

SCHEDULE 2

Conditions Precedent

Part 1a – Commencement Date

1. Financial Close has occurred.
2. HPTE has received evidence that those of the Required Insurances which are required to be in force by the Commencement Date (pursuant to Section 37) are in full force and effect, and the Concessionaire has delivered to HPTE duplicate originals or copies thereof certified by the Concessionaire's insurance broker to be true and correct copies of the originals.
3. The following contracts have been executed and copies certified to be true and correct copies of the originals have been delivered to HPTE:
 - (a) the Construction Sub-Contract;
 - (b) the Operation Sub-Contract;
 - (c) the HPTE-Sub-Contractor Agreements substantially in the form appearing in Schedule 19 from the Construction Sub-Contractor and the Operation Sub-Contractor;
 - (d) the Performance Security;
 - (e) the Tolling Services Agreement;
4. All Necessary Consents required for the Concessionaire to commence the Services in relation to the I-25 Managed Lanes have been received.
5. The Concessionaire has delivered to HPTE the schedule of submissions described in the HPTE Phase 2 Construction Work Requirements.
6. 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.
7. 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;
8. There exists no Concessionaire Default for which the Concessionaire has received notice from HPTE.
9. The Preliminary Initial Schedule referred to in paragraph 2 of Schedule 5 has been delivered and at least 20 Business Days have elapsed after the delivery of that schedule.
10. The Maintenance Management Plan, Operations Management Plan, the Safety Plan and the Transition Management Plan have been accepted by HPTE in accordance with Section 22.4 of the Contract.
11. The Concessionaire has delivered to HPTE a proposed Established Toll Schedule for the I-25 Managed Lanes and either 60 days have elapsed or HPTE has established that as the Established Toll Schedule.
12. The Source Code and Source Code Documentation relating to the operation of the I-25 Managed Lanes has been validated and placed in Escrow.

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13. The Concessionaire has delivered to HPTE a certificate by an Officer of the Concessionaire who has been actively involved with the negotiation of the financing of the Project to certify to the best of his knowledge, information and belief after making reasonable inquiries, whether or not at the Commencement Date any Subordinated Debt is to be held by
- (i) an Equity Member or by an Affiliate of an Equity Member (except for any Finco); or
 - (ii) any person (apart from a Finco) who has agreed to lend the Subordinated Debt on any basis other than as an arm's length transaction, wholly unconnected (whether directly or indirectly) with any arrangement of any sort with an Equity Member or any Affiliate of an Equity Member

(in which case if either is in the affirmative the steps provided for in the definition of Sub-Debt Adjusted Initial Equity IRR in Schedule 14 shall apply but if neither is in the affirmative the steps provided for in the definition of Sub-Debt Adjusted Initial Equity IRR in Schedule 14 shall not apply).

14. The Financial Plan, as defined in the agreement between the TIFIA Lender and a Finco in respect of the Phase 2 TIFIA Loan, has been approved in the manner described in Section 21(a) of that agreement.

Part 1b – Conditions for Financial Close

1. The Financing Assignments, which comply with Section 2.5, have been executed.
2. The Concessionaire has provided HPTE true and complete copies of the applicable executed Funding Agreements and Financing Assignments.
3. The Direct Agreement has been executed by the Security Trustee and by the Concessionaire.
4. All conditions precedent to the availability and utilization of Senior Debt have been satisfied in full or waived by the party entitled to rely on them.

SCHEDULE 2

Conditions Precedent

Part 2 – Conditions Precedent to the Phase 1 Services Commencement Date

1. HPTE has received evidence that those of the Required Insurances which are required to be in force by the Phase 1 Services Commencement Date (pursuant to Section 37) are in full force and effect, and the Concessionaire has delivered to HPTE duplicate originals or copies thereof certified by the Concessionaire's insurance broker to be true and correct copies of the originals.
2. 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.
3. 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.
4. 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.
5. 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.
6. 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 60 days have elapsed or HPTE has established that as the Established Toll Schedule.
7. There exists no Concessionaire Default for which the Concessionaire has received notice from HPTE.
8. 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 by the Tolling Services Provider.
9. The Assignment Effective Date (as defined in the Phase 1 TIFIA Loan AAR Agreement) shall occur concurrently with the Phase 1 Services Commencement Date.

