage of the cost of Routine Maintenance (including, to avoid doubt, the cost of the performance of the I-25 Preventative Maintenance Program to the extent that such work does not comprise Life Cycle Maintenance) on the I-25 Shared Bridge Decks and Project Co will pay such amount to Operating Contractor within 3 Business Days of receipt of such payment from HPTE.

5.50.9 The Operating Contractor shall pay its sub-contractors promptly and in any event, when the Operating Contractor receives a payment from Project Co to the Operating Contractor, part of which will be used to pay a sub-contractor, all payments must be provided to the Operating Contractor's sub-contractors no later than twenty-five (25) days following payment from Project Co if sub-contractor is satisfactorily performing under its contract with the Operating Contractor.

5.50.10 The Operating Contractor shall monitor the provision of the Services in accordance with the OC and shall compile a Monthly Service Report and an Annual Performance Report.

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5.50.11 At any time during the Services Period, and at its own cost, Project Co or HPTE may carry out checks on the Operating Contractor in relation to the performance of its obligations under this Operating Contract, including the checking of the provision of the Services in accordance with this Operating Contract; and during such Project Co or HPTE with any cooperation as may be reasonably required.

Conclusions:

We consider the structure of the invoicing and payment arrangements in the OC to be in line with similar P3 projects in North America.

5.51 Insurance

5.51.1 No later than the Commencement Date in relation to the Services to be provided in respect of the I-25 Managed Lanes; the Phase 1 Services Commencement Date in respect of the Phase 1 Managed Lanes and the Phase 1 GP Lanes; and the Full Services Commencement Date in relation to the remainder of the Services the Operating Contractor, take out and maintain or ensure the maintenance of the insurances required to be taken out and maintained pursuant to Schedule 17 of the CA (Required Insurances) and any other insurances as may be required by Law.

5.51.2 The Operating Contractor will take out insurance in respect of a risk which is Uninsurable, except where the predominant cause of risk being Uninsurable is any acts or omissions of the Operating Contractor or an Operating Contractor Related Party.

5.51.3 If a risk usually covered by builders' all risks insurance, property damage insurance, general liability insurance, (but not loss of profits) or workers compensation insurance in each case required under the DBC becomes Uninsurable then the DBJV shall notify Project Co within three (3) Business Days of the risk becoming Uninsurable.

5.52 Compensation & Relief Events

5.52.1 If, as a result of the occurrence of a Compensation Event:

- The Operating Contractor is unable to commence Services for the Phase 1 Managed Lanes on or before the Phase 1 Services Commencement Compensation Date;
- The Operating Contractor is unable to comply with any of its obligations under this Operating Contract; and/or
- The Operating Contractor incurs costs.

then the Operating Contractor is entitled to apply for relief from its obligations and/or relief from the allocation of Noncompliance Points and/or from any right which Project Co would otherwise deem that circumstances amounted to an Operating Contractor Default claim or compensation under and in accordance with

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this Operating Contract, except to the extent the Compensation Event is caused by an act or omission of Project Co.

- 5.52.2 As soon as practicable, and in any event within twelve (12) Business Days after it becomes aware that the Compensation Event has caused or is likely to cause a breach of an obligation under the OC and/or the Operating Contractor to incur costs or lose revenue, give to Project Co a notice of its claim for payment of compensation and/or relief from its obligations under the OC and/or from the allocation of Noncompliance Points and/or from the risk of there being an Operating Contractor Default.
- 5.52.3 If the Operating Contractor has complied with its obligations under the OC, and demonstrated:
- That the Compensation Event was the cause of the Estimated Change in Costs and/or breach of Operating Contractor's obligations under this Operating Contract; and
 - The steps which the Operating Contractor has taken to mitigate the Estimated Change in Costs, and/or the need for relief from the obligations under the OC;
 - Project Co shall compensate the Operating Contractor for the actual Change in Costs;
 - In the case of the Estimated Change in Costs anticipated to be incurred after the date of the claim ; Project Co shall pay Operating Contractor an amount corresponding to the amount HPTE compensated Project Co in respect of such Estimated Change in Costs of the Operating Contractor pursuant to the CA;
 - Project Co shall give the Operating Contractor the non-financial remedies in respect of the Compensation Event
- 5.52.4 The Operating Contractor shall not be entitled to financial or non-financial remedies to the extent that the Operating Contractor and its sub-contractors could have avoided the Compensation Event.
- 5.52.5 The Operating Contractor shall notify Project Co if at any time it receives or becomes aware of any further information relating to the Relief Event.
- 5.52.6 If and to the extent that a Relief Event adversely affects the ability of the Project Co to perform any of its obligations under the OC, then the Operating Contractor is entitled to apply for relief from its obligations and/or relief from the allocation of Noncompliance Points and/or from any right which Project Co would otherwise have to assert that circumstances amounted to a Project Co Default.
- 5.52.7 The Operating Contractor must as soon as practicable, and in any event within fifteen (15) Business Days after it becomes aware that the Relief Event has adversely affected the ability of the Operating Contractor to perform its other obligations, give Project Co a notice of its claim for relief from its obligations under the OC, including full details of the nature of the Relief Event, the date of occurrence and its likely duration; and within five (5) Business Days of receipt by Project Co of the notice give full details of the relief claimed.

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- 5.52.8 If the Operating Contractor has complied with its obligations under the CA, and demonstrated that the Relief Event was the cause of the breach of the Operating Contractor's obligations under the OC; and the steps which the Operating Contractor has taken to mitigate the need for relief from the obligations under this Operating Contract then Project Co shall give the Operating Contractor the remedies in respect of the Relief Event.
- 5.52.9 The Operating Contractor shall notify Project Co if at any time it receives or becomes aware of any further information relating to the Relief Event
- 5.52.10 Operating Contractor acknowledges and agrees that pursuant to Section 42.7 of the Concession Agreement, 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 shall be entitled to a fair and reasonable reduction in the Snow and Ice Services Fee

Conclusions:

The LTA regards the provisions for the Operating Contractor's Relief and Compensation Events in the OC as acceptable for the recovery of time and relief of costs and typical of P3 Projects in North America.

5.53 **Operating Contract Term Handback**

- 5.53.1 Not less than 48 months prior to the Expiry Date, Project Co shall appoint an Independent Inspector to carry out inspections of the Project. Both Project Co and the Operating Contractor shall share equal responsibility for the payment of the Independent Inspectors costs.
- 5.53.2 On the Expiry Date each element of the Project should be in a condition consistent with diligent performance of the Operating Contractor and consistent with the Maintained Elements as per the operations Management Plan and Rehabilitation Schedule. Each element of the Project should be operating in accordance with the performance specifications and standards set out in the CA and OC. Each element of the Project should also be in a condition so it has a reasonable likelihood of completing its remaining lifecycle. The aforementioned are known collectively as the "Expiry Transition Requirements".
- 5.53.3 The Independent Inspection shall perform an inspection of the Maintained elements and produce a "Condition Report" not less than 3 years prior to the Expiry Date. The report will define the condition of the Maintained Elements and assess the Operating Contractor's business case related to capital replacement and the adequacy of the "Rehabilitation Plan. The Condition Report will identify any work that is required to meet the Expiry Transition Requirements and specify when these works need to be complete. The report also will specify an estimate of the costs to perform this work and detailed of those costs will be calculated.
- 5.53.4 The Independent Inspector will provide annual reports thereafter to update both Project Co and the Operating Contractor on the current condition of the Maintained Elements.

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- 5.53.5 The Operating Contractor will update the O&M Plan and the Rehabilitation Schedule as applicable to reflect the findings of the Condition Survey.
- 5.53.6 If the costs to perform the Expiry Transition Works are higher than the estimate then the Operating Contractor shall perform these works at their own expense.
- 5.53.7 Project Co and the Operating Contractor are entitled to dispute the Condition Report in accordance with the Dispute Resolution Procedure.
- 5.53.8 Where the Expiry Transition Works Cost Estimate is greater than the Expiry Rehabilitation Costs, the difference shall be apportioned equally over the Payment Periods from the date of the Condition Report. Each apportioned amount being the “Expiry Transition Amount”. Project Co may deduct and retain the relevant Expiry Transition Amount from each Monthly Service Payment and deposit it into a separate interest bearing bank account or in trust as the “Escrow Account.”
- 5.53.9 Project Co shall not deduct any amount from the Monthly Service payment if the funds in the Escrow Account exceed the value of all or part of the Expiry Transition Works yet to be performed.
- 5.53.10 A “Final Condition Report” will be performed by the Independent Inspector within 30 Business Days after the Expiry Date. This report will identify any Expiry Transition Works that Project Co may need to withdraw from the Escrow Account or draw from the Expiry Transition Security to pay the funds in the Escrow Account to the Operating Contractor and return any remaining security to the Operating Contractor.

Conclusions:

The LTA regards the provisions for Handbacks in the OC acceptable and typical for a Project of this nature and typical of P3 Projects in North America.

5.54 Consequences of Termination or Expiration

- 5.54.1 The Operating Contractor shall within fifteen (15) Business Days of the Expiration Date (or, if earlier, the Termination Date, if applicable) hand over to Project Co all documents (or complete and accurate copies to the extent originals are not required), records, books, data and/or information in the possession, custody or power of the Operating Contractor relating to and/or touching upon the Assets, the design, installation, maintenance and/or replacement of the Managed Lanes and the Assets and the carrying out of the Services other than any of such documents, records, books, data and/or information of a financial nature which will not be relevant to the provision of services equivalent to the Services after the Termination Date or the Expiration Date (as the case may be). Documents, records, books, data and/or information kept or stored on computer shall be surrendered, released and/or handed-over to Project Co by whatever means and in whatever format Concessionaire may reasonably require.
- 5.54.2 If Project Co does not wish to retender the Services then the Assets (or such part of the Assets as may be required by Project Co) shall transfer to Project Co (or

5.0 COMMERCIAL COMMENTARY – ANCILLARY DOCUMENTS

any Person designated by Project Co), on the Expiration Date or Termination Date.

- 5.54.3 On termination of the OC the Operating Contractor shall be responsible for all costs incurred by Project Co associated with the appointment of a replacement operating contractor, including an increase to the cost of performing the Services.

Conclusions:

We consider such termination terms and processes appropriate and in line with similar P3 Agreements in North America.

5.55 **Dispute Resolution and Jurisdiction**

- 5.55.1 The Dispute Resolution Procedure is set out in Schedule 24 of the OC and follows similar procedures established in PP transactions in North America.

Conclusions:

The provisions for dispute resolution in the OC are standard for projects in North America. Strict time frames are to be complied with and enforced, however this should not pose a problem for a well sourced and organized Project Co and Operating Contractor.

6.0 REGULATORY APPROVALS

6.1 Introduction

- 6.1.1 Project Co, through the DBJV (Ames Construction Inc. and Granite Construction Inc.) and its design subcontractor will be responsible for obtaining all Government Approvals (Federal, State and Local), permits, licenses, certificates and authorizations required in connection with the Project.
- 6.1.2 Throughout their normal course of business the DBJV and its design subcontractor are accustomed to dealing with similar approval processes to the project requirements. The DBJV and its design subcontractor are currently engaged in preliminary discussion with many of the relevant permitting authorities. At present, the DBJV is addressing a near identical list of regulatory approvals and requirements on the adjacent US36 Phase 1 project, which is currently under construction.
- 6.1.3 In addition to Federal permitting Project Co, through the DBJV, will be required to gain Construction / Right of Way and Open Space Access Permits(s) as applicable for any works falling outside of the CDOT ROW. Likewise Boulder County Construction Permits will be required for works that occur in Boulder County outside of the CDOT ROW. Project Co is also required to retain a qualified biologist in a supportive role to the DBJV and its design team.
- 6.1.4 Project Co has provided us with a detailed breakdown of all the various construction permits with the corresponding permitting authority, DBJV responsibility and schedule timeline. This documentation is very detailed and thorough.
- 6.1.5 The following is a list of the Required Environmental Permits as outlined in RFP Schedule 5 Section 5:

Table 6.1: Required Environmental Permits

| Item | Obligation to Obtain | Obtained From |
|---|----------------------|--|
| Construction Dewatering Permit | Yes | CDPHE |
| Air Pollutant Emission Notice and Construction Permit | Yes | CDPHE (APCD) |
| Demolition Permits | Yes | CDPHE and all applicable jurisdictions |
| Construction Noise Permit | Yes | All applicable jurisdictions |
| Colorado Discharge Permit System (CDPS) Storm water Construction Permit | Yes | CDPHE Water Quality Control Division |
| Subterranean Groundwater Permit | Yes | CDPHE Water Quality Control Division |
| Black Tailed Prairie Dog Relocation or Removal Permit | Yes | Colorado Parks and Wildlife |

6.0 REGULATORY APPROVALS

| Table 6.1 Item | Obligation to Obtain | Obtained From |
|--|----------------------|---|
| Prairie Dog Lethal Control Permit | Yes | City of Boulder or other applicable jurisdiction |
| Construction Permits | Yes | All applicable jurisdiction |
| Other local permits (storm water, railroad, building, utility, survey, tree removal, wetland ordinance, work in parks and on trails) | Yes | Local agencies or railroad company |
| Letter of Approval for impacts to historic resources | Yes | State historic preservation officer |
| New development and redevelopment programs for MS4 Phase 1 and 2 areas | Yes | Follow requirements of local jurisdictions MS4 permits and CDOT MS4 permits |
| SB40 Certification (impacts to stream banks, stream channels, and riparian areas) | Yes | Colorado Parks and Wildlife |
| Construction Waste Material and transportation of solid wastes | Yes | CDPHE Hazardous Materials and Waste Management Division |
| Generation of contaminated materials during construction | Yes | CDPHE Hazardous Materials and Waste Management Division |
| Generation of hazardous waste per the Resource Conservation and Recovery Act (RCRA) | Yes | CDPHE Hazardous Materials and Waste Management Division |
| Stationary Source Air Quality Permit | Yes | CDPHE APCD |
| Section 404 Permit amendments | Yes | U.S. Army Corps of Engineers |

6.1.6 RFP Schedule 5, Section 5 states that the Section 404 Permit from the US Army Corps of Engineers (USACE Permit No. 200380602) has been received. This permit covers the anticipated impacts on the wetland and waters areas, as documented in the 2012 US 36 Phase 2 NEPA Reevaluation. However, if the Project impacts wetlands and waters outside of the boundaries set out in the approved Section 404 Permit, then Project Co will be responsible for obtaining a permit amendment from the approving body – the U.S. Army Corps of Engineers. Project Co has confirmed in an email (dated November 19, 2013) that there has been no change to the boundaries and that the permit has been received from HPTE.

6.1.7 Project Co and the DBJV have incorporated the environmental Permits called for in the RFP (Table 6.1) within their Original Initial Schedule, dated January 17, 2013. Project Co has also confirmed that the same permits have been incorporated into their permitting plan that forms part of their overall Project Management Plan.

6.0 REGULATORY APPROVALS

6.2 *Regulatory Approval Approach*

6.2.1 The DBJV's team's approach to environmental compliance will take advantage of lessons learnt from the Phase 1 works. Key personnel that were involved in the Phase 1 works will provide extensive experience with the local agency stakeholders and with state and federal agencies.

6.2.2 Project Co has confirmed that any permitting issues are being identified, managed and mitigated through weekly coordination meetings, called Task Force Meetings. Typically this is good industry practice as it allows the DBJV, Project Co and the applicable body of jurisdiction to deal with any issues at first hand.

6.2.3 Project Co has confirmed that some of the agency permits have set turnaround times, whereas the private permits do not. The DBJV are working on developing the phasing and timing of the permits into their schedule. Project Co has identified that the Conditional Letter of Map Revision could delay the work between stations 1120+00 to 1140+00, if they do not have it before works commence. However, they have a mitigation strategy in place to maintain continuity of the works, should the Conditional Letter of Map Revision not be received. Project Co has advised us in an email (dated November 19, 2013) of the following permit status:

- Section 404 Permit – Received from HPTE;
- Construcion Dewatering Permit – Submitted by Project Co on July 11, 2013;
- Air Pollutant Emission Notice and Construcion Permit – Submitted by Project Co on November 15, 2013; and
- Colorado Discharge Permit System (CDPS) Sotrmwater Construcion Permit – Received on November 1, 2013.

Attached to Project Co's email (dated November 19, 2013) is an updated status list of all permits. It appears that Project Co have a well organized and efficient process in place and have secured the intital key permits in advance of FC, as required. Project Co has also organized and strategized part or full permits that they will require throughout the design and construction process.

6.2.4 The DBJV and its design team is well informed of the following known environmental restrictions:

- Replacement of removed trees outside of the Senate Bill 40 (Guidelines to obtain certification from the Colorado Division of Wildlife – Senate Bill 40 acknowledges the need to protect and preserve all fish and wildlife resources associated with streams in Colorado);
- Prairie dog removal or relocation during burrowing owl nesting season (March 15 through October 31);
- Small and medium mammal wildlife crossings;
- Preble's meadow jumping mouse hibernation period from November 1 to May 1 each year;
- Ute Ladies'-Tresses Orchid survey to be conducted during the flowering season of July to August prior to construction;

6.0 REGULATORY APPROVALS

- Bobolink nest surveys to be done during the nesting season of May 15 to July 30 prior to land clearing;
- Burrowing owl survey to be conducted during the nesting season of March 15 to October 31 prior to removal of any BTPDs;
- Presence of Recognized Hazardous Materials (RHM) within the Phase 2 construction area; and
- Migratory Bird Treaty Act (MBTA).

Conclusion:

The Major Environmental Approvals, acquisition of which is the responsibility of the DBJV, are typical environmental plans required for any large civil infrastructure project including sediment and erosion, contamination containment and storm water discharge permits. We do not anticipate that the permits to be acquired by the DBJV in a timely manner should cause significant difficulty to the experienced DBJV members or delay the construction schedule.

7.0 EXISTING SITE CONDITIONS

7.1 *Site Description*

- 7.1.1 The Project includes the design and construction of the US 36 Phase 2 Corridor and, to varying degrees of scope, the operations, maintenance and lifecycle works of the US 36 Phase 1 Corridor, US 36 Phase 2 Corridor and the I-25 Express Lanes.
- 7.1.2 The US 36 Corridor comprises approximately 23 miles of existing 2-lane divided highway connecting Denver with Boulder, Colorado. The US 36 generally travels southeast to northwest, diagonally bisecting the Northwest Denver metropolitan area and carrying an average of between 80,000 and 100,000 trips per day.
- 7.1.3 The Southern end of the Phase 2 of the US 36 works commences at South 88th Street, West of the City of Broomfield. Travelling Northwest, the US 36 corridor passes between the Towns of Superior on the South side and Louisville on the North side. US 36 forms the northern boundary of the Town of Superior for approximately 3 miles. The McCaslin Boulevard interchange is located within this area and the immediate surrounds consist of residential housing and commercial development near the highway.
- 7.1.4 The US 36 continues Northwest of Superior/Louisville and enters the jurisdiction of Boulder. Almost the entire US 36 corridor in the Boulder segment is surrounded by City of Boulder and Boulder County open space areas, which collectively follow South Boulder Creek and the creek's associated tributaries. The uses associated with City of Boulder and Boulder County Open Space properties vary from passive recreation and wildlife viewing, to properties managed as wildlife refuges.
- 7.1.5 Widening and upgrade of the US36 Phase 1 Corridor is currently being constructed under a separate design-build contract. The US36 Phase 1 Corridor is approximately **19.5** miles long, extending from the intersection with the I-25 to immediately East of 88th Street. The US 36 Phase 2 Corridor, to be widened and upgraded as part the P3 contract that is the subject of this report, extends approximately **[5]** miles from immediately East of 88th Street, Northwest to the on/off ramps for the Foothills Parkway.
- 7.1.6 The I-25 passes through the length of the State Colorado in a North-South trajectory. The I-25 Express Lanes within the scope of the Project begin at the intersection with the US 36 and extends south to 20th Street. The I-25 Express Lanes are separated from the general purpose lanes of the I-25 by a continuous concrete barrier.
- 7.1.7 The Project includes tolling for the 50 year Term of the new managed lanes on both Phase 1 and Phase 2 of the US 36 Corridor and also the existing I-25 Express Lanes. Seven new gantries will provide electronic tolling on the US 36 and 1 existing gantry is located on the I-25. Project Co will be responsible for toll operations and traffic revenue risk.

7.2 *Environmental Site Investigations*

- 7.2.1 The project has progressed through federally required planning stages for a project of this type and scale, with a Final Environmental Impact Statement (FEIS) having been produced and subsequent issue of a Record of Decision granting

7.0 EXISTING SITE CONDITIONS

permission for the US 36 Corridor works to proceed as then envisioned. Subsequent re-evaluations were conducted as required by the National Environmental Policy Act (“NEPA”) which encompassed the additional scope resultant from further design development from the conceptual designs originally considered in the FEIS. The NEPA re-evaluations provide approval for the scope of works as they are currently proposed.

7.2.2 The following environmental documentation has been reviewed for the purpose of this report:

- US 36 Corridor, Final Environmental Impact Statement/Section 4(f) Evaluation, Record of Decision – December 2009 by the Federal Highway Administration and Federal Transit Administration
- Record of Decision 2 for the US 36 Corridor – September 2012 by the Federal Highway Administration
- National Environmental Policy Act Re-evaluation Form, US 36 Managed Lane Project: Federal Boulevard To Interlocked Loop With A Potential Extension To McCaslin Boulevard – February 2012 by the Colorado Department of Transportation
- NEPA Re-evaluation Form, US36 Managed Lane Phase 2 Construction Project: Foothills Parkway to 88th Street – DRAFT November 2012 by the Colorado Department of Transportation

7.2.3 The NEPA Re-evaluations released in 2012 include backing documentation describing changes to environmental impacts that have occurred since the release of the FEIS and Record of Decision (“ROD”) which granted initial approval in December 2009 based on concept designs. The Re-evaluations provide an updated ROD granting approval to the current proposals based on further refinement of the design since the 2009 decision.

7.2.4 The first NEPA Re-evaluation, approved in February 2012, applied to the US 36 route from Federal Boulevard which is within the US 36 Phase 1 Corridor, to McCaslin Boulevard within Phase 2. A second NEPA Re-evaluation was then conducted with a draft approval being granted in November 2012. The second NEPA Re-evaluation includes the full scope of the Phase 2 Corridor from 88th Street to Foothills Parkway.

7.2.5 The NEPA Re-evaluations were required due to changes in Project scope as CDOT advanced the engineering design to an approximate 30% level of design. The environmental impacts of those changes were studied with the ultimate result being NEPA approval remains in place. Elements subject to design alterations and which have been granted approval include:

- Irrigation Crossings;
- Water Quality / Detention Ponds;
- Bikeway Design Refinements;
- US 36 Median Barrier Width;
- US 36 Horizontal and Vertical Design Requirements;
- Managed Lane Access Ingress / Egress;

7.0 EXISTING SITE CONDITIONS

- Bus Use of Shoulder on US 36;
- Advanced Traffic Management; and
- Interchange Configuration at McCaslin Boulevard.

