KAPLAN KIRSCH ROCKWELL

AUG 4 2010
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August 4, 2010

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SURFACE
TRANSPORTATION BOARD

VIA HAND DELIVERY
Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

227511

Re: *Regional Transportation District – Acquisition Exemption – Certain Assets of Union Pacific Railroad Company in Adams, Denver and Jefferson Counties, Colorado*
STB Finance Docket No. 35394

Dear Ms. Brown:

I am enclosing an original and ten (10) copies of the Notice of Exemption and Motion to Dismiss of the Regional Transportation District ("RTD") in the above-captioned proceeding for the acquisition of a portion of several lines of railroad known as the Limon, Greeley and Moffat Tunnel Subdivisions from Union Pacific Railroad Company. An additional copy is enclosed for date stamp and return to our messenger. Please note that a compact disk containing an electronic copy of the Notice is enclosed with this document.

I am enclosing a form effecting payment by credit card of the $1800.00 filing fee required for a Notice of Exemption under 49 CFR § 1002.2(f)(14)(ii). However, RTD is seeking a waiver of the filing fee based on the fact that it is a local government entity filing the request on behalf of the general public pursuant to 49 CFR § 1002.2(e) and STB Ex Parte No. 542 (Sub-No. 6) – *Regulations Governing Fees For Services Performed In Connection With Licensing and Related Services – Policy Statement* (Served December 6, 2000). RTD is a "state or local government entity" and is a non-carrier. A separate letter requesting a waiver of the filing fee is attached.

Thank you.

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Sincerely,

Charles A. Spitulnik

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Enclosure

cc: Jill K. Rood
John J. Brennan, III

Attorneys at Law
Denver • New York • Washington, DC

Kaplan Kirsch & Rockwell LLP
1001 Connecticut Ave., N.W., Suite 800
Washington, DC 20036

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CONTAINS COLOR MAPS

Before the
Surface Transportation Board

Finance Docket No. 35394

REGIONAL TRANSPORTATION DISTRICT
– ACQUISITION EXEMPTION –
CERTAIN ASSETS OF UNION PACIFIC RAILROAD COMPANY
IN ADAMS, DENVER, AND JEFFERSON COUNTIES, COLORADO

VERIFIED NOTICE OF EXEMPTION

Dated: August 4, 2010

FILED
Proceedings
AUG 04 2010
Public Record

Communications with respect to this document should be addressed to:

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Counsel for Regional Transportation District

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Before the
Surface Transportation Board

Finance Docket No. 35394

REGIONAL TRANSPORTATION DISTRICT
– ACQUISITION EXEMPTION –
CERTAIN ASSETS OF UNION PACIFIC RAILROAD COMPANY
IN ADAMS, DENVER, AND JEFFERSON COUNTIES, COLORADO

VERIFIED NOTICE OF EXEMPTION

The Regional Transportation District ("RTD"), a political subdivision of the State of Colorado organized under Title 32, Article 9 of the Colorado Revised Statutes, hereby submits this Notice that it is concluding negotiations with Union Pacific Railroad Company ("UP") for the purchase by RTD of the physical assets and associated rights-of-way comprising an approximately 40' wide segment of each of two rail lines currently owned and operated by UP: (a) a portion of the "Limon Subdivision" extending approximately 8.96-miles from MP 628.50 in Adams County, Colorado, to MP 637.46 in the City and County of Denver (the "East Corridor Segment"), and (b) a portion of the "Moffat Tunnel Subdivision" extending approximately 2.22 miles from MP 4.28 in the City and County of Denver to MP 6.50 in Jefferson County, Colorado (the "Gold Line Segment").[1] The parties intend to execute the purchase and sale agreements for

---

[1] In conjunction with its acquisition of the East Corridor and Gold Line Segments, RTD will also acquire UP's interest in discrete parcels not integral to UP's existing freight operations at five locations along UP's Limon, Greeley and Moffat Tunnel Subdivisions for access, private roadway crossings, and similar purposes ancillary to RTD's use of the lines. In addition, UP will grant RTD four aerial easements over UP's lines for rail or pedestrian flyovers. The locations of the discrete parcels and easements are shown on **Exhibits 1-A** and **1-B** hereto. RTD and UP are also concluding the negotiation of an exchange of property to accommodate the relocation of UP's lead accessing its Burnham Shop in the City and County of Denver, CO. This exchange of property will preserve the existing functionality of UP's operations by relocating some track, but will not expand UP's access to additional territory. Accordingly, the exchange of property between RTD and UP is excepted from the Board's approval authority by 49 U.S.C. § 10906, and the relocation of UP's track requires no approval by this Board pursuant to long-standing Board precedent. *Detroit/Wayne County Port Authority v. I.C.C.*, 59 F.3d 1314, 1317 (D.C. Cir.

the transfer of the subject lines on or about August 4, 2010, and to consummate the transfers at later dates to be established at the agreement of RTD and UP according to the completion of various phases of track relocation and construction work within the corridors. The portion of the Limon Subdivision that is the subject of this Notice is shown on the map that is attached at **Exhibit 1-A** hereto. The portion of the Moffat Tunnel Subdivision that is the subject of this Notice is shown on the map that is attached at **Exhibit 1-B** hereto

UP will retain its existing interest in the remaining width of the corridors not being acquired by RTD. On the Limon Subdivision, RTD will relocate UP's existing track in order to provide uninterrupted freight service and accommodate the construction and operation of RTD's facilities. On the Moffat Subdivision, UP will retain the tracks on which it currently operates. UP will retain the exclusive right to operate freight service on the property it will retain on each line, and that right will not be affected by the transactions described in this Notice. UP and RTD will each operate within its own corridor and control its own dispatching and maintenance, with no physical or functional connection between the East Corridor Segment or the Gold Line Segment and UP's adjacent, contiguous property. As necessary, UP and RTD intend to grant easements to one another for utility crossings and access. Accordingly, UP will retain all of its present rights to provide freight rail service in these corridors on tracks it uses and will not share with RTD.

RTD will acquire no right or obligation to provide freight service on either line, and is acquiring the property for the purpose of providing wholly intrastate passenger commuter rail operations. RTD is a political subdivision of the State of Colorado with legal authority only to operate mass transportation services pursuant to C.R.S. §§ 32-9-103(7)(a) and 32-9-107.

1995) (relocation or improvement of an existing line that does not extend into new territory is not an extension or addition under 49 U.S.C. § 10901(a) and not subject to Board's oversight).

This Notice of Exemption is filed under 49 C.F.R. § 1150.41.[2] Because RTD will not acquire either rights or obligations that implicate in any way the existing freight common carrier operations that remain attached to the Limon, Greeley and Moffat Tunnel Subdivisions, and thus will not become a rail carrier providing transportation subject to the jurisdiction of the Board, RTD is simultaneously filing a Motion to Dismiss this Notice of Exemption.

In accordance with the requirements of 49 C.F.R. § 1150.43, RTD submits the following information:

(a) *The full name and address of the* applicant, 49 C.F.R. § 1150.43(a)

Regional Transportation District
1600 Blake Street
Denver, CO 80202-1399

(b) *The name, address and telephone number of the representative of the applicant who should receive correspondence*, 49 C.F.R. § 1150.43(b)

Charles A. Spitulnik
Allison I. Fultz
Kaplan Kirsch & Rockwell LLP
1001 Connecticut Avenue, N.W.
Suite 800
Washington, DC 20036
(202) 955-5600

(c) *A statement that an agreement has been reached or detail about when an agreement will be reached*, 49 C.F.R. § 1150.43(c)

On June 25, 2009, RTD and UP executed the FasTracks Project Property Transfer and Railroad Relocation Agreement (the "Transfer Agreement"). This document provides the framework for a series of four transactions, including the two acquisitions that are the subject of this Notice, through which RTD is acquiring rail corridors, yard track and other property from UP.[3] A copy of the Transfer

[2] RTD filed a Notice of Exemption with respect to its acquisition from BNSF Railway Company ("BNSF") of property interests in a line of railroad on which BNSF has retained an easement for provision of freight service. The exemption became effective on April 4, 2010. *Regional Transportation District – Acquisition Exemption – BNSF Railway Company – In Jefferson County, Colorado*, STB Finance Docket No. 35358 (Service Date March 19, 2010). In view of the rights BNSF retained in that transaction, RTD will shortly file a Motion to Dismiss that Notice of Exemption.

[3] The first acquisition contemplated by the Transfer Agreement, RTD's acquisition of UP's Boulder Industrial Lead, was governed by Addendum A to the Transfer Agreement. RTD's Notice of Exemption for this acquisition was published on Sept. 2, 2009, and the Board granted RTD's Motion to Dismiss the Notice of Exemption on June 25,

Agreement is attached hereto as **Exhibit 2**. In furtherance of the transactions contemplated in the Transfer Agreement, RTD and UP are negotiating Addenda C and D to the Transfer Agreement. Addendum C addresses RTD's acquisition of the East Corridor Segment and a current, near-final draft is attached hereto as **Exhibit 3**; Addendum D addresses RTD's acquisition of the Gold Line Segment and a current, near-final draft is attached hereto as **Exhibit 4**. UP and RTD will also enter into a Relocation and Construction Agreement to govern RTD's work on the Limon Subdivision to relocate UP's facilities prior to the transfer of the East Corridor Segment to RTD. A near-final draft of the Relocation and Construction Agreement is attached hereto as **Exhibit 5**. At no time will RTD have any rights that would give it any ability to interfere with UP's ability to fulfill its common carrier freight obligation. Following the completion of all construction and the commencement of RTD's commuter passenger rail operations, an Operations Agreement for each of the Limon and Greeley Subdivisions / East Corridor and Moffat Tunnel Subdivision / Gold Line corridors will govern the obligations of the parties. A near-final draft of the Operations Agreement for the Limon and Greeley Subdivisions / East Corridor is attached hereto as **Exhibit 6**. A near-final draft of the Operations Agreement for the Moffat Tunnel Subdivision / Gold Line is attached hereto as **Exhibit 7**.

(d) *The operator of the property*, 49 C.F.R. § 1150.43(d)

The real property that is the subject of this Notice is being carved out of the total width of UP's existing property. UP will remain the operator of the property it is retaining on the Limon, Greeley and Moffat Tunnel Subdivisions. No freight easement over the East Corridor Segment or Gold Line Segment is necessary because UP will continue to conduct freight operations solely on its property and RTD's operations will be confined to the East Corridor Segment and Gold Line Segment.

(e) *A brief summary of the proposed transaction*, 49 C.F.R. § 1150.43(e)

(1) *The name and address of the railroad transferring the subject property*, 49 C.F.R. § 1150.43(e)(1)

Union Pacific Railroad Company
1400 Douglas Street
Omaha, NE 68179

2010. *Regional Transportation District – Acquisition Exemption – The Union Pacific Railroad Company – In the Counties of Adams, Boulder, Broomfield and Weld, Colorado*, STB Finance Docket No. 35252 (Service Date Jun. 25, 2010). The property exchange to accommodate the relocation of UP's lead track to its Burnham Shop is governed by Addendum B to the Transfer Agreement. As discussed at note 1 above, neither the Addendum B transaction nor the UP's accompanying relocation of its track requires this Board's approval.

(2) *The proposed time schedule for the consummation of the transaction*, 49 C.F.R. § 1150.43(e)(2)

The transactions between RTD and UP will be consummated on a phased schedule to be determined at the agreement of UP and RTD according to the completion of the acquisition of certain non-railroad property by both parties and work to relocate UP's facilities. *See* **Exhibit 3** (Addendum C), Recital D; **Exhibit 4** (Addendum D), Recital D. RTD's acquisition of the Gold Line Segment is anticipated to occur on or about September 30, 2010. RTD's acquisition of the East Corridor Segment is anticipated to occur in late 2013 or later, following the completion of UP's relocated track and UP's commencement of service on the relocated facilities.

(3) *The mile-posts of the subject property, including any branch lines*, 49 C.F.R. § 1150.43(e)(3)

(a) The East Corridor Segment comprises a portion of UP's Limon Subdivision from MP 628.50 in Adams County, Colorado, to MP 637.46 in the City and County of Denver, a distance of approximately 8.96 miles.

(b) The Gold Line Segment comprises a portion of UP's Moffat Tunnel Subdivision from MP 4.28 in the City and County of Denver to MP 6.50 in Jefferson County, Colorado, a distance of approximately 2.2 miles.

(4) *The total route miles being acquired*, 49 C.F.R. § 1150.43(e)(4)

The total mileage of the lines to be acquired is approximately 11.18 miles.

(f) *A map that clearly indicates the area to be served, including origins, terminals, stations, cities, counties and states*, 49 C.F.R. § 1150.43(f)

See **Exhibits 1-A** and **1-B**. No new service is proposed. UP's existing operations will continue and UP will retain the exclusive right to provide freight service on its lines.

(g) *A certificate that applicant's projected revenues do not exceed those that would qualify it as a Class III carrier*, 49 C.F.R. § 1150.43(g)

See Verification and Certification, attached.

(h) Interchange agreements, 49 C.F.R. § 1150.43(h)

No interchange agreements and no limitation on any future interchange agreements are being imposed in connection with the subject transaction.

Under § 1105.6(c)(2), RTD's proposed acquisition of the East Corridor Segment and Gold Line Segment is exempt from environmental reporting requirements because the railroad operations on the line segment that is subject to the Board's jurisdiction will not be affected by the acquisition by RTD. *See* 49 C.F.R. § 1105.6(c)(2).

Similarly, under 49 C.F.R. § 1105.8(b)(1), RTD's proposed acquisition of the East Corridor Segment and Gold Line Segment is exempt from historic preservation reporting requirements. The proposed acquisition is intended to preserve the status quo with respect to freight rail operations. Further Board approval would be required for UP to discontinue or abandon any freight service that UP currently offers on the line.

In addition, this acquisition is part of the RTD's regional FasTracks program, which is projected to create a regional network of ten commuter rail corridors in the region. FTA issued Records of Decision in November 2009 (each a "ROD") for construction of RTD's East Corridor and Gold Line, including construction on other corridors not the subject of this proceeding. Attached to each ROD is an Appendix, the Section 106 Memorandum of Agreement among FTA, RTD and the Colorado State Historic Preservation Officer (the "MOA"). For each line, the ROD and MOA will guide RTD's historic preservation reporting once construction activities trigger the requirements of 49 C.F.R. § 1105.8(b)(1). The East Corridor Segment requires the acquisition of property and construction in the City and County of Denver and Adams County. Although the entire Gold Line project will encompass areas of Denver, Adams and Jefferson County, the proposed transaction only involves the acquisition of property in the City and County of Denver and Jefferson County. A copy of the ROD and MOA (Appendix B to the ROD) for the portion of the FasTracks project to be constructed on the East Corridor Segment is attached hereto as **Exhibit 8-A**; a copy of the ROD and MOA (Appendix A to the ROD) for the

portion of the FasTracks project to be constructed on the Gold Line Segment is attached hereto as **Exhibit 8-B**.

A proposed caption summary for publication in the Federal Register is attached as **Exhibit 9**.

Respectfully submitted,

Charles A. Spitulnik
Allison I. Fultz
Kaplan Kirsch & Rockwell LLP
1001 Connecticut Avenue, N.W.
Suite 800
Washington, DC 20036
Tel: (202) 955-5600
Emails: cspitulnik@kaplankirsch.com
afultz@kaplankirsch.com

Counsel for the Regional Transportation District

Dated: August 4, 2010

VERIFICATION AND CERTIFICATION

I, Marla Lien, General Counsel of the Regional Transportation District, verify under penalty of perjury that the facts recited in the foregoing Notice of Exemption are true and correct. Further, I certify that I have personal knowledge of the facts stated therein and that I am authorized to verify these facts stated in this Verified Notice of Exemption.

In addition, this is to certify, as required by 49 C.F.R. § 1150.43(g) that, because the Regional Transportation District will conduct no freight operations on the line segments being acquired, its revenues from freight operations will not result in the creation of a Class I or Class II carrier.

Marla Lien
General Counsel
Regional Transportation District

State of Colorado)
City and) ss.
County of Denver)

Subscribed and sworn to before me by Marla Lien this 2nd day of August, 2010.