SCHEDULE 2

Conditions Precedent

Part 2A – Process leading to the Phase 1 Services Commencement Date and consequences of delays to occurrence of the Assignment Effective Date, or the failure of the Assignment Effective Date to occur

1. In this Part the following expressions (in addition to those specified in Schedule 1) shall have the following meanings:

“Adjusted Estimated Fair Value of the Contract” has the meaning given to it in Part 1 of Schedule 23;

“Advance Fulfillment CPs” means those Assignment Effective Date CPs indicated to be Advance Fulfillment CPs in the table in the Appendix to this Part;

“Amended and Restated Phase 1 Loan Agreement” has the meaning given to it in the Phase 1 TIFIA Loan AAR Agreement;

“Assignment Effective Date” has the meaning given to it in the Phase 1 TIFIA Loan AAR Agreement;

“Assignment Effective Date CPs” means those conditions set out in section 13 of the Amended and Restated Phase 1 Loan Agreement, which are briefly listed for ease of reference in the Appendix to this Part;

“Base Senior Debt Termination Amount” has the meaning given to it in Part 1 of Schedule 23;

“Concessionaire Risk CPs” means those Assignment Effective Date CPs indicated to be Concessionaire Risk CPs in the table in the Appendix to this Part;

“Debt Termination Sum” has the meaning given to it in paragraph 9.4(b):

“Equity/Sub-debt Amount” means the Adjusted Estimated Fair Value of the Contract less the sum of:

- (a) the outstanding balance (as at the date of termination) of the Phase 1 TIFIA Loan
- (b) the Base Senior Debt Termination Amount; and
- (c) the Phase 2 TIFIA Loan Termination Amount;

an includes a reference to accrued interest in accordance with paragraph 9.4(c);

“Existing Phase 1 Loan Agreement” has the meaning given to it in the Phase 1 TIFIA Loan AAR Agreement;

“HPTE Risk CPs” means those Assignment Effective Date CPs indicated to be HPTE Risk CPs in the table in the Appendix to this Part;

“Material Adverse Effect CP” means the Assignment Effective Date CP at section 13(p) of the Amended and Restated Phase 1 Loan Agreement;

“MSA” has the meaning given to it in the Phase 1 TIFIA Loan AAR Agreement;

“Phase 2 TIFIA Debt Termination Amount” has the meaning given to it in Part 1 of Schedule 23;

“Restructured Existing Debt Arrangements” has the meaning given in paragraph 9.2;

“Termination Sum Financing Arrangements” has the meaning given paragraph 9.5(c);

“Updated Rating CP” means the Assignment Effective Date CP at section 13(b) of the amended and Restated Phase 1 Loan Agreement.

2. Intended process for satisfying the Conditions in Section 13 of the Amended and Restated Phase 1 Loan Agreement

2.1 HPTE will give notice to the Concessionaire when it has obtained all disbursements of the Phase 1 TIFIA Loan.

2.2 Having regard to the notifications of the expected date for acceptance of the Phase 1 DB Contract and the Phase 1 ETCS given by HPTE to the Concessionaire under Section 23.3, HPTE and the Concessionaire will regularly consult one another about the timing for obtaining the “Existing Rating” (as defined in the Updated Rating CP) and the Concessionaire will use reasonable endeavors to satisfy or obtain waivers of all of the Advance Fulfillment CPs conditions precedent in Section 13 of the Amended and Restated Phase 1 Loan apart from condition (a) [Phase 1 Loan fully disbursed] and condition (l) [Assignment Effective Date] before acceptance by HPTE of the Phase 1 DB Contract and the Phase 1 ETCS occurs.

2.3 Once acceptance has occurred under the Phase 1 DB Contract and the Phase 1 ETCS Installation Contract then, when HPTE is satisfied that the conditions precedent to the Phase 1 Services Commencement Date (apart from the Assignment Effective Date which shall occur concurrently with the Phase 1 Services Commencement Date) are satisfied or that it wishes to waive them, HPTE will give a notice (which will be irrevocable by HPTE) stating that all conditions precedent to the Phase 1 Services Commencement Date (apart from that the Assignment Effective Date shall occur concurrently with the Phase 1 Services Commencement Date) have been satisfied or waived.

2.4 On receipt of the notice referred to in paragraph 2.3 if the Advance Fulfillment CPs have been satisfied or waived then the Concessionaire will proceed to obtain the Updated Rating referred to in section 13(b) of Amended and Restated Phase 1 Loan Agreement.