7.2.6 The NEPA Re-evaluations conclude that none of the changes in impact, due to the design changes or changes in existing conditions, result in new significant impacts that were not identified in the FEIS Preferred Alternative or the Phase 1 ROD. The NEPA Re-evaluation also states that no additional studies or other requirements are needed for the proposed action.

7.2.7 The US 36 Corridor Final Environmental Impact Statement (the “FEIS”) studies the feasibility of various alternative design concepts to meet the mobility requirements throughout the US 36 Corridor, including reviewing the impact of not carrying out any development at all and the preferred concept design. The FEIS performs a detailed review of the history of the project; purpose and need; alternative solutions; the existing environment that will be impacted; environmental consequences; Public engagement; project commitments and mitigation plans.

7.2.8 The FEIS considers the route that is now Phase 1 and Phase 2 of the US 36 Corridor upgrade works. Due to the length of the US 36 Corridor as a whole, for the purpose of the FEIS the corridor was subdivided into six segments. These segments generally followed jurisdictional boundaries and from south to north include the Denver, Adams, Westminster, Broomfield, Superior/Louisville, and Boulder. Phase 2 works are located within the 2 northern jurisdictional areas in Superior/Louisville and Boulder. Phase 1 works are located within the remaining southern areas and some overlap of common jurisdiction occurring in Superior/Louisville.

7.2.9 The FEIS includes a Section 4(f) evaluation of various alternative concepts for the US 36 including the preferred alternative which ultimately formed the basis of this Project.

7.2.10 The U.S. Department of Transportation (USDOT) Act of 1966, as amended, declares that “[i]t is the policy of the United States Government that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites.”

7.2.11 Section 4(f) specifies that: “The Administration may not approve the use of a Section 4(f) property unless it makes a determination that:

- there is no feasible and prudent avoidance alternative to the use of land from the property; or
- the action includes all possible planning to minimize harm to the property resulting from such use.”

7.2.12 The FEIS concludes that the preferred alternative has the least harm in intensity and value of uses between the Section 4(f) resources used when compared to other alternatives. The preferred alternative avoids more Section 4(f) resources and best meets the project Purpose and Need. It was also found to have less ROW acquisitions to residents and businesses, was anticipated to be the least expensive package and had the most support of local stakeholders.

7.0 EXISTING SITE CONDITIONS

7.2.13 There are 11 irrigation channels crossing the Project, all owned by private entities. These ditches provide water for irrigation needs to local agriculture and recreational businesses. The channels currently pass under the existing US 36 via concrete culverts or under highway bridges which will be replaced or widened respectively as part of the Phase 2 works. Construction works affecting the flow of these water courses is restricted within the work window of October 30 to April 1 each year, so as to avoid affecting water flows during the summer months when irrigation is required. Permits from the third party owners of the irrigations channels will also be sought following announcement of Preferred Proponent. Please refer to Section 6 (Regulatory Approvals) and Section 9 (Schedule Review) for further discussion on permitting and scheduling impacts respectively.

7.2.14 These water courses are given from North to South as follows:

- Dry Creek #2 Ditch Station 1125+75
- South Boulder Creek Station 1142+00
- McMinn Ditch Station 1142+50
- South Boulder Canyon Ditch Station 1144+50
- Shearer Ditch Station 1167+25
- Marshallville Ditch Station 1182+50
- Good hue Ditch Station 1195+50
- Davidson Ditch Station 1213+50
- Coal Creek Ditch Station 1266+00
- Coal Creek Station 1335+50
- Irrigation pipe bridge Station 1362+00

Project Co has confirmed that the aforementioned list is inclusive of all third party irrigation ditches, with exception of the South Boulder Creek, which is an open water way.

7.0 EXISTING SITE CONDITIONS

7.2.15 The FEIS considers the presence of sensitive or protected flower and fauna throughout the US 36 corridor. Table 7.1 below provides the species with federal or state status identified by the FEIS as being potentially present within study area in the surrounds of the Phase 2 works.

Table 7.1: Federal and State of Colorado Special Status Species

| Common Name | Federal Status | State Status | Habitat | Potential of Occurrence |
|-------------------------------|----------------|--------------|---|---|
| Birds | | | | |
| Bald Eagle | FT | SE | Prefers open water near tall trees and prairie dog colonies, esp. in winter. | Present; summer nesting and wintering populations |
| Burrowing Owl | | ST | Grasslands, usually in association with prairie dog colonies | Present near prairie dog colonies during summer and shoulder months |
| American Peregrine Falcon | | SC | Nests on cliffs, forages over many habitats | Nest sites are identified in FEIS, however are very far removed from the Project at the mountain foothills West of Boulder. |
| Mammals | | | | |
| Pebble's meadow jumping mouse | FT | ST | Occurs in permanent or intermittent streams in areas with cover of shrubs or trees | Present along South Boulder Creek and ditches crossed by US 36 in Boulder open area |
| Black-tailed prairie dogs | | SC | Grasslands throughout Eastern Colorado | Present within the open areas alongside the Project |
| Fish | | | | |
| Brassy Minnow | | ST | Fluctuating streams | Potentially present, considered rare but could be present in any stream |
| Common Shiner | | ST | Cool, sediment free streams | Potentially present, considered rare but could be present in sediment free streams |
| Amphibians | | | | |
| Northern Leopard Frog | | SC | Pond, lake, and reservoir edges; wet meadows, marshes, streams and irrigation ditches | Likely present at the stream / irrigation ditches crossing the Project |
| Common Garter Snake | | SC | Aquatic, wetland and stream habitats | Likely present at the stream / irrigation ditches crossing the Project |
| Plants | | | | |
| Ute Ladies'-Tresses Orchid | FT | - | Along streams and meadows on flood plains | Present, largest population in Colorado at South Boulder Creek on either side of US 36. |

Note:

FT = listed as Federally Threatened

SE = listed as Endangered by the Colorado Division of Wildlife

ST = listed as threatened by the Colorado Division of Wildlife

SC = listed as Species of Special Concern by the Colorado Division of Wildlife

7.0 EXISTING SITE CONDITIONS

- 7.2.16 Bald eagles are noted by the FEIS to be present in the Project area year round, with roosting season from November 15 to March 15 each year. Mitigative activities identified by the DBJV include bird surveys each year within the roosting season and recognition that “no-work zones” will be required within a quarter mile of a nesting site during this period should one be recorded. The FEIS identifies 2 nesting areas within the study area of the Phase 2 portion of the US 36 corridor, though neither are within the quarter mile range with the nearest being approximately 3 miles from US 36. The FEIS concludes that the Project is unlikely to adversely affect bald eagles.
- 7.2.17 Burrowing Owl is a bird of prey that feeds on Black-tailed prairie dogs and tends to be located near to prairie dog towns where they nest in abandoned burrows. Unlike the Bald Eagle, their presence is seasonal in Colorado and are present between March 1 and October 1, nesting between April 1 and July 31 each year. The DBJV will be conducting bird surveys for the entire March to October period each year with no-work zones possible if nests are identified. Project Co has confirmed that the DBJV cannot disturb a prairie dog hole if the Black Tail Prairie Dog is present. CDOT have confirmed in an email (dated October 8, 2013) that there are no Black Tail Prairie Dog’s within the Phase 2 Works as they have all succumbed to a plague. A backed silt fence will be installed to prevent any new Black Tail Prairie Dogs from entering the works area.
- 7.2.18 Preble’s meadow jumping mouse are associated with wet habitat and are likely to be encountered along the stream banks crossing the Project and particularly along the creeks within the open prairie lands West of Superior/Louisville. November 1 to May 1 is their hibernation period and has been identified as a time for more significant construction activities at stream areas. The DBJV has also identified windows to clear identified Preble’s locations in mid to late August each year.
- 7.2.19 CDOT has a state-wide policy on black-tailed prairie dog mitigation that would be implemented on the Project. The policy identifies a hierarchy of steps to be followed where prairie dog colonies are affected:
- Avoidance of impacts;
 - Minimization of impacts;
 - Relocation;
 - If relocation is impossible, impacted black-tailed prairie dogs would be humanely removed from burrows directly affected by the Project and donated for feeding of captive black-footed ferret or raptors.
- 7.2.20 Opportunities for avoidance or minimization of affects to prairie dogs will be limited within the Right of Way of the Project. Therefore the DBJV will work with Colorado Division of Wildlife (“CDOW”), open space land management agencies, and willing landowners to identify and clear a relocation site prior to the start of construction in affected areas. Project Co has confirmed that CDOT are aware and have begun the consultation. We understand that the land has been recently surveyed and no prairie dogs have been found.
- 7.2.21 Brassy Minnow and Common Shiner are both rare species of fish that may occur within the streams crossing the Project. Mitigation efforts will include sediment

7.0 EXISTING SITE CONDITIONS

controls for drainage from construction areas, erosion controls for areas of disturbed ground near stream locations and implementation of spill prevention plans.

- 7.2.22 Ute ladies' –tresses orchids are associated with the same wet habitats as the Preble's mice. The largest population in Colorado is present at the South Boulder Creek area on each side of the US 36. Surveys conducted for the FEIS found 20-30 plants within the Project boundary which should not prove onerous for a well managed transplanting program. The FEIS concludes that the Project is likely to have an adverse effect to the species; however with numbers up to 20,000 plants in the local area this is likely to represent a very small portion of the South Boulder Creek population. Again the DBJV have identified annual survey periods from July to August and transplant and removal periods are scheduled in October each year. The DBJV are also implementing specimen culvert designs from CDOT which sizes culverts based on hydrology and drainage pattern studies. Minimizing effects on local hydrology will mitigate any indirect effects to the orchid population. Project Co has confirmed that a survey was recently completed by CDOT and that they have acquired a 23 acre off-site parcel of land to mitigate this concern. A new off-site wetland will be procured in October 2013 to facilitate a transplanting program.
- 7.2.23 Project Co has confirmed that there is no specific mitigation measures that will be implemented for the Leopard Frog other than general environmental avoidance measures when working near wetlands. The DBJV will use specific erosion control measures (straw erosion blankets with biodegradable thread) to minimize any impacts to the Garter Snake.
- 7.2.24 Additional mitigation measures to be implemented by the DBJV to reduce impacts to surrounding vegetation will include:
- Minimization of riparian vegetation through design and restoration of disturbed riparian areas with native grasses, herbs and shrubs;
 - Limiting construction vehicles to designated construction areas and fencing adjacent sensitive habitats;
 - Silt fencing and other best management practices to prevent erosion and sedimentation;
 - Graded areas within the ROW will be seeded with native grasses and herbs; and
 - To compensate for riparian habitat loss, equivalent areas will be enhanced or restored.
- 7.2.25 The following salient points from additional mitigation measures that are to be implemented during the design and construction phases of the Project development are:
- Waterways and Riparian Vegetation – Measures will be implemented to minimize impacts to waterways and riparian areas within the project area.
 - Wetlands – Minimization and mitigation of wetland and stream impacts would be required as part of the Clean Water Act Section 404 permitting process.

7.0 EXISTING SITE CONDITIONS

- Erosion Control – Measures to control and minimize erosion and water quality impacts from construction activities will be incorporated into the Project.
- Air Pollution – Construction activities will be performed in a manner that controls emissions from various activities; air pollution will be controlled; suitable devices that control airborne dust will be applied for all drilling, grinding, sawing and concrete works, as per the contract specifications; emissions from construction equipment will be controlled in accordance with the applicable standards; and burning of construction wastes will be performed in accordance with the local agencies/authority's.
- Noise – Construction noise can be minimized by constructing the proposed sound walls as early in the construction process as possible, by avoiding night time work, and through the use of quiet methods where needed.
- Traffic Control – Measures will be put into place to minimize disruption to traffic; to provide access to properties during construction; to provide the public with advance information on traffic control measures; to consult with school and bus administrators; and to consult with local officials in developing maintenance and traffic plans.
- Permits – all necessary and statutory environmental permits have been identified.
- Historical and Archaeological Resources – Commitments to mitigate impacts to historic and archaeological properties have been identified.

Conclusions:

The Project passes through an area where numerous special status bird, mammal, fish, amphibian and plant species exist. However, as the Project is a widening of an existing highway, impacts to these species is far less than were this a greenfield project. Many of the adjacent species have been identified within the study area of the FEIS but still remain far enough removed from the Project so that construction works should not have significant impact. Where species do exist within the Project ROW, appropriate plans are in place for identification, relocation or mitigation so as to minimize any impact.

The FEIS and NEPA Re-evaluations have raised numerous constraints and areas of attention that need to be addressed. However, experienced contractors forming part of the DBJV, who are already conducting works in on Phase 1 of the same corridor, should be more than capable of diligently carrying out and appropriately managing the work restrictions where they may arise and otherwise performs in conformity with the CA and NEPA requirements.

7.3 Geotechnical Report

7.3.1 We have reviewed the following reports and technical memoranda in relation to the project:

- Final Geotechnical Engineering Report, US 36 Managed Lane/BRT Design Build Project, Phase 2 – McCaslin Boulevard to Interlocken Loop. Prepared by Yeh and Associates ("Yeh"), dated August 12, 2011;

7.0 EXISTING SITE CONDITIONS

- Geotechnical Engineering Report, US 36 Managed Lane/BRT Design Build Project, Phase 2 – Foothills Parkway to McCaslin Boulevard. Prepared by Yeh and Associates, dated August 23, 2012;
- 7.3.2 Yeh's geotechnical report from Interlocken Loop to McCaslin Boulevard encompasses the Eastern end of the Project. Their second report then encompasses the remaining scope of the Project from McCaslin Boulevard to Foothills Parkway.
- 7.3.3 Yeh's subsurface investigations from Interlocken Loop to McCaslin Boulevard included the drilling of 49 borings to an approximate depth of 5 feet. The boring program included 23 borings for the west bound lane, 22 borings for the east bound lanes and 4 ramp borings.
- 7.3.4 Yeh's subsurface investigations McCaslin Boulevard to Foothills Parkway included the drilling of 83 borings to an approximate depth of 6 feet. The boring program included 42 borings for the west bound lane and 41 borings for the east bound lanes. An additional 2 borings were drilled to a depth of 35 feet to provide geotechnical information at the widening of the existing bridge at South Boulder Creek.
- 7.3.5 Bulk samples were taken of the soils encountered, and groundwater observations and resistance measurements made. Where borings were advanced through the existing pavement, cores were also taken to determine the condition of the lower layer and the thickness of the existing pavement.
- 7.3.6 The pavement on US 36 is quite variable ranging from a minimum of 3.0 inches of Hot Mix Asphalt ("HMA") at one outside shoulder location to 15.5 inches at two mainline locations. The majority of the travel lanes on US 36 consist of a Portland Cement Concrete Pavement ("PCCP") averaging 8.5 inches with several HMA overlays. The HMA thickness over the concrete on the travel lanes pavement ranges from 2.25 to 7.25 inches depending on location. The average thickness of the HMA over PCCP in the travel lanes is 5.2 inches on the section East of McCaslin Boulevard and 4.4 inches West of McCaslin Boulevard. The overall average total pavement thickness is approximately 10.9 inches.
- 7.3.7 Yeh note that based on the coring information, the concrete pavement may be present throughout the project length and the plans should note that the concrete might be encountered in any area of pavement removal.
- 7.3.8 All shoulder and ramp cores consisted of HMA pavement over varying base materials, some sandy material or some clayey soils.
- 7.3.9 A total of 221 soil and bedrock samples were tested in the laboratory to determine the classification and engineering properties of the subsurface materials encountered in the borings. Chemical analyses were performed on 11 samples considered to be representative of the subgrade materials. The testing was conducted in general accordance with recognized test procedures, primarily those of the American Society for Testing and Materials (ASTM).

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- 7.3.10 The testing provides ranges for pH values, water soluble sulphate concentrations (from road salting/de-icing), and electrical resistivity. The testing provides information to allow appropriate selection of pipe material in accordance with the CDOT Pipe Materials Selection Policy. The concentrations of water soluble sulphates represent a Class 0 (Negligible) degree of sulphate attack on concrete exposed to these chemicals as described by the American Concrete Institute. Therefore, sulphate resistant concrete mix designs are not required. R-Values for underlying soils are provided which measures the response of a compacted sample of soil to vertically applied pressure under specific conditions. This data will form the inputs for pavement design.
- 7.3.11 The subsurface materials encountered in the borings include natural clayey soils, clayey fill soils and bedrock. In certain locations, clay stone and siltstone bedrock was encountered at depths of 1 to 3.5 feet.
- 7.3.12 Swell / consolidation tests were performed on the underlying clays which are known to typically exhibit erratic swell potential. Measured swell / consolidation potentials ranged from -0.3 to 10.1 percent, which is of importance as it indicates that the underlying clay could potentially swell considerably when exposed to water. Should saturated clay then drain and consolidate under a newly constructed pavement, differential settlement may occur causing an uneven driving surface. Similar swelling properties are also likely to be exhibited by the underlying claystone.
- 7.3.13 CDOT provide recommendations to treat soils with high plasticity and swell potential which will be implemented throughout the Project. Clays will be over-excavated to a depth of 3 to 4 feet, dependant on the local plasticity of the underlying clay, and recompacted at near optimum moisture or replaced with better material. Three feet should be measured from the bottom of any proposed aggregate base or other pavement section. The DBJV has been implementing this procedure throughout the Phase 1 works which will provide a full understanding of the requirements in Phase 2.
- 7.3.14 Yew notes that the swell potential of the soils under the existing pavement should have already been addressed, unless the elevation of the new pavement is lowered. If the elevation of the roadway is significantly lowered, Yew recommends that the subgrade be over excavated and recompacted in accordance with CDOT specifications to a depth of 3 feet below any pavement section. Prior to replacement of the pavement in the reconstruction areas, the subgrade should be scarified to a depth of 12 inches, moisture conditioned and compacted. This assumes that the subgrade materials are exposed to drying conditions for only a limited time such that drying of the subgrade is limited to the upper 12 inches.
- 7.3.15 Groundwater was not encountered during drilling the borings East of McCasslin Boulevard. Groundwater was encountered at one pavement location West of McCasslin Boulevard at a depth of 3 feet. Groundwater conditions in the study area will likely vary considerably throughout the year. Significant drainage or consolidation features such as wick drains or extended periods of surcharging are not required at any location throughout the Project.
- 7.3.16 Yeh note that permanent cut and fill slopes should not be steeper than 2.5 horizontal to 1 vertical. Steeper fill slopes may be considered on an individual basis. The ground surface underlying all fills should be removed of organic

7.0 EXISTING SITE CONDITIONS

material such as topsoil, scarred to a depth of 12 inches and then recompact to appropriate dry density depending on soil classification. Embankment fill should be placed with moisture density treatment as required by CDOT Standard Specifications and should not contain organic matter or other deleterious material.

Conclusions:

The number of exploratory holes and samples tested provide adequate information for the DBJV to carry out preliminary design and cost estimations. Further ground investigations will be required ahead of detailed design which is normal practice for a project of this nature.

The ground conditions encountered throughout the Project should not provide significant technical challenges to the design and construction of the Project. Structures will be adequately founded in the bedrock which is neither excessively shallow which might require rock breaking over large sections nor at significant depths which would add cost to foundation solutions.

Care will have to be taken to ensure moisture treatment of clay subgrade is carried out diligently so as to avoid differential settlement caused by swelling and contracting of the clay. The DBJV have a significant advantage with this regard, having its experience on the US 36 Phase 1 to refine exactly what treatments will be required to maintain the clays.

7.4 Archeology and Built Heritage

7.4.1 Section 106 of the National Historic Preservation Act of 1966 (“NHPA”) and implementing regulations require that federal agencies, such as Federal Highway Administration (“FHWA”) or state or other agencies that receive federal assistance, such as the Colorado Department of Transportation (“CDOT”), take into account the effects that a proposed undertaking may have on historic properties.

7.4.2 The FEIS for the US 36 Corridor evaluates temporary and permanent direct and indirect effects to historic and archaeological properties throughout the route under Section 106. A synopsis of its findings from East to West is given below.

Coal Creek Ditch (FEIS Site ID: 5BL5664)

7.4.3 This resource consists of three parallel pipes that were constructed to convey water from three laterals of the Coal Creek Ditch over US 36. CDOT and FHWA have determined the proposed undertaking would result in the determination of No Adverse Effect.

Louisville Reservoir Inlet (FEIS Site ID: 5BL9577)

7.4.4 The entire Louisville Reservoir Inlet is eligible for its association with the development of water rights and agriculture in Boulder County in the latter half of the 19th century. CDOT and FHWA have determined that the proposed undertaking would result in the determination of No Adverse Effect.

US 36 (The Denver to Boulder Turnpike) (FEIS Site ID: 5BL7529)

7.0 EXISTING SITE CONDITIONS

7.4.5 The existing US 36 is eligible for its association with the regional suburban development and commerce in the Denver and Boulder regions and as a good example of limited-access roadways built in the 1950s.

7.4.6 The original turnpike alignment would be replaced and realigned as part of the Project with the existing appearance and integrity of the highway segment being destroyed as part of the undertaking. Therefore, CDOT and FHWA have determined the Project would result in the determination of Adverse Effect.

Davidson Ditch (FEIS Site ID: 5BL453)

7.4.7 Davidson Ditch was originally constructed in 1872 and is eligible for its role in the development of water rights and agriculture in Boulder County. CDOT and FHWA have determined that the proposed undertaking would result in the determination of No Adverse Effect.

Goodhue Ditch (FEIS Site ID: 5BL2719)

7.4.8 The entire Goodhue Ditch is eligible due to its association with the development of water rights and agriculture in Boulder County in the latter half of the 19th century. CDOT and FHWA have determined that the proposed undertaking would result in the determination of No Adverse Effect.

Marshallville Ditch (FEIS Site ID: 5BL5042)

7.4.9 The entire Marshallville Ditch is eligible due to its association with the development of water rights and agriculture in Boulder County in the latter half of the 19th century. CDOT and FHWA have determined that the proposed undertaking would result in the determination of No Adverse Effect.

Shearer Ditch (FEIS Site ID: 5BL5040)

7.4.10 Shearer Ditch was originally constructed in 1860 and is eligible for its role in the development of water rights and agriculture in Boulder County. CDOT and FHWA have determined that the proposed undertaking would result in the determination of No Adverse Effect.

South Boulder Canyon Ditch (FEIS Site ID: 5BL750)

7.4.11 The entire South Boulder Canyon Ditch is eligible due to its association with the development of water rights and agriculture in Boulder County in the latter half of the 19th century. CDOT and FHWA have determined that the proposed undertaking would result in the determination of No Adverse Effect.