Cynthia D. Howerton
Notary Public

My commission expires: September 15, 2013

CYNTHIA D. HOWERTON NOTARY PUBLIC STATE OF COLORADO

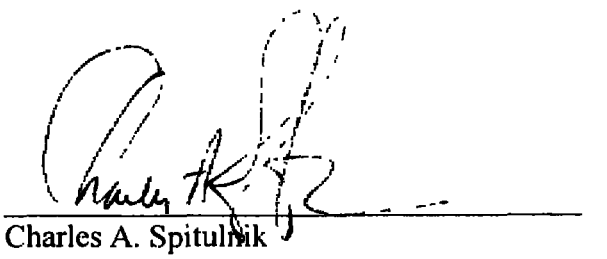
My Commission Expires 9/15/2013

Certificate of Service

I hereby certify that I have this day caused a copy of the foregoing Notice of Exemption of the Regional Transportation District to be served by first class mail, properly addressed and with postage prepaid, upon the following:

Jill K. Rood, Esq.
Jacobs Chase Frick Kleinkopf & Kelley, LLC
1050 17th Street
Suite 1500
Denver, CO 80265

John J. Brennan, III, Esq.
Union Pacific Railroad Company
1400 Douglas Street
Omaha, NE 68179



Charles A. Spitulnik

Dated: August 4, 2010

296556_2.doc

1

Exhibit 1-A

Map of the Line – Limon Subdivision

[attached hereto]

I-470
Peña
Airport Property Line
Airport Boundary
Approximate Limit of 65 DNL Noise Contour
NOISE SUBDIVISION
NOISE SUBDIVISION
NOISE SUBDIVISION
NOISE SUBDIVISION

Exhibit 1-B

Map of the Line – Moffat Tunnel Subdivision

[attached hereto]

TO BOULDER
LEADVILLE
SUPERIOR
Mount Truman Reservoir

2

Exhibit 2

FasTracks Project Property Transfer and Railroad Relocation Agreement

[attached hereto]

FASTRACKS PROJECT

PROPERTY TRANSFER AND RAILROAD RELOCATION AGREEMENT
with Escrow Instructions

between

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

SELLER

and

REGIONAL TRANSPORTATION DISTRICT,
a political subdivision of the State of Colorado

PURCHASER

June 24, 2009

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FASTRACKS PROJECT
PROPERTY TRANSFER AND RAILROAD RELOCATION AGREEMENT

THIS FASTRACKS PROJECT – PROPERTY TRANSFER AND RAILROAD RELOCATION AGREEMENT ("Agreement") is dated effective June 24, 2009 (the "Effective Date"), by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Seller") and REGIONAL TRANSPORTATION DISTRICT, a political subdivision of the State of Colorado ("Purchaser").

RECITALS

A. Purchaser intends to construct the FasTracks Passenger Rail Network pursuant to the FasTracks plan adopted by Purchaser's board of directors on April 22, 2004 (the "Project"), which will involve, *inter alia*, (i) the acquisition of a rail corridor and portions of other rail corridors and rail yards from Seller, (ii) the relocation and modification of certain rail lines and railroad facilities of Seller, and (iii) in conjunction therewith, both (a) the relocation of certain property owned by Seller's lessees, licensees and easement owners ("Third Party Property"), and (b) the relocation or implementation of access mitigation plans for certain freight rail customers of Seller.

B. Seller's rail properties included in the Project plans are located in Adams County, Boulder County, the City and County of Broomfield, the City and County of Denver, Jefferson County and Weld County, State of Colorado, all as generally shown on Exhibit A attached hereto and made a part hereof (the "Project Segments"). The Project Segments are commonly known as the "Boulder Industrial Lead/North Metro Line", the "Burnham Yard Lead/West Corridor", the "Moffat Tunnel Subdivision/Gold Line" and the "Limon and Greeley Subdivisions/East Corridor", and each shall be more particularly described in the addendum hereto relating to such Project Segment (individually, an "Addendum" and collectively, the "Addenda"). Addendum A, describing the additional terms and conditions applicable to consummating the transfer of the Boulder Industrial Lead/North Metro Line, is part of this Agreement on the Effective Date. The parties are currently working, and shall continue to work, diligently and in good faith toward preparing engineering plans for the remaining Project Segments, and toward finalizing the forms of the remaining Addenda. The parties intend to initial and attach the remaining Addenda (separately or all together) within thirty (30) days after the engineering plans for the railroad and Third Party Property relocations are in satisfactory form to commence construction on, and Purchaser has appropriated funds for, such Project Segment(s).

C. In connection with the Project, Seller desires to sell and/or exchange its right, title and interest in and to the Project Segments, and Purchaser desires to acquire such right, title and interest, and to exchange other properties for certain portions of the Project Segments, all as more particularly described in the Addenda.

D. Purchaser and Seller desire to enter into certain ancillary agreements that pertain to (i) the pre-closing design and construction work related to each Project Segment, (ii) the post-closing operation and maintenance obligations of the parties with respect to each Project

Segment (and adjacent properties) and (iii) such other matters as may be described in the Addendum for each Project Segment.

E. Subject to the terms and conditions contained herein, Purchaser and Seller now desire to enter into the transactions outlined in these Recitals and further described in this Agreement (including the Addenda hereto).

F. Concurrently with the execution of this Agreement, Purchaser has provided Seller with a certified copy of the resolution of Purchaser's board of directors authorizing Purchaser to enter into this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Purchaser and Seller hereby agree as follows:

ARTICLE 1 - DEFINITIONS

The following capitalized terms shall have the following meanings:

"Access Easement(s)" shall have the meaning set forth in Article 3 below.

"Addendum(a)" shall have the meaning set forth in Recital B above.

"Affiliate(s) of Seller", or "Seller's Affiliates" shall mean any person or entity that (i) holds beneficially, directly or indirectly, fifty (50) percent or more of the outstanding capital stock, shares or equity interests of Seller, or (ii) controls, is controlled by, or is a rail carrier under common control with Seller. As used in this definition, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of Seller, whether through ownership of voting securities, by contract or otherwise.

"Agreement" shall mean this FasTracks Project - Property Transfer and Railroad Relocation Agreement, dated as of the Effective Date, by and between Seller and Purchaser.

"Assigned Leases" shall refer, collectively, to the Leases listed in the schedules attached to the Addenda, only to the extent such Leases cover the Property (excluding the Flyover Easement property) and do not pertain to the Retained Rights.

"Assigned Other Agreements" shall refer, collectively, to the Other Agreements listed in the schedules attached to the Addenda, only to the extent such Other Agreements cover the Property (excluding the Flyover Easement property) and do not pertain to the Retained Rights.

"Assignment" shall have the meaning set forth in Section 15.2.1 below.

"Assignment and Assumption Agreements" shall mean, collectively, the assignment and assumption agreements more particularly described in the Addenda.

"Assignment and Assumption Agreements for Exchange Property" shall mean, collectively, the assignment and assumption agreements transferring to Seller, and Seller's lessees, licensees and easement owners as applicable, the leases, other agreements, warranties and guaranties approved by Seller and applicable to the Exchange Property, as more particularly described in the Addenda.

"Bills of Sale" shall mean, collectively, the bills of sale quitclaiming to Purchaser all of Seller's right, title and interest in and to any personalty identified by Seller and located on the Property, as more particularly described in the Addenda.

"Bills of Sale for Exchange Property" shall mean, collectively, the bills of sale transferring to Seller, and Seller's lessees, licensees and easement owners as applicable, the personalty located on the Exchange Property, as more particularly described in the Addenda.

"Boulder Industrial Lead/North Metro Line" shall mean the rail corridor described in Addendum A as the property to be acquired by Purchaser from Seller.

"Burnham Yard Lead/West Corridor" shall mean the property described in Addendum B as the property currently used by Seller for the North Burnham Lead into its Burnham Yard, and to be acquired by Purchaser from Seller.

"Burnham Yard Lead/West Corridor Exchange Property" shall mean the property described in Addendum B as the property to be acquired from third parties and granted to Seller in exchange for a portion of the Burnham Yard Lead/West Corridor, in order to facilitate the relocations, modifications and realignments of Seller's Railroad Facilities, of Railroad Facilities of third parties impacted by Seller's relocation, and of Third Party Property.

"Claimant" shall have the meaning set forth in Section 8.5 below.

"Claims Period" shall have the meaning set forth in Section 8.5 below.

"Closing" and "Close of Escrow" shall have the meaning set forth in Section 13.2.1 below.

"Closing Date" shall have the meaning set forth in Section 13.2.1 below.

"Closing Notice" shall have the meaning set forth in Section 13.2.1 below.

"Communication Easement(s)" shall have the meaning set forth in Article 3 below.

"Condemnation" shall have the meaning set forth in Section 14.2 below.

"Condemnation Notice" shall have the meaning set forth in Section 14.2 below.

"Condemnation Termination Notice" shall have the meaning set forth in Section 14.2 below.

"Condition of the Property" shall have the meaning set forth in Section 9.1.4 below.

"Consent Request" shall have the meaning set forth in Section 15.2.1.1 below.

"Consultants" shall mean the employees, agents, contractors, consultants and other representatives of Purchaser.

"Cost of cancellation of the Escrow" shall mean the costs accrued and charged by Escrow Holder for the cancellation of Escrow.

"Costs" shall mean all costs, fees and expenses, including without limitation, attorneys' fees and consultants' fees and disbursements, and including any overtime expenses approved by Purchaser.

"Deeds for Exchange Property" shall refer collectively to all easement agreements from Purchaser to Seller to convey the Exchange Property, as more particularly described in each applicable Addendum.

"Deposit" shall have the meaning set forth in Section 5.1.1 below.

"Due Diligence Right(s) of Entry" shall mean, collectively, the due diligence right of entry agreements entered into between Seller and Purchaser covering the Project Segments prior to the applicable Effective Date, as amended from time to time.

"Effective Date" shall mean, for any Project Segment, the date of execution of this Agreement by both parties and/or the initialing of the applicable Addendum. This Agreement shall be effective as to the Boulder Industrial Lead/North Metro Line on the date set forth on page 1 hereof as the "Effective Date," and as to each other Project Segment at the time that the Addendum for that Project Segment is initialed by both parties and attached hereto.

"Engineering Agreement(s)" shall mean, collectively, the following agreements regarding engineering design entered into between Seller and Purchaser, each covering an individual Project Segment, as amended from time to time: (i) Agreement Regarding Engineering Design for Burnham Lead Relocation, dated October 31, 2008, (ii) Agreement Regarding Engineering Design for Limon and Greeley Subdivisions/East Corridor Relocation, dated March 13, 2009, and (iii) Agreement Regarding Engineering Design for Moffat Tunnel Subdivision/ Gold Line Relocation, dated March 12, 2009.

"Environmental Agency" means any federal or state agency with jurisdiction over the administration and enforcement of any Environmental Law.

"Environmental Condition" of the Property means any presence, spill, leak, discharge, escape, migration, release or threat of release of Hazardous Substances into the environment on, at, or under the Property.

"Environmental Law(s)" means any and all applicable laws, statutes, regulations, enforceable requirements, orders, decrees, agreements, judgments or injunctions validly issued, promulgated or entered by any court or governmental agency with jurisdiction, relating to the environment, to preservation or reclamation of natural resources, or to the management, release or threatened release of contaminants that are binding on Seller, including, without limitation, the

Hazardous Substances Transportation Act (49 U.S.C. § 1802 *et seq.*), the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 *et seq.*), as amended by the Superfund Amendments and Reauthorization Act of 1986, the Solid Waste Disposal Act. as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 *et seq*) and the Hazardous and Solid Waste Amendments of 1984, the Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*), as amended by the Clean Air Act Amendments of 1977, the Clean Air Act of 1970 (42 U.S.C. § 7401 *et seq*), as amended by the Clean Air Act Amendments of 1990, the Safe Drinking Water Act (42 U.S.C. § 300f *et seq.*), the Toxic Substances Control Act of 1976 (15 U.S.C. § 2601 *et seq.*), any similar or implementing state law, and all amendments thereto and regulations or rules promulgated thereunder.

"Escrow" shall have the meaning set forth in Section 5.1.1 below.

"Escrow Holder" shall mean Stewart Title Guaranty Company.

"Exchange Property" shall mean, collectively, the Burnham Yard Lead/West Corridor Exchange Property and the Moffat Tunnel Subdivision/Gold Line Exchange Property, as generally shown on Exhibit B attached hereto and made a part hereof.

"Exchange Property Valuation Reduction Amount" shall have the meaning set forth in each Addendum.

"Flyover Easements" shall have the meaning set forth in Section 2.1.2 below.

"GIA" shall have the meaning set forth in Section 8.2.7 below.

"Hazardous Substances" means any material or substance (i) that is present in quantities and in a form that requires investigation, removal, cleanup, transportation, disposal, response or remedial action (as the terms "response" and "remedial action" are defined in Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 (23) and (24)) or under any Environmental Law; or (ii) that is defined as a "hazardous waste," "hazardous substance," "pollutant" or "contaminant" under any Environmental Law.

"Indemnified Party" shall have the meaning set forth in Section 14.4 below.

"Indemnifying Party" shall have the meaning set forth in Section 14.4 below.

"Investigation Period" shall have the meaning set forth in Section 7.3 below.

"Knowledge" shall mean actual knowledge of a particular fact, without any duty of inquiry or investigation.

"Leases" shall refer collectively to all leases entered into by Seller granting rights to third parties to use the Property or any portion thereof (excluding the Flyover Easement property), including all amendments and/or supplements thereto, but excluding the Other Agreements.

"Limon and Greeley Subdivisions/East Corridor" shall mean the portion of Seller's Limon and Greeley Subdivisions described in Addendum C hereto as the property to be acquired by Purchaser from Seller.

"Limon and Greeley Subdivisions/East Corridor Seller Relocation Property" or "Seller Relocation Property" shall mean the property, as generally shown on Exhibit C attached hereto and made a part hereof, in the vicinity of Seller's Limon and Greeley Subdivisions that is described in Addendum C as the property that Seller needs to acquire from third parties in order to facilitate the relocations, modifications and realignments of Seller's Railroad Facilities, of Railroad Facilities of third parties impacted by Seller's relocation, and of Third Party Property.

"Losses" shall mean all losses, damages, claims, demands, Costs, liabilities, judgments and civil penalties, fees and expenses of any nature.

"Memoranda" shall have the meaning set forth in Section 13.3.6 below.

"Moffat Tunnel Subdivision/Gold Line" shall mean the portions of Seller's Moffat Tunnel Subdivision described in Addendum D hereto as the property to be acquired by Purchaser from Seller.

"Moffat Tunnel Subdivision/Gold Line Exchange Property" shall mean those parcels in the vicinity of Seller's Moffat Tunnel Subdivision that are described in Addendum D as the parcels to be acquired by Purchaser from third parties and granted to Seller in exchange for portions of the Moffat Tunnel Subdivision/Gold Line, in order to facilitate the relocations, modifications and realignments of Seller's Railroad Facilities, of Railroad Facilities of third parties impacted by Seller's relocation, and of Third Party Property.

"Moffat Tunnel Subdivision/Gold Line Right of Entry Agreement" shall mean that right of entry agreement for the Moffat Tunnel Subdivision/Gold Line, as described in Section 4.2 below.

"Notice of Breach" shall have the meaning set forth in Section 8.5 below.

"Notices" shall have the meaning set forth in Section 15.4 below

"Opening of Escrow" shall have the meaning set forth in Section 13.1 below.

"Other Agreements" shall refer collectively to all licenses and agreements entered into by Seller that cover the Property or any portion thereof (excluding the Flyover Easement property), including all amendments and/or supplements thereto, and including but not limited to any freight trackage rights agreements or other freight railroad operating agreements, but excluding the Leases.

"Other Assets" shall have the meaning set forth in Section 2.2.2 below.

"Past Due Interest Rate" shall have the meaning set forth in Section 4.5.1.2 below.

"Permitted Exceptions" shall have the meaning set forth in Section 6.1 below.

"Project" shall have the meaning set forth in Recital A above.

"Project Segments" shall have the meaning set forth in Recital B above.

"Property" shall have the meaning set forth in Section 2.2.1 below.

"Property Materials" shall have the meaning set forth in Section 7.1 below.

"Purchase Price" for the Property shall have the meaning set forth in Section 5.1 below.

"Purchaser" shall mean the Regional Transportation District. a political subdivision of the State of Colorado.

"Qualified Proposed Assignee" shall have the meaning set forth in Section 15.2.2 below.

"Quitclaim Deeds" shall mean, collectively, the quitclaim deeds from Seller to Purchaser to transfer Seller's right, title and interest in and to the Property (excluding the Flyover Easement property) and, as applicable, the Other Assets, in the forms set forth in the Addenda.

"Railroad Easement" shall have the meaning set forth in Article 3 below.

"Railroad Facilities" shall have the meaning set forth in Article 3 below.

"Related Agreements" shall mean the Engineering Agreements, the shared use agreement (for the Boulder Industrial Lead/North Metro Line), the railroad facilities licenses, the Relocation and Construction Agreements, the Moffat Tunnel Subdivision/Gold Line Right of Entry Agreement, and the operations and maintenance agreements for the Moffat Tunnel Subdivision/Gold Line and the Limon and Greeley Subdivisions/East Corridor.

"Relocation Acts" shall have the meaning set forth in Section 4.3.2 below.

"Relocation and Construction Agreements" shall mean, collectively, the relocation and construction agreements for the Limon and Greeley Subdivisions/East Corridor and for the Burnham Yard Lead/West Corridor, as described in Section 4.2 below.

"Retained Rights" shall have the meaning set forth in Article 3 below.

"STB" shall mean the Surface Transportation Board or any successor federal agency.

"Seller" shall mean Union Pacific Railroad Company, a Delaware corporation.

"Seller Invoices" shall have the meaning set forth in Section 4.5.1.1 below.

"Seller's Standard Real Estate Search" shall have the meaning set forth in Section 7.1 below.

"Surviving Obligations" shall mean the obligations of and indemnities by Purchaser in the Due Diligence Rights of Entry, in the confidentiality agreement(s) between the parties

covering the Property and Other Assets, in Sections 5.3, 7.2, 7.4, 7.5, 14.3 and 14.4 hereof, and in Articles 4, 9, 10, 11, 12 and 15 hereof.