3. Process if there are outstanding conditions precedent to the Assignment Effective Date

3.1 If HPTE has given its notice under paragraph 2.3 but the Assignment Effective Date does not occur within 10 Business Days after that notice then in respect of the HPTE Risk CPs, the Concessionaire may give notice to HPTE, or in respect of all of the other conditions precedent to the Assignment Effective Date, HPTE can give notice to the Concessionaire, or requiring either:

- (a) the outstanding conditions precedent to be satisfied 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 Assignment Effective Date are addressed together with a plan for addressing those outstanding conditions precedent.

in each case within 30 Business Days after the notice under paragraph 2.3.

3.2 The plan under paragraph 3.1(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.

3.3 If the plan under paragraph 3.1(b) cannot be implemented within the 30 Business days after HPTE's notice under paragraph 2.3 then HPTE may commence interim operations of the Phase 1 Managed Lanes. The revenues generated by the Phase 1 Managed Lanes will be retained by HPTE and dealt with in accordance with the Existing Phase 1 MTI. For greater certainty any revenues generated by the Phase 1 Managed Lanes not required to be retained in accordance with the Existing Phase 1 MTI will be held in a separate account by HPTE until the plan (and any interim plan) is developed and agreed by HPTE and the Concessionaire. HPTE may use the funds in this account for O&M expenses if at

any time the Toll Revenues from the Phase 1 Managed Lanes and the reserves held under the Existing Phase 1 MTI are insufficient for that purpose.

- 3.4 The plan may be based on the principles set out in Appendix H to the MSA.
- 3.5 The plan (and/or any interim plan) will be subject to agreement by all relevant parties (in the case of HPTE and the Concessionaire, each acting reasonably) including the agreement of any necessary waivers, consents or amendments to or under any of the Existing Phase 1 Loan Agreement, the Existing Phase 1 MTI and/or the Funding Agreements.

4. Termination following non-assumption of the Phase 1 TIFIA Loan

- 4.1 If following HPTE's notice referred to in paragraph 2.3 above:
- (a) a plan or interim plan is not put forward in accordance with paragraph 3.1 within 60 Business Days after HPTE's notice under paragraph 2.3;
 - (b) the plan or interim plan is put forward within 60 Business Days after HPTE's notice under paragraph 2.3 but:
 - (i) the plan or interim plan cannot be agreed; or
 - (ii) the Assignment Effective Date does not occur before the Full Services Commencement Longstop Date; or
 - (c) if other material conditions included in an agreed plan under this paragraph 3 are not met at all or by such deadlines as may be prescribed by the agreed plan;

then HPTE may terminate this Contract by giving notice to the Concessionaire, and compensation on termination shall be calculated and paid as set out in the remainder of this Part.

5. HPTE Risk CPs

- 5.1 If HPTE terminates this Contract because the reason preventing the Assignment Effective Date from occurring is non-satisfaction of one of the HPTE Risk CPs then compensation on termination shall be paid as if the termination had arisen out of an HPTE Default.

6. Concessionaire Risk CPs

In the case of all of the Concessionaire Risk CPs apart from those at section 13(b), 13(k) and 13(p) of the Amended and Restated Phase 1 Loan Agreement, and subject to paragraph 6A in the case of the Concessionaire Risk CP at section 13(h) of the Amended and Restated Phase 1 Loan Agreement, the amount of the termination payable shall be the Adjusted Estimated Fair Value of the Contract and shall be no greater than 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

- (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 Amended and Restated 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 Amended and Restated Phase 1 Loan Agreement

in which case the quantum of the payment shall be equal to the Termination Sum under Part 5 of Schedule 23 (Force Majeure).

6A Section 13(h) of the Amended and Restated Phase 1 Loan Agreement: litigation risk

In the case of the Concessionaire Risk CP under Section 13(h) of the Amended and Restated Phase 1 Loan Agreement, if the Concessionaire cannot give the required certificate 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 agreed or determined to be 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 agreed or determined to be 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.