7.0 EXISTING SITE CONDITIONS

Viele Homestead (FEIS Site ID: 5BL5036)

- 7.4.12 The homestead was determined eligible based on its association with 19th century Boulder County agriculture and the overall integrity of the farm structures built during the period of significance (1880s to 1949). The preferred alternative design would have no effect to this resource and CDOT and FHWA have determined the proposed undertaking would result in the determination of No Historic Properties Affected.

McGinn Ditch (FEIS Site ID: 5BL4165)

- 7.4.13 The entire McGinn Ditch is eligible due to its association with the development of water rights and agriculture in Boulder County in the latter half of the 19th century. CDOT and FHWA have determined that the proposed undertaking would result in the determination of No Adverse Effect.

Native American Consultation

- 7.4.14 As part of the required consultation process conducted by the FEIS, 16 federally recognized tribes with an established interest along the entire US 36 route were invited to participate as consulting parties. The consultation process encompassed both Phase 1 and Phase 2 of the US 36 corridor.
- 7.4.15 Six tribes (Cheyenne and Arapaho Tribes of Oklahoma, Northern Cheyenne Tribe, Northern Arapaho Tribe, Northern Ute Tribe, and Southern Ute Indian Tribe) responded to the invitation, each indicating an interest in participating as a consulting party. No specific issues of concern regarding the proposed undertaking were raised by any of the tribes in the context of places of religious or cultural significance. However, two tribes requested that information related to Native American archaeological and historic sites that may be discovered during any subsequent field survey remain confidential.

Conclusions:

Based on the archeological information that has been collated and made available, we are of the opinion that archeological considerations are Low risk.

8.0 DESIGN REVIEW

8.1 Introduction

- 8.1.1 The Project design, with consideration to the background technical reports and documents included with the RFP, has allowed the DBJV to prepare a program incorporating all the existing known information, working towards a unique final design, which gives the most appropriate and cost effective solution to the requested proposal.
- 8.1.2 The purpose of this design review is to provide a high level assessment of the design considerations proposed by the DBJV and to identify any system(s) or design considerations that are inconsistent with the requirements of the RFP.
- 8.1.3 The LTA has reviewed the RFP and its attachments. The LTA has also reviewed the DBJV's conceptual design packages to verify compliance with the RFP.
- 8.1.4 We note that the prepared design is preliminary in nature and indicates design intent by means of preliminary drawings and narrative to address the required scope of the Project. As we would expect at this stage of the Project, the design is incomplete and is a work in progress with critical elements having reached approximately 30 – 40% development. There is, however, sufficient information to consider the DBJV's response in addressing technical requirements, functionality and risk to the Finance Parties. Project Co has informed us on an email (dated November 19, 2013) that they currently have approximately thirty (30) engineers working on the design and that it has currently advanced to the following stages:

- Grading and Drainage 60%
- Irrigation Crossings 80%
- Bridges and Walls 30%
- Geotechnical 30%
- Wet Utilities 20%
- Dry Utilities 20%
- Roadway 60%
- ITS/ETCS 20%
- Maintenance of Traffic 30%

8.2 Project Outline

- 8.2.1 The Plenary Roads Denver team includes a joint venture of Ames Construction, Inc. and Granite Construction Company as the lead design-build contractor. The design-build team has retained HDR Engineering, Inc. to serve as the lead design firm. This is the same design-build team structure that is currently delivering the adjacent US 36 Phase 1 Managed Lanes Project. This continuity in team members allows transfer of site specific knowledge and efficiencies learned through the initial phases of the Phase 1 project.
- 8.2.2 The Project scope includes the reconstruction of approximately 5 miles of the existing US 36 from 88th Street in Louisville/Superior to Table Mesa/Foothills Parkway in Boulder. The project is an extension of Phase 1, which is currently under construction, and will mirror the same features.
- 8.2.3 The scope of the US 36 Phase 2 Managed Lane Project includes the following elements:

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- Add an express lane in each direction of the US 36. The express lanes will be the inner most lanes for use by Bus Rapid Transit (“BRT”), High Occupancy Vehicles (“HOV”) and tolled Single Occupancy Vehicles (“SOV”);
- Reconstruct existing pavement on US 36 and widen the highway to accommodate 12 foot wide inside and outside shoulders;
- Add BRT improvements, including new electronic display signage at stations and bus propriety improvements at ramps;
- Install Intelligent Transportation Systems (“ITS”) for tolling, transit, traveler information and incident management;
- Install a separate commuter bikeway along much of the corridor; and
- Improve Regional Transportation District (“RTD”) stations along the corridor, including new canopies with enhanced weather protection.

8.2.4 The Western mainline reconstruction limits of the US 36 Phase 2 begins where the Eastbound on-ramp and Westbound off-ramp of the Foothills Parkway tie with the US 36 mainline. Reconstruction of the ramps or the intersection is not part of the Project scope. While the mainline construction begins at the Eastern side of the US 36 / Foothills Parkway intersection, construction of a separated 12 foot wide bikeway begins at Table Mesa Drive, approximately 2,000 feet West of the beginning of the mainline works.

8.2.5 The Western extent of the mainline construction is given by Station 1120+00. Station numbering is a measure of hundreds of feet along the centre line of the roadway and increases from STA 1120+00 as the Project progresses eastward. The Eastern extent of the mainline construction, and the point where Phase 2 connects with Phase 1, is at STA 1388+00.

8.2.6 At the Western extent, the mainline configuration consists of 2 general purpose lanes in each direction, 1 auxiliary lane in each direction connecting with the ramps to the Foothills Parkway and 12 foot wide shoulders alongside the central median and outside verge of the carriageway in each direction. The separated bikeway progresses alongside the Southern side of the mainline at the Western Project extent.

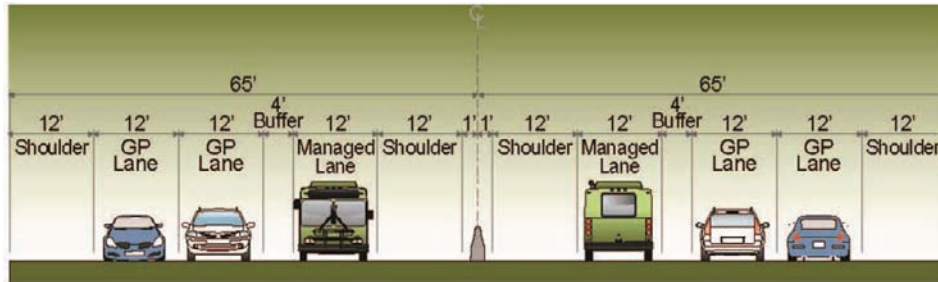
8.2.7 Progressing eastward, the US 36 crosses the South Boulder Creek at STA 1142+00 where the existing 3-span steel girder structure is to be widened by 33.5ft to accommodate the new road configuration. The bike path also passes underneath this structure to continue eastward along the Northern side of the mainline.

8.2.8 The “managed lanes” begin at STA 1163+50 where the roadway configuration will consist of a managed lane separated by a 4 foot buffer from 2 general purpose lanes in each direction. The buffer zone will be delineated by line markings and will not consist of a physical barrier between managed and general purpose lanes. Twelve foot wide shoulder lanes will continue along the inside median and outside verge in both directions. This configuration continues eastward for the remaining 4.25 miles of the Project to its Western extent where US 36 Phase 2 ties with Phase 1. Minor exceptions to this configuration include additional auxiliary lanes

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at the McCaslin Boulevard Interchange and sections where the buffer zones are eliminated to allow entry or egress onto or from the managed lanes.

Figure 8.1: Final US 36 Lane Configuration



Source: Final Config MOT Sec 2_9_A 40987.pdf

- 8.2.9 Immediately East from the beginning of the managed lanes configuration described above the mainline passes underneath an existing bridge structure at Cherryvale Road. The widening of the mainline will have no impact on this structure which will remain as is.
- 8.2.10 East of Cherryvale Road the reconstructed mainline continues in the managed lanes configuration with the new bikeway continuing along the Northern side of the mainline and then proceeding north to provide access to Louisville/Superior area. The bikeway then re-joins the mainline on the East side of the McCaslin Interchange. At STA 1267+50, before the bikeway turns toward Louisville/Superior, the preliminary design shows a spur of the bikeway passing underneath the mainline carriageway to connect with Marshall Drive on the South side of US 36. A 14x10 foot culvert will be utilized for this crossing though a more detailed design is not yet available.
- 8.2.11 The McCaslin Interchange will be reconstructed as part of the Project scope, with the existing partial clover leaf configuration being replaced by a diverging diamond configuration. Two new bridge structures will be required to accommodate segregated BRT ramps and the existing overpass structure is to be widened. New entry and exit ramps will be constructed for each direction as part of the interchange reconstruction.
- 8.2.12 East of the McCaslin Interchange, the bikeway resumes on the North side of the mainline until it crosses the mainline via an existing underpass at Coal Creek at STA 1335+50. A new prefabricated bridge will also be constructed on the South side of the mainline to carry the bikeway over Coal Creek. East of Coal Creek, the bikeway passes under the mainline once again via an existing underpass at STA 1357+00 and then continues east to 88th street at the Eastern extent of the Project.
- 8.2.13 The US 36 mainline continues East from McCaslin Interchange in the managed lanes configuration described above. Existing irrigation pipes pass over the US 36 mainline at STA 1362+00 supported by three concrete columns. The pipe crossing will be replaced by a utility bridge consisting of a U-shaped concrete tub girder with new piping provided within the girder. The extents of mainline reconstruction end immediately East of 88th Street. The overpass structure carrying 88th Street over the US 36 will not be impacted by the widening of the highway underneath.

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8.2.14 Interchanges:

- Foothills Parkway / US 36 Interchange (No Impact); and
- McCaslin Boulevard Interchange (Reconstruction).

8.2.15 Bridge Structures (West to East):

- Table Mesa Drive (No Impact);
- Foothills Parkway to US 36 Eastbound On-Ramp (No Impact);
- South Boulder Creek Bridge (Widening);
- Cherryvale Road (No Impact);
- Pedestrian Overpass at McCaslin Interchange (No Impact);
- US 36 to McCaslin Boulevard Eastbound Off-Ramp (New Structure);
- McCaslin Boulevard to US 36 Westbound On-Ramp (New Structure);
- McCaslin Boulevard Overpass (Widening);
- Bikeway over Coal Creek (New Structure); and
- Utilities Bridge (New Structure).

8.3 *Pavement Design*

8.3.1 Pavement design options have been developed by the DBJV in collaboration with the O&M team to ensure the design reflects the lifecycle requirements of the Project. Geotechnical factors, pavement design methods, roadway construction specifications and operating and handback requirements have all been considered during pavement design.

8.3.2 The DBJV will provide a pavement design that is consistent with the adjacent US 36 Phase 1 Project. A concrete surface course solution will be implemented throughout the reconstruction of the mainline while ramps and artillary roads will be asphaltic surface course with the exception of 2 new concrete surfaced bus laybys on ramps at the McCaslin Interchange.

8.3.3 The proposed pavement design takes into consideration knowledge of the existing paving structure garnered from cores taken during earlier ground investigations. An optimized design has been proposed whereby full reconstruction is provided on sections where the underlying pavement needs to be replaced whereas concrete overlay will be provided where the underlying pavement structure is sound. In sections where pavement overlay is utilized, full depth pavement widening will be constructed on the outside verges in each direction.

8.3.4 The sections of new reconstruction or overlay are intermittent throughout the 5 mile length of mainline included within the scope of the Project, depending on conditions of the existing pavement structure. New pavement reconstruction will be carried out on a total of approximately 2.9 miles or 56.5% of the overall mainline length. Figure 8.1 below provides the proposed concrete pavement structures to be employed on the Project.

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Figure 8.2: US 36 Phase 2 Concrete Pavement Structures



Note:
 PCCP Portland Cement Concrete Pavement
 ABC Aggregate Base Course
 R \geq 50 Compacted Subgrade with Resistance Value \geq 50
 MT Moisture Treated Clay

8.3.5 All mainline pavements throughout the Project will employ a 10 inch concrete surface course. This is the same design being implemented on the US 36 Phase 1 Project which will streamline operations and lifecycle considerations through the Term of the Project.

8.3.6 Initial pavement design was carried out by the DBJV according to the American Association of State Highway and Transportation Officials' ("AASHTO") soon to be adopted Mechanistic-Empirical Pavement Design Guide ("MEPDG") which uses project specific traffic, climate, and materials data for estimating damage accumulation over a specified pavement service life. Initial results from the design process implied that a 9/9.5" PCCP surface course would be sufficient to meet the design life, traffic loading and local climatic conditions of the US 36. However, following submission of this alternative through Alternative Technical Concept ("ATC") 19 to HPTE, the 10" PCCP solution carried in the indicative design will be implemented.

8.3.7 However, other optimization elements within ATC 19 have been approved by HPTE which includes the use of intermittent overlay where underlying pavement structure is adequate, and the minimization of imported clay fill through the use of compacted and moisture treated subgrades.

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- 8.3.8 The RFP requires that 3 feet of treated or worked subgrade be provided as a buffer to the natural clays underneath. The natural clays are prone to swelling and contracting which could cause differential settlement and an uneven driving surface. The RFP provides for 24 inches of compacted clay with Resistance Value ("R-Value") greater than 50 over a 12 inch layer of moisture treated clays underneath. The solution proposed by the DBJV, shown in Figure 8.2 above, provides 18 inches of compacted clay with R-Value greater than 50 and 18 inches of moisture treated clays. Both solutions provide the total 3 foot buffer between the aggregate base layers of the roadway and the natural, swell prone clays underneath. However by reducing the requirement of compacted clays, the DBJV has reduced the amount of imported suitable fill required by increasing the use in-situ clay. The moisture treated clay layer refers to the natural in-situ clay which will be excavated, tested for swelling, and then processed by either drying or addition of water to reduce its swell potential to suitable levels. This is a process that is successfully being implemented on the US 36 Phase 1 of the Project.
- 8.3.9 The proposed pavement approach to carriageway shoulders includes the use of tied PCCP. Tied concrete shoulders (with tie bars) provide stress reduction along the longitudinal joint between the outside lane and the shoulder. The largest amount of stress from truck tires is along the outside edge of pavement due to the outside lane being the most frequently trafficked lane by trucks. The tied shoulder then spreads the load more uniformly across the longitudinal joint. This is superior to an asphalt concrete shoulder as the shoulder does not connect to the PCCP and does not provide that edge support like a tied PCC shoulder.
- 8.3.10 The PCCP solution will utilize 15 foot joint spacing which creates shorter slabs, reducing the potential of mid-panel transverse cracking. The proposed solution also utilizes 1.5 inch dowel bars across transverse joints which assists load transfer between panels and reduces the potential for faulting at joint locations.
- 8.3.11 In sections where an overlay will be provided over existing pavement and the outside verges will be widened with new full pavement construction, the overlay thickness will be maintained the same as the adjacent new full structure pavement sections. Also, the widening sections include a 2 inch layer of HMA in order to match the existing pavement structure within the carriageway that is being overlaid. This uniformity of pavement structure will assist with smoothness profiles and maintenance requirements.
- 8.3.12 Overall, the DBJV have proposed a conservative design approach for the concrete paving sections with an anticipated design life of up to 50 years which is significantly greater than the 30 years acquired by the RFP. This will be of significant benefit to maintenance and lifecycle requirements throughout the 50 year Services Period.
- 8.3.13 For ramps and McCaslin Boulevard, the DBJV will utilize asphaltic pavement design, the structural composition of which is shown in Figure 8.3 below. The asphalt pavement is in accordance with the requirements of the RFP. An asphaltic pavement solution will provide greater schedule flexibility during the shifting of traffic patterns at McCaslin Boulevard during construction activities.

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Figure 8.3: US 36 Phase 2 Asphalt Pavement Structure



Note:

| | |
|------|--|
| HMA | Hot Mix Asphalt |
| ABC | Aggregate Base Course |
| R≥50 | Compacted Subgrade with Resistance Value ≥50 |
| MT | Moisture Treated Clay |

Conclusions:

We consider the approach to pavement design by the DBJV as appropriate whereby both rigid and flexible pavement designs will be implemented. The design team has also made appropriate consideration of the infrastructure lifecycle and handback requirements and has incorporated this into its pavement design.

It is our opinion that pavement design represents a low risk to the Project.

8.4 Bridge Structures

- 8.4.1 A total of 6 bridge structures will be constructed or widened as part of the Project scope. Two new structures will be constructed to facilitate ramps at the McCaslin Interchange, 2 existing bridges will be widened, 1 new structure will be provided as part of the bikeway and 1 new utilities bridge will be constructed. All bridges have been designed to a 75 year design life criteria.
- 8.4.2 All of the new bridges are designed to the Ultimate Configuration. The substructure locations and span arrangements accommodate the future Ultimate Configuration lanes and ramps. No rework will be required when elements of the ultimate US 36 are constructed.
- 8.4.3 CDOT Class H concrete will be utilized in all bridge decks that carry vehicular traffic. This concrete class should limit water intrusion and minimize the potential for corrosion of deck reinforcing.

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8.4.4 All new bridges are designed as joint-less structures, utilizing integral abutments that do not require bearings or expansion joints. Expansion joints are located only at the ends of the approach slabs where the roadway pavement is concrete. Project Co has confirmed that integral abutments will be used in lieu of expansion joints. They are envisaging that they will not have movement more than ½ inch and that crack sealing will be performed annually are part of the rehabilitation process. The lack of expansion joints eliminates, to a large extent, the seepage of water onto abutment seats, pier caps and girder ends, which is a significant cause of concrete deterioration.

8.4.5 All bridge decks will have a waterproofing membrane and asphalt-wearing surface, in accordance with CDOT standard practice, which will further protect the bridge from intrusion of water and chlorides. The primary maintenance activity will be the normal milling and replacement of the asphalt-wearing surface and waterproofing membrane.

South Boulder Creek Bridge

8.4.6 The existing bridge carrying the US 36 over South Boulder Creek Bridge is to be widened by 33.5 feet on its Northern side to accommodate the new bikeway and an additional westbound auxiliary lane connecting with the off ramp to the Foothills Parkway. The managed lanes configuration does not begin until further East than the South Boulder Creek Bridge.

8.4.7 The existing bridge is a steel girder design with 3 spans and the widening will mimic the existing design to ensure continuity in rigidity across the structure. From the preliminary design drawings provided by the DBJV, it appears that the existing structure is supported by concrete abutments on the West and East ends and by 2 continuous solid pier walls between the abutments. All abutments and piers appear to be supported on spread footing founded within the underlying bedrock when compared with geotechnical drilling results conducted by Yew and Associates (Refer to Section 7.3 of this report). The support system for the widening of the bridge structure will continue with this approach. The DBJV has confirmed that no additional piling is required at South Boulder Creek Bridge. South Boulder Creek will be built on spread footings that match the existing structure.

Eastbound Off Ramp Bridge at McCaslin Interchange

8.4.8 A new single span bridge structure utilizing shallow concrete box girders shall be constructed to carry the new Eastbound off ramp at the McCaslin Interchange over the new eastbound bus ramp at that location. The structure is located where the ramp widens from 2 to 3 lanes and so is approximately 44 feet wide at the Western abutment and approximately 47 feet wide at the Eastern abutment. The single span of the bridge is approximately 33.5 feet long with a max structure depth of 2.5 feet.

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- 8.4.9 The bridge superstructure will be supported by concrete abutments over steel H-piles. It is not clear from the preliminary design drawings what depth the piles are to be driven but should be founded in the underlying bedrock where possible. From the preliminary ground investigations conducted by Yew and Associates it is not clear what depth bedrock is located at the McCaslin Interchange. The DBJV have confirmed that the depth of the piles will be established during the design portion of the works.

Westbound On Ramp Bridge at McCaslin Interchange

- 8.4.10 The Westbound on ramp structure is a similar bridge structure as that employed for the Eastbound off ramp with a 91 foot single span from abutment to abutment, utilizing concrete box girders and total superstructure depth of 3.5 foot. The structure carries the Westbound on ramp over the westbound bus ramp. Again, the superstructure is supported by concrete abutments on steel H piles which will likely be driven to bedrock though depth of piling is not indicated on the preliminary drawings. The DBJV have confirmed that the depth of the piles will be established during the design portion of the works.

McCaslin Boulevard Overpass

- 8.4.11 McCaslin Boulevard passes over US 36 via an existing 2 span concrete NU girder bridge. As part of the scope of works the bridge is to be widened 12 foot symmetrically on each side to increase trafficked lanes from 2 to 3 in each direction. A segregated pedestrian walkway along the central median will also be provided. Each bridge span is 95 feet long with a total length from abutment to abutment of 192.5 feet. The bridge deck is currently 85 feet wide which will be extended to 109 feet wide with the widening works.
- 8.4.12 The existing structure is supported on concrete abutments over steel H piles with a continuous pier wall on raft foundation provided as the central support. These foundation systems would be extended on each side for the widened sections, though as previously mentioned depth of piling is not evident on the preliminary design drawings and confirmation that the pier spread footing is bearing on bedrock is to be confirmed. The DBJV have confirmed that the bearing strata of the foundations will be established during the design portion of the works.
- 8.4.13 As part of the upgrade works to McCaslin Boulevard Overpass, an architectural steel arch feature will be constructed along the central median, under which the pedestrian crossing will be located. The steel arch is designed to only be self-supporting and has no structural bearing on the bridge itself. The arch is being provided to mimic existing nearby pedestrian bridges.

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Figure 8.4: Render of McCaslin Boulevard Bridge Architectural Arch



Source: FHU and HPTE

Bikeway over Coal Creek

- 8.4.14 Installation of a 12 foot wide prefabricated [steel] truss bridge is proposed to carry the bikeway over Coal Creek, a span of 61.5 feet. The prefabricated bridge will have a 6 inch concrete deck and will be supported by concrete abutments over steel pile foundations. The design of this bridge is preliminary in nature and the truss dimensions nor depth to founding strata is not clear. The DBJV have confirmed that the depth of the piles will be established during the design portion of the works.

Utilities Bridge

- 8.4.15 The utilities bridge will be a pre-stressed concrete tub girder which will carry 3 irrigation pipes within the U of the tub girder. The structure will be a 2 span structure with a total length of 214.5 feet from abutment to abutment and supported by a concrete column at the central median. The structure should not act as a challenging feature to construct with the main consideration being communication with irrigation companies regarding design approval and construction scheduling.

Conclusions:

Bridge superstructure and substructure designs have been standardized to the extent possible throughout the Project. By doing so, procurement of structure elements will be more cost effective, construction can be expedited and overall cost kept to a minimum.

8.0 DESIGN REVIEW

The scope of works involving bridge structure is relatively small on this Project and does not include any significantly challenging design or construction elements. We have noted that the foundation design on a number of structures appears to be unclear from preliminary design drawings; however the experience on the adjacent US 36 Phase 1 has been that piling requirements have not been at excessive depths.