"Third Party Property" shall have the meaning set forth in Recital A above.

"Third Party Work" shall mean all Work performed by third parties, such as licensees, lessees, easement holders, governmental entities, quasi-governmental agencies and/or their contractors to facilitate relocation, installation and construction of the Third Party Property.

"Title Company" shall mean H. C. Peck & Associates, Inc., or, as applicable, Stewart Title Guaranty Company.

"Title Policy" shall have the meaning set forth in Section 6.2 below.

"Utility Easement(s)" shall have the meaning set forth in Article 3 below.

"Valuation Reduction Amount" shall have the meaning set forth in Section 6.3 below.

"Work" shall mean all work coordinated through and/or performed by Seller due to the impact of the Project on the Property, the Exchange Property, the Seller Relocation Property, the Third Party Property, or on the Railroad Facilities or operations of Seller or another railroad operating on or adjacent to the Project Segment, including without limitation, any work or obligations required by governmental entities or quasi-governmental agencies, work and obligations related to acquisitions of property interests, contract negotiations with third parties to facilitate the Project, designing, engineering, planning, entitling, permitting, constructing, relocating and equipping sites and facilities, Seller's work in coordinating all Work with Purchaser, and the fulfillment of all fees, exactions, conditions of approval and other obligations imposed during the contracting, approving and permitting processes.

ARTICLE 2 – SALE AND PURCHASE; EXCHANGE

2.1 Sale and Purchase; Grant of Easements.

2.1.1 Sale and Purchase. Subject to the terms and conditions of this Agreement, Seller agrees to sell, transfer and quitclaim the Property and the Other Assets to Purchaser without warranty of title, and Purchaser agrees to purchase the Property and the Other Assets from Seller.

2.1.2 Flyover Easements. Seller agrees to grant certain aerial easements (together with surface easements as specified for appurtenant support structures) for rail purposes or pedestrian use (collectively, whether for rail or pedestrian purposes, the "Flyover Easements") to Purchaser for the portions of the Property specified in the Addenda, on condition that Purchaser meets Seller's design standards and that Purchaser's support structures shall not interfere with either Seller's existing tracks or Seller's future main lines, as more particularly provided in the flyover easement agreement form attached to the Addendum for each Project Segment.

2.2 Property and Other Assets Defined.

2.2.1 Property. As used in this Agreement, the term "Property" shall mean, collectively, Seller's rights, title and interests in the Project Segments that Seller will transfer to Purchaser and that Purchaser will acquire from Seller pursuant to the Quitclaim Deeds and the Flyover Easements, but shall exclude the Retained Rights.

2.2.2 Other Assets. As used in this Agreement, the term "Other Assets" shall mean any and all interests and rights of Seller appurtenant to the Property (excluding the Flyover Easement property) that are not otherwise reserved in this Agreement and that do not pertain to the Retained Rights, including the following:

(i) Seller's interests and obligations in and under the Assigned Leases and the Assigned Other Agreements; and

(ii) the Railroad Facilities owned by Seller located on the Property (excluding the Flyover Easement property), including without limitation, all tracks, rails, ties, signals, bridges, tunnels, culverts, trestles, switches, grade crossing materials, warning devices, ballast, subgrade, buildings, facilities, railroad communication and signal systems, wires, pipes, poles and all other trackage appurtenances; provided however, that the transfer of Seller's right, title and interest expressly excludes (a) any improvements owned by any party other than Seller, (b) the improvements, if any, listed in a schedule attached to each Addendum and (c) those other Railroad Facilities, if any, listed in a schedule to each Addendum.

2.3 Exchange Property.

Subject to the terms and conditions of this Agreement, Purchaser agrees to acquire from third parties (at Purchaser's sole cost and expense) and grant to Seller, at any time on or before the applicable Closing Date, the applicable Exchange Property, in exchange for certain parcels of such Project Segment. Purchaser shall not retain or reserve any rights or interests in the Exchange Property, except that it shall retain the fee interest in any portion of the Exchange Property granted to Seller by easement at Seller's request.

2.4 Seller Relocation Property.

Subject to the terms and conditions of this Agreement and as partial consideration for such Project Segment, Purchaser agrees to actively facilitate the acquisition by Seller (at Purchaser's sole cost and expense) of the Seller Relocation Property prior to or promptly after the attachment of the applicable Addendum.

2.5 No Rights or Obligations Absent Addendum.

Notwithstanding anything to the contrary contained in this Agreement, neither Seller nor Purchaser shall have any rights or obligations with respect to the transfer of (i) a Project Segment, or (ii) the Exchange Property for such Project Segment, until and unless the Addendum for such Project Segment has been initialed by both parties and attached to this Agreement. In the event that any of the anticipated Addenda has not been initialed by the parties and attached to this Agreement within five (5) years after the Effective Date of this Agreement, then all

references to such Addendum and the related Project Segment within this Agreement shall be deemed void and of no force or effect, and this Agreement may, at either party's request, be amended to delete such references.

ARTICLE 3 – RETAINED RIGHTS

Seller excepts from the sale of the Property, and reserves unto itself, its successors and assigns, the following rights and easements, which shall be more particularly described in the Quitclaim Deeds for each Project Segment (collectively, the "Retained Rights"):

(i) for the Boulder Industrial Lead/North Metro Line only, a perpetual, exclusive easement for freight railroad purposes in, on, under, upon, over, through and across the Property (the "Railroad Easement"). The Railroad Easement shall include without limitation, an easement for the purposes of owning, using, constructing, reconstructing, maintaining, repairing, operating, relocating, upgrading, renewing, replacing and removing existing and/or future railroad tracks and railroad-related equipment, facilities and transportation systems ("Railroad Facilities") related to freight rail operations, and shall include the right to grant operational and easement rights to others;

(ii) perpetual, non-exclusive easements in, on, under, upon, over, through and across the portions of the Property designated in the Addendum for each Project Segment for existing and future vehicular and pedestrian access (the "Access Easement(s)");

(iii) perpetual, non-exclusive easements in, on, under, upon, over, through and across the portions of the Property designated in the Addendum for each Project Segment for existing and future communications lines and facilities owned by Seller or Seller's lessees, licensees and easement holders (the "Communication Easement(s)");

(iv) perpetual, non-exclusive easements in, on, under, upon, over, through and across the portions of the Property designated in the Addendum for each Project Segment for existing and future utility lines and facilities owned by Seller or Seller's lessees, licensees and easement holders (the "Utility Easement(s)");

(v) perpetual, exclusive easements rights in, on, under, upon, over, through and across certain portions of the Limon and Greeley Subdivisions/East Corridor for construction and maintenance of shared drainage improvements, as described in the Related Agreement(s) for such Project Segment, which agreement(s) shall grant reciprocal easement rights to Purchaser and Seller for construction and maintenance of the shared drainage improvements;

(vi) all minerals and all mineral rights of every kind and character now known to exist or hereafter discovered five hundred (500) feet or more below the surface of the Property, together with the sole, exclusive and perpetual right to explore for, remove and dispose of said minerals by any means or methods suitable to Seller, but without entering upon or using the surface of the Property, and in such manner as not to damage the surface of said property or to materially interfere with the surface or subsurface use or intended use thereof by Purchaser; and

(vii) all surface and subsurface water rights pertaining or appurtenant to or used in connection with the Property, together with a perpetual easement for vehicular and pedestrian access upon, over, under, across and through the Property for purposes related to the water rights.

ARTICLE 4 - RAILROAD RELOCATION AND THIRD PARTY WORK

4.1 Purchaser's Acquisition of Certain Property.

Immediately after the attachment of the initialed Addendum for (i) the Burnham Yard Lead/West Corridor, or (ii) the Moffat Tunnel Subdivision/Gold Line, Purchaser shall pursue the acquisitions of, at its sole cost and expense, the applicable Exchange Property identified in such Addendum. Such acquisitions shall be completed in a timely manner so as to facilitate the construction, realignments, modifications and relocations of Seller's Railroad Facilities, of Railroad Facilities of third parties impacted by Seller's relocation, and of Third Party Property, prior to the Closing of such Project Segment. Seller agrees to cooperate with Purchaser to acquire such properties in a timely manner, at Purchaser's sole cost and expense.

4.2 Design and Construction for Relocations.

The parties agree to work diligently and in good faith to negotiate the Relocation and Construction Agreements that will be executed concurrently (as applicable) with the attachment of Addendum B and Addendum C hereto, and to negotiate the Moffat Tunnel Subdivision/Gold Line Right of Entry Agreement that will be executed concurrently with the attachment of Addendum D hereto. Those agreements will govern the applicable pre-closing relocation and construction work related to such Project Segment (which Work shall occur both on and in the vicinity of such Project Segment and related Exchange Property and Seller Relocation Property). Generally, the Relocation and Construction Agreements will (i) define the Work to be completed for the applicable Project Segment based upon the Engineering Agreement designs and the Third Party Work designs, (ii) provide that Seller will construct and relocate all of its Railroad Facilities, and Purchaser will perform all civil site work in preparation for construction and relocation of the Railroad Facilities, and (iii) contain reciprocal access licenses to enable the Work to be performed on the applicable Project Segment and Exchange Property. Generally, the Moffat Tunnel Subdivision/Gold Line Right of Entry Agreement will provide for Purchaser's pre-closing Work on the Project to be completed for such Project Segment based upon the Engineering Agreement designs and the Third Party Work designs. In addition, Seller shall construct and install a new signal system on the Moffat Tunnel Subdivision/Gold Line at Purchaser's sole cost and expense, in accordance with the designs approved under the Engineering Agreement for such Project Segment.

4.3 Third Party Work.

4.3.1 Private Utilities. For each Project Segment, Seller and Purchaser shall cooperate fully with each other and with Seller's licensees, lessees and easement owners, with respect to the relocation of related utilities, and of certain fiber optics lines and facilities and other private utilities. Purchaser shall pay all Costs not paid by third parties that are related to the Third Party Work for fiber optics lines and facilities and other private utilities, and shall also

reimburse Seller for all Costs incurred by Seller related to such Work. Seller shall cooperate with Purchaser by providing notice to the impacted licensees, lessees and easement owners, and by reviewing (and approving, in Seller's sole discretion) any designs proposed by Purchaser for relocating onto Seller's adjacent property those utilities that cannot be accommodated on the Property due to Purchaser's Project designs. Purchaser shall pay all Costs incurred for such relocations in accordance with Section 4.5 below.

4.3.2 Freight Rail Customer Service Modifications.

4.3.2.1 Boulder Industrial Lead/North Metro Line. The shared use agreement between the parties for the Boulder Industrial Lead/North Metro Line (in the form attached to Addendum A as an exhibit thereto, to be executed at the Closing of such Project Segment) will provide, *inter alia*, for modifications as required to continue freight rail service for Seller's existing customers as of the date of this Agreement. Purchaser shall pay all Costs incurred for such Work, as applicable, in accordance with the shared use agreement or Section 4.5 below.

4.3.2.2 Limon and Greeley Subdivisions/East Corridor. Purchaser shall cooperate fully with Seller's freight rail customers and other impacted parties, with respect to the relocations, service modifications, access mitigation plans and/or other relocation assistance that will offset the impacts of the Project. Purchaser shall pay all Costs related to (i) Purchaser's threatened or pending eminent domain actions and/or (ii) the cessation of Seller's freight rail service, that directly result from this transaction or the Project and that are required to be paid by Purchaser pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. § 4601, *et seq.*), the Colorado Relocation Assistance and Land Acquisition Policies Act (Colo. Rev. Stat. § 24-56-101, *et seq.*) and/or any other federal, state or local law, ordinance or regulation requiring the provision of relocation assistance to persons displaced by action of public agencies (collectively, the "Relocation Acts"), whether incurred before or after the Closing, and Purchaser shall also pay Seller for any Costs incurred by Seller related to such Work as required by the Relocation Acts. Purchaser shall pay all Costs incurred for such Work in accordance with the Relocation Acts.

4.3.3 Roadways and Public Utilities. Seller and Purchaser shall cooperate fully with each other, and with governmental entities and quasi-governmental agencies, with respect to any required quiet zone measures, relocations, closures, bridge and overpass work, crash walls, and grade-separations of, and intersection modifications to, public roadways, and with respect to relocations of public utilities required due to Work for the Project and/or any Project Segment. Purchaser shall pay all Costs not paid by third parties that are related to the Work for such roadways and public utilities, and shall also pay Seller for all Costs incurred by Seller related to such Work. Purchaser shall pay all Costs incurred for such Work in accordance with Section 4.5 below.

4.4 Additional Work Costs.

Purchaser shall pay all additional Costs related to, or required in connection with, the relocations, modifications and realignments of Seller's facilities and operations, including without limitation, those related to Work required by the BNSF Railway, and any exactions,

conditions of approval and/or contractual obligations, that are imposed by another railroad or by any governmental entity or quasi-governmental agency in connection with development or permitting approvals for the Project Segments or adjacent properties. Purchaser shall pay all Costs incurred for such Work in accordance with Section 4.5 below.

4.5 Payments by Purchaser.

4.5.1 Purchaser Payments. On an ongoing basis, Purchaser shall pay Seller for all the Costs incurred by Seller or any third party for Work performed, or materials ordered, pursuant to (i) Section 2.4 above and Section 4.6.2 below, (ii) the Engineering Agreements, (iii) the Relocation and Construction Agreements and the Moffat Tunnel Subdivision/Gold Line Right of Entry Agreement, and (iv) that Work for the Moffat Tunnel Subdivision/Gold Line described in Sections 4.2 (as related to relocation and construction of Seller's signal system and/or the Moffat Tunnel Subdivision/Gold Line Right of Entry Agreement), 4.3.1 (as related to Purchaser's Project, but not if solely related to Seller's relocation), 4.3.3 and 4.4 above for that Project Segment, as follows:

4.5.1.1 Seller Invoices. Seller shall send Purchaser invoices ("Seller Invoices") not more frequently than monthly describing the amount to be paid by Purchaser to Seller for Costs that have been incurred (but not previously paid by Purchaser), together with such backup documentation as Purchaser may reasonably request to verify the amounts expended by Seller for Work projects related to each Project Segment, Seller Relocation Property and Exchange Property. All Seller Invoices will be based upon the approved engineering designs for, or other Work costs related to, the Project Segments, the Seller Relocation Property and/or the Exchange Property. Payment from Purchaser shall be due within thirty (30) calendar days after receipt of a Seller Invoice. Purchaser acknowledges that the Seller Invoices and backup documentation will be in electronic format utilizing Seller's and Purchaser's contract administration systems.

4.5.1.2 Amounts Past Due. Any amounts owing that remain unpaid forty-five (45) days after Purchaser receives a Seller Invoice shall accrue interest at the Past Due Interest Rate. Purchaser shall pay interest on past due amounts at the rate of one percent (1%) per month (the "Past Due Interest Rate"), plus all fees, charges and damages that accrue due to Purchaser's failure to make payment within thirty (30) days after receipt of a Seller Invoice. Except as provided in the preceding sentence, Seller shall be solely responsible, and Purchaser shall not pay Seller, for any late charges or fees that accrue due to Seller's failure to pay amounts to third parties when due.

4.5.1.3 All Amounts Due at Closing or Termination. Notwithstanding anything to the contrary contained herein, (i) at the Closing of each Project Segment, Purchaser shall pay to Seller all Costs then due pursuant to this Article 4 for such Project Segment, or (ii) upon termination of this Agreement, Purchaser shall pay to Seller all Costs then due pursuant to this Article 4. Notwithstanding the foregoing, in the event this Agreement is terminated prior to the Closing of one or more Project Segments, Purchaser's payment obligations hereunder shall be limited to payment of those Seller Invoices, related to those Project Segments not yet closed, that have been previously delivered to Purchaser and those Seller Invoices (covering Costs previously incurred and Costs due under executed contracts) delivered to Purchaser within ninety

(90) days after the termination date (on condition that such Seller Invoices meet the standards set forth in Section 4.5.1.1 above).

4.5.2 Disputes Regarding Uses of Funds. If Purchaser disputes any item on a Seller Invoice, Purchaser may notify Seller of the amounts and reasons for any such disputed items within twenty (20) days after Purchaser's receipt of the invoice. In such event, Purchaser may request from Seller copies of such supporting documentation and/or records as are kept in the ordinary course of Seller's business and that are reasonably necessary to verify the accuracy of the invoice as rendered. Purchaser shall pay disputed amounts in a timely manner as though there were no dispute unless the dispute is based solely on whether or not a bill is attributable to Work, and any credits due to Purchaser based upon the parties' settlement of a disputed amount shall be credited against future amounts due from Purchaser hereunder. If a dispute is based solely on whether or not a bill is attributable to Work (despite Seller's provision of backup documentation pursuant to Section 4.5.1.1 above), then Purchaser shall pay the amount of the disputed bill upon receipt of further confirmation from Seller that the bill was for Work. In the event Purchaser delays payment of a Seller Invoice based on a dispute regarding whether or not a bill is attributable to Work, then Purchaser shall pay the Past Due Interest Rate for any such disputed amounts later determined to be due to Seller.

