

**AMENDMENT NO. 1 TO
THE AMENDED AND RESTATED A&R CONCESSION AGREEMENT FOR US 36 AND THE I-25
MANAGED LANES**

THIS AMENDMENT NO. 1 TO THE AMENDED AND RESTATED A&R CONCESSION AGREEMENT FOR US 36 AND THE I-25 MANAGED LANES (this "Amendment") is made as of ~~November~~, 2014.

December 17

BETWEEN:

COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE, a government owned business and a division of the Colorado Department of Transportation

("HPTE")

AND:

PLENARY ROADS DENVER LLC, a Colorado limited liability company

(the "Concessionaire", and collectively with HPTE, the "Parties").

WHEREAS:

- A. On February 25, 2014, HPTE and the Concessionaire executed the Amended and Restated A&R Concession Agreement for US 36 and the I-25 Managed Lanes (the "**A&R Concession Agreement**"); and
- B. As contemplated by Section 70 of the A&R Concession Agreement, the Parties desire to amend the A&R Concession Agreement by written agreement.

NOW THEREFORE for good and valuable consideration, the sufficiency of which is acknowledged and agreed, HPTE and the Concessionaire agree to further amend the A&R Concession Agreement in accordance with terms of this Amendment.

1. Terms of this Amendment

- (a) Capitalized terms used and not defined herein have the meaning ascribed to such terms in the A&R Concession Agreement.

- (b) A new defined term is added to Schedule 1 of the A&R Concession Agreement as follows:
- "Phase 1 DB Project Completion"** means Project Completion under the Phase 1 DB Contract, being the date when CDOT finds that all prerequisites to Project Completion have been met in accordance with Section 20.1.2 of the Phase 1 DB Contract."
- (c) The definition of **"Phase 1 Services Commencement Date"** as defined in Schedule 1 of the A&R Concession Agreement is deleted and replaced in its entirety with the following definition: "means the later of the date of Phase 1 DB Project Completion and the date upon which HPTE has given notice to the Concessionaire that the Conditions Precedent to the Phase 1 Services Commencement Date have been satisfied or waived."
- (d) A new sentence is added to Section 1.6 of the A&R Concession Agreement as follows: "When in this Contract there is a reference to "accept" or "acceptance" in relation to the Phase 1 DB Contract, such term means the acceptance by CDOT that prerequisites to Project Completion have been met in accordance with Section 20.1.2 of the Phase 1 DB Contract (which, for illustration, applies to all uses of "accept" and "acceptance" as used in the A&R Concession Agreement Sections 23.3, and 23.5, and in Schedule 2, Part 2A, Sections 2.2, 2.3, 7.1(b), and 8 of the A&R Concession Agreement)."
- (e) Section 29.7(d) of the A&R Concession Agreement is deleted and replaced in its entirety with the following:
- "In all cases where payments are due to be made to the Concessionaire by HPTE pursuant to this Section 29.7:
- (i) HPTE shall make payment to the Concessionaire in relation to each day during which a closure or suspension was in force within three (3) Business Days after that day; provided, that
- (1) in the case of any closure or suspension where the second sentence of Section 29.7(c)(iii) applies, the Parties shall have five (5) Business Days following the first two (2) week measurement period to determine the amount of such payment in accordance with Section 29.7(c)(iii) and Section 29.7(d)(ii), and any payment shall be payable to Concessionaire within five (5) Business Days following such determination; and
- (2) in the case of any closure or suspension where Section 29.7(c)(iv) applies, the Parties shall have five (5) Business Days following the first three (3) month measurement period to determine the amount of such payment in accordance with Section 29.7(c)(iv) and Section

29.7(d)(ii), and any payment shall be payable to Concessionaire within five (5) Business Days following such determination.

- (ii) Where calculation of the payment involves using the value of Toll Revenues which will be collected after the date when payment is due, then the calculation shall be made on the basis of Toll Revenues predicted in the Base Case Financial Model and a balancing payment made by HPTE to the Concessionaire or by the Concessionaire to HPTE within ten (10) Business Days after all of the actual data necessary to make the calculation is available.”

- (f) This Amendment shall take effect as of the date first set forth above.

2. Miscellaneous

- (a) Upon this Amendment taking effect, this Amendment shall be read and construed as part of and subject to the terms of the A&R Concession Agreement in all respects, except as specifically provided for in Sections 1(b) through 1(e), inclusive, of this Amendment. The terms and provisions of the A&R Concession Agreement, as now modified by this Amendment, are hereby affirmed and shall remain in full force and effect. To the extent of any conflict or inconsistency between the terms of this instrument and the A&R Concession Agreement and this Amendment, the terms of this Amendment shall control.
- (b) This Amendment may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by each of the parties and the State Controller shall constitute a full and original instrument for all purposes.

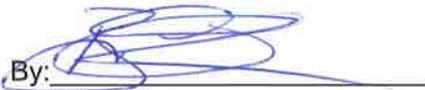
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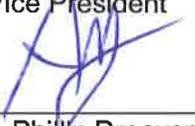
WITNESS WHEREOF the parties have executed this Amendment effective as of the date first set forth above.

HPTE

By: 
Name: Michael L. Cheroutes
Title: HPTE Director

PLENARY ROADS DENVER LLC

By: 
Brian Clark
Vice President

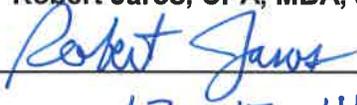
By: 
A. Phillip Dreaver
Vice President

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller of the State of Colorado approve all State Contracts. This Amendment is not valid until signed and dated below by the State Controller or delegate of the State of Colorado. The Concessionaire is not authorized to begin performance until such time. If the Concessionaire begins performing prior thereto, the State of Colorado is not obligated to pay the Concessionaire for such performance or for any goods or services provided hereunder.

STATE CONTROLLER

Robert Jaros, CPA, MBA, JD

By:  _____

Date: 12-17-14