It is our opinion that bridge design and construction represents a low risk to the Project.

8.5 Noise Attenuation

8.5.1 CDOT's preliminary design studies conclude that noise walls are not required for this Project. The DBJV's proposed design does not differ from the indicative design sufficiently to warrant any additional noise attenuation features.

Conclusions:

It is our opinion that noise attenuation represents a low risk to the Project.

8.6 Drainage Design

8.6.1 Drainage systems typically incorporate roadway sections that are crowned in the median, resulting in flow of surface water to the verges and away from the pavement structure. Ditches will then pick up water flow along the verges to be conveyed to attenuation ponds or outfalls to local water courses. In areas of super elevation (where on a bend in the outside lane is higher than the median and the road cross fall falls from the verge to the median) inlets will be provided along the median barrier or collect water. All mainline pavement will be constructed with a cross slope of 2 percent to facilitate drainage. All pavement joints will be sealed to prevent water infiltration into the pavement structure.

8.6.2 Storm drainage trunk lines, where required in areas where ditches are not possible due to Right of Way constraints, retaining walls or roadside barriers, will be built in their ultimate locations and will be sized to handle ultimate flows. Reinforced concrete pipe is proposed for the majority of the closed drainage requirements which is standard industry practice. Where drainage pipe is required within Mechanically Stabilized Earth ("MSE") walls, high-density polyethylene pipe (plastic pipe) will be utilized with welded joints. This is good practice to ensure water does not leak from the pipe causing instability within the MSE wall.

8.6.3 Attenuation and settlement ponds are to be constructed in their ultimate locations, except where ultimate ramp layout conflicts with currently available Right of Way. Outlet structures are to be constructed so that they can be modified to accommodate ultimate flows rather than rebuilt.

8.6.4 Cross drains and irrigation structures are to be designed in ultimate locations and to ultimate flow volumes. Cross drains will be constructed to their ultimate length where permitted within the current Right of Way.

8.0 DESIGN REVIEW

Conclusions:

It is our opinion that drainage design represents a low risk to the Project.

8.7 **Intelligent Transport System (ITS) and Electronic Toll Collection (ETC)**

8.7.1 The ITS/ETC elements for Phase 2 will be an extension of the work currently being performed on Phase 1. As part of the Phase 1 work, the fibre optic cable backbone will be installed along the entire Project length with the exception of at the immediate vicinity of the McCaslin Interchange. The Phase 2 ITS/ETC elements will be integrated with this backbone to provide a complete system for the corridor.

8.7.2 The DBJV proposes to install ITS/ETC components taking into account Ultimate Configuration by placing the devices to minimize any disruptions caused by the future widening. Overhead sign bridges, median cantilevers and butterfly structures will be constructed in their ultimate locations. Overhead cantilever structures that are placed on the outside roadway shoulder for the interim configuration will need to be relocated when the Ultimate Configuration is constructed. However, these structures are able to be reused, and will only require construction of a new drilled shaft foundation. Other devices, such as poles for CCTV cameras, detectors and travel time devices will be placed in their ultimate locations wherever possible.

Conclusion:

It is our opinion that installation of ITS/ETC hardware represents a low risk to the Project.

8.8 **Traffic Management Plan**

8.8.1 The DBJV will be required to maintain 2 trafficked lanes on the US 36 in each direction of, maintaining the existing number currently available on the US 36. The DBJV's maintenance of traffic plans include a construction phasing plan that will maintain the existing lanes on the US 36 and interchange ramps, maximize cross street and intersection capacity and maintain access to all existing bicycle/pedestrian movements.

8.8.2 After evaluating alternative methods of construction phasing, the DBJV intends to implement the same methods as it has done on the US 36 Phase 1 Project. This will involve construction of the Project in halves, the steps for which are as follows:

- Temporarily widen Eastbound lanes to accommodate 4 lanes of traffic;
- Switch all traffic onto Eastbound side of the mainline;
- Construct final configuration of Westbound side of mainline;
- Switch all traffic onto Westbound side of mainline; and
- Complete final configuration of eastbound side of mainline.

8.0 DESIGN REVIEW

- 8.8.3 All stages will maintain 2 lanes of traffic in each direction as required by the RFP. Temporary ramps will be constructed at the interchanges with McCaslin Boulevard and Foothills Parkway to ensure no ramp closures are required. While the Project scope does not include works to the interchange with Foothills Parkway, new auxiliary lanes are to be provided on the US 36 which necessitates the temporary ramps at that location.
- 8.8.4 A Traffic Management Plan and Incident Management Plan will be generated following being notified Preferred Proponent. The DBJV have the added benefit of having already developed similar plans for the US 36 Phase 1 Project which will allow inclusion of requirements already discussed with CDOT and will also enable continuity of traffic management approach which will make the process easier for road users.

Conclusion:

The DBJV is utilizing knowledge already garnered on the US 36 Phase 1 Project which will be valuable when assessing traffic patterns and work requirements. The DBJV also have the benefit of being able to seek synergies of work phasing between Phase 1 and 2 during the period of overlap of construction periods.

The traffic and work phasing proposed for the Project is a simple approach that should provide the least amount of disruption to road users throughout the US 36 corridor.

9.0 SCHEDULE REVIEW

9.1 Key Dates & Durations

9.1.1 The following is based on the construction schedule, “**US36 Concession Project – UWEW Progress Report – US36PH2**” (the “Schedule”). We note that the level of detail contained with this schedule is extremely advanced for this stage of the Project.

9.1.2 Through Amendments 1 & 2 of the CA; Project Co and HPTE have agreed to a deferred Financial Close Deadline Date of January 31, 2014; as it was not possible to achieve TIFIA financing by the original Financial Close Deadline Date of October 4, 2013. In order to avoid a delay to the Planned Full Services Commencement Date and The Full Services Commencement Longstop Date; Project co and HPTE have agreed to proceed with a portion of the Phase 2 Construction Work, which includes “Utility Works” and “Concessionaire Financed Early Works”. Project o has confirmed that a third amendment o the CA will be issued post FC; that agrees a revised FC date that is currently targeted for February 6, 2014. We note that this will not impact the current progress of the early works that have been ongoing pre-FC.

9.1.3 The schedule identifies the below key dates and durations.

- Notice to Proceed 1 (FC) **February 2, 2014**
- Project Co Mobilization **October 23, 2013**
- Utility Works Early Works Commence **August 1, 2013**
- Utility Works Early Works Complete **July 1, 2017**
- Design Management Commence **August 1, 2013**
- Design Management Complete **December 30, 2015**
- Roadway Construction Commence **November 6, 2013**
- Roadway Construction Complete **December 30, 2015**
- Structures (Phase 1, 2 & 3) Commence **December 11, 2013**
- Structures (Phase 1, 2 & 3) Complete **July 28, 2015**
- Project Complete – Managed Lanes Open for Traffic **December 30, 2015**

9.2 CA Requirements

9.2.1 We received a copy of the final executed CA, dated June 27, 2013. Section 2.1.3 of Schedule 5 outlines the technical requirements for Schedule Management. The pertinent points are outlined below:

- The Contract Schedules shall represent a practical plan to complete the Work before the Planned Full Services Commencement Date and convey the intent in the manner of the prosecution and progress of the Work.
- The Contract Schedules shall include the planned execution of the Work in accordance with the Contract Documents. The Contract Schedules shall include involvement and coordination, Utility Owners, Governmental Persons, engineers, architects, Sub-Contractors, and Suppliers in the development of the Original Initial Schedule, Revised Initial Schedule, and updating of subsequent Monthly Progress Schedules.

9.0 SCHEDULE REVIEW

- The Contract Schedules shall represent the requirements of the Contract Documents and the Work shall be executed in the sequence and duration indicated in the Contract Schedules.
- All Contract Schedules shall be developed consistent with the Accepted WBS and the Planned Full Services Commencement Date.

9.3 Pre-Construction Works Review

9.3.1 The DBJV will commence the following works as part of the Utility Works Early Works (“UWEW” Agreement):

| Design | | |
|-------------------------------------|-----------------------------------|---|
| Quality Management | Environmental Plans | Roadway/Drainage Early Submittals |
| Irrigation Crossing Design Packages | Roadway/Drainage Final Submittals | Roadway/Traffic Submittals/signing/Striping /Signals/Lighting |
| Pavement Design | Structures Submittals | Retaining Wall Layout / Design Submittals |
| Maintenance of Traffic Submittals | ITS Design Package | Geotechnical Reports and Field Investigations |
| Construction | | |
| Environmental Management | Procurement | Maintenance of Traffic |
| Roadway | Removals | Excavation |
| Drainage | Utilities | |

9.3.2 The UWEW package was scheduled to commence on August 1, 2013 and is scheduled to complete on July 1, 2014. A detailed breakdown of the activities that identified in Appendix A of the CA Amendment No.1 for the UWEW have been included within the schedule

Conclusions:

The DBJV has highlighted the aforementioned works to be performed prior to Financial Close. Durations and lead-in times for these works appear to be satisfactory in terms of duration and logic. This prudent approach to planning enables Project Co and the DBJV to commence construction activities prior to FC to avoid a delay to the Planned Full Services Commencement Date.

9.0 SCHEDULE REVIEW

9.4 Construction Works Review

9.4.1 Project Co and the DBJV have prepared the schedule using a detailed Critical Path Method (CPM). The critical path is the longest path of the scheduled activities and the earliest and latest each activity can start and finish with our impacting the completion date.

9.4.2 The Critical Path runs through the following areas of scheduled activities:

| | | |
|--|--|---|
| Plenary Mobilization | Design – MOT Phase 0 | Design – Early Roadway Excavation / EMB Drain |
| Design – Irrigation and Floodplain | Design – Utilities | Utility Coordination |
| Development, submittal and acceptance of Original Initial Schedule | Procurement of drainage and roadway materials | QA Plan development and submission |
| Creation of DBE and ESB Plans | Creation of Contraction Welfare and Professional Services Plan | HPTE – Approve Public Information Plan |
| Storm water Management Plan | Erosion Control and Land Clearing | Maintenance of Traffic |
| Roadway Construction Phases 1, 2 & 3 | Drainage and Inspection Phases 1, 2 & 3 | Utility Bridge over US36 |
| Utilities | ITS Phase 2 | Integrate and Test Electronic Tolling System |

9.4.3 Maintenance of Traffic (MOT), Roadway works, Drainage, Utilities, Structures and the Intelligent Transportation System (ITS) have all been incorporated into the construction section of the schedule.

9.4.4 Each of the aforementioned disciplines have been broken down into Phase 0, 1, 2, 3 & 3B areas of work and sequenced and lined to maintain continuity of work for the various sub teams within the DBJV. This logical and practical approach ensures efficiency and fluency to the DBJV’s internal coordination of the teams as the Project develops.

9.4.5 In addition to the UWEW Package a lot of the project management, design and procurement activities are scheduled to commence prior to FC and have been captured in the Amendment No.1 of the CA. These have been accounted for under the Concessionaire Financed Early Works.

9.4.6 Generous allowances have been given to Public utility relocations in each Segment to allow for the intricate coordination process.

9.4.7 The schedule also provides a breakdown of the structures into the main components, Walls, Utility Bridge, South Boulder Creek Bridge, McCaslin Bridge and Ramps and

9.0 SCHEDULE REVIEW

the Bikeway Bridge. It appears that the DBJV has provided adequate timing for each and logic/sequencing are clearly identified.

9.4.8 The DBJV has also identified critical dates within the schedule for procuring sub-contracts for Drainage, Retaining Walls and Structures, which are linked to the design activities that are predecessors to them.

9.4.9 The full scope of construction work is scheduled to occur between October 2013 and December 2015 with the schedule considering Traffic Availability for the New Infrastructure to be on December 30, 2015. The high level tasks associated with the roadway works include:

| | |
|---------------------------------------|--|
| Erosion Control and Land Clearing | August 1, 2013 to December 30, 2014 |
| Maintenance of Traffic | October 11, 2013 to April 30, 2014 |
| Roadway Construction Phase 1 | November 6, 2013 to August 8, 2014 |
| Roadway Construction Phase 2 (Step 1) | February 7, 2014 to October 30, 2014 |
| Roadway Construction Phase 2 (Step 2) | July 29, 2014 to April 17, 2015 |
| Roadway Construction Phase 3 (Step 1) | October 10, 2014 to July 21, 2015 |
| Roadway Construction Phase 3 (Step 2) | January 26, 2015 to December 30, 2015 |
| Drainage & Irrigation | November 5, 2011 to October 29, 2015 |
| Structures Phase 1 | December 11, 2013 to July 21, 2014 |
| Structures Phase 2 | May 20, 2014 to December 5, 2014 |
| Structures Phase 3 | February 27, 2014 to July 28, 2015 |
| Utilities | October 4, 2013 to December 18, 2014 |
| Electrical | September 11, 2014 to June 12, 2015 |
| ITS | June 17, 2014 to October 28, 2015 |

9.4.10 Project Co will use Primavera P6 scheduling software prepare and update 90-day detailed operation schedules and 3 week construction schedules. They will prepare daily schedules for personnel and equipment assignments through weekly scheduling and coordination meetings. These activities form part of the ongoing schedule control and monitoring that will be implemented during design and construction.

9.5 Handover & Close-Out Procedures Review

9.5.1 At present no activities have been included for the Project close-out procedures.

9.5.2 Contractor's deficiencies and inspections by HPTE should be integrated within the schedule before the Managed Lanes or GP Lanes are handed over and re-opened to the public. We would expect to see activities related to these items being included as the schedule is developed in more detail during the Construction Period.

9.5.3 We would suggest than an Independent Safety Audit is included into the schedule. We would suggest initial safety audits occur earlier into the schedule and be divided between individual project Phases due to the scale and complexity of the project to ensure the intended Traffic Availability date is achieved. Considering the long lead

9.0 SCHEDULE REVIEW

time to these activities, the DBJV has yet to reach this level of detail with the current development of the schedule.

- 9.5.4 The DBJV's schedule envisages final completion of all Project works by the Traffic Availability Target Date.

9.6 Comparable Projects

- 9.6.1 We have compared the schedule for this Project with the schedules for 5 other projects in our database. Table 9.1 provides the location, length, value, duration and completion date and status.

Table 9.1 Comparable Projects

| Project | Mainline Length (km) | Value (\$000's) | Duration (months) | Completion Date | Status |
|-------------------|----------------------|-----------------|-------------------|-----------------|-------------------------------|
| Central Alberta | 11 | 326,548 | 34 | Oct-07 | Completed |
| Central Alberta | 22 | 995,057 | 41 | Dec-11 | Traffic Availability Achieved |
| Southern BC | 13 | 746,000 | 40 | Jun-09 | Completed |
| Southern Manitoba | 2 | 137,027 | 40 | Jun-13 | Traffic Availability Achieved |
| Southern Ontario | 12 | 1,400,000 | 51 | Mar-15 | Under Construction |
| Northern Alberta | 27 | 13,461,725 | 53 | Nov-16 | Under Construction |
| US36 | 9.6 | 121,500 | 24 | Dec-15 | To Start |

- 9.6.2 The duration for the Project may appear generous, but due to the intricacy of widening the road structure to accommodate the Managed Lanes whilst continuing to maintain the existing traffic, we are comfortable with the current timeframe.

Conclusions:

The DBJV's schedule contains sufficient logic, float and activities to allow the Project to be designed and constructed as per its intent. The schedule provides appropriate sequence and timing of works so that Traffic Availability is achieved by the Traffic Availability Target Date.

The DBJV's schedule has incorporated critical items such as utility relocations, sequencing of structures and environmental issues in a structured manner. The schedule is a dynamic document and will be reviewed and updated throughout the duration of the Project. We will continue to review this document as design and construction progresses ensuring the schedule intentions and guidelines set out in the RFP and CA are followed.

10.0 PROJECT COST REVIEW

10.1 Basis of Project Cost Review

10.1.1 This review of the Project Costs for the US36 Managed Lanes Toll concession Project is based on the following information provided by Project Co and the DBJV to date:

- Bid Schedule (US36 Phase 2 – Fin Close Oct '13), Version 12;
- DBJV Monthly Cash Flow, dated February 21, 2013;
- Copy of Estimate for Ind Reviewer, dated February 15, 2013;
- O&M pricing, received October 18, 2013; and
- Rehabilitation pricing, received October 18, 2013.

10.1.2 Please note that due to the commercial sensitivity of the cost information provided, and as this report may be subject to third party disclosure, a number of the tables below have been redacted to omit costing information to protect the commercial interests of Project Co and DBJV members.

10.2 Project Co Costs

10.2.1 Table 10.1 below provides Project Co's current estimate for direct costs incurred by it during the construction period of the Project.

Table 10.1: Project Co Costs – Construction Period

| Item | Annual Cost | 24 Month Total | % |
|---|---------------------|---------------------|---------------|
| 1 Agencies Services | \$296,000 | \$592,000 | 17.3% |
| 2 Financial and Legal Services (Admin and Compliance) | \$127,000 | \$254,000 | 7.4% |
| 3 Insurance Premiums | \$305,000 | \$610,000 | 17.9% |
| 4 Other Direct Expenses | \$253,250 | \$506,500 | 14.8% |
| 5 SPV External Support | \$57,000 | \$114,000 | 3.3% |
| 6 SPV Mgmt Staff (with burden) | \$250,000 | \$500,000 | 14.6% |
| 7 SPV Office Facilities | \$0 | \$0 | 0.0% |
| 8 Start-up costs | \$0 | \$0 | 0.0% |
| 9 Technical Advisors | \$284,000 | \$568,000 | 16.6% |
| 10 Vehicles | \$75,000 | \$150,000 | 4.4% |
| 11 Ajustment | \$60,000 | \$120,000 | 3.5% |
| Total | \$ 1,707,250 | \$ 3,414,500 | 100.0% |

10.0 PROJECT COST REVIEW

10.2.2 Table 10.2 below provides Project Co's current estimate for direct costs incurred by it during the Services Period.

Table 10.2: Project Co Costs – Operating Period

| Item | Annual Cost | 50 Year Total | % |
|---|---------------------|----------------------|---------------|
| 1 Agencies Services | \$313,000 | \$15,650,000 | 21.9% |
| 2 Financial and Legal Services (Admin and Compliance) | \$83,000 | \$4,150,000 | 5.8% |
| 3 Insurance Premiums | \$300,000 | \$15,000,000 | 21.0% |
| 4 Other Direct Expenses | \$180,100 | \$9,005,000 | 12.6% |
| 5 SPV External Support | \$156,640 | \$7,832,000 | 10.9% |
| 6 SPV Mgmt Staff (with burden) | \$151,800 | \$7,590,000 | 10.6% |
| 7 SPV Office Facilities | \$221,000 | \$11,050,000 | 15.4% |
| 8 Start-up costs | \$0 | \$0 | 0.0% |
| 9 Technical Advisors | \$5,000 | \$250,000 | 0.3% |
| 10 Vehicles | \$0 | \$0 | 0.0% |
| 11 Ajustment/Contingency | \$20,000 | \$1,000,000 | 1.4% |
| Total | \$ 1,430,540 | \$ 71,527,000 | 100.0% |

10.2.3 Project Co has provided a detailed cost model of its projected costs over the entire Project Term. We consider the analysis provided to be of sufficient detail for the calculation of Project Co costs over the Term of the Project.

10.2.4 We are satisfied with the overall proportional breakdown of the total Project Co costs and note the appropriate shift in expenditure from its responsibilities during construction to the Operating Period.

10.2.5 Personnel expenditure is in line with anticipated staffing levels and salary assumptions appropriate to the professional categories required.

10.2.6 Suitable expenditure is accounted for against office facilities, fit out and soft costs. Duplication between budgets is suitably avoided on items that will be provided by the DBJV during construction but are then accounted for during the Operating Period.

10.2.7 Technical advisory services and vehicle expenditure are suitably accounted for throughout the Project Term.

10.2.8 There has been a notable increase to the Project Co costs during the construction period. An increase to the insurance premiums, technical advisors and vehicles have attributed to this change. These changes have made Project Co's pricing more robust and account for up-to-date pricing that they have received from the market at bid-stage.

10.2.9 There has also been a considerable increase to Project Co's costs during the Operating Period. An increase to the insurance premiums, external support and office facilities have attributed to this change. These changes have made Project Co's pricing more robust and account for up-to-date pricing that they have received from the market at bid-stage

10.0 PROJECT COST REVIEW

Conclusions:

The level of detail provided by Project Co is suitable to provide confidence in the cost projections made over the length of the Project Term.

Overall, the LTA has no concerns with the level of expenditure projected by Project Co and considers the level of contingency held within the total pricing to be in line with normal industry practice.

10.3 Capital Cost Overview

10.3.1 The review of the Capital Cost for the US36 Managed Lanes Toll Concession Project is based on the following information provided by Project Co:

- Bridge Drawings: S01 - S08
- Pavement Drawings: A1 – A2 and P01 – P26
- Roadway Drawings: B01 – B26
- Wall Drawings: WL1 – WL2 and W1 – W25

10.0 PROJECT COST REVIEW

10.3.2 Table 10.3 below provides DBJV's current estimate (dated February 25, 2013) of capital cost to perform the DB Work.

Table 10.3: Total Capital Costs

| Direct Costs | | | |
|---|----------------------|----------------------------|--------------------|
| Description | Total | Total (excl. Opt 1) | Variances |
| Surveying | \$1,282,447 | \$1,282,447 | |
| Removals & Demolition | \$1,483,621 | \$1,483,621 | |
| Mass Earthwork, Select Fill & Road Base | \$9,847,467 | \$9,847,467 | |
| Concrete Paving | \$14,862,049 | \$14,862,049 | |
| Drainage | \$9,507,423 | \$9,507,423 | |
| Bridges/CIP Ret Walls/CIP CBC's | \$13,507,577 | \$12,911,887 | (\$595,690) |
| Retaining Walls (MSE Precast Panel) | \$2,428,865 | \$2,428,865 | |
| Electrical (Lighting, Signals) & ITS | \$7,142,229 | \$7,142,229 | |
| Permanent Signs & Pavement Markings | \$2,705,188 | \$2,705,188 | |
| Fence & Metal Guardrail | \$1,024,520 | \$1,024,520 | |
| Erosion Control | \$794,680 | \$794,680 | |
| Irrigation/Landscaping/Seeding | \$913,609 | \$913,609 | |
| Maintenance of Traffic | \$7,012,620 | \$7,012,620 | |
| Utility Adjustments/Relocations | \$588,268 | \$588,268 | |
| Environmental | \$121,424 | \$121,424 | |
| Asphalt Paving | \$1,711,646 | \$1,711,646 | |
| Curb, Gutter, Bike Path & Flatwork | \$1,756,669 | \$1,756,669 | |
| Concrete Slipform Barrier/Guardrail | \$1,768,395 | \$1,768,395 | |
| Sub Mobilization & RTD Bus Stop Amenities | \$935,736 | \$935,736 | |
| Design/Bonds/Insurance/QA-QC | \$17,918,876 | \$17,762,362 | (\$156,514) |
| Subtotal | \$97,313,309 | \$96,561,105 | (\$752,204) |
| Indirect Costs | | | |
| Description | Total | | |
| Salaried Overhead Labor | \$4,003,669 | \$4,003,669 | |
| Salaried Overhead Support | \$901,080 | \$901,080 | |
| Project Office | \$943,210 | \$943,210 | |
| Field Offices | \$320,300 | \$320,300 | |
| Yards & Shops | \$154,800 | \$154,800 | |
| Job Services | \$460,888 | \$460,888 | |
| On-site Transportation & Material Handling | \$504,629 | \$504,629 | |
| Other Indirects (Eq. mob, cleanup, eq. repair, small tools, taxes, escalations) | \$2,875,985 | \$2,875,985 | |
| Subtotal | \$10,164,560 | \$10,164,560 | |
| Subtotal Costs | \$107,477,869 | \$106,725,665 | (\$752,204) |
| Contingency & Profit | | | |
| Description | Total | | |
| Contingency - 3% of Costs | \$3,224,336 | \$3,201,770 | (\$22,566) |
| Profit & Home Office Overhead - 10% of Costs | \$10,747,787 | \$10,672,567 | (\$75,220) |
| Subtotal | \$13,972,123 | \$13,874,337 | (\$97,786) |
| Project Total | \$121,449,992 | \$120,600,002 | (\$849,990) |

NOTE – the DBJV have broken their pricing into two separate breakdowns to reflect the capital cost for the total works and Option 1 (exclusion of the McCaslin Underpass).