4.5.3 Purchaser's Review of Seller's Records. So much of the books, accounts and records of Seller as is related to the Work shall, during business hours, be open to inspection by the authorized representatives and agents of Purchaser, and to any representative of the Federal Transit Administration or any other federal agency with oversight responsibility for RTD's Passenger Rail System. All accounting records and other supporting papers shall be maintained for a minimum of three (3) years from the date of the Closing of the applicable Project Segment.

4.6 Cooperation and Diligence; Project Representative.

4.6.1 Cooperation and Diligence. Seller and Purchaser shall cooperate to diligently perform and/or facilitate all Work described in this Agreement, including without limitation all Work described in the Engineering Agreements, the Moffat Tunnel Subdivision/Gold Line Right of Entry Agreement and the Relocation and Construction Agreements.

4.6.2 Project Representative. Prior to the attachment of each of Addendum B, Addendum C and Addendum D, (i) each party shall designate a project representative to coordinate with the other party on all Work matters related to such Project Segment, including working directly or indirectly with the public and with public entities with respect to entitlements, approvals and permits, and (ii) Seller shall estimate the future costs and expenses to be incurred with respect to its project representative, and deliver such estimate to Purchaser for purposes of Purchaser's appropriation authorization. Purchaser shall pay all reasonable costs and expenses, including without limitation salary/compensation, benefits, office space and overhead expenses for Seller's designated project representative, in accordance with Section 4.5 above.

ARTICLE 5 - CONSIDERATION

5.1 Purchase Price.

In addition to the amounts payable by Purchaser pursuant to Article 4 above, Purchaser shall pay to Seller the amounts stated in each Addendum (collectively, all amounts due from Purchaser pursuant to Article 4 and this Article 5 are referred to herein as the "Purchase Price"), and shall exchange the Exchange Property for portions of the Project Segments (as described in each Addendum), all as consideration for the Property, Other Assets and other obligations undertaken by Seller hereunder. The additional Purchase Price amounts to be stated in, and payable under, each Addendum are as follows: (i) for the Boulder Industrial Lead/North Metro Line, One Hundred Seventeen Million Six Hundred Thirty-seven Thousand Eight Hundred Twenty-one Dollars ($117,637,821.00); (ii) for the Burnham Yard Lead/West Corridor, One Million Dollars ($1,000,000.00); (iii) for the Limon and Greeley Subdivisions/East Corridor, Seventeen Million Four Hundred Fifty-five Thousand Dollars ($17,455,000.00); and (iv) for the Moffat Tunnel Subdivision/Gold Line, Two Million One Hundred Thirty-one Thousand Dollars ($2,131,000.00). The balance of the Purchase Price shall be paid as follows:

5.1.1 Deposit. Concurrently with Purchaser's execution and delivery to Seller of this Agreement (including Addendum A), Purchaser shall deliver to Escrow Holder, for deposit into an escrow account for the Closing under Addendum A the sum of Five Hundred Thousand Dollars ($500,000.00), as a deposit toward the Purchase Price for the Boulder Industrial Lead/North Metro Line Project Segment. Subsequently, concurrently with Purchaser's initialing and delivery to Seller of each of Addendum B, C and/or D, Purchaser shall deliver to Escrow Holder, for deposit into an escrow account for the applicable Closing, the following sums: (i) for the Burnham Yard Lead/West Corridor, One Hundred Thousand Dollars ($100,000.00); (ii) for the Limon and Greeley Subdivisions/East Corridor, One Hundred Thousand Dollars ($100,000.00); and (iii) for the Moffat Tunnel Subdivision/Gold Line, One Hundred Thousand Dollars ($100,000.00), as a deposit toward the Purchase Price for such Project Segment. Each such delivery of a deposit to Escrow Holder to establish an escrow account for a Project Segment shall constitute an "Escrow" and each such deposit into an individual Escrow shall constitute a "Deposit." The Deposit shall be paid by cashier's or certified check drawn upon a Colorado financial institution, or by cash deposit or a wire transfer of U.S. funds for immediate credit. The Deposit shall be applied toward the Purchase Price of the applicable Project Segment at the Closing thereof, and shall become nonrefundable upon the expiration of the Investigation Period specified in the Due Diligence Right of Entry for such Project Segment, except in the event of a material default by Seller or the failure of a condition precedent to Purchaser's obligations to close such Project Segment

5.1.2 Balance. The balance of the Purchase Price shall be due and payable in accordance with Section 13.4.1 below and, with respect to the Purchase Price for the Boulder Industrial Lead/North Metro Line only, in accordance with the escrow provisions set forth in Addendum A.

5.2 Investment of Deposit.

The Deposit, upon receipt by Escrow Holder, shall be invested by Escrow Holder in an interest-bearing money market or a savings account with a national banking association or federally chartered savings and loan association. Interest earned on the Deposit shall accrue to the benefit of Purchaser; provided however, that in the event of any material default by Purchaser under this Agreement, all interest on the Deposit shall accrue to the benefit of Seller. All references to the Deposit hereafter shall include any interest accrued on the Deposit from Escrow Holder's investment thereof. Escrow Holder shall use Purchaser's tax identification number, which is 84-0597392 to report any interest which may accrue on the Deposit.

5.3 Waiver of Right to Record Lis Pendens.

As a material consideration for Seller's entering into this Agreement, Purchaser expressly waives any right under Colo. Rev. Stat. § 38-35-110 or at common law or otherwise to record or file a lis pendens or a notice of pendency of action or similar notice against all or any portion of the Property. Purchaser acknowledges and agrees, subject to Section 14.3.3 below, that prior to the actual Close of Escrow, Purchaser does not and shall not have any right, title and/or interest in the Property or any portion thereof.

5.4 Eminent Domain.

Purchaser deems it proper and necessary, pursuant to Colorado law, to acquire the Property for public purposes, and represents that it has been authorized, empowered and directed to negotiate with Seller to acquire the Property and Other Assets for such public purposes. The parties acknowledge that Seller intends to treat the transfer of the Property and Other Assets as an involuntary conversion made under threat of condemnation pursuant to Section 1033 of the Internal Revenue Code of 1986, as amended. The parties agree that, in lieu of Purchaser's initiating eminent domain proceedings to acquire the Property and Other Assets for public purposes, and to avoid the cost and uncertainty of such litigation, the Property and Other Assets will be acquired by Purchaser pursuant to the terms of this Agreement.

ARTICLE 6 - TITLE

6.1 Property; Permitted Exceptions.

Except for the Retained Rights and subject to the Permitted Exceptions, Seller shall transfer and quit claim its right, title and interest in and to the Property (excluding the Flyover Easement property) to Purchaser, as more particularly provided in the Quitclaim Deeds. The following matters, *inter alia*, shall be permitted exceptions to such transfer (the "Permitted Exceptions"):

(i) a lien to secure payment of real property taxes and assessments, not yet delinquent;

(ii) matters affecting the condition of title created or permitted to be created by or with the consent of Purchaser;

(iii) those Property Materials affecting title to the Property or Other Assets described in Section 7.1 below;

(iv) all Leases, Other Agreements, franchises and permits affecting the Property;

(v) standard exceptions and scheduled exceptions to title whether shown in the title commitment prepared for the Property or in the Title Policy;

(vi) matters that would be disclosed by a survey or inspection of the Property;

(vii) the Retained Rights; and

(viii) any other exceptions or reservations set forth in the Quitclaim Deeds and Flyover Easements.

6.2 Title Policy.

Purchaser may elect to obtain, at its sole cost and expense, a title insurance policy ("Title Policy"), insuring Purchaser's right, title, and interest in and to the Property. Should Purchaser obtain a title commitment and/or Title Policy on the Property, Purchaser shall promptly deliver copies of the same to Seller, together with copies of the documents underlying the exceptions contained therein. Seller shall not be required to assume any liabilities or obligations in connection with obtaining the Title Policy. The issuance of the Title Policy for any Project Segment shall not be a condition to, or cause for delay of, the Closing.

6.3 Title Review.

Purchaser shall have until fourteen (14) business days after the Effective Date for each Project Segment to notify Seller in writing of any exceptions to title that specify Seller has no color of title for one or more parcels. If Seller does not respond in writing to Purchaser within five (5) business days after receipt of Purchaser's notice, stating that Seller has evidence showing its color of title, then Purchaser shall have the right, exercisable by delivery of written notice to Seller within five (5) business days after the expiration of Seller's five (5) day period, to either (i) accept any such exceptions or (ii) notify Seller of a proposed Valuation Reduction Amount. The "Valuation Reduction Amount" shall be agreed upon by the parties as follows: Purchaser shall provide Seller with a good faith estimate of the dollar amount by which such defect adversely affects the value of the Project Segment, calculated on a pro rata basis using the appraised value of that specific portion of such Project Segment and the size of the area affected by the title defect; and Seller shall verify and confirm such calculation. If Purchaser does not deliver such written notice, Purchaser shall be deemed to have waived all exceptions to title (excluding only monetary liens that were created by Seller and are of a definite and ascertainable amount that may be satisfied by the payment of money, which shall be paid, released or otherwise provided for by Seller at the Closing), and such exceptions shall be deemed Permitted Exceptions, and Purchaser shall be deemed to have elected to proceed to Closing. The procurement by Seller of evidence reasonably satisfactory to Purchaser and/or the Title Company of Seller's color of title to such parcel(s), or the Title Company's agreement to issue an endorsement to the Title Policy insuring Purchaser against any disapproved exception set forth in

Purchaser's notice, shall be deemed a cure by Seller of such item. In no event shall Seller's failure to cure any disapproved exceptions be deemed a breach of this Agreement.

ARTICLE 7 - DUE DILIGENCE

7.1 Availability of Property Materials.

At least sixty (60) days prior to the applicable Effective Date for any Project Segment, Seller shall have made available to Purchaser at Seller's offices copies of documents in the possession of Seller's representatives Dan Leis or Gary Honeyman related to such Project Segment that are: (i) non-confidential and non-proprietary Leases and Other Agreements that are disclosed by Seller's Standard Real Estate Search; (ii) valuation maps covering the Property that are in the records of Seller's Real Estate Department in Omaha, Nebraska, which location is where valuation maps are stored and maintained in the ordinary course of Seller's business; (iii) environmental studies or reports relating to the Property that are in the records of Seller's Environmental Management Group in Omaha, Nebraska or Laramie, Wyoming or Denver, Colorado, which locations are where environmental studies and reports are stored and maintained in the ordinary course of Seller's business; and (iv) deeds and franchise agreements that purport to vest in Seller or Affiliates of Seller any real property interest in the Property that are in the records of Seller's Real Estate Department (collectively, all materials listed in (i) through (iv) above are referred to herein as the "Property Materials"). To the extent the valuation maps delivered under subsection (ii) of this Section contain audit numbers or other cross-references to Seller's records for deeds or easements (whether recorded or not) under which Seller transferred to any third party (including, without limitation, any Affiliate of Seller) an interest of Seller in and to any portion of the Property, and such deeds and easements are in the records of Seller's Real Estate Department, Seller shall make available such deeds and easements to Purchaser at such time as Seller makes its valuation maps available. "Seller's Standard Real Estate Search" means the following procedure: Seller's Real Estate Department (a) determines the location of the property in question and converts the information into a data base inquiry which is run against Seller's Real Estate Management System data base to generate a list of documents affecting the property in question as revealed by the data base, and (b) searches for the listed documents in the Real Estate Department records in Omaha, Nebraska, which location is where documents in Seller's Real Estate Management System data base are stored and maintained in the ordinary course of Seller's business. Purchaser acknowledges and agrees that all of the Property Materials and other information provided pursuant to this Section 7.1 have been provided by Seller to Purchaser without any warranty or representation, express or implied, oral or written, concerning the accuracy or completeness thereof and that Purchaser will not rely thereon but instead will rely solely on Purchaser's and any Consultant's investigations of the Property to determine whether the Property is in a condition satisfactory to Purchaser.

7.2 Confidentiality/Non-disclosure.

Except as required by law or as specifically permitted under the terms of the existing confidentiality agreements between Seller and Purchaser, all environmental studies and reports furnished by Seller pursuant to Section 7.1 shall be kept confidential by Purchaser until the Closing for the applicable Project Segment. Except as required by law or as specifically permitted under the terms of the existing confidentiality agreements between Seller and

Purchaser, all Property Materials and information other than such environmental studies and reports obtained by Purchaser pursuant to this Agreement shall be kept confidential by Purchaser until the Closing for the applicable Project Segment. After such Closing(s), Purchaser shall not disclose any information regarding environmental matters that directly pertain to any property retained by Seller under this Agreement. Without limiting the generality of the foregoing, Purchaser shall not copy or distribute any of the environmental studies and reports relating to the Property provided by Seller pursuant to Section 7.1 except to the extent necessary for Purchaser's due diligence under the terms of the existing confidentiality agreements between Seller and Purchaser or, to the extent required by law or specifically approved by Seller in writing, to comply with environmental regulations during construction of any Project Segment. and shall return such studies and reports to Seller upon termination of this Agreement.

7.3 Due Diligence Rights of Entry.

The Due Diligence Rights of Entry give Purchaser and its Consultants the right to enter upon the Property during a certain time period (for any Project Segment, the "Investigation Period"), to physically inspect the Property and to make or conduct such engineering, feasibility, environmental or other inspections, tests, surveys, studies, procedures or investigations which Purchaser deems necessary or advisable to determine whether the condition of the Property is satisfactory to Purchaser and whether the Property is suitable for Purchaser's intended uses; provided however, that in connection with any entry upon the Property by Purchaser or by any Consultant(s) and in connection with all inspections, tests, surveys, studies, procedures, investigations or reports made or prepared by Purchaser or by any Consultant(s), it is understood and agreed that Purchaser and its Consultants shall be governed by the terms of the Due Diligence Rights of Entry. Purchaser and its Consultants shall be entitled to exercise their rights under the Due Diligence Rights of Entry, at their own expense, during the Investigation Period. Any default by Purchaser under the Due Diligence Rights of Entry that is not cured by Purchaser within thirty (30) days after receipt of notice from Seller shall be deemed a material default under this Agreement. Purchaser agrees, upon request by Seller, to promptly deliver to Seller without charge therefor, the results and copies of any and all survey, reports, tests, studies and assessments made by or for Purchaser with respect to the Property.

7.4 Mechanics' Liens.

Purchaser covenants and agrees to pay in full for all materials joined or affixed to the Property and to pay in full all persons who perform labor upon the Property, and not to permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against such property for any work done or materials furnished thereon at the instance or request or on behalf of Purchaser; and Purchaser agrees to indemnify, hold harmless and defend (with counsel acceptable to Seller) Seller and Seller's Affiliates, its and their respective officers, agents and employees against and from any and all liens, claims, demands, Costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed or materials furnished prior to Closing. Work contracted for by Seller pursuant to any Engineering Agreement or Relocation and Construction Agreement shall not be considered Work done for Purchaser under this Section 7.4 to the extent that Purchaser has fully paid for such Work pursuant to this Agreement, the Engineering Agreement and the Relocation and Construction Agreement.

7.5 Due Diligence - Further Assurances.

If the Closing on any Project Segment does not occur for any reason, Purchaser agrees to provide to Seller a copy of each written test, survey, study or report obtained by Purchaser in connection with Purchaser's or any Consultant's inspections, tests, surveys, studies, procedures or investigations of such Project Segment during the Investigation Period (at a reasonable cost to Seller) or provided by Seller to Purchaser and to destroy all originals and copies in the possession or control of Purchaser.

7.6 Purchaser's Right to Terminate.

If, during the Investigation Period, the inspections, tests, surveys, studies, procedures, investigations or other due diligence activities by Purchaser or by any Consultant(s) show that the physical or environmental condition of any Project Segment is not satisfactory to Purchaser in Purchaser's sole judgment, Purchaser shall have the right to terminate this Agreement by delivering written notice of such election to Seller prior to the end of the Investigation Period. In the event of such termination, the cost of cancellation of the Escrow shall be paid by Purchaser and neither party shall have any further rights or obligations under this Agreement except for the Surviving Obligations.

ARTICLE 8 - REPRESENTATIONS AND WARRANTIES

8.1 Seller's Representations and Warranties.

Seller represents and warrants that as of the date hereof, and as of the Closing Date, for each Project Segment (except as otherwise stated in Schedule 8.1 attached hereto, which may be updated from time to time, and subject to Sections 8.3 and 12.2.6 below):

8.1.1 Corporate Good Standing. Seller is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware and able to do business in the State of Colorado.

8.1.2 Authority. Seller has full corporate power and authority to enter into this Agreement and the Related Agreements and, subject to any necessary regulatory authority, to carry out the obligations of Seller under this Agreement and the Related Agreements.

8.1.3 Binding Agreement. Subject to Section 12.1.8, this Agreement has been duly authorized, executed and delivered by Seller and is a legal, valid and binding agreement of Seller, enforceable against Seller in accordance with its terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered a proceeding in equity or at law). Neither the execution and delivery of this Agreement and the Related Agreements by Seller, the consummation by Seller of the transactions contemplated thereby, nor compliance or performance by Seller with any of the provisions thereof does or will violate any judgment, order, law or regulation applicable to Seller (provided that Purchaser obtains any required STB exemption(s) or approval(s)) or any provisions of Seller's certificate of incorporation or by-laws,

or result in any material breach of, or constitute a material default under any agreements to which Seller is a party or by which any of the Property is bound.