7. Section 13(k) of the Amended and Restated Phase 1 Loan Agreement: Tolling Services Agreement

7.1 In the case of Assignment Effective Date CP 13(k) relating to the Tolling Services Agreement if:

- (a) the Concessionaire agrees a form of Tolling Services Agreement (and, if applicable, a Trademark License Agreement) with the Tolling Services Provider which is on terms substantially consistent with the Tolling Services Agreement and Trademark License Agreement in force on the Commencement Date subject to amendments in accordance with the MOU attached to that Commencement Date Tolling Services Agreement; and
- (b) the Concessionaire provides that form of Tolling Services Agreement (and if applicable, a Trademark License Agreement) to TIFIA 180 days or more before the then currently expected date for acceptance of the Phase 1 Managed Lanes under the Phase 1 DB Contract (as notified to the Concessionaire by HPTE under Section 23.3 of the Concession Agreement)

but the TIFIA Lender and/or the Required Senior Creditors refuse to accept that those documents were in form and substance satisfactory to them and this has led to the termination then the quantum of the payment of compensation on termination shall be equal to the Termination Sum under part 5 of Schedule 23.

7.2 In all other circumstances where a failure to satisfy the condition at section 13(k) of the Amended and Restated Phase 1 Loan Agreement has led to termination then the amount of the compensation on termination shall be the Adjusted Estimated Fair Value of the Contract.

8. Updated Rating CP and the Material Adverse Effect CP

Subject to the following sentence, if a failure to fulfill the Updated Rating CP and the Material Adverse Effect CP leads to termination of the Concession Agreement then the quantum of the termination payment shall be the Adjusted Estimated Fair Value of the Contract. In circumstances where the Concessionaire has obtained an Existing Rating under Section 16(m) of the Phase 2 TIFIA Loan Agreement within four (4) weeks prior to the expected date for acceptance of the Phase 1 DB Contract and the Phase 1 ETCS (which date has been set out in the notices from HPTE under section 23.3) but subsequent notices from HPTE under section 23.3 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 fulfill these conditions which leads to termination of this Contract shall be equal to the Termination Sum under part 5 of Schedule 23.

9. Quantification of Adjusted Estimated Fair Value of the Contract and Payment of Compensation on Termination

Adjusted Estimated Fair Value of the Contract

9.1 If the amount of the payment on termination under this Part will be the Adjusted Estimated Fair Value of the Contract (to avoid doubt, valuing the whole Project, including the Phase 1 Managed Lanes) then that shall be assessed on the following assumptions:

- (a) that the Assignment Effective Date took place when the other conditions precedent for the Phase 1 Services Commencement Date were satisfied; and
- (b) that (having regard to the intentions of the parties in relation to building out the Phase 2 Work set out at paragraph 10.1 below) 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 (including an allowance for the settlement of any claims which the Construction Sub-Contractor may have against the Concessionaire);

unless the Construction Sub-Contract has previously been terminated, or the Construction Sub-Contractor is in default under the Construction Sub-Contract, in which case (c) will apply;

- (c) if paragraph 9.1(b) does not apply, then the assumption shall be that HPTE will complete the construction of the Phase 2 Works 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.
- (d) Apart from the matters set out in this paragraph 9.1, the assessment of the Adjusted Estimated Fair Value of the Contract shall be carried out in accordance with Schedule 23.

HPTE to use existing financing where possible

9.2 HPTE will use its reasonable endeavors to assume the rights to draw down the proceeds of the PABs (as defined in the MSA) and the Phase 2 TIFIA Loan and to assume the obligation to repay those facilities, and if, successful, these arrangements are referred to as the "Restructured Existing Debt Arrangements".

Payment of the compensation on termination

9.3 In all cases where the compensation on termination payable under this Part is to be on the basis of Part 5 of Schedule 23 such compensation shall be payable in accordance with Part 5 of Schedule 23 and Part 6 of Schedule 23.

9.4 Whenever the compensation on termination under this Part is to be determined on the basis of Adjusted Estimated Fair Value of the Contract such compensation on termination shall be paid as follows:

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- (a) If and to the extent that HPTE can put the Restructured Existing Debt Arrangements in place the only compensation to be paid shall be the Equity/Sub-debt Amount;
- (b) If and to the extent that HPTE cannot put the Restructured Existing Debt Arrangements in place, payment up to the aggregate of the Base Senior Debt Termination Amount and the Phase 2 TIFIA Debt Termination Amount (the "Debt Termination Sum") will be made within 270 days after termination;
- (c) Payment in relation to "Equity/Sub-debt Amount" should be made through the mechanism outlined in paragraph 9.3. The Equity/Sub-debt Amount will bear interest at a equal to the true-interest-cost applicable to the PABs (as defined in the MSA) at the pricing date of the PABs plus 1 per cent, compounded on the same basis as the PABs. For this purpose the true-interest-cost is the rate necessary to discount all debt service payments due on the PABs to the purchase price of the PABs, compounded semi-annually.