10.3.3 We have performed an analysis of the capital cost estimates provided at bid which has indicated that a total capital cost of \$121,449,992 is a reasonable cost for a project of this size and scope. \$849,990 has been broken out against the relevant direct, indirect and other soft costs for the McCaslin Under Pass Option.

10.0 PROJECT COST REVIEW

10.3.4 The cost summary provides a breakdown of the construction costs representing major construction elements. We consider the elemental cost breakdown provided acceptable for the Project with the proportional breakdown of the overall cost in line with our expectations for a project of this nature.

10.3.5 We have noted that construction contingency is approximately three percent (3%) of the total capital cost in addition to profit held by the DBJV. The DBJV has indicated that it is holding a fixed dollar amount for construction contingency based on attaching monetary value to schedule delay, risk of productivity and inflation of materials to risk items identified within the risk register. We consider this to be an appropriate approach and note that over four percent construction contingency would be above what we would normally expect in highways P3 projects.

10.3.6 We consider that the DBJV has adopted a robust approach to deriving its capital cost estimate, utilizing the significant depth of expertise available within the two major civil contractors making up the DBJV. Expertise of local partners has also been utilized during the pricing process as well as a concerted effort to ascertain market rates from local and national subcontractors and suppliers. Please refer to Section 10.5 of this report for further detail on how the DBJV's estimate was arrived at.

10.3.7 The provided capital costs are based on preliminary design having reached approximately 35% for the main design elements of the Project. We consider the design progressed to a sufficient level to allow an appropriate estimate of quantities to be carried out for the purposes of calculating construction costs. Further to this, the submittal process with HPTE lends itself to a more accurate design process whereby there has been significant communication between the DBJV, Project Co and IFA through the ATC and one-to-one consultation process during bid procurement. This process has allowed DBJV to integrate innovations within its design and construction methodology having received assurances from HPTE what is acceptable and confirmation of what meets the Technical Provisions. This process has been integrated into the capital cost estimate and should reduce the risk of design changes at later stages.

10.4 Benchmarking

10.4.1 We have compared the unit rates for this Project with seven other recent North American horizontal flatwork road projects in our database. Table 10.4 below provides a benchmark range for these similar projects. All dollar amounts are provided in 2012 US dollars.

10.4.2 In general civil projects tend not to lend themselves readily to benchmarking exercises between total capital costs. Whilst different projects may have similar individual components, there will always be differences in the combination of components that make up each project, i.e. two projects may vary greatly in scope of the approach highways. To that end we have not provided a benchmarking exercise for total capital cost of the Project, but rather have identified the costs associated with different components of the Project and compared them with similar components of different projects.

10.0 PROJECT COST REVIEW

Table 10.4: Benchmarking Comparable

| Project Description | Mid-West | Mid-West | Mid-East | Mid-East | Mid-West | Mid-East | US36 |
|---------------------------------------|-------------|-------------|-------------|-------------|-------------|-------------|------------------|
| A. Bridge Structures (\$/SQM) | \$0 | \$0 | \$0 | \$3,860 | \$4,383 | \$5,931 | \$7,049 |
| B. Roadworks (\$/ lane-km) | \$1,418,207 | \$959,959 | \$2,348,984 | \$2,165,070 | \$1,617,059 | \$3,829,959 | \$526,385 |
| C. Earthworks (\$/ lane-km) | \$1,014,618 | \$1,055,970 | \$180,950 | \$1,710,493 | \$651,468 | \$0 | \$407,727 |
| D. Utilities (\$/ lane-km) | \$190,915 | \$246,269 | \$434,785 | \$1,397,766 | \$572,931 | \$1,008,236 | \$149,642 |
| E. General Requirements (\$/ lane-km) | \$1,145,248 | \$580,179 | \$4,913,145 | \$884,752 | \$915,025 | \$3,077,718 | \$538,502 |

10.4.3 Table 10.4 above illustrates that the cost per km of a single lane of the Project is within the range of similar projects for each component displayed, with the exception of the Bridge Structures where the Project is 19% above the higher end of the range. For the purpose of benchmarking comparable, we note that the \$/SQM for the Bridge Structures is higher as it carries the costs for the asphalt paving.

10.4.4 We are overall satisfied with the indicated costs per lane-km and believe them as sufficient to complete the Project.

Conclusions:

We consider the DBJV's breakdown of capital costs as sufficiently detailed to allow it to carry out the Project as required by the Technical Provisions.

We consider the Project costs per linear km of a single lane to be appropriate and in line with expectations for a project of this type and scope and consider the indicated costs to be sufficient to complete the Project. The DBJV have broken out the costs for the McCaslin Bridge Underpass against suitable line times in the divisional breakdown. These costs can be added into the Capex should this work be added to the scope.

We consider the DBJV's method to arrive at construction contingency to be a sound approach. We consider it appropriate that contingency was maintained as the estimate was reconciled and that the contingency value of approximately three percent, not including DBJV profit, to be ahead of market norms.

10.5 Approach to preparation of the DBJV's Estimate

10.5.1 DBJV's approach to preparation of its capital cost estimate has been a collaborative effort involving all members during design development.

10.5.2 Pricing components from DBJV's committed local subcontractors have also been included where they bring extensive local knowledge and experience to the process.

10.5.3 We consider the approach taken by the DBJV to be thorough and should result in accurate quantitative analysis and associated pricing. The DBJV has utilized the strength of having two major North American contractors within the team, each capable of arriving at a full independent estimate. By then following a

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reconciliation process of the three estimates to arrive at a final estimate DBJV has reduced its risk and produced as robust a solution as possible.

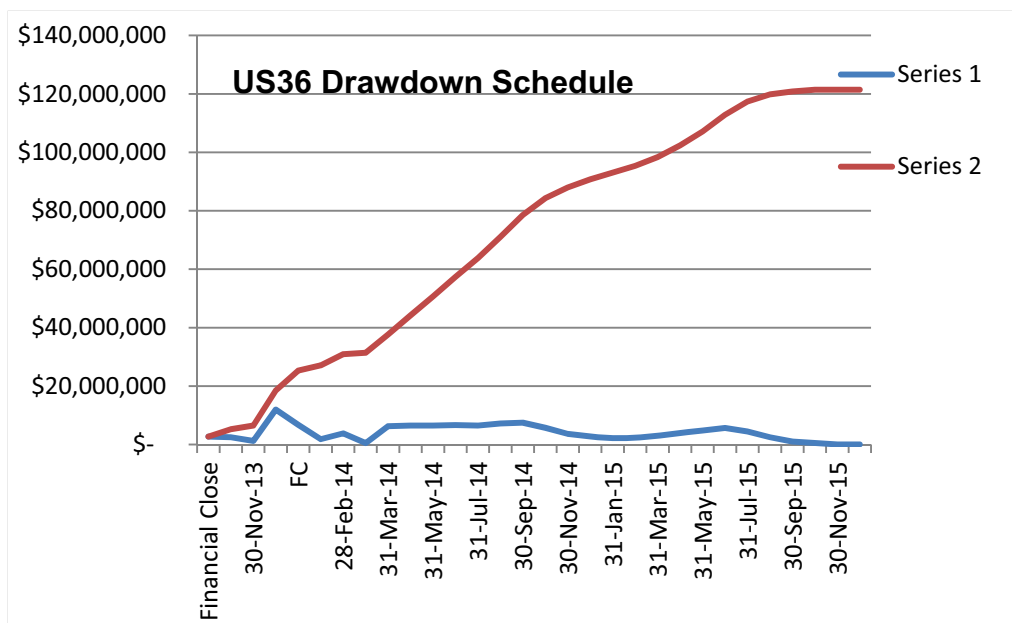
Project Cash Flow

10.5.4 We have received a copy of the DBJV’s cash flow to Plenary on January 20, 2014”, which is based on the Capital Cost estimate of \$121,449,991 (which includes the option of \$849,992 for the McCalsin Underpass which is funded by HPTE if they decide to include it within the works) over the total construction period of 28 months.

Conclusions:

We have reviewed the project cash flow and reconciled the cumulative and monthly draw values for each scenario against our own Cash Flow and S-Curve analysis and we consider that the project cash flow (as shown in the following chart) is reasonable and in line with what we would expect for similar projects, with similar construction activity restraints.

Figure 10.1: Project Cash Flow



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10.6 Operating Expenditure

10.6.1 The following table shows a summary of the latest operating expenditure (“OPEX”) estimate by Project Co for the Operating Period.

Table 10.5: Total Operating Expenditure

| Item | 50 Year Total | Average Annual Total | % | |
|--------------------|---------------------------|-----------------------|------------------------|---------------|
| Maintenance | | | | |
| 1 | Pavement Maintenance | \$ 8,159,337 | \$ 163,186.74 | 3.8% |
| 2 | Roadside Maintenance | \$ 1,223,545 | \$ 24,470.90 | 0.6% |
| 3 | Drainage | \$ 7,245,412 | \$ 144,908.24 | 3.4% |
| 4 | Vegetation and Aesthetics | \$ 3,387,078 | \$ 67,741.56 | 1.6% |
| 5 | Traffic Services | \$ 45,991,399 | \$ 919,827.97 | 21.7% |
| 6 | Snow and Ice Control | \$ 61,135,646 | \$ 1,222,712.93 | 28.8% |
| 7 | Facility Maintenance | \$ 250,244 | \$ 5,004.88 | 0.1% |
| 8 | Land Bridge Maintenance | \$ 9,018,380 | \$ 180,367.60 | 4.2% |
| 9 | Project Asset Valuation | \$ 13,103,012 | \$ 262,060.25 | 6.2% |
| 10 | Prime Bond | \$ 1,625,500 | \$ 32,510.00 | 0.8% |
| | Maintenance Total | \$ 151,139,553 | \$ 3,022,791 | 71.2% |
| Operations | | | | |
| 11 | Indirects | \$ 15,704,143 | \$ 314,082.86 | 7.4% |
| 12 | Staff Labour | \$ 32,017,181 | \$ 640,343.61 | 15.1% |
| 13 | Craft Labour | \$ 1,042,467 | \$ 20,849.35 | 0.5% |
| 14 | US Equipment | \$ 12,500,000 | \$ 250,000.00 | 5.9% |
| | Operations Total | \$ 61,263,791 | \$ 1,225,275.82 | 28.8% |
| | Grand Total | \$ 212,403,344 | \$ 4,248,067 | 100.0% |

10.6.2 We have reviewed the OPEX cost model provided by Project Co which details its final bid price cost model projections over the Operating Period. We consider the estimate to be of sufficient detail for this stage of the Project.

10.6.3 The OPEX budget has been estimated by Transfield Services team of engineers who have a wealth of experience developing plans and costing for very similar projects including projects procured under P3 commercial structures. Transfield has worked collaboratively with Project Co in this endeavour. We understand that suitable efforts to accurately define scope during the Operating Period, eliminates duplication between budgets, and refinement of unit pricing have been made during the estimate process. Detailed inventory of the different elements of operations and maintenance have been included with Project Co's estimate. Each major component of the operational activities have been broken down including pricing for inspections maintenance of the highway structures, cleaning and

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replacing of drainage elements, fence and guardrail inspection and repair, repairs to both asphalt and concrete pavement options, signage and lighting repair, incident response and specialty items such as snow removal.

- 10.6.4 We are satisfied with the overall proportional breakdown of the OPEX which represents a shift in responsibility during the construction Period to the Operating Period.
- 10.6.5 Project Co has modeled their costs sufficiently as they transition though the various stages of O&M (1-25 only / I-25 & US36 Phase 1 & I-25 & US36 Phase 1&2). Their build-up of costs appears adequate for this stage of the procurement process.
- 10.6.6 The majority of the Maintenance costs are allocated to Traffic Services (21.7%) and Snow & Ice Control (28.8%). These cost centres carry large cost items like the Courtesy Patrol and CDOT Smart Traffic Staffing for Traffic Services; and Stockpiling of Winter Materials, truck driver sub-contracts and snow ploughing for Snow and Ice Control. These Maintenance Services combined represent over 50% of the O&M costs, which is typical.
- 10.6.7 Another notable cost allocation is Staff Labour as a soft Operations cost. The Staff Labour costs represent 15.1% of the total O&M costs. This is within the expected range that we have seen on similar projects.
- 10.6.8 We understand the Project Co is currently carrying approximately 10% contingency which is appropriate and in line with our expectations. This is something we expect to see re-worked and revised within the next revision of the O&M pricing.

Conclusions:

We have received a cost model from Project Co which clearly outlines operational expenditure (OPEX) for each component of the Project such as pavements, drainage, traffic services, snow and ice control, land bridge maintenance and routine inspections. The OPEX cost model provides significant detail within each Project component, providing detailed costs for all activities and material required for preventative maintenance for all aspects of the Project within the O&M Limits. We are satisfied that the level of detail and respective pricing is robust and will enable Project Co to operate and maintain the Project within the O&M limits as required by the CA.

We note that the cost model does not include any general contingency or profit margin at this current stage.

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10.7 Rehabilitation Capital Expenditure

10.7.1 The following table shows a summary of the current rehabilitation capital expenditure estimate.

Table 10.6: Total Rehabilitation Capital Expenditure

| | Item | Annual Cost | 50 Year Total | % |
|----|--------------------------------|--------------------|----------------------|---------------|
| | US36 (Phases 1 & 2) | | | |
| 1 | Paving | \$ 421,324 | \$ 21,066,213 | 35.1% |
| 3 | Land Bridges | \$ 94,410 | \$ 4,720,502 | 7.9% |
| 4 | Drainage | \$ 10,883 | \$ 544,141 | 0.9% |
| 5 | Traffic & Safety | \$ 128,232 | \$ 6,411,596 | 10.7% |
| 6 | Misc. | \$ 234,117 | \$ 11,705,865 | 19.5% |
| 7 | <i>Sub-Total</i> | \$ 888,966 | \$ 44,448,317 | 74.1% |
| | | | | |
| | I-25 | | | |
| 8 | Paving | \$ 152,614 | \$ 7,630,692 | 12.7% |
| 9 | Land Bridges | \$ 84,068 | \$ 4,203,420 | 7.0% |
| 10 | Drainage | \$ 3,864 | \$ 193,188 | 0.3% |
| 11 | Traffic & Safety | \$ 3,600 | \$ 180,000 | 0.3% |
| 12 | Misc. | \$ 67,037 | \$ 3,351,850 | 5.6% |
| 13 | <i>Sub-Total</i> | \$ 311,183 | \$ 15,559,150 | 25.9% |
| | | | | |
| | Grand Total | \$1,200,149 | \$ 60,007,467 | 100.0% |

10.7.2 We are overall satisfied with Project Co's approach to costing for rehabilitation and renewals, and consider the level of detail provided by Project Co cost model to be appropriate.

10.7.3 Pavement rehabilitation represent the largest share of rehabilitation costs as structures on the Project are designed to 75 year design life and so will require more minor works such as replacement of bearings and expansion joints, rather than full structural rehabilitative works. As is often the case with highways projects, pavement remains the predominant element in the cost of rehabilitation works due to its shorter lifespan and typical performance requirements as contained within the Technical Requirements.

10.7.4 Pavement replacement is well represented in the cost breakdown and model, with three interventions identified for asphalt pavement at years 25, 33 and 48 (for US36) resulting in 8 & 15 year intervention cycles, respectively. On I-25 Project CO has allowed for 6 interventions staged through the 50 year maintenance period for paving stripping and mill and resurfacing. Each of the pavement interventions are appropriately predicated by costs associated with inspections and engineering support. The final interventions during the last two years of the Project Term will ensure that handback requirements are met. The DBJV has opted for an asphaltic pavement options and so rehabilitation costs associated with concrete paving have been removed. We consider the pricing and intervention timing to be appropriate.

10.7.5 Other spikes in capital expenditure on the Project during the Term occur every 5 years, from year 15 on the Land Bridges and are associated with milling and overlay of the Bridge Decks and replacement of the joint seals every 5 years from year 10. We consider the timing and costing of the repairs to be appropriate when

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considered in tandem with the ongoing minor spelling repairs that will be undertaken as good practice preventative maintenance, as is considered in the operational expenditure cost model.

- 10.7.6 During year 30, Project Co has allowed for the full rehabilitation of the curbs and gutters on US36 which is in linked with its expected design life. The underground storm sewers and culvert boxes are upgraded during year 37 when they are scheduled to have their residual life upgrade.

Conclusions:

Project Co has provided detailed cost model for rehabilitation capital expenditure over the Term the Project similar to that received for OPEX. Again, we consider the level of detail to be adequate to accurately identify the pricing against each component of the Project. As a general statement, we consider the cost models for all expenditure over the Term of the Project to be of a high quality with good level of detail. Further to this, we consider the cost and timing attributed to the rehabilitation works to be appropriate for the intended scope of works.

11.0 OPERATION AND MAINTENANCE

11.1 *Introduction*

11.1.1 The RFP outlines the operations, maintenance and rehabilitation requirements within the HPTE Service Requirements of the Project. "O&M" refers to the operation and maintenance of the US36 Managed Lanes and Toll Concession Facilities within the Service Requirements. Pertinent sections of the RFP that relate to the O&M requirements are:

RFP – Section 3: Scope of Parties' Responsibilities for the Concession Project

- Section 3.4 – Operation and Maintenance
- Section 3.5 – Tolling Back Office Services

Concession Agreement

- Part 6: Provision of Services
 - Section 22 – Operation and Maintenance
 - Section 23 – The Phase 1 Services Commencement Date and Interface with the Phase 1 DB Contract
 - Section 24 – Procedures Relating to Life Cycle Maintenance Work
- Section 48.0 – Handback
- Schedule 6 – HPTE Service Requirements

11.1.2 The Service Requirements stipulate that general O&M obligations are to include, but are not limited to, the following:

- The operation and maintenance of the Managed Lanes and maintenance of the General Purpose Lanes as agreed by the CA will be under the direction of Project Co beginning at the Services commencement date(s) and continuing through the Services Period.
- Project Co shall maintain the Managed Lanes and the General Purpose as agreed in the CA as "Maintained Elements" that provides a safe and reliable transportation system.
- Project Co is responsible for operating the I-25 Managed Lanes, Phase 1 Managed Lanes and Phase 2 managed Lanes as well as maintaining the ETCS.
- Project Co will be responsible for all Routine Maintenance and Life Cycle Maintenance of the I-25 Managed Lanes except for the special provisions associated with the I-25 Bridges.
- Identify and correct all Category 1 & 2 Defects and in accordance with Appendix 6-1 of Schedule 6.
- Project Co shall conduct the Services in accordance with all applicable safety laws with the impetus to maximize the safety of the travelling public and Project Co employees.

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- Project Co shall identify all primary staff to be dedicated to providing the Services and shall maintain adequate support staff with appropriate skill levels and proper training to respond to all of HPTE's Service Requirements.
- Project Co shall prepare a Maintenance Management Plan (MMP) that sets out how they will comply with HPTE's Service Requirements.
- Project Co shall prepare an Operations Management Plan (OMP) that sets out how they will comply with HPTE's Service Requirements.
- Project Co shall include a section in the Quality Management Plan (QMP) that describes the quality procedures that will be performed for the operations and maintenance work in compliance with Schedule 6.
- Project Co shall prepare an Incident Response Plan for JPTE's Acceptance for the Maintained Elements that demonstrates how they will comply with CDOT's Incident Management Plans.
- Project Co shall assume full responsibility for all operations and designated maintenance activities for the Maintained Elements upon each Services commencement date.
- Project Co shall prepare Monthly Maintenance Reports and quarterly & annual reports on operational status.
- Project Co shall have monthly meetings, or as needed with HPTE representatives to discuss the Services and shall coordinate with HPTE, CDOT and all Government Authorities on all issues relating to the Managed Lanes and the Service Requirements.
- Project Co shall coordinate with all local emergency services and Colorado State Patrol.
- Project Co shall prepare an Annual Review Report and meet with HPTE to discuss any potential impacts to the Services.