8.1.4 Environmental. To the Knowledge of Gary Honeyman (Seller's environmental management group representative with respect to each Project Segment) after performing Seller's standard search with respect to the Property Materials described in Section 7.1 (iii) above, Seller has not received any written notice from any Environmental Agency regarding the release of Hazardous Substances on or onto any Project Segment listed on Schedule 8.1 in violation of any Environmental Law, nor does Seller have any Knowledge of any pending action by any Environmental Agency concerning any of the Property included in any Project Segment listed on Schedule 8.1, except as may be set forth on Schedule 8.1.

8.2 Purchaser's Representations and Warranties.

Purchaser represents and warrants that as of the date hereof and as of the Closing Date for each Project Segment (subject to Section 8.3):

8.2.1 Good Standing. Purchaser is a political subdivision duly organized, validly existing, and in good standing under the laws of the State of Colorado.

8.2.2 Authority. Purchaser has full power and authority to enter into this Agreement and the Related Agreements, including, subject to applicable law, the authority to apply for and obtain any necessary authority or exemption from the STB, to carry out the obligations of Purchaser under this Agreement and the Related Agreements. As of the Closing for each Project Segment except for the Boulder Industrial Lead/North Metro Line, Purchaser shall have obtained any necessary authority or exemption from the STB or confirmation from the STB that no authorization is required.

8.2.3 Binding Agreement. Subject to Section 12.2.3, this Agreement has been duly authorized, executed and delivered by Purchaser and is a legal, valid and binding agreement of Purchaser, enforceable against Purchaser in accordance with its terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered a proceeding in equity or at law). Neither the execution and delivery of this Agreement and the Related Agreements by Purchaser, the consummation by Purchaser of the transactions contemplated thereby, nor compliance or performance by Purchaser with any of the provisions thereof does or will violate any judgment, order, law or regulation applicable to Purchaser or any provisions of Purchaser's statutory authority, or result in any breach of or constitute a default under any agreements to which Purchaser is a party.

8.2.4 No Judgments. Purchaser's representative, Marla Lien, has no Knowledge of any actions, suits or proceedings pending or threatened against Purchaser, or any other facts, that would prevent or hinder the sale and transfer of the Property or Other Assets to Purchaser. Purchaser's representative has day-to-day responsibility for the matters that are the subject of this representation and warranty.

8.2.5 Non-Carrier Status. As of the Effective Date for each Project Segment, Purchaser is not a rail carrier providing transportation subject to the jurisdiction of the STB for purposes of utilizing the STB procedures at 49 CFR 1150, Subpart D.

8.2.6 Subdivision and Zoning. The real property transactions for each Project Segment comply, or by the time of Closing for such Project Segment will comply, with all applicable state and local laws regarding the subdivision of legal parcels (which compliance may include legal nonconforming parcels). The Exchange Property and Seller Relocation Property shall be zoned, as of the applicable Closing Date, to allow Seller's and Seller's lessees', licensees' and easement owners' intended uses of such property "by right" (without special or conditional use permits), which zoning may include any legal nonconforming use status available to Seller.

8.2.7 Purchaser Indemnities Not Inconsistent with Law. None of Purchaser's indemnities contained in this Agreement or in the Related Agreements are inconsistent with or in contravention of either (i) the Regional Transportation District Act, C.R.S. §§ 32-9-101 *et seq.*, or (ii) the Governmental Immunity Act, C.R.S. §§ 24-10-101 *et seq.* (the "GIA").

8.2.8 Waiver of Governmental Immunity on Purchaser Indemnities. Purchaser's board of directors has taken all steps legally required by Section 104 of the GIA to waive any governmental immunity that Purchaser may have under the GIA in defense of any claims against Purchaser pursuant to any indemnities provided in this Agreement, subject to Section 15.5 below.

8.2.9 GIA Section 114. The monetary limitations on damages set forth in Section 114 of the GIA do not apply to any indemnity claims against Purchaser provided in this Agreement.

8.3 Accuracy as of Closing.

All representations and warranties by the respective parties contained herein (as updated) are intended to remain true and correct as of the Closing for the applicable Project Segment, and are deemed to be restated at such Closing except with respect to variance(s) of which written notice(s) are given as provided below in this Section 8.3. In the event a party (or Seller's or Purchaser's representative(s), in the case of the representations limited to the Knowledge of such persons) has Knowledge that a representation and warranty in this Article 8 is no longer true and correct after the applicable Effective Date, such party shall immediately give the other party written notice of such variance. The party benefited by the representation and warranty may elect to terminate this Agreement or may waive the variance by giving the other party written notice of such election (i) within ten (10) days after such written notice of variance is received, or (ii) prior to Closing for the applicable Project Segment, in the event such notice is received within ten (10) days of such Closing. If the benefited party does not give timely notice of termination or waiver, then the benefited party will be deemed to have waived the variance. If this Agreement is terminated pursuant to this Section 8.3, the cost of cancellation of the Escrow shall be paid by Purchaser and neither party shall have any further rights or obligations under this Agreement except for the Surviving Obligations.

8.4 Survival.

Except as otherwise expressly provided herein or in the Quitclaim Deeds, the representations and warranties set forth in this Article 8 by Seller and Purchaser for each Project Segment shall survive the Closing of such property for a period of one (1) year and shall then expire and terminate.

8.5 Notice of Breach.

Neither Seller nor Purchaser shall have any cause of action or claim for breach of representations and warranties (such party having a claim being referred to herein as a "Claimant") unless a "Notice of Breach" shall have been theretofore delivered by Claimant to the party claimed to be in breach within one (1) year following the applicable Closing Date (the "Claims Period"). Failure of a Claimant to deliver a Notice of Breach within the Claims Period shall terminate any and all causes of action, claims or rights with respect to the alleged breach by the other party of any such representation or warranty. Each Notice of Breach shall describe with reasonable specificity and particularity the nature of the alleged breach.

ARTICLE 9 - DISCLAIMERS

9.1 Property As-Is.

As a material inducement to Seller to enter into this Agreement and to sell the Property to Purchaser, Purchaser acknowledges and agrees that:

9.1.1 As-Is. Purchaser is purchasing the Property and the Other Assets in "AS-IS, WHERE-IS" condition, with all faults, and accepts the Property and Other Assets in their current physical and environmental condition. Purchaser acknowledges that the Property and Other Assets have been used for, among other things, a railroad right-of-way, railyards and heavy industrial purposes. Purchaser further acknowledges that, pursuant to Section 7.1 above, prior to the attachment of any Addendum for a Project Segment, Purchaser shall have received and reviewed, and/or will be knowledgeable of all Property Materials made available to Purchaser and all matters listed in Schedule 8.1 for such Project Segment. Seller makes no representation or warranty as to the accuracy or completeness of the reports or other documents listed on Schedule 8.1.

9.1.2 Existing Laws. Purchaser is purchasing the Property and Other Assets subject to all existing laws, statutes, ordinances, codes, rules and regulations.

9.1.3 Purchaser's Use. Seller shall not be responsible for the payment of any connection charges, fees and payments required in connection with Purchaser's use of utilities, roads or other similar improvements to use the Property, Other Assets and/or any improvements existing or hereafter constructed or placed thereon by Purchaser.

9.1.4 No Warranties. Neither Seller nor any party representing Seller has made any warranty or representation to Purchaser, express or implied or statutory, oral or written, with respect to the Property or Other Assets, including without limitation, any warranties or representations concerning title, habitability, fitness for a particular purpose, suitability,

merchantability, quality of work, structural integrity, compliance with federal railroad administration regulations, environmental conditions, building code, fire code, health and safety regulations, zoning, platting, subdivision, access, availability of utilities or compliance with any laws, statutes, ordinances, codes, rules or regulations (collectively, "Condition of the Property").

9.1.5 Reliance. Purchaser will rely solely upon the Purchaser's and any Consultant(s) inspections, tests, surveys, studies, procedures and investigations of the Property and Other Assets, and will assume the risk that adverse physical and environmental conditions may not have been revealed by its investigation.

9.1.6 Release and Waiver. Purchaser, for itself and its successors and assigns, hereby waives, releases, remises, acquits and forever discharges Seller, Affiliates of Seller, its and their respective officers, employees, agents, successors and assigns, and/or any other person acting on behalf of Seller, of and from any claims, actions, causes of action, demands, rights, Losses or compensation whatsoever, direct or indirect, that Purchaser now has or may have in the future on account of or in any way arising out of or in connection with the Condition of the Property, including without limitation, the known or unknown physical condition of such property or any federal, state or local law, ordinance, rule or regulation applicable thereto. Notwithstanding the foregoing, Purchaser's release contained in this Section 9.1.6 shall not include the Environmental Condition of the Property, because that release is set forth in Section 10.2 below.

9.2 Exchange Property As-Is.

9.2.1 As-Is. As a material inducement to Purchaser to enter into this Agreement and to convey the Exchange Property to Seller, Seller acknowledges and agrees that, subject to (i) Section 8.2 above, (ii) any warranties and indemnities contained in a Deed for Exchange Property, and (iii) any other representations, warranties and indemnities contained in an Addendum or Closing document relating to the Exchange Property, Seller is acquiring the Exchange Property in "AS-IS, WHERE-IS" condition, with all faults, and accepts Exchange Property in its current physical condition and, with respect only to the Moffat Tunnel Subdivision/Gold Line Exchange Property, environmental condition.

9.2.2 Release and Waiver. Subject to (i) Section 8.2 above, (ii) any warranties and indemnities contained in a Deed for Exchange Property, and (iii) any other representations, warranties and indemnities contained in an Addendum or Closing document relating to the Exchange Property, Seller, for itself and its successors and assigns, hereby waives, releases, remises, acquits and forever discharges Purchaser, affiliates of Purchaser, its and their respective officers, employees, agents, successors and assigns, and/or any other person acting on behalf of Purchaser, of and from any claims, actions, causes of action, demands, rights, Losses or compensation whatsoever, direct or indirect, that Seller now has or may have in the future on account of or in any way arising out of or in connection with the condition of the Exchange Property, including without limitation, the known or unknown physical condition of such property or any federal, state or local law, ordinance, rule or regulation applicable thereto. Notwithstanding the foregoing, Seller's release contained in this Section 9.2.2 shall not include the Environmental Condition of the Exchange Property, because that release is set forth in Section 10.2.2 below.

9.3 All Forms of Liability.

The disclaimer of warranties and releases contained in this Article 9 apply to the disclaimer and release of all forms of liability, including those arising on the basis of contract and tort liability.

ARTICLE 10 - RESPONSIBILITY FOR HAZARDOUS SUBSTANCES

10.1 Purchaser's Inspection.

Purchaser acknowledges that it is being afforded access to the Property pursuant to this Agreement and the Due Diligence Rights of Entry in order to make, at its sole cost and expense, an on-site inspection of the Property and Other Assets, and to have independent Consultants prepare environmental studies regarding the presence of Hazardous Substances.

10.2 Release, Waiver and Indemnity Regarding Claims.

10.2.1 Property. Each Addendum shall provide for Purchaser's indemnification of Seller with respect to the Environmental Condition of the Property for that Project Segment.

10.2.2 Exchange Property. Addendum D shall provide for Seller's indemnification of Purchaser with respect to the Environmental Condition of the Property for that Moffat Tunnel Subdivision/Gold Line Exchange Property.

10.3 No Assignment.

Neither party may assign its obligations under this Article 10 without prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.

ARTICLE 11 - COVENANTS

11.1 Seller's Covenants to Purchaser.

Seller covenants to Purchaser that:

11.1.1 Payment of Taxes. Prior to the applicable Closing Date, Seller shall pay all taxes and assessments affecting such Project Segment that it is legally obligated to pay prior to the date such taxes and assessments become legally delinquent. Seller shall be responsible for taxes of any kind (including, without limitation, possessory interest taxes, if any) that are separately levied on any of the Retained Rights.

11.1.2 No New Encumbrances. After the Effective Date for each Project Segment, Seller shall not encumber and shall use reasonable efforts not to permit to be encumbered any part of such Property, or otherwise impair (except as otherwise contemplated by or permitted under this Agreement) the state of title to such Property for use as a public rail transit corridor, except with Purchaser's prior written consent which shall not be unreasonably withheld, conditioned or delayed and shall be based upon whether such encumbrance would materially and adversely affect Purchaser's intended use of the Property for a public rail transit

corridor (including without limitation a consideration of any material increase in Purchaser's cost of operations), as determined by Purchaser in its reasonable judgment.

11.1.3 No Modification of Assigned Leases and Assigned Other Agreements. After the Effective Date for each Project Segment, Seller shall not modify any of the Assigned Leases or Assigned Other Agreements for such property in any material way, or enter into new Leases or Other Agreements affecting such Project Segment, without Purchaser's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed and shall be based upon whether such modification would materially and adversely affect Purchaser's intended use of the Property for a public rail transit corridor (including without limitation a consideration of any material increase in Purchaser's cost of operations), as determined by Purchaser in its reasonable judgment. Seller shall have the right to terminate or cancel any Assigned Leases or Assigned Other Agreements without Purchaser's consent, provided that Seller notifies Purchaser in advance of such termination or cancellation.

11.1.4 Relocation Assistance. Provided the transfer of the Property closes pursuant to this Agreement, and Purchaser fulfills all of its obligations under this Agreement, Seller acknowledges and agrees that it will be fully compensated for the sale of the Property and Other Assets and is not entitled to any further assistance under the provisions of the Relocation Acts, by reason of the transactions contemplated by this Agreement. Notwithstanding the foregoing, nothing in this Agreement shall be deemed to create or impair any rights of any third parties to seek assistance under the provisions of the Relocation Acts.

11.2 Purchaser's Covenants and Indemnities to Seller.

Purchaser covenants to Seller, and indemnifies Seller, as follows:

11.2.1 Covenant Regarding Certain Leases and Other Agreements. If, after the applicable Closing, Seller or Purchaser discovers any Leases or Other Agreements that cover such Project Segment that would have been assigned to Purchaser if discovered prior to such Closing, Seller and Purchaser shall enter into an assignment and assumption agreement with respect to such Leases and Other Agreements in the form of the assignment and assumption agreement executed at the Closing of such Project Segment or amend such assignment and assumption agreement to include such Leases and Other Agreements.

11.2.2 Mistakes in Legal Descriptions. If, after the applicable Closing, Seller or Purchaser discovers any mistakes in the legal descriptions of such Project Segment or Exchange Property (or any Retained Rights with respect thereto), Seller and Purchaser shall work cooperatively to correct such mistakes.

11.2.3 No Grant of Freight Rail Rights. Except as may be specifically provided in any Addendum (or amendment thereto) or as may be required by any governmental authority with jurisdiction over the granting of such rights, Purchaser shall not grant any right to seek operating authority on all or any section of the Property at any time to any entity or individual other than Seller. This Section shall survive the Closing of all Project Segments, or the termination of this Agreement.

11.2.4 Relocation Assistance. Purchaser shall comply with the provisions of the Relocation Acts with respect to Seller's freight rail customers and any other third parties seeking assistance thereunder or under any claim based on the cessation of Seller's freight rail service, and shall keep Seller generally apprised, to the extent permitted by law, of all activities and negotiations related thereto. Purchaser shall indemnify, defend and hold harmless Seller and Seller's affiliates and their respective officers, directors and employees against all claims, suits and demands for Losses arising now and in the future out of (i) the Relocation Acts, (ii) Purchaser's threatened or pending eminent domain actions, and/or (iii) any third-party claim related to the cessation of Seller's freight rail service as a direct result of this transaction or the Project, in connection with the transactions contemplated by this Agreement.

ARTICLE 12 - CONDITIONS PRECEDENT TO CLOSING

Notwithstanding the execution of this Agreement by the parties, the performances by Seller and Purchaser, as applicable, of the Closing for each Project Segment are subject to fulfillment of the following conditions precedent that benefit such party on or prior to the applicable Closing Date:

12.1 Seller's Conditions Precedent.

12.1.1 Railroad Relocation and Construction.

The applicable Seller Relocation Property and Exchange Property shall have been acquired by Seller and entitled for Seller's use. The Work for such Project Segment shall have been fully completed in accordance with the applicable Relocation and Construction Agreement or, for the Moffat Tunnel Subdivision/Gold Line, in accordance with Seller's relocation construction plans. Purchaser shall not be in default and shall have fully paid all Costs due in connection with the foregoing acquisitions and Work; and Seller shall have commenced its operations on the relocated Railroad Facilities.

12.1.2 Utility and Fiber Optics Relocations.

All Third Party Property identified in the applicable Relocation and Construction Agreement shall have been relocated; Purchaser shall not be in default and shall have fully paid all Costs due in connection therewith not paid by third parties; and the relocated Third Party Property shall be fully operational in fulfillment of such parties' contractual rights and regulatory standards.

12.1.3 Freight Customer Service Modifications.

Any freight rail customer relocations, service modifications, and access mitigation plans for Seller's freight rail customers and any other third parties seeking relocation assistance, as identified by either party pre-Closing, shall have been initiated; and Purchaser shall have fully paid all Costs then accrued for which it is liable under law or pursuant to existing agreements.