9.5 If the Restructured Existing Debt Arrangements cannot be put in place then HPTE agrees to use its reasonable endeavors to fund;

- (a) its obligation to pay the Debt Termination Sum (and interest thereon in accordance with paragraph 4.3(b) of Schedule 23) and
- (b) the cost of completing the Phase 2 Work (unless it can fund the payments to complete the Phase 2 Work from other sources of funds available to it):

by a new TIFIA loan, or, if that cannot be achieved by the use of reasonable endeavors, through a tax-exempt bond issuance by HPTE (the "Termination Sum Financing Arrangements"). HPTE's obligations to service and repay debt due under the Termination Sum Financing Arrangements will be a special limited obligation of HPTE secured by a first-ranking lien on the toll revenues (net of operation and maintenance costs) generated by HPTE's operation of the I-25 Managed Lanes and the Phase 2 Managed Lanes following the Termination Date.

9.6 The Restructured Existing Debt Arrangements or the Termination Sum Financing Arrangements (as the case may be) shall provide, pursuant to a "cash flow waterfall" or other similar provision, for periodic payments in respect of the Equity/Sub-debt Amount (and accrued interest) to be made by the relevant trustee in the following order of priority and in a frequency to be determined which is customary for tax-exempt financings in the United States secured by the revenues of toll road facilities, with each of the payments described below:

- (a) first, to fund reasonable and customary fees of the trustee then due and payable;
- (b) second, to fund the operation and maintenance and renewal costs of the Managed Lanes (including the Phase 1 Managed Lanes) then due and payable;
- (c) third, to pay interest and principal then due and payable in respect of the Restructured Existing Debt Arrangements or the Termination Sum Financing Arrangements;
- (d) fourth, to fund reserve accounts which are customary for tax-exempt financings in the United States secured by the revenues of toll road facilities; and
- (e) fifth, to the Concessionaire up to a maximum of the outstanding Equity/Sub-debt Amount.

9.7 If as a consequence of the amount of the toll revenues generated by the I-25 Managed Lanes and the Phase 2 Managed Lanes and/or the terms of the relevant finance documentation, the security trustee in respect of the Restructured Existing Debt Arrangements or the Termination Sum Financing Arrangements is unable to pay the Concessionaire anything in respect of the Concessionaire's Equity/Sub-debt Amount then that shall not be a default on the part of HPTE.

10. Build out and subsequent operation of the Project

10.1 Unless the Construction Sub-Contract has previously been terminated, or the Construction Sub-Contractor is in default under the Construction Sub-Contract HPTE will use its rights under HPTE Sub-Contractor Agreement with the Construction Sub-Contractor to build out the Phase 2 Work. Otherwise HPTE will build out the Phase 2 Work using such contracting arrangements as it considers to be necessary or expedient to do so.

10.2 This Concessionaire will be provided reasonable rights to:

- (a) oversight of construction, operation and maintenance of the Managed Lanes;
- (b) full disclosure of all revenues, cost structures and other matters relevant to the determination of revenue share in relation to the Managed Lanes; and
- (c) consultation with respect to major decisions which could impact payments in respect of the Equity/Sub-debt Amount, the right to propose new toll rates to maximize revenue and to propose the progress to dynamic tolling and to be subject to the same HOV3+ change provisions as set out in Schedule 16, and HPTE undertakes to consider all such proposals in good faith.

10.3 If as a consequence of the amount of the toll revenues generated by the I-25 Managed Lanes and the Phase 2 Managed and/or the terms of the relevant finance documentation, the payments to the Concessionaire from security trustee in respect of the Restructured Existing Debt Arrangements or the Termination Sum Financing Arrangements are insufficient to pay the interest accruing on the Concessionaire's Equity/Sub-debt Amount for a period of five consecutive years then the Concessionaire shall have the right

- (a) to require that the Phase 1 Managed Lanes shall be subject to the same HOV3+ change provisions as set out in Schedule 16 and
- (b) to propose that new toll rates and/or dynamic tolling algorithms to maximize revenue should be established by HPTE on the same basis (including the same right to compensation if such new toll rates and/or algorithms are not established) as set out in Schedule 16.