11.2 *Scope of O&M Work*

- 11.2.1 Project Co shall make the Managed Lanes available for use by vehicles and shall provide the Services and the Snow and Ice Control Services from the Commencement Date and throughout the contract period in relation to the I-25 managed Lanes and the I-25 Shared Bridge Decks; from the Phase 1 Services Commencement Date throughout the contract period in relation to the Phase 1 Managed Lanes [and the Phase 1 GP Lanes]; and from the full Services commencement Date and throughout the Services Period in relation to the Managed Lanes [and the US36 General Purpose Lanes, as an integrated system.
- 11.2.2 Project Co shall ensure that at all times its maintenance and operating procedures are compliant with Schedule 6 of the CA (HPTE Service Requirements).
- 11.2.3 Project Co shall submit a Maintenance Management Plan, Transition Management Plan, Operations Management Plan, Safety Plan and the Communications & Marketing Plan to HPTE for acceptance. This will be

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- submitted at least forty (40) Business Days prior to the projected Commencement Date in relation to the I-25 Managed Lanes and Shared Bridge Deck; at least sixty (60) Business Days prior to the Projected Phase 1 Services Commencement Date in relation to the Phase 1 Managed and GP Lanes; at least ninety (90) Business Days prior to the projected Full Services Commencement Date in relation to the Managed Lanes and the US36 General Purpose Lanes as an integrated system; and no less than annually if Project Co wishes to change any matter within any plan, more frequently, but no more frequently than once every three (3) months. HPTE will review the plans and either accept or not accept within twenty (20) Business Days.
- 11.2.4 Once a year HPTE may carry out a survey of the Managed Lanes by a suitably qualified independent expert and an audit of Project Co's records and operations. HPTE will notify Project Co in writing a minimum of ten (10) Business Days in advance of any survey. When carrying out a survey or audit, HPTE shall use reasonable endeavours to minimize any disruption caused to the provision of the Services. If the survey shows any non-compliance then HPTE will notify Project Co and specify a reasonable period within which Project Co must carry out such rectification and/or maintenance work. HPTE will be entitled to be reimbursed by Project Co for reasonable cost of the survey.
- 11.2.5 In the event of any failure by Project Co to comply with the CA, with the consequence that the Managed Lanes are not available for use by vehicles in accordance with the CA for a period of five (5) days following notice to Project Co, then HPTE shall be entitled to exercise its right of access and take such reasonable steps to make the Managed Lanes available for use, and Project Co shall pay any costs or expenses incurred in doing so to HPTE.
- 11.2.6 Project Co shall be furnished with a copy of the Phase 1 DB Contract, the Phase 1 ETCS Installation Contract and all Phase 1 Change Orders in place, prior to the execution of the CA.
- 11.2.7 Section 23.0 sets out the terms and conditions for Project Co's involvement in any changes or amendments to the Phase 1 ETCS Installation, the Phase 1 DB Contract that may impact the Phase 1 Services Commencement Date, and ultimately Project Co's commencement of their O&M and Life Cycle services under the CA. If Project Co encounters any Latent Defects from the Phase 1 Works then it shall be treated as a Compensation Event.
- 11.2.8 No later than ninety (90) days before the beginning of each calendar year after the Full Services Commencement Date, Project Co will prepare a full five (5) year Life Cycle Maintenance Plan to HPTE for review. Project Co will consider any reasonable changes or additions proposed by HPTE to the Life Cycle Maintenance Plan. If no agreement is made within sixty (60) days then either Party may refer the Dispute to the Dispute Resolution Procedure.
- 11.2.9 If Project Co fails to complete any Non-Separable Task (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) in accordance with the CA or the Life Cycle Maintenance Plan, then within twenty (20) Business Days must present a proposal to HPTE to rectify the situation; or HPTE will self-perform the task. HPTE will be entitled to demand that Project Co pays HPTE an amount equal to HPTE's good faith estimate of the costs it incurs to complete such corrections.

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11.2.10 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 in accordance with good industry practice. Project Co shall carry out and complete the I-25 Initial Work Package as part of the Phase 1 Construction Work; the Routine Maintenance and Life Cycle Maintenance on the I-25 Bridge Deck Superstructure; the I-25 Preventative Maintenance Program to the I-25 Bridge Deck Superstructure. HPTE through CDOT shall carry out the maintenance of the I-25 Bridge Substructures.

11.2.11 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, the sub-grade supporting the pavement for the I-25 Managed Lanes or structures within that sub-grade; then such a closure shall be a Compensation Event provided it relates to Project Co's loss of revenue.

Conclusions:

The O&M Work, as prescribed by the CA is in line with our expectations for a project of this size and nature.

In our opinion, a reasonable operating and maintenance regime managed by competent and experienced personnel, as proposed by Project Co for this Project, should be able to meet the requirements with minimal cost premiums.

11.3 Performance Requirements

11.3.1 Project Co shall monitor the provision of the Services in accordance with the CA and shall compile a Monthly Service Report and an Annual Performance Report.

11.3.2 In general, the Project infrastructure within the O&M Limits is to be maintained in compliance with applicable requirements or within allowable tolerances specified for an individual performance requirement / noncompliance. Noncompliance categories are prescribed in Table 3 given in Schedule 10 to the CA.

11.3.3 Noncompliance Requirements are prescribed by Table 3 under the following headings:

- | | |
|--|--|
| • Toll Maintenance / ETCS Equipment; | • Maintenance Management Plan; |
| • Operations / Contact Center; | • Operations Management Plan; |
| • Operations; | • Record Keeping; |
| • Operations – Incident Management; | • Safety; |
| • Operations – Courtesy Patrol; | • Project Plans; |
| • Roadway Maintenance – Category 1 Defect; | • Snow and Ice Control; |
| • Roadway Maintenance – Category 2 Defect; | • Snow and Ice Control – Service Level Scoring |
| • Roadway Maintenance – Asset Condition; | • Service Level Scoring; |
| | • Quality Management; |
| | • Tolling Price; |
| | • US36 Managed Lanes Speed; |

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- Roadway Maintenance – Inspection;
- Roadway Maintenance Inspection / Operations;
- Roadway Maintenance / Toll Maintenance;
- Managed Lanes Reporting;
- Public Information;
- I-25 Managed Lanes Speed;
- Handback Reserve;
- Key Personnel;
- Maintenance and Inspection of Records;
- Incident Management Plan;
- Maintenance Management;

11.3.4 Under each of the headings there are a number of specific requirements for various Project elements, with a response time to repair or mitigate defects (cure period). There are a total of fifty-nine (59) Noncompliance occurrences provided under the headings given in Section 11.3.3 above. Table 11.1 below provides a snapshot of the Performance and Measurement Table as an illustrative example.

Table 11.1: Performance and Measurement Table

| ID | Source Document | Heading | Noncompliance occurs if the following conditions are not fulfilled: | Category | Cure Period | Max Points (*) | GPLane Routine Maint Max Points (*) |
|----|---------------------------|----------------------------------|--|----------|-------------|----------------|-------------------------------------|
| 1 | Schedule 6 – Appendix 6-2 | Toll Maintenance/ ETCS Equipment | All ETCS equipment is fully functional and housing is functioning and free of defects. | A | 14 days | 2 | |
| 2 | Schedule 6 – Appendix 6-2 | Toll Maintenance/ ETCS Equipment | All beacons or other equipment associated with HOV enforcement are functioning as required when a vehicle passes through the lane declared as HOV. | B | 7 days | 2 | |
| 3 | Schedule 6 – Appendix 6-2 | Toll Maintenance/ ETCS Equipment | All antennas and readers are capturing 99.95% of transactions where a transponder is present in the vehicle. | B | 14 Days | 2 | |
| 4 | Schedule 6 – Appendix 6-2 | Toll Maintenance/ ETCS Equipment | Lane controllers are up and running 99.99% of the time that the managed lanes are open. | B | 14 Days | 2 | |
| 5 | Schedule 6 – Appendix 6-2 | Toll Maintenance/ ETCS Equipment | AVC system is classifying the correct number of axles on vehicles correctly 99.95% of the time a transaction is detected in the lane. | B | 14 Days | 2 | |

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Table 11.2: Noncompliance Categorization

| Noncompliance Category | Cure period deemed to start | When Noncompliance Points may be allocated |
|------------------------|--|--|
| A | Cure period shall be deemed to start upon the date the Concessionaire first obtained knowledge of, or should have known of the Noncompliance if the Concessionaire had been performing its duties under the HPTE Service Requirements and the Concessionaire's Service Proposals in accordance with this Contract. For this purpose the Concessionaire shall be deemed to first obtain knowledge of the breach or failure not later than the date of delivery of the initial statement to the Concessionaire, as described in paragraph 1.2. | Noncompliance Points may be allocated (a) if the Concessionaire has failed to cure the Noncompliance by the end of the applicable cure period and (b) if the Noncompliance has not been cured after one or more subsequent periods equal to the cure period then on the expiry of each such period further Noncompliance Points may be allocated |
| B | Cure period shall be deemed to start from the date on which the breach or failure occurred, whether or not an initial notice has been delivered to the Concessionaire, as described paragraph 1.2. | Noncompliance Points may be allocated on the date of the written statement from HPTE to the Concessionaire pursuant to paragraph 1.2 and additionally (c) if the Concessionaire has failed to cure the Noncompliance by the end of the applicable cure period further Noncompliance Points may be allocated to the Concessionaire and (d) if the Noncompliance has not been cured after a one or more subsequent periods equal to the cure period then on the expiry of each such period additional further Noncompliance Points may be allocated. |
| C | No cure period | Noncompliance Points may be allocated on the date of the written statement from HPTE to the Concessionaire pursuant to paragraph 1.2. |

11.3.5 Table 11.2 outlines the Noncompliance category, the curing periods and when Noncompliance points are deducted.

Table 11.3: Noncompliance Point Accumulation and Remedy

| Row # | A Uncured Noncompliance Points | | | B Cumulative Unexpired Noncompliance Points (Cured or Uncured) over 365 Day Period | | | C Cumulative Unexpired Noncompliance Points (Cured or Uncured) over 1.095 Day Period | | | Remedy available to HPTE (see section 5) |
|-------|-----------------------------------|-----------|------------|---|---|----------|---|------------|----------|--|
| | Period I | Period II | Period III | Period I | | Period I | Period II | Period III | Period I | |
| 1 | 30 | 40 | 30 | 40 | 1 | 30 | 40 | 30 | 40 | 1 |
| 2 | 35 | 50 | 40 | 60 | 2 | 35 | 50 | 40 | 60 | 2 |
| 3 | 40 | 70 | 50 | 80 | 3 | 40 | 70 | 50 | 80 | 3 |

11.3.6 Table 11.3 sets out the remedies available and cumulative thresholds for Unexpired Noncompliance Points (Cured or Uncured).

11.3.7 The following periods are identified as the following:

- **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

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- 11.3.8 HPTE may increase the monitoring (1) if Project Co has more unexpired Noncompliance Points that the number applicable to the relevant period in Row #1, up to a maximum period of 2 months.
- 11.3.9 If Project co has more unexpired or uncured Noncompliance points in Row #2, HPTE my require Project Co to prepare a Remedial Plan (2) that describes the specific actions and timeframes that Project co will take to improve its performance to reduce the total number of uncured Noncompliance points.
- 11.3.10 If at any time during Period 1, Period 2 or Period 3 Project Co has more uncured or unexpired Noncompliance Points in Row #3 then they shall be a Concessionaire Default which could lead to termination of their Services.
- 11.3.11 Project Co is to establish an inspection procedure annually during the Operating Period which will ensure Defects are identified and remedied within the timeframes specified. Failure to address Category 1 and Category 2 Defects within the time period shown in the Performance and Measurement Table will cause Project Co to incur Noncompliance Points which are linked with monitory penalties and ultimately, if consistently reoccurring, a Default scenario as outlined by Exhibit 12 of the PPA. Please refer to Section 12 (Revenue Analysis) of this report for further discussion and analysis of the Noncompliance points system.

11.4 *Routine Maintenance & Life Cycle Plan*

- 11.4.1 Project Co (through their O&M Contractor, Transfield) will develop estimated annual workloads that are based on achieving a specific performance measure. Specific maintenance plans for each individual work activity will be able to be developed.
- 11.4.2 The work plan process will feed directly into the development of the Maintenance Management Plan on a monthly basis and will plan work units and work order each month.
- 11.4.3 Routine maintenance is an important aspect to transportation infrastructure whereby cyclical and routine maintenance activities ensure the system is managed to the desired level of service without system wide replacement and rehabilitation efforts.
- 11.4.4 Project Co shall schedule road closures with all Routine Maintenance operations in coordination with HPTE, giving a two week notice and take all necessary actions to minimize delay and inconvenience to customers; minimize the risk of damage, disturbance or destruction of third party property; coordinate with and enable HPTE, CDOT and others with statutory duties in relation to the Managed Lanes to perform such duties; perform systematic inspections of the Maintained Elements, periodic maintenance and Routine Maintenance; and provide all resources necessary for the performance of all of the activities in the MMP.

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11.4.5 Project Co is responsible for the minimum performance and measurement criteria for the Maintained Elements, including, but not limited to:

Routine Maintenance for the Maintained Elements

- Pavement Patching & Repair;
- Traffic Management;
- Inside Shoulder Replacement & Repair;
- Drainage Maintenance;
- Water Quality Monitoring & Maintenance;
- Replacement of damage guardrails, bridge rails, barriers & glare screens;
- Repair of impact attenuators;
- Routine and Life Cycle Maintenance of Node Building 2;
- Defect correction from incidents;
- Weather monitoring;
- Existing Structures Patching & Repair;
- Shoulder Drop off Repair;
- Lighting
- Delineator Maintenance
- Signage and Pavement Markings Maintenance;
- Routine and Life Cycle Maintenance of 70th Ave Storage Facility;
- Pest Control of Buildings within the CDOT ROW;
- Control of Noxious Weeds;
- Removal of litter, graffiti, animals and abandoned vehicles or equipment;

11.4.6 Where necessary Project Co will include provisions in the Operation and Maintenance Plan to address items which may not be specifically identified in the CA but which are required for the safety of the travelling public or are recognized by the industry as a normal industry practice or are standard practice on similar highways in Denver.

11.4.7 Project Co will engage the O&M Contractor during the design process to ensure they address all elements of the asset's Life Cycle maintenance management appropriately for cost and design. Having the O&M contractor involved at this early stage creates an understanding of the design and assists with the delivery of an integrated solution for the 50 year Services Period.

11.4.8 No later than ninety (90) days before the beginning of each calendar year after the Full Services Commencement Date, Project Co will prepare a full five (5) year Life Cycle Maintenance Plan to HPTE for review. Project Co will consider any reasonable changes or additions proposed by HPTE to the Life Cycle Maintenance Plan. If no agreement is made within sixty (60) days then either Party may refer the Dispute to the Dispute Resolution Procedure.

11.4.9 If Project Co fails to complete any Non-Separable Task (a task comprising Life Cycle Maintenance for a component that is within both the US 36 Managed Lanes and the US 36 General Purpose Lenses) in accordance with the CA or the Life Cycle Maintenance Plan, then within twenty (20) Business Days must present a proposal to HPTE to rectify the situation; or HPTE will self-perform the task. HPTE will be entitled to demand that Project Co pays HPTE an amount equal to HPTE's good faith estimate of the costs it incurs to complete such corrections.

11.4.10 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 in

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accordance with good industry practice. Project Co shall carry out and complete the I-25 Initial Work Package as part of the Phase 1 Construction Work; the Routine Maintenance and Life Cycle Maintenance on the I-25 Bridge Deck Superstructure; the I-25 Preventative Maintenance Program to the I-25 Bridge Deck Superstructure. HPTE through CDOT shall carry out the maintenance of the I-25 Bridge Substructures.

- 11.4.11 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, the sub-grade supporting the pavement for the I-25 Managed Lanes or structures within that sub-grade; then such a closure shall be a Compensation Event provided it relates to Project Co's loss of revenue.
- 11.4.12 The O&M Contractor will develop the Life Cycle Maintenance Plan, which will be founded on a thorough knowledge and understanding of the design-build stages of the Project. The O&M contractor will continue to review the design and equipment/material selection with Project Co and the DBJV to assist with the development of the design that reflects the broader issues of constructability, energy efficiency, serviceability and long-term reliability.
- 11.4.13 The components included in the Life Cycle Management plan that is important for the analysis of the Life Cycle Maintenance cost will be the estimate residual life of the asset element; the description of the anticipated type of Life Cycle maintenance methods and efforts to be performed; the assumptions used to develop the Life cycle Maintenance Plan; and the total estimated cost of the Life Cycle Maintenance for each year covered by the Life Cycle Maintenance Plan.
- 11.4.14 The Life cycle Maintenance Plan will include the provision and procedures for the O&M Contractor to conduct regular condition surveys to re-evaluate asset performance against life expectancies.

Conclusions:

The Consortium's approach to maintenance appears to be very bespoke and specific to the contractual needs of the Project. The Lifecycle Maintenance Plan proposed by Project Co will be comprehensive and robust base for the Operations and Maintenance Plan and identifies appropriate tasks to be completed during the Services Period.

11.5 **Electronic Toll Collection System Maintenance ("ETCS")**

- 11.5.1 Project Co will enter into a contract with E-470 to provide maintenance of the ETCS field equipment. E-470 will install the equipment, thus they will be familiar with the equipment during the maintenance period. Project Co has informed the LTA (via email Nov 19, 2013) that this contract will be executed prior to FC. At the time of the report the LTA has not been furnished with a copy of the executed contract.
- 11.5.2 The O&M Contractor's approach to maintenance is based on continuous proactive monitoring of the system to identify issues before they arise. Should a device fail then maintenance staff will be notified to commence repair activities as the system is integrated into the host servers and lane equipment that monitors performance of different features and applications.

11.0 OPERATION AND MAINTENANCE

- 11.5.3 Project Co will implement the Maintenance Online Management System (MOMS). This system was specifically developed for tolling systems across the USA and internationally. It is currently being used by over 25 separate toll agencies monitoring over 1000 toll lanes. MOMS provided an automated method of creating, tracking and reporting failures and preventative maintenance activities. MOMS will be integrated with the in-lane equipment and the VTMS to monitor the sign communications and operations.
- 11.5.4 Work Orders are used to track action taken on equipment, servers and parts. The MOMS Work Order Management System allows Project co to create and maintain all work orders and to track repair activities from generation to resolution. The Work Orders can also be categorized into priority levels which will assist with the management and close out.
- 11.5.5 The MOMS application will provide an extensive set of reports that feed into the Monthly and Annual Maintenance Reports. The following is a list of the different reports that can be created by the MOMS:
- Work Order Summary by Registered Date & Time;
 - Time to Respond Exception;
 - Work Order Summary by Repaired Date & Time;
 - Parts Aging;
 - Failure Analysis;
 - Maintenance Activity;
 - Part Performance Report;
 - Asset Depreciation;
 - Work Order Summary by Arrived Date & Time;
 - Work Order Summary by Failure Time;
 - Part Inventory History;
 - Inventory Valuation by Location;
 - Work Order Detail History;
 - Event History;
 - Part Inventory;
 - Work Order Detail;
 - Maintenance Summary
 - Staff Performance;
 - Weekly Maintenance;
 - Open Work Order;
 - Availability Status;
 - Part Reorder;
 - Site and Location;
 - Mean Time Between Failure
 - System Availability;
 - Inventory Valuation by Equipment Type Report;
 - Time to Repair Exception
 - Time to Travel;
 - Part Usage;
 - Event Definition;
 - Preventive Maintenance

Conclusions:

It is evident that Project Co has placed detailed consideration on the assessment and planning of maintenance requirements for the Tolling System. A comprehensive program of monitoring and controlling is proposed which will support developing accurate and appropriate maintenance activities that is consistent with good industry practice.

11.0 OPERATION AND MAINTENANCE

11.6 *Periodic Maintenance*

11.6.1 Project Co shall carry out general inspections and continuous monitoring of the Maintained Elements in accordance with the OMP. Project Co will use the results of the general inspection and develop and update the I-25 Preventative Maintenance Plan and the Life Cycle Maintenance Plan to maintain asset conditions and service levels, and to develop programs of maintenance and Life Cycle Maintenance to minimize the effect of Maintained Elements on customers.

11.6.2 Project Co will implement a program of inspections of the Maintained Elements which:

- Verifies the continuing safety of the customers;
- Prioritizes Category 1 Defects;
- Identifies Category 2 Defects to be included for repair either within the annual maintenance or as Life Cycle Maintenance;
- Is responsive to reports or complaints received;
- Takes account of Incidents and emergencies affecting the Maintained Elements;
- Monitors the effects of extreme weather conditions; and
- Collates data to monitor performance of the Maintained Elements and to establish priorities for future maintenance operations and Life Cycle Maintenance.

11.6.3 Project Co will base their Periodic Maintenance Schedule for major maintenance repairs and replacements on the results of its inspection program. They will conduct inspections that will identify the required quantity and types of work and will then investigate the most cost-efficient and effective methods for performing the work.

11.6.4 Project Co will carry out inspections and prepare the work schedule for the remaining operating period and submit this schedule for approval.

11.6.5 Project comply will fully comply with the handback requirements, as per the CA. The work schedule is a key component of their Handback Plan during the last 5 years of the Services Period. The work schedule will include, but not limited to, scope and schedule of any residual life testing; and the estimated cost of the work for each element at the end of its life.

11.6.6 Project Co will perform handback inspections to establish the condition of all elements and verify the extent of the required work. Project Co will prepare the work schedule for the last 5 years, by element, as follows:

- Determine the estimated useful life;
- Determine the estimated residual life;
- Describe the type of work expected to be performed at the end of the element's life; and
- Estimate the cost in current dollars of the work and schedule the costs in each of the final 5 years prior to handback.

11.0 OPERATION AND MAINTENANCE

11.6.7 Project Co are including the following specific components in their Life Cycle Plan for the I-25 Enhanced Maintenance Program:

- Annual maintenance inspections of each bridge, prior to the NBIS (National Bridge Inspection Standard) report. This will provide an “early warning” of any problems, which can be factored into the bridge work plan;
- Review of the NBIS bridge inspection reports with CDOT;
- Development of a work plan for each individual bridge;
- Maintenance of joint seals to prevent leakage of salt laden snow melt onto the structural elements below the deck;
- Patching of potholes and any delamination’s;
- Full depth deck repairs & joint repairs;
- Crack sealing of cold joints and deck repairs to prevent water from seeping down to rebar level;
- Cleaning and painting of bearings;
- Maintenance of protective coating on the steel superstructure.

11.6.8 It is important to note that during the execution of the work related to the Life Cycle Maintenance in the managed lanes, traffic control and construction work zones will be established within the space allocated for the managed lanes only. Project Co recognizes the importance to minimize any impacts to the US36 GP Lanes.

Conclusions:

It is evident that Project Co has placed detailed consideration on the assessment and planning of maintenance requirements. A comprehensive program of inspection and assessment is proposed which will support developing an accurate and appropriate periodic maintenance schedule that is consistent with good industry practice.

11.7 Winter Maintenance Operations

11.7.1 Project Co will monitor weather forecasts, using Road Weather Information Systems (RWIS) sites, region wide radar, satellite meteorological streams. They will also maintain a close relationship with adjacent highway and road maintainers before, during and after hazardous and inclement weather. Project Co’s objectives are to safeguard lives and property; keep the system operational for as long as possible; and to re-open the system as soon as possible.

11.7.2 Project Co’s policies covering storm actions are:

- Consideration for safety will govern all actions;
- Roadways or facilities will be returned to service after the facility has been made safe for the public to use;
- Maintain communication with the emergency response agencies, HPTE and CDOT by means of scheduled email correspondence and calls, before during and after the event; and

11.0 OPERATION AND MAINTENANCE

- Implement the Emergency Response Plan should the event be declared and Emergency.

11.7.3 Snow and ice events are generally well predicted and provide sufficient time to set up trucks and drivers. In order to handle unexpected snow and ice events, Project Co will have trucks with ploughs and spreaders at the ready during the snow season for immediate response.

Conclusions:

The requirements for Winter Maintenance activities are standard for a project of this nature.