12.1.4 Roadways and Public Utilities.

If required by any governmental entity in connection with the Project or with the relocation of the Railroad Facilities, Purchaser shall have relocated, closed, grade-separated and/or modified the intersections of the public roadways (including without limitation any quiet zone measures) that may be required in conjunction with the Work on the Project Segment, if any, and shall have relocated any existing public utilities in connection therewith; and Purchaser shall have fully paid all associated Costs.

12.1.5 Other Relocation Costs.

Purchaser shall have satisfied all requirements it has negotiated with or approved for the BNSF Railway and any exactions, conditions of approval and contractual obligations imposed with respect to the applicable Project Segment; and Purchaser shall have fully paid all Costs in connection therewith.

12.1.6 No Work Stoppage.

There shall be no work stoppage imminent or in effect on the railroad lines of Seller or Seller's Affiliates or on the Property as a result of the execution or implementation of this Agreement.

12.1.7 No Legislative, Judicial or Administrative Action.

Seller shall not be prevented from fulfilling its obligations under this Agreement as a result of legislative, judicial or administrative action.

12.1.8 Seller's Board Approval.

Seller shall have received all necessary approvals from its board of directors to enter into this Agreement and consummate the transactions contemplated by this Agreement under all of the terms and conditions hereof.

12.1.9 Compliance by Purchaser.

Purchaser shall have substantially complied with each and every condition and covenant of this Agreement (and documents executed in connection with the Closings thereunder), of the Due Diligence Rights of Entry, of the Engineering Agreements, of the Moffat Tunnel Subdivision/Gold Line Right of Entry Agreement, and of the Relocation and Construction Agreements, to be kept or complied with by Purchaser.

12.1.10 Representations of Purchaser.

Subject to Section 8.3, all representations and warranties made by Purchaser under this Agreement shall be true and correct and all covenants of Purchaser to be performed before Closing shall have been performed, as of the Closing Date.

12.1.11 Withdrawals from Utility Agreements.

Purchaser shall have deposited with Escrow Holder on or before the applicable Closing Date the sum determined by Seller, for credit to Seller's account at the Closing, as the amount due to Seller to pay for all withdrawal and repurchase fees due under Seller's master utility agreements in connection with any existing underlying utility agreements on such Project Segment that are to be withdrawn from such master agreements. Upon the applicable Closing, Seller will send the appropriate notices of withdrawal to the utility companies, and the withdrawal will be effective within ninety (90) days after the notice of withdrawal is sent, after which time Seller will assign the withdrawn underlying utility agreements to Purchaser.

12.1.12 Closing Documents.

Seller shall have approved the forms of all Closing documents.

12.1.13 Jurisdictional Determination.

If the STB has determined prior to the Closing Date for any Project Segment that it has jurisdiction over the transactions contemplated by this Agreement and imposes a material adverse condition (except for labor protection) on Seller, then Purchaser shall have agreed to meet such condition or to indemnify Seller for the costs and expenses of meeting such condition.

12.2 Purchaser's Conditions Precedent.

12.2.1 Jurisdictional Determination.

The STB shall have determined that consummation of the transactions contemplated by this Agreement shall not make Purchaser a "rail carrier" providing transportation subject to the jurisdiction of the STB as that term is defined in 49 U.S.C. § 10102(5).

12.2.2 No Legislative, Judicial or Administrative Action.

Purchaser shall not be prevented from fulfilling its obligations under this Agreement as a result of legislative, judicial or administrative action.

12.2.3 Purchaser's Board Approval.

Purchaser shall have received all necessary approvals from its board of directors to enter into this Agreement and consummate the transactions contemplated by this Agreement under all of the terms and conditions hereof. Purchaser shall have delivered to Seller all of Purchaser's organizational documents necessary to evidence Purchaser's authority to complete the transaction contemplated by this Agreement.

12.2.4 Compliance by Seller.

Seller shall have substantially complied with each and every condition and material covenant of this Agreement to be kept or complied with by Seller.

12.2.5 Representations of Seller.

Subject to Section 8.3, all representations and warranties made by Seller under this Agreement shall be true and correct and all covenants of Seller to be performed before Closing shall have been performed, as of the Closing Date.

12.2.6 Certain Disclosures.

Purchaser shall have made no objection within ten (10) days after receipt of the Schedule 8.1 disclosures, if any, made by Seller on Schedule 8.1. Any such objection by Purchaser shall be delivered in writing to Seller prior to the end of such ten (10) day period, or shall be deemed waived.

12.2.7 Closing Documents.

Purchaser shall have approved the forms of all Closing documents.

12.3 Notice of Termination.

Purchaser or Seller may terminate this Agreement if any applicable condition precedent for its benefit remains unsatisfied in whole or in part, and is not reasonably expected to be promptly satisfied despite the reasonable efforts of the party benefited by such condition precedent, by delivering written notice of such termination to the other party at any time prior to the Closing Date. If such termination notice is not timely delivered, Seller and Purchaser shall be deemed to have waived their termination rights under this Article 12. In the event of such termination, the cost of cancellation of the Escrow shall be paid equally by the parties and neither party shall have any further rights or obligations under this Agreement except for the Surviving Obligations.

ARTICLE 13 - OPENING AND CLOSING OF ESCROW

13.1 Opening of Escrow and Escrow Instructions.

Upon execution of this Agreement or the initialing of any Addendum hereto, the parties shall deposit three (3) or more executed counterparts of such document (and Purchaser shall deposit the applicable Deposit) with Escrow Holder and this Agreement shall serve as the instructions to Escrow Holder for consummation of the property transfer contemplated by the applicable Addendum(a). Escrow Holder shall insert the date of the Opening of Escrow for each Project Segment on the upper right hand corner of the first page on each counterpart. The "Opening of Escrow" shall be the date upon which Escrow Holder has received executed counterparts from both Purchaser and Seller, and has received the Deposit from Purchaser. Escrow Holder shall deliver to both Purchaser and Seller one (1) or more originals of the documents executed by Purchaser, Seller and Escrow Holder and shall retain one (1) original in Escrow. Escrow Holder shall only be responsible for undertaking such matters in connection with the Closing as are specifically provided for herein or in any additional or supplementary escrow instructions delivered by the parties. In the event the Opening of Escrow has not occurred within five (5) business days after the applicable Effective Date, this Agreement and

the terms and conditions contained herein shall be null and void and of no further force and effect except for the Surviving Obligations.

13.2 Closing.

13.2.1 Closing Date. The consummation of the transactions contemplated by any Addendum to this Agreement and recording of the Quitclaim Deeds, Flyover Easement(s) and, as applicable, Deed(s) for the Exchange Property (each, a "Closing" or "Close of Escrow") shall occur, and delivery of all items to be made at the Closing under the terms of this Agreement shall be made on the date (the "Closing Date") specified in the written notice to be delivered by Seller to Purchaser and Escrow Holder at least five (5) business days prior to the specified Closing Date (the "Closing Notice").

13.2.2 Pre-Closing Conditions. Neither party shall have any obligation to close on the Property unless each and every condition for its benefit set forth in Article 12 and Sections 13.3 and 13.4 below applicable to such Closing has occurred on or before the applicable Closing Date. Provided that (i) Escrow Holder and Title Company can comply with these instructions, (ii) Escrow Holder and Title Company have received the applicable deliverables described in Sections 13.3 and 13.4 below, and (iii) neither Escrow Holder nor Title Company has received prior written notice from a party that any condition precedent to such party's obligations has not been fulfilled, or that either Purchaser or Seller has properly exercised any right to terminate this Agreement, then Title Company or Escrow Holder, as applicable, is authorized and instructed to: (a) record the Quitclaim Deed(s) and the Flyover Easement(s) and, as applicable, the Deed(s) for the Exchange Property and the Memorandum, (b) deliver the Purchase Price to Seller, as adjusted pursuant to the approved settlement statements, (c) deliver a conformed copy of the recorded Quitclaim Deed(s) and the Flyover Easement(s) and, as applicable, the Deed(s) for the Exchange Property and the Memorandum, and fully executed counterparts of all the other Closing documents to Purchaser and Seller, and (d) deliver the approved settlement statements to Purchaser and Seller in accordance with Section 13.2.4 below.

13.2.3 Failure to Close. If the Closing does not occur on or before the Closing Date, then either party not then in default may elect (i) to extend the Closing Date to a date certain by giving written notice of such extension to the other party and to Escrow Holder and Title Company, or (ii) to terminate this Agreement and cancel Escrow by giving written notice of such termination and cancellation to the other party and to Escrow Holder, or (iii) to seek specific performance by the other party except with respect to the Boulder Industrial Lead/North Metro Line, and only in the event that all conditions precedent have been satisfied, or are not reasonably expected to be promptly satisfied by the reasonable efforts of the party benefited by the condition precedent, or waived. In the event of such termination and cancellation, neither party shall have any further obligations hereunder except for the Surviving Obligations and, unless the Escrow fails to close due to a default by Seller, or the failure of a condition precedent to Purchaser's obligations hereunder, the Deposit shall be paid to or retained by Seller and all documents and other instruments shall be returned to the party depositing the same into Escrow. In the event this Agreement is terminated and neither party is in default, then the cost of cancellation of the Escrow shall be shared equally between Purchaser and Seller; in the event only one of the parties hereto is in default or if this Agreement expressly so provides, then such defaulting party shall pay for the entire cost of cancellation of the Escrow. The termination of

this Agreement and cancellation of the Escrow as provided herein shall be without prejudice to whatever legal rights, as said rights may be limited by the terms contained in this Agreement that Purchaser or Seller may have against each other arising out of this Agreement and the Escrow. If neither party elects to terminate this Agreement and cancel Escrow, Escrow Holder and Title Company shall cooperate to close the Escrow as soon as possible and the date upon which Escrow actually closes shall be deemed the new "Closing Date."

13.2.4 Notification; Settlement Statements. If either Escrow Holder and Title Company cannot comply with the instructions herein and to be provided, then neither Escrow Holder nor Title Company, as applicable, is authorized to cause the recording of the Quitclaim Deed(s), the Flyover Easement(s) or the Deed(s) for the Exchange Property, or to close this Escrow. If Title Company is unable to cause the recording of the documents, Escrow Holder shall notify Tony Love at 402-544-8640 and Jill Rood at 303-389-4657 (for Seller) and Marla Lien at 303-299-2207 and Stephen Kaplan at 303-825-7000 (for Purchaser) without delay. If Escrow Holder and Title Company are able to comply with the instructions herein and with those recording and wiring instructions to be provided, at the Closing, Escrow Holder shall deliver to Seller a true, correct and complete copy of Seller's settlement statement, and shall deliver to Purchaser at the Closing a true, correct and complete copy of Purchaser's settlement statement.

13.3 Deliveries by Seller.

Not later than one (1) business day prior to the Closing Date for any Project Segment, Seller shall deposit with Escrow Holder or, as applicable, Title Company (as set forth in the recording and wiring instructions) the following items:

13.3.1 Quitclaim Deeds. The quitclaim deed for each county covered by that Project Segment, quitclaiming to Purchaser all of Seller's right, title and interest to the Project Segment (excluding the Flyover Easement property) but reserving the Retained Rights, in the form attached to the applicable Addendum, duly executed by Seller and acknowledged;

13.3.2 Bills of Sale. The Bill of Sale for such Project Segment, in the form attached to the applicable Addendum, duly executed by Seller;

13.3.3 Flyover Easements. The Flyover Easement(s) for such Project Segment, in the form attached to the applicable Addendum, duly executed by Seller and acknowledged;

13.3.4 Assignment and Assumption Agreement/Assignment and Assumption Agreement for Exchange Property. The Assignment and Assumption Agreement for such Project Segment, assigning the Assigned Leases and Assigned Other Leases to Purchaser, in the form attached to the applicable Addendum, together with the Assignment and Assumption Agreement for the Exchange Property related to such Project Segment in the form attached to the applicable Addendum, both duly executed by Seller (the Assigned Leases and Assigned Other Agreements that are wholly assigned to Purchaser shall be delivered to Purchaser after the Closing);

13.3.5 Notices of Termination. Notices of termination from Seller to the tenants of any Lease or Other Agreement to be terminated effective as of the Closing Date, if any, as

agreed to by Seller and Purchaser prior to the expiration of the Investigation Period, and Seller agrees to mail such notices within five (5) days after the Closing;

13.3.6 Related Agreements. The remaining Related Agreement(s) applicable to such Project Segment, in the form attached to the applicable Addendum, and a memorandum of each such agreement in proper form for recording (collectively, the "Memoranda"), duly executed by Seller;

13.3.7 Certificate. An executed certificate of Seller's Assistant Secretary, certifying that Seller is authorized to enter into this Agreement and the applicable Related Agreements, and to consummate the transactions contemplated thereby;

13.3.8 Non-Foreign Status Certificate. A Certification of Non-Foreign Status pursuant to Internal Revenue Code Section 1445, in the form of Exhibit D attached hereto, duly executed by Seller; and

13.3.9 Settlement Statement and Other Documents. The settlement statement for Seller with respect to such Project Segment, and any other documents, instruments, data, records, correspondence or agreements reasonably necessary for the Closing that have not previously been delivered.

13.4 Deliveries by Purchaser.

Not later than one (1) business day prior to the Closing Date, Purchaser shall deposit with Escrow Holder or, as applicable, Title Company (as set forth in the recording and wiring instructions) the following items:

13.4.1 Purchase Price. Immediately available funds, in an amount equal to the Purchase Price for such Project Segment, as adjusted pursuant to the approved settlement statements;

13.4.2 Quitclaim Deeds. The Quitclaim Deed(s) for such Project Segment, duly executed by Purchaser and acknowledged;

13.4.3 Deeds for the Exchange Property. If not delivered by Purchaser to Seller prior to the Closing, the Deed(s) for the Exchange Property related to such Project Segment, if any, in the form attached to the applicable Addendum, duly executed by Purchaser and acknowledged, together with a title policy insuring Seller's interest in the Exchange Property in form and substance satisfactory to Seller;

13.4.4 Bills of Sale for Exchange Property. If not delivered by Purchaser to Seller prior to the Closing, the Bill(s) of Sale for the Exchange Property related to such Project Segment, in the form attached to the applicable Addendum, duly executed by Purchaser;

13.4.5 Assignment and Assumption Agreement/Assignment and Assumption Agreement for Exchange Property. The Assignment and Assumption Agreement for such Project Segment, together with (if not delivered by Purchaser to Seller prior to the Closing) the

Assignment and Assumption Agreement for Exchange Property related to such Project Segment in the form attached to the applicable Addendum, both duly executed by Purchaser;

13.4.6 Flyover Easements. The Flyover Easement(s) for such Project Segment, duly executed by Purchaser and acknowledged;

13.4.7 Related Agreements. The remaining Related Agreement(s) applicable to such Project Segment and the Memorandum(a) thereof, duly executed by Purchaser;

13.4.8 Board Resolution. A certified copy of the resolution of Purchaser's board of directors (i) authorizing Purchaser to enter into the applicable Related Agreements, and to perform Purchaser's obligations thereunder, and (ii) as set forth in Section 104 of the GIA, waiving any governmental immunity, to the monetary levels of Purchaser's insurance coverage requirements, that Purchaser may have under the GIA in defense of any claims against Purchaser pursuant to any indemnities provided in this Agreement and the applicable Related Agreements (subject to Section 15.5 below);

13.4.9 Tax Letter. Such letter(s) as Seller may reasonably request from Purchaser to support Seller's filings with appropriate taxing authorities for that Project Segment; and

13.4.10 Settlement Statement and Other Documents. The settlement statement for Purchaser with respect to such Project Segment, and any other documents, instruments, data, records, correspondence or agreements reasonably necessary for the Closing that have not been previously delivered.

13.5 Other Instruments.

Seller and Purchaser shall each deposit such other instruments and take such other actions as are reasonably required by Escrow Holder or otherwise required to close the Escrow and consummate the purchase of the applicable Project Segment and the conveyance of any applicable Exchange Property, in accordance with the terms hereof.

13.6 Prorations.

13.6.1 Revenues and Expenses. All revenues and expenses of the Project Segment including, without limitation, real property taxes, special taxes, assessments, and rentals paid or payable under the Assigned Leases and/or Assigned Other Agreements, shall be prorated and apportioned between Purchaser and Seller as of 12:01 a.m. on the Closing Date, so that Seller bears all expenses attributable to the Project Segment and has the benefit of all income attributable to the Project Segment through and including the date immediately preceding the applicable Closing Date. Purchaser shall have no obligation to collect any rents or other charges due but uncollected prior to such Closing. If Purchaser collects any such delinquent rents or charges, it shall pay to Seller such amounts as it shall collect; provided however, that all rents collected by Purchaser shall first be applied to all current amounts then due to Purchaser. If rents or charges remain due to Seller and unpaid sixty (60) days after the Closing, Seller shall be free to commence an action for the collection of such delinquencies and Purchaser agrees to cooperate in such efforts in all reasonable respects; provided however, Purchaser shall not be

required to terminate any Assigned Lease or Assigned Other Agreement on account of a default occurring prior to the Closing.