11. Other defaults/termination processes are unaffected

11.1 If the reason for the failure to satisfy the Assignment Effective Date CPs is one of the matters referred to in the next sentence, then the provisions of this Contract applicable to those matters will apply in place of this Part and this Part is without prejudice to those provisions of this Contract. The matters referred to in the previous sentence are:

- Concessionaire Default
- Persistent Breach (by the Concessionaire)
- Prohibited Act
- HPTE Default

- Force Majeure.

11.2 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 the Assignment Effective Date then the compensation on termination payable if there is a termination under this Part shall be determined and paid in accordance with Part 3 and Part 6 of Schedule 23 (respectively).

12. **Existing Phase 1 MTI Debt Service Reserve Account Transfer**

HPTE agrees that it will direct the trustee under the Existing Phase 1 MTI that if the Assignment Effective Date occurs so that the Existing Phase 1 MTI is discharged (but only in that eventuality) then the trustee shall transfer the amount then standing to the credit of the debt service reserve account under the Existing Phase 1 MTI to the Security Trustee to fund the debt service reserve account in respect of the Phase 1 TIFIA Loan under the MSA.

Appendix

Assignment Effective Date CPs

| Paragraph of Section 13 of the Amended and Restated Phase 1 Loan Agreement | | Advance Fulfillment CP | Concessionaire or HPTE Risk CP? |
|--|--|------------------------|---|
| a | Fully disbursed Original Phase 1 TIFIA Loan | Yes | HPTE Risk |
| b | Updated Rating no lower than Existing Rating | No | |
| c | Project accounts and subaccounts to be established | Yes | Concessionaire Risk |
| d | Funding the TIFIA Phase 1 DSRA | Yes | Concessionaire Risk [HPTE risk if HPTE does not direct the trustee under the Existing Phase 1 MTI to pay DSRA Funds to be paid to Concessionaire] |
| e | Phase 1 Trustee to make payments | | Concessionaire Risk [HPTE risk if HPTE does not direct the trustee under the Existing Phase 1 MTI to pay DSRA Funds to be paid to Concessionaire] |
| f | Promissory Notes to have been delivered | Yes | Concessionaire Risk |
| g | Certificate of Discharge from Phase 1 Trustee | | Concessionaire Risk |
| h | Certificate from Loan Parties of no default or event which would become a default etc. | Yes | Concessionaire Risk |
| i | Non-debarment certificate from Loan Parties | Yes | Concessionaire Risk |
| j | incumbency certificate from Loan Parties | Yes | Concessionaire Risk |
| k | TSA in form and substance satisfactory to TIFIA | Yes | TSA CP |
| l | Assignment Effective Date under Phase 1 TIFIA Loan AAR Agreement | Yes | Concessionaire Risk (re reps |

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|---|--|------------------|---|
| | will occur concurrently with the Effective Date. | | and warranties at section 6 or HPTE Risk (re reps and warranties at section 7) |
| m | Loan Party to have executed the Amended and Restated Phase 1 Loan Agreement and the TIFIA Phase 1 Note | Yes | Concessionaire Risk |
| n | [not applicable] | [not applicable] | [not applicable] |
| o | Loan Parties to have reaffirmed grant of security. | Yes | Concessionaire Risk |
| p | if Updated Rating is 10 Business Days or less before the Effective Date then no MAE since Existing Rating. | | |

SCHEDULE 2

Conditions Precedent

Part 3 – Conditions Precedent to the Full Services Commencement Date

1. HPTE has received evidence that those of the Required Insurances which are required to be in force by the Full Services Commencement Date (pursuant to Section 37) are in full force and effect, and the Concessionaire has delivered to HPTE duplicate originals or copies thereof certified by the Concessionaire's insurance broker to be true and correct copies of the originals.
2. All Necessary Consents required for the Concessionaire to commence the Services in relation to the Managed Lanes and in relation to the US 36 General Purpose Lanes have been received.
3. 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 General Purpose Lanes.
4. The Notice of Phase 2 Work Completion has been issued by HPTE.
5. 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.
6. 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.
7. 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.
8. There exists no Concessionaire Default for which the Concessionaire has received notice from HPTE.