Project Co's Winter Maintenance Plan should result in no monetary penalties or events of default if implemented correctly.

11.8 Emergency Response

11.8.1 Through their O&M Contractor, Project Co will provide sufficient resources that are trained and equipped to patrol and monitor the Managed Lanes and deal with any incidents that occur. Local law enforcement and emergency response agencies will also identify accidents and incidents. O&M Contractor staff will use the CDOT Traffic Operations Centre system to receive calls from these external sources.

11.8.2 The O&M Contractor will be available to respond to traffic and/or roadway related incidents in accordance with their Traffic Management Plan. Incident responders will be empowered to make decisions, gather information from the person (s) reporting the incident and assist police, fire and life safety personnel with an appropriate response. Barricades and safety equipment will be set up to warn and protect motorists from any hazards and to protect the integrity of the road system.

11.8.3 For major incidents that require extended road closures, the O&M Contractor Staff will implement detours as and when necessary.

11.8.4 Project Co has developed an approach to emergency response and disaster recovery across the entire toll collection system. The typical emergency repair is an unexpected device failure that affects system operation or an accident where equipment is damaged. For any issues that may impact public safety the maintenance team will be the first to respond to secure the area and address public safety issues. Project Co expects the contract with E-470 will include provisions for emergency response and repair. Project Co will mobilize resources so that damaged equipment can be repaired and the sites brought back online.

11.8.5 The toll host system (trip processing, dynamic pricing etc.) will be delivered with redundant virtual servers. This infrastructure allows the system, to continue to process toll transactions even if there is a catastrophic failure of one of the servers.

Conclusions:

Emergency response is adequately addressed by Project Co.

11.0 OPERATION AND MAINTENANCE

11.9 Snow and Ice Control Services

11.9.1 Project Co's strategy for snow and ice control operations is to provide for the safe movement of traffic on the project routes during periods of frozen precipitation. This will be achieved by applying anti-icing chemicals, de-icing materials and traction control material and providing the necessary spreading/plowing/removal operations throughout a snow/ice event to maintain safe traffic mobility without delay. The snow and ice control plan incorporates Project Co's methods to provide these services on the I-25 Managed Lanes and the US 36 Phase 1 and Phase 2 Managed Lanes and General Purpose Lanes. This plan is based on incorporating the most efficient methods and technologies with least environmental impact.

11.9.2 The roads will be maintained in a manner so that all travel lanes will be kept free and clear of snow and ice so that traffic can proceed in a safe and orderly manner throughout the inclement weather occurrence. Project Co has developed a comprehensive snow and ice plan that details the following elements:

- Management/administration;
- Safety approach;
- Quality Plan;
- Concession Agreement compliance;
- Monitoring;
- Weather forecasting;
- Equipment inventories;
- Material and chemicals;
- Snow routes;
- Shifts;
- Response times;
- Application processes;
- Clean-up, training; and
- Reporting and required approvals.

Conclusions:

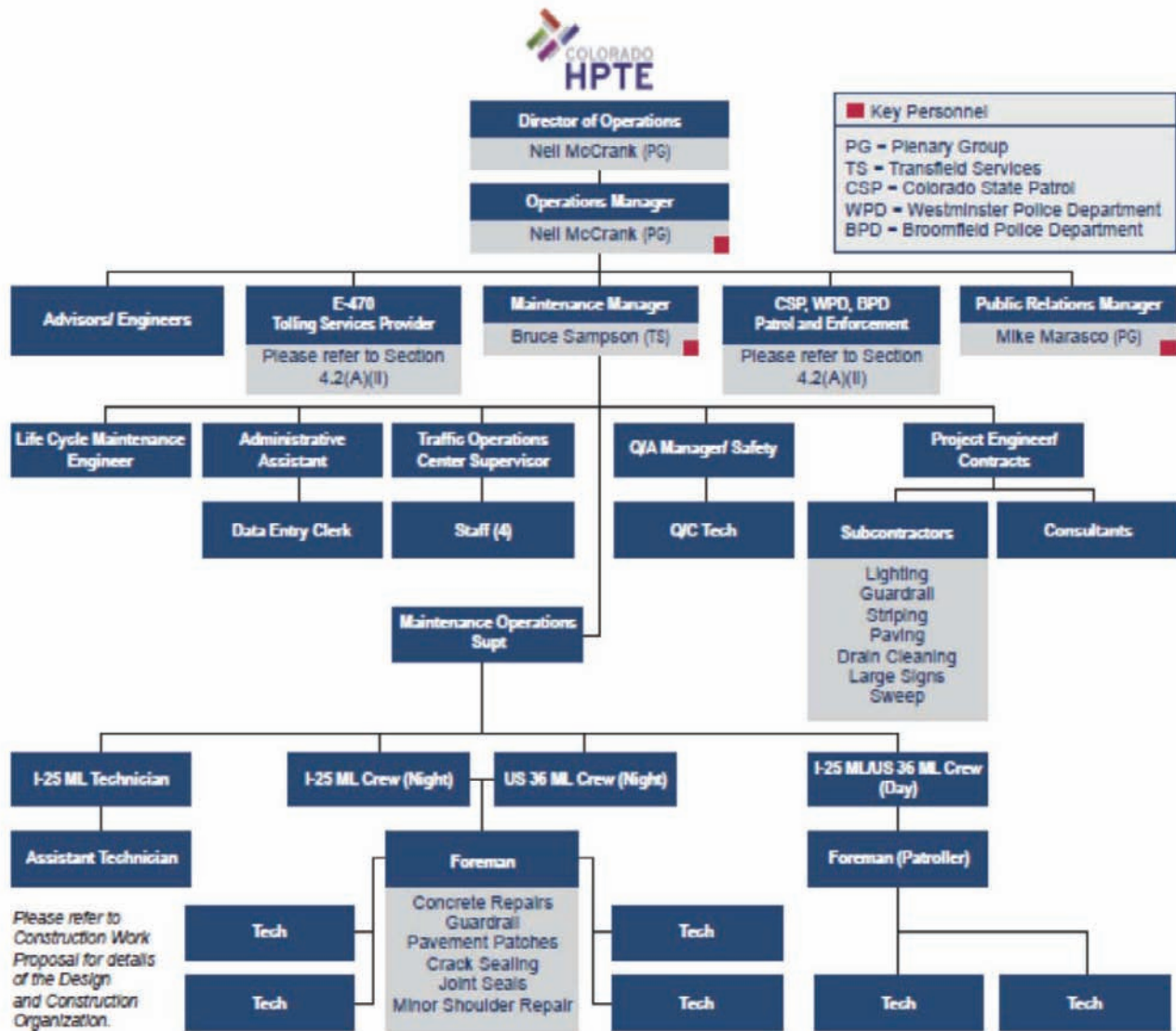
We consider the approach to Snow and Ice Control Services to be appropriate for the Project Co to perform the O&M Work of the Project.

11.10 Project Co Resourcing during the Operating Period

11.10.1 Project Co has developed a resource structure that will be implemented to carry out the operations and maintenance of the Project. Their organization has been structured to provide clear delineation of responsibility, clear reporting channels and the engagement of expert and empowered individuals that will efficiently take on the management of the Services. Please refer to Figure 11.1 below which illustrates Project Co's approach to resourcing the Operations and Maintenance:

11.0 OPERATION AND MAINTENANCE

Figure 11.1 – Project Co’s Service Organization Chart



11.10.2 Project Co will open a new office and maintenance facility in close geographical proximity to the Project to serve as the main managerial operations. Project Co and the Maintenance Manager from the O&M Contractor will be housed in that same office and have a close working relationship.

11.10.3 Project Co has outlined its intended management structure within its O&M staffing Plan. Please refer to Figure 11.2 below which illustrates Project Co’s approach to resourcing the Operations and Maintenance and levels of responsibility:

11.0 OPERATION AND MAINTENANCE

Figure 11.2: Project Co's Staffing Plan

| Responsibility | |
|--|---|
| Reporting Relationship/ Interrelations | |
| Project Engineer/ Contract Administrator | |
| <ul style="list-style-type: none"> ■ Development of subcontracts ■ Development of purchasing agreements ■ Reviewing of Change Orders for O&M implications ■ Condition surveys of assets ■ Assist the Maintenance Manager and Operations Manager with work planning and budget control ■ Short-term work planning (annual work plan) ■ Long-term work planning (multi-year plan) | <ul style="list-style-type: none"> ■ Oversight and inspection of subcontractors ■ Record keeping of contracted work ■ Record keeping of all work planned, performed, quantities accomplished, locations or work performed, life expectancy of repaired asset or element ■ Development and submittal of all project required reports to client ■ Maintenance Work Reports ■ NBIS bridge inspection reports |
| Reports to the Maintenance Manager and will serve as Acting Maintenance Manager during Maintenance Manager absence. Interrelates with the Superintendent, Life Cycle Maintenance Engineer, QA Manager, Administrative staff, subcontractors and consultants. | |
| Quality Assurance / Safety Manager | |
| <ul style="list-style-type: none"> ■ Development of Quality Assurance / Quality Control program ■ Development of the safety program ■ Training of staff to conform to program requirements ■ Performance of QA and Safety functions including: ■ Random and sampling inspections | <ul style="list-style-type: none"> ■ Record keeping ■ Non-Compliance notice rectification ■ Process improvements ■ Work place safety inspections ■ OSHA compliance and record keeping ■ Injury reports |
| Report to the Maintenance Manager Interrelates with the Superintendent, Project Engineer, PRD and HPTE. | |
| Life Cycle Maintenance Engineer | |
| <ul style="list-style-type: none"> ■ Development of asset condition survey program ■ Analysis of asset conditions and comparison to Performance Requirements ■ Development of life cycle plan for each asset | <ul style="list-style-type: none"> ■ Development of annual maintenance and rehabilitation work plan for each asset ■ Development of hand back plan for each designated asset ■ Record keeping of all asset routine , preventive, rehabilitative and hand back maintenance |
| Reports to the Maintenance Manager Interrelates with the Project Engineer, Superintendent and consultants | |

11.0 OPERATION AND MAINTENANCE

Traffic Operations Center staff supervisor

- Perform Monitoring of US-36 and I-25 at Traffic Operations Center
- Responsible for conduct and 24/7 presence of required staff

Reports to the Maintenance Manager

Interrelates with other Traffic Operations Center staff, Superintendent, Courtesy Patrol, Work Crews, HPTE and CDOT.

Superintendent

- | | |
|--|---|
| <ul style="list-style-type: none"> ■ Oversight of all work operations ■ Observation of project assets for work needs ■ Day to day crew scheduling ■ Roadway closures ■ Winter patrol diaries ■ Winter operations record ■ Coordination of roadway closures between crews and subcontractors | <ul style="list-style-type: none"> ■ Stockpiled materials ■ Fleet and equipment resources ■ Snow and Ice control Planning and Performance ■ Assist Project Manager and Project Engineer with short-term and long-term work planning ■ Incident response planning and performance |
|--|---|

Reports to the Maintenance Manager.

Interrelates with the Project Engineer, Life Cycle Maintenance Engineer, QA / Safety Manager, Courtesy Patrol, Traffic Operations Center, work crews, Patroller, police, fire and rescue, subcontractors, consultants, material suppliers and the administrative staff.

Work Crews

Day Shift

- Maintenance activities limited to non-lane closure needs
- Fencing, litter, delineators, drainage ditches, security checks, small sign repairs, asset condition surveys, etc.
- Emergency pothole repairs, Debris removal
- Incident Response
- Observation of work needs, record keeping of work accomplished
- Snow and Ice control operations

Night Shift

- Maintenance activities requiring lane or shoulder closures
- Pothole patching (planned), striping, overhead sign repairs, traffic control for sub-contractors, etc.
- Emergency repairs, security checks, debris removal
- Incident response
- Observation of work needs, record keeping of work accomplished
- Snow and Ice control operations

Direct report to the Superintendent

Interrelates with the Courtesy Patrol, Traffic Operations Center, QA/Safety Manager and Patroller.

11.10.4 The O&M Staffing Plan will include a team consisting of Supervisors, Administrators and O&M Staff that will physically carry out the O&M Work. Project Co will provide the required staffing for the Traffic Operations Centre, the Courtesy Patrol, the I-25 Reversible Lanes technician, Patrollers, Life cycle Maintenance Engineer, a QA/HSE Manager and sub-contractors and consultants as and when required.

11.10.5 The O&M Contractor will perform all of the primary work with sub-contractors used for speciality work or when workload dictates.

Conclusions:

We consider the approach to staffing to be appropriate for the Project Co to perform the O&M Work of the Project.

12.0 REVENUE ANALYSIS

12.1 Introduction

- 12.1.1 From the Commencement Date (I-25 managed Lanes); the Phase 1 Services Commencement Date (Phase 1 Managed Lanes); and the Full Services Commencement Date (Managed Lanes as an Integrated System) Project Co is will have the exclusive right to receive and retain tolls as a form of Revenue throughout the Services Period.
- 12.1.2 Project Co will operate the ETCS during the Services Period as the method for identifying and collecting tolls from the vehicles on the Managed Lanes. Section 29 of the CA sets out the Administration, Payment Violations, Emergency, Closure, and Revenue Risk provisions for the Tolling of the Managed Lanes.
- 12.1.3 The Toll Revenue is subject to various Payment Adjustments as specified in Appendix 1 to Schedule 10 to the CA. The adjustment regime is structured to provide a financial incentive to Project Co to meet quality, performance and O&M Requirements over the Services Period. It is important to ensure that the adjustment regime is reasonable and does not expose Project Co to excessive or un-quantified deductions to their Tolling Revenue tied with potential risk items outside its control.
- 12.1.4 For each Noncompliance Event listed in Table 3 of Schedule 10 to the CA, Noncompliance Points will be awarded. The number of Failure Points attributable to each failure event is set out in the aforementioned table.
- 12.1.5 For Noncompliance Events listed in Table 1 of Schedule 10 to the CA, there are 3 assessment categories as listed in table 12.7 below:

Table 12.1: Noncompliance Assessment Categories

| Category | Cure Period Deemed to Start | When Compliance Points may be Allocated |
|----------|---|--|
| A | Cure period shall be deemed to start upon the date the Project Co first obtained knowledge of, or should have known of, the Noncompliance if the Project Co had been performing its duties under the HPTE Service Requirements and the Project Co's Service Proposals in accordance with the CA. For this purpose Project Co shall be deemed to first obtain knowledge of the breach or failure not later than the date of delivery of the initial statement to the Project Co, as described in Paragraph 1.2 of Schedule 10 of the CA. | <p>Noncompliance points may be allocated</p> <p>a) If Project Co has failed to cure the Noncompliance by the end of the applicable cure period; and</p> <p>b) If the Noncompliance has not been cured after one or more subsequent periods equal to the cure period then on the expiry of each such period further Noncompliance Points may be allocated.</p> |
| B | Cure Period shall be deemed to start from the date which the breach or failure occurred, whether or not an initial notice have been delivered to Project Co, as described in Paragraph 1.2 of Schedule 10 of the CA. | <p>Noncompliance points may be allocated on the date the written statement from HPTE to Project Co pursuant to Paragraph 1.2 of Schedule 10 of the CA and additionally</p> <p>c) If Project Co has failed to cure the Noncompliance by the end of the applicable cure period further Noncompliance Points may be allocated to Project Co</p> <p>d) If the Noncompliance has not been cured after a one or more subsequent periods equal to the cure period then on expiry of each such period additional further Noncompliance Points may be allocated</p> |
| C | No cure period | Noncompliance points may be allocated on the date of the written statement from HPTE to Project Co pursuant to Paragraph 1.2 of Schedule 10 of the CA. |

12.0 REVENUE ANALYSIS

- 12.1.6 We have completed an assessment of the Noncompliance Point System, and the likely level of both accumulated Failure Points and the associated Deduction value. Our assessment is based on three levels of performance by Project Co as follows:-
- 12.1.7 **Optimal:** This equates to Noncompliance Failure Rates of between 0 and 1%. While we would expect that the Project Co would operate at a better performance than this, it is not unreasonable to see failure rates at these levels. Generally, performance expectations are met, and it is simply the quantity of Failure Events being tested that lead to this level of point accumulation.
- 12.1.8 **Possible:** This equates to a Noncompliance Failure Rate of up to 3%. We consider this the “worst case scenario”, as we expect that Project Co, with its experience and the experience of its O&M Contractor, would out-perform this level of point accumulation.
- 12.1.9 **Possible, but unlikely:** This equates to a Noncompliance Failure Rate of 10%. While individually there may be other conditions that would cause these levels of failure accumulations, as a whole it is statistically very unlikely that they would achieve these accumulations for every testable event, as we have calculated. Note we analyse all of our projects at these types of levels, in order to gauge a relative ranking of the severity of the adjustment regime among projects of similar type.
- 12.1.10 Table 12.2 below provides the results of our assessment at the levels discussed above. Please refer to Appendix B attached to this report for the detailed analysis undertaken in assessing these levels.

Table 12.2: O&M Period Noncompliance Assessment

| Performance Level | Annual Point Accumulation | Concession Point Accumulation | Annual Deduction Value | Concession Deduction Value | Statistical Likelihood |
|-------------------|---------------------------|-------------------------------|------------------------|----------------------------|------------------------|
| Optimal | 7 | 325 | \$ 32,265 | \$ 1,129,275 | > 90% |
| Possible | 21 | 1,030 | \$ 102,871 | \$ 3,600,485 | < 10% |
| Unlikely | 68 | 3,420 | \$ 341,823 | \$ 11,963,805 | 0% |

- 12.1.11 The Statistical Likelihood value provided in Table 12.2 is the probability that Project Co would operate the Project at values bound by the upper range of Annual Point Accumulations described. In other words, there is a 90% probability that Project Co will accumulate 7 points or less on an annual basis for the Optimal Performance Level.
- 12.1.12 We also note that the Concession Point Accumulation and Concession Deduction Values are based on a 50 year Concession Period.
- 12.1.13 We have confirmed that Project Co has included in the OPEX budget an allowance of \$10,731.71 per annum for Failure Point Deductions. Project Co is reporting that the total level of contingency carried in the OPEX budget is over \$18,000,000, so even if they operated at a rate approaching the Possible Performance Level, there is more than sufficient funds within the model to cover the Annual Deduction Value.

12.0 REVENUE ANALYSIS

12.2 Remedies available when Project Co accumulates Noncompliance Points

12.2.1 Section 5.0 Schedule 10 of the CA sets out the provisions for the remedies available to HPTE when Project Co accumulates Noncompliance Points. Table 2 of Schedule 10 of the CA sets out the thresholds that trigger the remedies.

Table 12.3: HPTE Available Remedies

| Row # | A | | | B | | | C | | | Remedy available to HPTE (see section 5) |
|-------|------------------------------|-----------|------------|--|-----------|------------|--|-----------|------------|---|
| | 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 the HPTE |
| 2 | 35 | 50 | 40 | 60 | 90 | 75 | 135 | 165 | 150 | Remedial plan to be submitted to the HPTE |
| 3 | 40 | 70 | 50 | 80 | 140 | 100 | 180 | 225 | 200 | Concessionaire Default |

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.

12.2.2 In order for HPTE to increase the monitoring of Project Co's performance; have a Remedial Plan submitted to go into Default then Project Co will need to incur Noncompliance points that are set out in Table 12.2 above.

A: Uncured Noncompliance points. We have based our analysis on an Optimum Failure Rate of 1.0%; a Possible Failure Rate of 3.0% and a Possible (but unlikely) Failure Rate of 10.0%. For increased monitoring to be implemented Project Co's probability of failure will be over 10% (9.9 points) which we have deemed to be possible, but unlikely.

B: Cumulative Unexpired Noncompliance Points. We have based our analysis on an Optimum Failure Rate of 1.0%; a Possible Failure Rate of 3.0% and a Possible (but unlikely) Failure Rate of 10.0%. For increased monitoring to be implemented Project Co's probability of failure will be over 10% (63.9 points) which we have deemed to be possible, but unlikely.

C: Cumulative Unexpired Noncompliance Points. We have based our analysis on an Optimum Failure Rate of 1.0%; a Possible Failure Rate of 3.0% and a Possible (but unlikely) Failure Rate of 10.0%. For increased monitoring to be implemented Project Co's probability of failure will be over 10% for 3 years (65.1 points) which we have deemed to be possible, but unlikely over the 3 year period.

12.0 REVENUE ANALYSIS

Conclusions:

In general, based on our probability analysis the risk to Project Co incurring HPTE remedies is low. The following mitigating factors support this assumption:

Project Co would need to incur Noncompliance deductions at a failure rate over 10%, which is highly unlikely.

Project Co's experience managing, maintaining and operating large PPP Projects throughout North America and Australia; the O&M Contractor's extensive experience maintaining over 20,000km of roads and E-470's proven experience collecting tolls and back office support should not trigger the noncompliance point levels for the proposed remedies.

There is an allowance for a staged transition through Periods I – III as Project Co takes on more scope of the O&M and Toll Collection works. This will allow Project Co, the O&M Contractor and E-470 to implement their procedures efficiently and cleanly.

13.0 EQUATOR PRINCIPLES

13.1 *Background and Methodology*

13.1.1 The Equator Principles (“EP”) were established by the project finance sector to document a benchmark for the consideration of environmental and social risk factors during the due diligence process of assessing requests for project finance.

13.1.2 The risk management considers business, credit, environmental and reputation risk. The Equator Principles allow financial institutions to assess, document, mitigate and report upon the particular project and its potential risks. Although the initial rationale for the Equator Principles was directed at finance for emerging markets and Lesser Developed Countries it has become best practice to consider the Principles for all projects.

13.1.3 There are ten basic Equator Principles that were documented in 2006 and are presented as follows:

Principle 1: Review and Categorization;

Principle 2: Social and Environmental Assessment;

Principle 3: Applicable Social and Environmental Standards;

Principle 4: Action Plan and Management System;

Principle 5: Consultation and Disclosure;

Principle 6: Grievance Mechanism;

Principle 7: Independent Review;

Principle 8: Covenants;

Principle 9: Independent Monitoring and Reporting; and

Principle 10: EPFI Reporting.

13.1.4 The Equator Principles were developed with the active participation of the World Bank Group’s International Finance Corporation (“IFC”) and require projects to be categorized according to three levels of impact on the social and environmental landscape:

Category A: Potential significant adverse social or environmental impacts that are diverse, irreversible or unprecedented.

Category B: Projects that are defined by the IFC as having potential limited adverse social or environmental impacts that are few in number, generally site-specific, largely reversible and readily addressed through well proven mitigation measures.

Category C: These are projects are defined by the IFC as having minimal, or no, social or environmental impacts.