13.6.2 Special Taxes, Bonds or Assessments. If, at the time of the applicable Closing, any portion of the Property is affected by an assessment or other charge, whether for taxes or bonds, or interest thereon, which is or may become payable in installments, and an installment payment of such assessment is then a lien, then such installment shall be prorated as of 12:01 a.m. on the applicable Closing Date. All installments not yet then due whether or not the same have been prepaid shall not be prorated and Purchaser shall assume such bonds or assessments. Any prepaid assessments made in advance of its due date shall be credited to Seller. In addition, Purchaser shall assume any and all future bonds, assessments, special taxes, fees or charges applicable to the Property for liabilities now or hereafter imposed by any governmental authority including, without limitation, (i) local assessment or improvement districts, (ii) any special tax assessments, (iii) traffic mitigation improvements, (iv) park and recreation fees and/or (v) any other public facility infrastructure or traffic mitigation. Purchaser shall assume all such bonds or future assessments without offset or adjustment.

13.6.3 No Proration with Respect to Retained Rights. The foregoing provisions of this Section 13.6 are not intended to prorate revenues or expenses from any rail freight operations or other Retained Rights, or with respect to the Flyover Easement property.

13.7 Costs and Expenses.

Notwithstanding any other allocation of costs and expenses set forth in this Agreement that applies in the event the Closing does not occur, the costs and expenses of Escrow upon Close of Escrow shall be allocated as follows: Purchaser shall pay the premium for the Title Policy including all endorsements thereto, and the cost of any sales, use, documentary or other transfer taxes applicable to the sale, as well as all recording costs and other miscellaneous costs of Closing. Purchaser shall also pay all other standard costs and charges of the Escrow.

13.8 Disbursement of Funds.

On the Close of Escrow for each Project Segment, Escrow Holder shall disburse the full amount due to Seller pursuant to Seller's settlement statement in immediately available funds, and, unless otherwise instructed by Seller, Escrow Holder shall cause such funds to be sent by wire transfer as follows:

US Bank
Omaha, NE 68102
ABA Routing #104000029
For Credit Union Pacific Railroad Company
Account No. 148744571164

Such funds are to be wired on or before 11:00 a.m. Central Time or Central Daylight Time, as applicable, on such date in order that such funds may be received by Seller on the Close of Escrow; provided however, that if such funds cannot be wired to Seller on the Close of Escrow, Escrow Holder shall, unless otherwise directed in writing by Seller, invest the funds overnight in an interest-bearing account for Seller's benefit.

13.9 Delivery of Documents.

Upon the Close of Escrow for each Project Segment all instruments and documents shall be delivered forthwith to such party's attorney specified in Section 15.4. Escrow Holder shall forthwith deliver to the party entitled thereto the recorded originals of such instruments or documents upon Escrow Holder's receipt of the same.

13.10 Possession.

Possession of the Property shall be delivered to Purchaser at the applicable Closing, subject to the Permitted Exceptions, the Retained Rights, the Related Agreements and the other terms and conditions of this Agreement.

ARTICLE 14 - RISK OF LOSS; CONDEMNATION; DEFAULTS AND REMEDIES

14.1 Risk of Loss.

If between the Effective Date and the applicable Closing Date, any Project Segment shall be damaged by fire, flood, earthquake or other casualty to a material degree, that is, if the estimated cost of restoration of the damaged property exceeds twenty percent (20%) of the Purchase Price therefor, Purchaser shall have the option either to (i) elect not to acquire such Project Segment and the remaining Property, in which case this Agreement shall terminate, and the cost of cancellation of the Escrow shall be paid by Purchaser and neither party shall have any further rights or obligations under this Agreement except for the Surviving Obligations, or (ii) acquire such Project Segment, subject to such casualty, without adjustment to the Purchase Price and otherwise in accordance with the terms and conditions of this Agreement, but Purchaser shall be entitled to all net insurance proceeds paid by an insurer on account of such casualty which would otherwise accrue to Seller as compensation for losses to such Project Segment. Purchaser shall give written notice to Seller of any election pursuant to this Section within thirty (30) days following receipt by Purchaser of written notice from Seller of such casualty. Failure of Purchaser to make such an election within such period shall be deemed an election to proceed to purchase such Project Segment pursuant to clause (ii) above. If prior to the applicable Closing, any Project Segment Property suffers a casualty other than to an extent entitling Purchaser to elect not to acquire the remaining Property pursuant to this Section, Purchaser shall close the transactions contemplated by this Agreement in accordance with the terms hereof as though such casualty had not occurred, except that Seller shall, at Closing, pay or assign to Purchaser any net insurance proceeds paid or payable to Seller in respect thereof. Seller shall provide Purchaser with prompt notice of any casualty within the scope, or that reasonably could be within the scope, of this Section 14.1 of which Seller becomes aware prior to the Closing, and shall give Purchaser such information relating thereto as Purchaser may thereafter reasonably request.

14.2 Condemnation.

If, prior to the Closing, a governmental agency other than Purchaser commences or threatens in writing to commence any eminent domain proceedings to take all or any portion of the Property ("Condemnation"), Seller promptly shall deliver to Purchaser notice of the

Condemnation ("Condemnation Notice"). Only in the event that the portion of the Property to be taken through the Condemnation will materially and adversely affect the use of such Property as a public rail transit corridor, Purchaser shall have the right to terminate this Agreement by delivering written notice of such election to Seller within thirty (30) days after the delivery of the Condemnation Notice ("Condemnation Termination Notice"). In the event of such termination, the cost of cancellation of the Escrow shall be paid by Purchaser, and neither party shall have any further rights or obligations under this Agreement except for the Surviving Obligations. If Purchaser does not timely deliver the Condemnation Termination Notice to Seller, Purchaser shall be deemed to have elected to purchase the Property subject to the effects of the Condemnation. If such property is purchased subject to the effects of the Condemnation, there shall be no adjustment of the applicable Purchase Price, but Purchaser shall be entitled to a credit against the applicable Purchase Price in the amount of the portion of any net condemnation awards or damages actually received by Seller prior to the Closing attributable to such property or to an assignment of Seller's right, title and interest in such portion of net condemnation awards or damages received by Seller subsequent to Closing If the Condemnation Notice is not delivered to Purchaser at least thirty (30) days prior to the Closing Date, the Closing Date shall (at Purchaser's option) be extended to that date that is the first business day following the expiration of thirty (30) days after the date of delivery of the Condemnation Notice.

14.3 Default and Remedies.

14.3.1 Remedies Non-exclusive.

Subject to the other provisions of this Section 14.3, in the event that either Purchaser or Seller fails to perform or comply with any of its obligations or the terms contained in this Agreement, the non-defaulting party shall have all rights and remedies available at law or in equity, which remedies shall be non-exclusive unless specified otherwise in this Agreement. In the alternative, the non-defaulting party shall have the right to terminate this Agreement if the default is not cured within the applicable cure period set forth in this Section 14.3, and neither party shall have any further rights or obligations under this Agreement except for the Surviving Obligations and, if applicable, Seller's remedies under this Section 14.3. Purchaser and Seller, for themselves and their successors and assigns, hereby waive the remedies of consequential and punitive damages against the other party.

14.3.2 Purchaser's Default.

In the event of a default under this Agreement by Purchaser, Seller shall give Purchaser written notice specifying such default and Purchaser shall have the opportunity to cure such default within ninety (90) days after receipt of such notice. Failure of Seller to provide notice of such default shall not constitute a waiver of such default. In the event that Purchaser fails to timely cure such default, Purchaser shall remain liable for all title and survey Costs, and Escrow Holder is authorized and instructed to immediately release the Deposit to Seller, and Escrow Holder is hereby relieved of liability for such release. If this Agreement is terminated by Seller due to a default by Purchaser, Purchaser shall pay the cost of cancellation of the Escrow.

14.3.3 Seller's Default.

In the event of a default under this Agreement by Seller, Purchaser shall give Seller written notice specifying such default and Seller shall have the opportunity to cure such default within ninety (90) days after receipt of such notice. Failure of Purchaser to provide notice of such default shall not constitute a waiver of such default. In the event that Seller fails to timely cure such default, Purchaser shall deliver to Seller all of the materials required to be delivered to Seller pursuant to Sections 7.2 and 7.4 hereof, Escrow Holder is hereby authorized and instructed to immediately release the Deposit to Purchaser, and Escrow Holder is hereby relieved of liability for such release. Purchaser shall remain liable for all title and survey Costs, and Seller shall pay the cost of cancellation of the Escrow. Except as provided in Section 13.2.3 above, Purchaser shall have no right to seek specific performance of this Agreement.

14.4 Notice of Claims; Defense.

In the event either Purchaser or Seller becomes aware of a claim or liability asserted against it which it considers to be subject to defense and indemnity obligations under this Agreement, the party seeking defense and indemnification ("Indemnified Party") shall provide timely notice of such claim or liability to the other party ("Indemnifying Party"). If the Indemnifying Party agrees that it owes the Indemnified Party a defense and indemnification pursuant to the terms of this Agreement for the claim or liability in question, then the Indemnifying Party shall assume and pay for the defense of the action in which such claim or liability is asserted against the Indemnified Party. The Indemnified Party shall be entitled to retain its own separate counsel at its own expense, in which case the Indemnified Party and its counsel shall reasonably cooperate with the Indemnifying Party and the counsel it has retained in the defense against the alleged claim or liability. The Indemnified Party may, at its sole option, at any time upon written notice to the Indemnifying Party assume the defense against any claim or liability asserted against the Indemnified Party, in which event the Indemnifying Party shall have no further obligation to provide a defense against such claim or liability. No indemnification or assumption of liability for a particular claim or liability by the Indemnifying Party shall exist if the Indemnified Party, without the specific written approval of the Indemnifying Party, settles or compromises any such claim or liability. If an Indemnified Party provides timely notice and tender to the Indemnifying Party of a claim or liability in accordance with this Section 14.4, and the Indemnifying Party denies that it owes a defense or indemnification to the Indemnified Party with respect to such claim or liability, then the Indemnified Party shall defend itself against such a claim or liability and may settle, compromise or otherwise resolve such claim or liability in its own reasonable discretion. If the Indemnified Party subsequently obtains a final judgment that the Indemnifying Party did owe the Indemnified Party a defense and indemnification with respect to such claim or liability, the Indemnified Party shall be entitled to recover its reasonable attorneys' fees incurred in the defense of such claim or liability, as well as reimbursement for the reasonable costs incurred to settle, compromise or otherwise resolve the claim or liability.

ARTICLE 15 - MISCELLANEOUS

15.1 No Brokers.

Seller and Purchaser each warrant and represent to the other that no real estate brokers', agents' or finders' fees or commissions are due or arising in connection with the execution of this Agreement or the consummation of the transactions contemplated herein, and each party hereto hereby agrees to indemnify and hold the other party hereto harmless from claims made by any party for any such fees. commissions or like compensation claiming to have dealt with the party so indemnifying the other. The provisions of this Section 15.1 shall survive the Closing or the termination of this Agreement.

15.2 Binding on Successors; Assignment.

15.2.1 Assignment. This Agreement and the terms, covenants and conditions hereof shall be binding upon, and inure to the benefit of. the parties and, except as expressly limited herein, their respective permitted successors and assigns. The qualifications and reputation of Purchaser are material inducements to Seller in entering into this Agreement. Therefore, Purchaser may not assign, in whole or in part, any of its rights or delegate any of its duties under this Agreement and/or the Related Agreements (an "Assignment"), to any third party without the prior written consent of Seller, which consent may be withheld in Seller's sole discretion. Without limiting the generality of the foregoing, no third party shall be eligible to become an assignee until and unless it has been qualified as a Qualified Proposed Assignee pursuant to Section 15.2.2 hereof. Purchaser shall not seek Seller's consent to any Assignment prior to the Closing of the Project Segment to which such Assignment relates. Any Assignment, in whole or in part, or attempted Assignment, in whole or in part, by Purchaser whether voluntary, by operation of law or otherwise, in violation of this Section 15.2, shall be absolutely void.

15.2.1.1 Purchaser shall make its request for Seller's consent to an Assignment in writing (for each proposed Assignment, a "Consent Request") and shall include with such request the proposed form of agreement that Purchaser intends to use to formalize such Assignment and shall include an update of the qualifying information required to be delivered pursuant to Section 15.2.2. The assignment and assumption agreement shall, among other things (i) specify the rights and obligations of Purchaser that will be assigned, with reference to this Agreement and any other document(s) that are the subject of such Assignment, (ii) expressly provide that the assignee shall assume and be bound by the terms and conditions of this Agreement and any other document(s) that are the subject of such Assignment, (iii) expressly provide that Purchaser shall remain primarily liable to Seller for such assigned rights and delegated duties, and (iv) expressly provide that the provisions described in Section 15.5 below shall not inure to the benefit of such assignee.

15.2.1.2 Within thirty (30) days after the later of (i) Seller's receipt of a Consent Request or (ii) Seller's receipt of the update of the qualifying information described in Section 15.2.1.1, Seller shall respond to Purchaser in writing setting forth (a) Seller's consent to such Assignment, (b) Seller's refusal to consent to such Assignment or (c) Seller's conditional consent to such Assignment setting forth the conditions that Purchaser or such proposed assignee

shall satisfy prior to obtaining Seller's consent (which conditions may include revisions to the assignment and assumption agreement). Should Seller fail to provide Purchaser with a written response to any Consent Request within such thirty (30) day period, Seller shall have been deemed to have refused consent to such Assignment.

15.2.1.3 Notwithstanding anything to the contrary contained herein or in any assignment and assumption agreement, (i) no Assignment shall release Purchaser from any of Purchaser's rights or obligations under this Agreement or any documents subject to the Assignment, and (ii) Purchaser shall remain primarily liable to Seller for all such assigned rights or delegated duties. Purchaser shall, no later than ten (10) days after the effective date thereof, provide Seller with a fully executed copy of each assignment and assumption agreement.

15.2.2 Qualified Proposed Assignees.

Whenever Purchaser desires to make an Assignment, Purchaser shall seek Seller's prior written approval of the proposed assignee as a "Qualified Proposed Assignee." All requests for Seller's approval under this Section 15.2.2 shall be in writing, shall state that Purchaser intends to assign all or a portion of its rights and obligations under this Agreement and/or the Related Agreements to such proposed assignee, shall describe the scope of the rights and obligations that Purchaser intends to assign, and shall specify in detail the following qualifying information:

(i) legal name and address of the proposed assignee and the names, addresses and telephone numbers of the persons that own or have control of the proposed assignee;

(ii) information regarding the proposed assignee's prior business experience that may be relevant to Seller;

(iii) bank and other credit references, business reputation references, financial statements and such other information as Seller may reasonably require to assess the proposed assignee's business and financial responsibility and standing;

(iv) any other background information on such proposed assignee obtained by Purchaser in connection with the Project; and

(v) any other follow-up information regarding such proposed assignee as Purchaser may deem to be material or as may be requested by Seller in its reasonable discretion.

Within thirty (30) days after the later of (a) Seller's receipt of Purchaser's request for approval of any proposed assignee or (b) Seller's receipt of the necessary qualifying information regarding such proposed assignee, Seller shall provide Purchaser with written notice of Seller's approval or disapproval of such proposed assignee as a Qualified Proposed Assignee. Seller's failure to respond within such thirty (30) day period shall be deemed to be a disapproval by Seller of the proposed assignee. Notwithstanding anything to the contrary contained in this Section 15.2.2, an approval by Seller of a Qualified Proposed Assignee hereunder shall not be deemed to be a consent to an Assignment under Section 15.2.1.