13.0 EQUATOR PRINCIPLES

13.2 *The Importance of Appropriate Project Categorization*

- 13.2.1 The first stage of the assessment of a proposed development under the EP is to categorize the development as Category A, B or C. This is typically undertaken through a scoping assessment in order to categorize the development in terms of the magnitude of its potential impacts and risks. This will determine which aspects of the project warrant in-depth assessment, management and mitigation measures.
- 13.2.2 Appropriate categorization of the project is fundamental. It determines what type and depth of assessment is required and consequently the appropriate management and mitigation measures for the project.
- 13.2.3 Appropriate management mechanisms include consultation and discourse with affected communities in a structured and culturally appropriate manner, including through the use of a grievance mechanism. Unless a suitable assessment through appropriate project categorization is undertaken it is not possible to identify the affected communities and individuals of that community. In such instances, such community impacts when realized later during construction or operation, can lead to significant problems as described in the previous section.
- 13.2.4 Unless the environmental and social risks are fully understood, the financial risks cannot be fully understood. Furthermore, it will not be possible for the financial institutions to impose appropriate mitigation, management and monitoring measures on the developer/operator, leading to the establishment of ineffective covenants to protect the investor.

13.3 *Defining Project Categorization*

- 13.3.1 Principle 1: Review and Categorization, of the EP states that:

When a project is proposed for financing, the EPFI will, as part of its internal social and environmental review and due diligence, categorize such project based on the magnitude of its potential impacts and risks in accordance with the environmental and social screening criteria of the International Finance Corporation (IFC).

- 13.3.2 The definitions for categorizing projects are summarized in 'Exhibit I' of the Equator Principles guidance document, reproduced from the IFC guidelines and are detailed below. We have used examples of previous projects to help define the nature of projects in each category and to help inform the categorization process later in this report. All examples summarized below are available for public view on the IFC web site.

Category A Projects

- 13.3.3 These are projects defined by the IFC as having potential significant adverse social or environmental impacts that are diverse, irreversible or unprecedented.

13.0 EQUATOR PRINCIPLES

13.3.4 Typical examples of Category A projects illustrated on the IFC website are:

- Mining development in Ghana incorporating the construction of a greenfield open cast gold mine and associated facilities (the mill facility, a tailings storage facility, a water storage facility, construction camp and access roadways) to mine, process and extract gold;
- Hydropower development in India. Construction, operation and maintenance of a 192MW run-of-the-river hydro-electric merchant power plant in the Kula district of Himachal Pradesh and the construction of a 174km, 220kV transmission line for evacuating power to the regional grid;
- Power plant in India incorporating 4,000MW (5 units of 800 MW each) 'ultra mega' imported coal and supercritical technology based power plant at the port City of Mudra in the state of Gujarat in India;
- Tourism in Rwanda incorporating establishment of an apartment hotel of 34 units which is targeted at medium and long stay international arrivals in Kigali. The key impact associated with the project is the resettlement of 47 families (247 people); and
- Cement plant in Albania incorporating construction of a new cement plant and associated quarries on a greenfield site. Potential impacts associated with air quality, effects on water regime and limited resettlement.

Category B Projects

13.3.5 Category B Projects: These are projects defined by the IFC as having potential limited adverse social or environmental impacts that are few in number, generally site-specific, largely reversible and readily addressed through mitigation measures,

13.3.6 Typical examples of Category B projects illustrated in the IFC website are:

- Textiles plant expansion in Turkey incorporating investment to increase production capacity from 25,000 tpy to 37,000 tpy by installing two twelve-position flake-fed spinning machines;
- Aerospace in Mexico incorporating rehabilitation and upgrading of the current facilities to enhance the plant's efficiency, expanding the range of engine repair capability to access a larger market and working capital requirements to support the operations. The site is not located near sensitive habitats and no resettlement nor economic displacement occurred as a result of the project;
- Rolling Mill in Kenya incorporating replacement of two existing galvanizing lines with a single state-of-the-art unit at an existing site. The new plant will have the capacity to manufacture 80,000 tons per annum of highest quality galvanized and Al-Zn coated coils for the local market as well as for exports in the region. No resettlement issues;

13.0 EQUATOR PRINCIPLES

- Seamless Metal Tube Production in India incorporating the modernization, expansion and financial restructuring of the company. Issues potential issues related to this project include direct and fugitive air emissions, liquid effluent treatment and discharge; solid waste handling and disposal; emergency planning and response; employee exposure to dust, molten metal and noise; and employee training. No resettlement issues reported;
- Heart Centre, Bosnia and Herzegovina, incorporating establishment of an 88-bed full-service Specialist Hospital and Heart Center (the Center) in Tuzla, Bosnia and Herzegovina (BiH); and
- Expansion of a hospital in New Delhi, India, incorporating the addition of 66 beds and the development of a 40 bed satellite unit to the existing 90 bed facility; the development of a new 250 bed facility in Manesar -an emerging city to the south of Delhi; and a television channel focused on health-related services.

Category C Projects

13.3.7 Category C Projects: These are projects defined by the IFC as having minimal or no social or environmental impacts.

13.3.8 Typical examples of Category C projects illustrated on the IFC website are:

- Finance in Peru incorporating supporting the creation of a private pension fund or AFP for the Peruvian market;
- Information technology in India supporting a software product company focused on billings systems for the Finance and Telecommunications industries; and
- Information technology in Papua New Guinea supporting a company to obtain a mobile license in Papua New Guinea and plans for the construction and operation of a nationwide GSM network to provide competition in monopolized mobile communication services.

13.3.9 From the analysis of the project categorizations that have been delineated by the IFC, projects involving transportation infrastructure are typically assigned Category B. The inference of this categorization is that a partial ESIA should be undertaken or an Initial Environmental Examination (IEE) should be undertaken in order to prove that there are no significant impacts.

13.4 ***Characteristics & Performance of the US36 Managed Lanes Toll Concession Project***

13.4.1 The information made available by Project Co has provided an overview of the project which has enabled us to determine the potential environmental and social issues associated with the Project.

13.0 EQUATOR PRINCIPLES

- 13.4.2 The project will consist of the reconstruction of the General Purpose Lanes and the addition of one “Express Lanes” in each direction on 6 miles of US36 from Interlocken Loop to Foothills Parkway (Phase 2 Works). The project also includes the maintenance and life cycle works of the US36 Phase 1 Works, which is 10 miles of General Purpose and Express Lanes between Federal Boulevard and 88th Street; and the existing I-25 Express Lanes.
- 13.4.3 The Phase 2 works is the expansion and reconstruction of the Phase 2 Corridor of the existing highway is surrounded by greenfield, residential, farmland and wetlands.
- 13.4.4 Construction is expected to take twenty-four (24) months. The project forms part of the overall re-development of the US36 corridor between Denver and Boulder. The new improved works will help control the flow of traffic improving congestion, safety, and accommodating the growing population and economic development.
- 13.4.5 The usual regulatory requirements for construction will be applicable to the highway. Project Co (passed through to the DBJV) retain the risk for obtaining the” Federal, State and Local Approvals, as required by the PPA.
- 13.4.6 During both construction and operation there will be both re-routing and disruption of traffic flows. It is evident that the appropriate authorities are implementing mitigation measures to reduce any negative impacts. As a result of the proposed improvements to the current highway will be a significant positive social impact.
- 13.4.7 With regards to construction phase, the development is still in the planning stages with no signed works agreements in place, though preliminary civil design and regulatory approvals will continue to develop once the Preferred Proponent is named.
- 13.4.8 Detailed risk assessments have been undertaken and method statements produced for the work to be undertaken. Upon the agreement of the works, detailed contracts should be written which will include stipulations for Project Co and their representatives to comply with the appropriate legislation at all times. Please refer to Section 7.2 of this report for details of the identified environmental impacts that may result as a produce of the proposed work.

13.0 EQUATOR PRINCIPLES

- 13.4.9 Similarly, since no contracts are presently in place, no covenants have been stipulated by the investors on the project managers or contractors. Potential issues associated with the construction phase of the operations will typically be:
- Noise (jackhammers, vehicle movements, and materials movement), particularly in respect to a large portion of the works occurring in a major arterial corridor;
 - Dust, from movement of heavy vehicles and wind entrainment of demolition dust and construction materials/waste;
 - Impacts associated with accidental releases to water and or air (including odor), particularly if as result of the use of hazardous/noxious substances;
 - Contamination/siltation of surface waters as a result of suspended particles in the surface water runoff; and
 - Increased visual pollution, particularly at night as a result of security lighting around the construction area. Note if such lighting is used and powered by on-site generators, this may lead to noise issues.
- 13.4.10 However, since the construction works are being undertaken within the United States, with well-developed construction laws, standards and policing of laws, it is unlikely that there will be significant impacts associated with the construction phase of the project. Since the country is situated within the Organisation for Economic Co-operation and Development (“OECD”), the implementation of IFC standards on construction management is superseded by the in-country regulations.
- 13.4.11 The contractors will be sourced mainly from the local area. Therefore, issues associated with management of foreign workers, housing and associated impacts are not applicable to this project.
- 13.4.12 Participation, consultation and awareness of stakeholders, including general public has been and continues to be undertaken by the local authority. Local planning laws will effectively dictate this process and therefore it is unnecessary to impose any further requirements on Project Co. The project engineers will continue to engage with the relevant stakeholders when the works agreement is in place and the construction is underway. The extent of the participation undertaken to date, and the extent planned, is appropriate to the nature, scale and impacts of the activities and therefore no further actions are necessary.
- 13.4.13 The re-construction and development of the highway is a refurbishment and improvement to the existing infrastructure and will not have any dramatic new negative impact to the surrounding areas.

13.5 *Conclusions and Project Categorization*

- 13.5.1 From the information available, we consider the proposed construction will have a very low social and/or environmental negative impact. Furthermore since this development will significantly improve traffic flow, it can be assumed that the overarching impact of the project is a positive one.

13.0 EQUATOR PRINCIPLES

13.5.2 Previous flatwork projects sponsored by the IFC are generally located in non-OECD countries and are therefore appropriately assigned Category B. However, this development will be in the United States. We consider that the project should not be assigned Category B for the following reasons:

- The planning of the development is taking place in an OECD country with well-established regulatory requirements and penalties for transgression. Note that the examples of category B projects illustrated earlier were undertaken in countries with less well established planning regimes and governance;
- Project Co obliged to obtain a certain number of Major Governmental Approvals, which we do not expect to be onerous to a consortium of the nature of Project Co;
- No significant negative social impacts are perceived that would warrant specific, detailed analysis;
- Construction activities will be appropriately controlled by means of conscientious and well developed regulations. The project will be delivered by a team that is well experienced in meeting all regulatory processes;
- Comprehensive Environmental Management Plan will be developed and followed;
- Since the development is taking place on land which is owned by the HPTE/CDOT, the minimization of negative issues associated with the project will be high on the agenda; and
- After development and during operation, the activities are not perceived to result in new or increased impacts compared to pre-development impacts and the structures, plant and processes within the development will be specified to the highest resource efficiency standards.

Conclusion

We consider that an appropriate categorization for this project is Category C, where the project has “minimal or no social or environmental impacts” as defined by the OFC guidelines.

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APPENDIX J

FORM OF BOND COUNSEL OPINION

February 26, 2014

Colorado High Performance Transportation Enterprise
Denver, Colorado

\$20,360,000

**Colorado High Performance Transportation Enterprise
U.S. 36 and I-25 Managed Lanes Senior Revenue Bonds
Series 2014**

Ladies and Gentlemen:

We have been engaged by the Colorado High Performance Transportation Enterprise (as issuer of the 2014 Bonds defined hereinafter, the “Issuer”), a government-owned business within the Colorado Department of Transportation (“CDOT”), and a division of CDOT, created by the Funding Advancements for Surface Transportation and Economic Recovery Act of 2009, title 43, article 4, part 8, Colorado Revised Statutes, as amended (“FASTER”), to act as Bond Counsel with respect to the issuance of the Colorado High Performance Transportation Enterprise U.S. 36 and I-25 Managed Lanes Senior Revenue Bonds, Series 2014 (the “2014 Bonds”). The 2014 Bonds are being issued pursuant to FASTER; the Supplemental Public Securities Act, title 11, article 57, part 2, Colorado Revised Statutes, as amended (the “Supplemental Securities Act”); and the Trust Indenture dated February 26, 2014 (the “Indenture”), by and between the Issuer and The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”). Capitalized terms used but not defined herein have the meanings assigned to them in the Glossary of Terms attached as Exhibit A to the Indenture.

The proceeds of the 2014 Bonds will fund a loan from the Issuer to Plenary Roads Finco LP (the “Borrower Finco”) pursuant to a Loan Agreement, dated February 26, 2014 (the “Loan Agreement”), by and among the Issuer, the Borrower Finco, Plenary Roads Finco ULC, Plenary Denver Finco, LLC, and Plenary Roads Denver LLC (the “Concessionaire”). The Borrower Finco, Plenary Roads Finco ULC, Plenary Denver Finco, LLC, and the Concessionaire are referred to collectively herein as the “Borrower Group Members.”

We have examined: the documents listed in the preceding two paragraphs; the Tax Regulatory Agreement dated February 26, 2014 (the “Tax Regulatory Agreement”), by and among the Issuer, the Borrower Finco and the Concessionaire; the Master Security Agreement, dated as of February 25, 2014 (the “MSA”), by and among the Issuer, the Trustee, The Bank of New York Mellon, as security trustee (the “Security Trustee”), The Bank of New York Mellon, as intercreditor agent (the “Intercreditor Agent”), the United States Department of Transportation, Northleaf/PRD LenderCo LP, and the Borrower Group Members; the Amended and Restated Concession Agreement for US 36 and the I-25 Managed Lanes dated February 25, 2014 (the “Amended and Restated Concession Agreement”), between the Colorado High Performance Transportation Enterprise and the Concessionaire; the Constitution and the laws of the State of Colorado (the “State”); the opinions delivered on or about the date hereof by the Attorney General of the State with respect to the 2014 Bonds, the documents described above and the other matters described in such opinions; the Internal Revenue Code of 1986, as amended (the “Code”), and the regulations, rulings and judicial decisions relevant to the opinions set forth herein; and the proceedings, certificates, documents, and other opinions and papers delivered in connection with the

issuance of the 2014 Bonds. As to questions of fact material to our opinion, we have relied upon the representations and certifications set forth in the items examined, without undertaking to verify the same by independent investigation. We have assumed the due authorization, execution and delivery by the Trustee, and the enforceability against the Trustee, of the Indenture and the due authorization, execution and delivery by the Borrower Group Members, and the enforceability against the Borrower Group Members, of the Loan Agreement and the Tax Regulatory Agreement; have assumed the correctness of the legal conclusions stated in the opinions of the Attorney General referred to above; and have assumed that the Issuer, the Trustee and the Borrower Group Members will comply with, and perform their obligations in accordance with, the Indenture, the Loan Agreement and the Tax Regulatory Agreement.

Based upon and in reliance on the foregoing, we are of the opinion, under existing law and as of the date hereof, that:

1. The Issuer is duly created and validly existing as a government-owned business within CDOT with the power to enter into and perform its obligations under the Indenture and the Loan Agreement and to issue the 2014 Bonds.

2. The Indenture and the Loan Agreement have been duly authorized, executed and delivered by the Issuer and are legal, valid and binding obligations of the Issuer enforceable against the Issuer.

3. Pursuant to FASTER and the Supplemental Securities Act, the Indenture creates a valid lien on the Trust Estate for the benefit of the Owners of the 2014 Bonds, which lien is on a parity with the lien on the Trust Estate for any Additional Senior Bonds, if any, issued under the Indenture in the future.

4. The 2014 Bonds have been duly authorized, executed and delivered by the Issuer and are valid and binding special, limited obligations of the Issuer payable solely from the Trust Estate in accordance with the Indenture.

5. Under the laws, regulations, rulings and judicial decisions existing on the date hereof, interest on the 2014 Bonds is excluded from gross income for federal income tax purposes, except that such exclusion does not apply with respect to interest on any 2014 Bond for any period during which such 2014 Bond is held by a person who is a "substantial user" of the facilities financed by the 2014 Bonds or a "related person" to such substantial user within the meaning of Section 147(a) of the Code. Interest on the 2014 Bonds constitutes an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations under the Code. The opinions set forth in the preceding sentences assume the accuracy of certain representations and continuing compliance by the Issuer and the Borrower Group Members with certain covenants designed to satisfy the requirements of the Code that must be met subsequent to the issuance of the 2014 Bonds. Failure to comply with such requirements could cause such interest on the 2014 Bonds to be included in gross income for federal income tax purposes or could otherwise adversely affect such opinions, retroactive to the date of issuance of the 2014 Bonds. The Issuer has covenanted in the Indenture and the Tax Regulatory Agreement, the Borrower Group Members have covenanted in the Loan Agreement, and the Borrower Finco and the Concessionaire have covenanted in the Tax Regulatory Agreement to comply with such requirements. We express no opinion regarding other federal tax consequences arising with respect to the 2014 Bonds.

6. Under State statutes existing on the date hereof, the 2014 Bonds, the transfer thereof and the income therefrom are exempt from all taxation and assessments in the State of

Colorado. We express no opinion regarding other tax consequences arising with respect to the 2014 Bonds under the laws of the State or any other state or jurisdiction.

The rights of the Owners of the 2014 Bonds and the enforceability of the 2014 Bonds, the Indenture and the Loan Agreement may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally, by equitable principles, whether considered at law or in equity, by the exercise of judicial discretion, by the exercise by the State and its governmental bodies of the police power inherent in the sovereignty of the State and by the exercise by the United States of America of the powers delegated to it by the Constitution of the United States of America.

This opinion is limited to the matters specifically set forth herein and we offer no other opinion or advice as to any other aspect of the transaction generally described herein. In particular, but without limitation, we offer no opinion or advice as to: the enforceability of the Indenture against the Trustee; the enforceability of the Loan Agreement against the Borrower Group Members; the enforceability of the Tax Regulatory Agreement, the MSA or the Amended and Restated Concession Agreement against any of the parties thereto; any indemnification, contribution, penalty, choice of law, choice of forum or waiver provisions contained in the foregoing documents; or the creditworthiness or financial condition of the Issuer, CDOT, the State, the Trustee, the Borrower Group Members or any other person. In addition, we have not undertaken any responsibility for the accuracy, completeness or fairness of the Preliminary Official Statement dated February 12, 2014, as supplemented by the Supplement to Preliminary Official Statement dated February 19, 2014, or the final Official Statement dated February 20, 2014 with respect to the 2014 Bonds or any other offering material relating to the 2014 Bonds, and we express no opinion relating thereto.

The opinions set forth herein may be affected by changes in the items examined in connection with this opinion and actions taken or omitted or events occurring after the date hereof. This opinion speaks only as of its date and our engagement with respect to the 2014 Bonds has concluded with the delivery of this opinion. We have no obligation to update this opinion or to inform any person about any changes in the items described in the third paragraph hereof, any actions taken or omitted or events occurring after the date hereof or any other matters that may come to our attention after the date hereof.

Respectfully submitted,

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APPENDIX K

BOOK-ENTRY-ONLY SYSTEM

Introduction

Unless otherwise noted, the information contained under the caption “—General” below has been provided by DTC. Neither the Issuer nor the Borrower Group makes any representations as to the accuracy or the completeness of such information. The Beneficial Owners of the 2014 Bonds should confirm the following information with DTC, the Direct Participants or the Indirect Participants.

NONE OF THE ISSUER, THE BORROWER GROUP OR THE BOND TRUSTEE HAVE ANY RESPONSIBILITY OR OBLIGATION TO DIRECT PARTICIPANTS, TO INDIRECT PARTICIPANTS, OR TO ANY BENEFICIAL OWNER WITH RESPECT TO (A) THE ACCURACY OF ANY RECORDS MAINTAINED BY DTC, ANY DIRECT PARTICIPANT, OR ANY INDIRECT PARTICIPANT; (B) ANY NOTICE THAT IS PERMITTED OR REQUIRED TO BE GIVEN TO THE OWNERS OF THE 2014 BONDS UNDER THE INDENTURE, (C) THE SELECTION BY DTC OR ANY DIRECT PARTICIPANT OR INDIRECT PARTICIPANT OF ANY PERSON TO RECEIVE PAYMENT IN THE EVENT OF A PARTIAL REDEMPTION OF THE 2014 BONDS; (D) THE PAYMENT BY DTC OR ANY DIRECT PARTICIPANT OR INDIRECT PARTICIPANT OF ANY AMOUNT WITH RESPECT TO THE PRINCIPAL OR INTEREST DUE TO THE OWNERS OF THE 2014 BONDS; (E) ANY CONSENT GIVEN OR OTHER ACTION TAKEN BY DTC AS THE OWNERS OF 2014 BONDS; OR (F) ANY OTHER MATTER REGARDING DTC.

General

DTC will act as securities depository for the 2014 Bonds. The 2014 Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully registered 2014 Bond certificate will be issued for each maturity of the 2014 Bonds, each in the aggregate principal amount of such maturity, and will be deposited with DTC.

DTC, the world’s largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934, as amended. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants”). DTC has a Standard & Poor’s rating of AA+. The DTC Rules applicable to Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at www.dtcc.com.

Purchases of the 2014 Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the 2014 Bonds on DTC's records. The ownership interest of each actual purchaser of each 2014 Bond ("Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the 2014 Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in the 2014 Bonds, except in the event that use of the book-entry system for the 2014 Bonds is discontinued.

To facilitate subsequent transfers, all 2014 Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co. or such other name as may be requested by an authorized representative of DTC. The deposit of 2014 Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not affect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the 2014 Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such 2014 Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of 2014 Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the 2014 Bonds, such as redemptions, tenders, defaults and proposed amendments to the 2014 Bond documents. For example, Beneficial Owners of 2014 Bonds may wish to ascertain that the nominee holding the 2014 Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of the notices be provided directly to them.

While the 2014 Bonds are in the book-entry-only system, redemption notices will be sent to DTC. If less than all of the 2014 Bonds of a maturity are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to the 2014 Bonds unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the Issuer as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the 2014 Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Principal and interest payments on the 2014 Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the Issuer, the Bond Trustee on the payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, the Bond Trustee or the Issuer, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal and interest payments to Cede & Co. (or such other nominee as may be requested by an

authorized representative of DTC) is the responsibility of the Issuer or the Bond Trustee, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as depository with respect to the 2014 Bonds at any time by giving reasonable notice to the Issuer or the Bond Trustee. Under such circumstances, in the event that a successor depository is not obtained, certificates representing the 2014 Bonds are required to be printed and delivered.

The Issuer may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, certificates representing the 2014 Bonds will be printed and delivered to DTC.

BENEFICIAL OWNERS WILL NOT RECEIVE PHYSICAL DELIVERY OF 2014 BONDS AND WILL NOT BE RECOGNIZED BY THE BOND TRUSTEE AS OWNERS THEREOF, AND BENEFICIAL OWNERS WILL BE PERMITTED TO EXERCISE THE RIGHTS OF OWNERS ONLY INDIRECTLY THROUGH DTC AND THE DTC PARTICIPANTS.

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