15.3 Time of the Essence.

Time is important to both Seller and Purchaser in the performance of this Agreement, and they have agreed that strict compliance is required as to any date set forth herein. If the final date of any period which is set forth in any term or condition of this Agreement falls upon a Saturday, Sunday or legal holiday under the laws of the United States or the state in which the Property is located, then, and in such event, the time of such period shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

15.4 Notices.

Any notice or other communication required or permitted to be given under this Agreement ("Notices") shall be in writing and shall be (i) personally delivered; (ii) delivered by a reputable overnight courier; or (iii) delivered by certified mail, return receipt requested and deposited in the U.S. Mail, postage prepaid. Facsimile notices shall be deemed valid only to the extent they are (a) actually received by the individual to whom addressed and (b) followed by delivery of actual Notice in the manner described above within three (3) business days thereafter. Notices shall be deemed received at the earliest of (x) actual receipt; or (y) one (1) business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (z) three (3) business days following deposit in the U.S. Mail, as evidenced by a return receipt. Notices shall be directed to the parties at their respective addresses shown below, or such other address as either party may, from time to time, specify in writing to the other in the manner described above:

If intended for Seller:

UNION PACIFIC RAILROAD COMPANY
Assistant Vice President Real Estate
1400 Douglas Street, Stop 1690
Omaha, NE 68179-1690
Telephone: 402-544-8640
Facsimile: 402-501-0340

with copies to:

UNION PACIFIC RAILROAD COMPANY
Patrick R. McGill, Esq.
Senior Counsel – Real Estate
1400 Douglas Street, Mail Stop 1580
Omaha, NE 68179
Telephone: 402-544-5761
Facsimile: 402-544-0132

JACOBS CHASE FRICK KLEINKOPF & KELLEY, LLC
Jill K. Rood, Esq.
1050 17th Street, Suite 1500
Denver, CO 80265
Telephone: 303-389-4657
Facsimile: 303-685-4869

If intended for Purchaser:

REGIONAL TRANSPORTATION DISTRICT
_____ General Manager
1600 Blake Street
Denver, CO 80202-1399
Telephone: 303-299-2300
Facsimile: 303-299-2363

with copies to:

REGIONAL TRANSPORTATION DISTRICT
Marla Lien, General Counsel
1600 Blake Street
Denver, CO 80202-1399
Telephone: 303-299-2207
Facsimile: 303-299-2217

KAPLAN KIRSCH & ROCKWELL LLP
Stephen Kaplan, Esq.
1675 Broadway, Suite 2300
Denver, CO 80202
Telephone: 303-825-7000
Facsimile: 303-825-7005

If intended for Title Company:

H. C. Peck & Associates, Inc.
Executive Vice President - General Counsel
4001 Fox Street
Denver, Colorado 80216
Attention: J E Parker, Jr.
Telephone: 303-623-6112 (ext 202)
Facsimile: 303-623-6301

or, as applicable:

Stewart Title Guaranty Company
50 S. Steele Street, Suite 600
Denver, CO 80209
Attn: Carma D. Weymouth
Telephone: 303-780-4015
Facsimile: 303-331-9867

If intended for Escrow Holder:

Stewart Title Guaranty Company
50 S. Steele Street, Suite 600
Denver, CO 80209
Attn: Carma D. Weymouth
Telephone: 303-780-4015
Facsimile: 303-331-9867

15.5 Limitations Specific to Regional Transportation District.

Notwithstanding anything to the contrary contained in this Agreement, due to the special status of Regional Transportation District as a political subdivision of the State of Colorado, the following limitations shall apply with respect to Regional Transportation District in its capacity as a party hereto, only to the extent required by law (including without limitation any amendments to the Constitution of the State of Colorado) from time to time for purposes of enforceability: (i) the damages recoverable by Seller hereunder shall exclude punitive and exemplary damages; (ii) Purchaser's waiver of governmental immunity and Purchaser's liability for indemnifying Seller under this Agreement, with respect to claims based on bodily injury, death and/or property damage, shall be limited to the monetary levels of Purchaser's applicable insurance coverage requirements; and (iii) nothing in this Agreement shall be construed as a multi-year fiscal obligation. In no event shall these limitations apply to or inure to the benefit of any successor or assign of Regional Transportation District. On or before each anniversary date of each Addendum to this Agreement, Purchaser shall deliver to Seller (a) certificates evidencing Purchaser's insurance policy renewals and (b) evidence of the annual appropriations authorized by Purchaser's board of directors, to satisfy Purchaser's obligations and liabilities under this Agreement for such Project Segment.

15.6 Amendments in Writing.

No supplement, modification or amendment of this Agreement or any document executed pursuant to this Agreement shall be binding unless executed in writing by both Seller and Purchaser.

15.7 Professional Fees and Costs.

If any legal or equitable action, arbitration, bankruptcy, reorganization, or other proceeding, whether on the merits, application, or motion, are brought or undertaken, or an attorney retained, to enforce this Agreement, any Due Diligence Right of Entry, Engineering Agreement, Moffat Tunnel Subdivision/Gold Line Right of Entry Agreement, Relocation and Construction Agreement and/or any Closing document, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of such document, then the successful or prevailing party or parties in such undertaking (or the party that would prevail if an action were brought) shall be entitled to recover all Costs, including without limitation reasonable attorneys' and other professional fees, expert witness fees, court costs and other expenses incurred in such action, proceeding, or discussions, in addition to any other relief to which such party may be entitled. The parties intend this provision to be given the most liberal construction possible and to apply to any circumstances in which such party reasonably incurs Costs and expenses. The provisions of this Section shall survive the Closing or the termination of this Agreement.

15.8 Governing Law and Venue.

This Agreement shall be construed in accordance with, and governed by, the laws of the State of Colorado, and any action or proceeding, including arbitration, brought by any party in which this Agreement is subject, shall be brought in the City and County of Denver, Colorado.

15.9 Effect of Headings.

The headings of the paragraphs, sections and articles of this Agreement are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.

15.10 Counterparts.

This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

15.11 Number and Gender.

When required by the context of this Agreement, each number (singular and plural) shall include all numbers, and each gender shall include all genders.

15.12 Parties-in-Interest.

Except as expressly provided in this Agreement, nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons (including without limitation, freight rail customers and utility companies) other than the parties to it and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons

to any party to this Agreement, nor shall any provision give any third persons any right to subrogation or action over or against any party to this Agreement.

15.13 Waiver.

No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

15.14 Recording.

This Agreement shall not be recorded by the parties.

15.15 Further Assurances.

Each party to this Agreement agrees to execute, acknowledge and deliver such further instruments as may be necessary or desirable to accomplish the intent and purpose of this Agreement, provided that the party requesting such further action shall bear all costs and expenses related thereto.

15.16 Advice of Professionals.

Each party has had the opportunity to be advised by legal counsel and other professionals in connection with this Agreement, and each party has obtained such advice as each party deems appropriate.

15.17 Negotiated Terms.

The parties agree that the terms and conditions of this Agreement are the result of negotiations between the parties and that this Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or its professionals participated in the preparation of this Agreement.

15.18 Not an Offer.

The submission of this Agreement to Purchaser for review or signature does not constitute an offer to sell the Property and Other Assets to Purchaser or the granting of an option or other rights with respect to the Property and Other Assets to Purchaser. No agreement with respect to the purchase and sale of the Property and Other Assets shall exist, and this writing shall have no binding force or effect, until executed and delivered by both Seller and Purchaser.

15.19 Merger/Survival.

Except as otherwise expressly provided herein, the parties' covenants to transfer title contained herein shall merge into the deeds to be delivered at applicable Closing and shall not survive the Close of Escrow for such Project Segment. The following provisions shall survive

the Close of Escrow for the Property: Articles 4, 5 and 7 and Article 8 (for the period stated in Section 8.4), Articles 9, 10, 11, 14 and 15.

15.20 No Partnership.

Nothing contained herein and no act by Purchaser or Seller in the performance of, or in any relation to, this Agreement will be construed to create or evidence in any manner any employment, partnership, agency or joint venture relationship between the parties hereto. Purchaser and Seller represent and acknowledge that it is their mutual intention that the sole relationship created by this Agreement is that of vendor and purchaser.

15.21 No Personal Liability.

No officer, director, employee or agent of either party, nor any of their respective heirs, administrators, executors, personal representatives, successors or assigns, shall have any personal liability or other personal obligation with respect to any payment, performance or observance of any amount, obligation or liability to be paid, performed or observed under this Agreement and all related Agreements or any of the representations, warranties, covenants, indemnifications or other undertakings of such party hereunder, if any, and each party agrees it shall not seek to obtain a judgment at law or equity against any officer, director, employee or agent of the other party, or against any of their respective heirs, administrators, executors, personal representatives, successors or assigns.

15.22 Jury Trial.

Each party hereto, to the fullest extent permitted by law, hereby knowingly, intentionally and voluntarily, with and upon the advice of competent counsel, waives, relinquishes and forever foregoes the right to a trail by jury in any action or proceeding based upon, arising out of, or in any way related to this Agreement or the Property or any conduct, act, act or omission of any party hereto, or any respective director, officer, partner, member, employee, agent or attorney, or any other persons affiliated with such party, in each of the foregoing cases, whether sounding in contact, tort or otherwise.

15.23 IRS Real Estate Sales Report.

Purchaser and Seller hereby appoint Escrow Holder as, and Escrow Holder agrees to act as "the person responsible for closing" the transactions which are the subject of this Agreement, pursuant to Internal Revenue Code of 1986 Section 6045(e). Escrow Holder shall prepare and file the informational return (IRS Form 1099-B) required by and otherwise comply with the terms of I.R.C. §6045(e). Escrow Holder further agrees to indemnify and hold Purchaser, Seller and the respective attorneys harmless from and against all claims, Costs, liabilities, fees, penalties or expenses resulting from Escrow Holder's failure to file the appropriate reports and otherwise comply with the terms of the Internal Revenue Code.

EXECUTED by Seller and Purchaser as of the Effective Date.

SELLER:

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

By: _____
Name: TONY K. LOVE
Title: Assistant Vice President – Real Estate

APPROVED AS TO LEGAL FORM FOR THE REGIONAL TRANSPORTATION DISTRICT:

By: _____
Legal Counsel

PURCHASER:

REGIONAL TRANSPORTATION DISTRICT,
a political subdivision of the State of Colorado

By: _____
Name: C W MARSELLA
Title: General Manager

THE UNDERSIGNED ESCROW HOLDER ACKNOWLEDGES ITS RECEIPT OF THE DEPOSIT AND A MINIMUM OF THREE (3) EXECUTED COPIES OF THIS AGREEMENT AND AGREES TO ACT IN ACCORDANCE THEREWITH.

ESCROW HOLDER:

Stewart Title Guaranty Company

By: Carma D. Weymouth
Name: CARMA D. WEYMOUTH
Escrow Officer

3

Exhibit 3

Form of
Addendum C to FasTracks Project Property Transfer and Railroad Relocation Agreement
Limon and Greeley Subdivision / East Corridor

[attached hereto]

Purchaser: _____ *JC Draft*
RTD Title: _____ *July 29, 2010*
Seller: _____ Escrow No.: Stewart File No. 932563
UP Title: _____ Escrow Holder: _____
Effective Date: _____ Date of Opening of Escrow: _____

ADDENDUM C

TO THE PROPERTY TRANSFER AND RAILROAD RELOCATION AGREEMENT

LIMON AND GREELEY SUBDIVISIONS/EAST CORRIDOR

This Addendum C is attached to and a part of the Property Transfer and Railroad Relocation Agreement, by and between Union Pacific Railroad Company and Regional Transportation District, originally executed June 24, 2009 with Addendum A for the Boulder Industrial Lead/North Metro Line and dated effective August ___, 2010, for the Limon and Greeley Subdivisions/East Corridor, as amended by that certain First Amendment to Property Transfer and Railroad Relocation Agreement, by and between Union Pacific Railroad Company and Regional Transportation District, dated effective August ___, 2010. This Addendum C contains additional terms and conditions applicable to consummating the transfer of the Limon and Greeley Subdivisions/East Corridor Project Segment, and is to be read together with the foregoing Articles and Sections of the Agreement, as noted herein.

The following schedules and exhibits are attached to this Addendum C and incorporated herein by reference:

Schedule 1	Assigned Leases and Assigned Other Agreements
Schedule 2.2.1	Excluded Parcels
Schedule 2.2.2(ii)(b)	Excluded Improvements
Schedule 2.2.2(ii)(c)	Excluded Railroad Facilities
Schedule 3	Leases and Other Agreements Pertaining to Communication Easement
	Leases and Other Agreements Pertaining to Utility Easement
Schedule 8.1	Seller's Disclosures
Exhibit A	The Property
	I. Limon and Greeley Subdivisions/East Corridor
	II. Flyover Easement Property
	A. Rail Transit Flyover Easement Property
	II. Flyover Easement Property
	B. Pedestrian Flyover Easement Property
Exhibit B	Assignment and Assumption Agreement
Exhibit C	Bill of Sale
Exhibit D	Flyover Easement Agreement
Exhibit F	Quitclaim Deed
Exhibit G	Operations Agreement and Memorandum thereof
Exhibit H	Private Crossing and Roadway License Agreement
Exhibit I	Utility License Agreement for Electric Wire Line Crossing

RECITALS

B. The Limon and Greeley Subdivisions/East Corridor and the Flyover Easement property associated therewith are more particularly depicted and/or described as the "Property" on Exhibit A attached to this Addendum C and made a part hereof.

D. Prior to the Effective Date of this Addendum C, Seller has acquired, and Purchaser has fully reimbursed Seller for the acquisition of, the Limon and Greeley Subdivisions/East Corridor Seller Relocation Property. Concurrently with the attachment of this Addendum C to the Agreement, Seller and Purchaser have executed (i) the Construction Agreement (defined below), governing the pre-closing relocation and construction work for this Project Segment and for the Limon and Greeley Subdivisions/East Corridor Seller Relocation Property, (ii) the Escrow Agreement (defined below), to fund Purchaser's liabilities and obligations hereunder, and (iii) the Utility License Agreement for Electric Wire Line Crossing (defined below), to facilitate Purchaser's initial Project construction. The parties agree that Seller's Limon and Greeley Subdivisions are essential to Seller's ability to fulfill its common carrier obligation, and therefore, this Project Segment shall not be transferred to Purchaser until, *inter alia*, the relocations and modifications of Seller's Railroad Facilities and of the Third Party Property on the Limon and Greeley Subdivisions are completed and operational.

E. Concurrently with the attachment of this Addendum C to the Agreement and subject to Section 15.5, Purchaser has provided Seller with a certified copy of the resolution of Purchaser's board of directors (i) authorizing Purchaser to enter into this Addendum C, the Construction Agreement and related agreements, and (ii) waiving any governmental immunity that Purchaser may have under the GIA in defense of any claims against Purchaser pursuant to any indemnities provided in this Addendum C, the Construction Agreement and the Engineering Agreement.

ARTICLE 1 – ADDITIONAL DEFINITIONS

"Assigned Leases" for the Limon and Greeley Subdivisions/East Corridor shall refer collectively to the Leases listed in Schedule 1 attached hereto, only to the extent such Leases cover the Property (excluding the Flyover Easement property) and do not pertain to the Retained Rights.

"Assigned Other Agreements" for the Limon and Greeley Subdivisions/East Corridor shall refer collectively to the Other Agreements listed in Schedule 1 attached hereto, only to the extent such Other Agreements cover the Property (excluding the Flyover Easement property) and do not pertain to the Retained Rights.

"Assignment and Assumption Agreement" shall mean the assignment and assumption agreement transferring to Purchaser all of Seller's interests in the Assigned Leases and Assigned Other Agreements for this Project Segment, in the form attached to this Addendum as Exhibit B.

"Bill of Sale" for this Project Segment shall mean the bill of sale quitclaiming to Purchaser all of Seller's right, title and interest in and to any personalty identified by Seller and located on the Property (excluding the Flyover Easement property), in the form attached to this Addendum as Exhibit C.

"Construction Agreement" shall mean the Relocation and Construction Agreement – Limon and Greeley Subdivisions/East Corridor between the parties executed concurrently with this Addendum C.

"Escrow Agreement" shall mean the Escrow Agreement among Seller, Purchaser and U.S. Bank National Association as escrow agent, dated of even date herewith.

"Excluded Improvements" shall have the meaning set forth in Section 2.2.2 below.

"Excluded Parcels" shall have the meaning set forth in Section 2.2.1 below.

"Excluded Railroad Facilities" shall have the meaning set forth in Section 2.2.2 below.

"Flyover Easement" shall mean, collectively, the rail transit and pedestrian flyover easement agreements, in the form attached to this Addendum as Exhibit D.

"Limon and Greeley Subdivisions/East Corridor Seller Relocation Property" shall mean the property depicted and/or described on Exhibit E to this Addendum.

"Property" shall have the meaning set forth in Recital B above.

"Quitclaim Deed" shall mean, collectively, the quitclaim deeds for this Project Segment (excluding the Flyover Easement property) covering two (2) counties within which this Project Segment is located, in the form attached to this Addendum C as Exhibit F.

"Related Agreements" shall mean, for this Project Segment, the Operations Agreement between the parties in the form attached to this Addendum as Exhibit G, the Private Crossing and Roadway License Agreement between the parties in the form attached to this Addendum as Exhibit H, the Utility License Agreement for Electric Wire Line Crossing between the parties in the form attached to this Addendum C as Exhibit I, the Escrow Agreement, the Engineering Agreement and the Construction Agreement.

"Retained Rights" shall include without limitation an easement for Railroad Facilities on and under the Property, as described in the Quitclaim Deed.

ARTICLE 2 – SALE AND PURCHASE; EXCHANGE

2.2.1 Property. The Property for the Limon and Greeley Subdivisions/East Corridor shall exclude the Excluded Parcels described in Schedule 2.2.1 attached hereto, and shall exclude the Retained Rights described in the Quitclaim Deed.

2.2.2 Other Assets. Schedule 2.2.2 (ii)(b) attached hereto describes the improvements owned by Seller that are excluded from the Other Assets for this Project Segment ("Excluded Improvements"). Schedule 2.2.2 (ii)(c) attached hereto describes the Railroad Facilities owned by Seller that are excluded from the Other Assets for this Project Segment ("Excluded Railroad Facilities").

2.4 Limon and Greeley Subdivisions/East Corridor Seller Relocation Property. Prior to the Effective Date of this Addendum, Seller has acquired, and Purchaser has fully reimbursed Seller for its acquisition of, the Limon and Greeley Subdivisions/East Corridor Seller Relocation Property.

ARTICLE 3 – RETAINED RIGHTS

Seller's Retained Rights for the Limon and Greeley Subdivisions/East Corridor are described in the Quitclaim Deed. Schedule 3 attached hereto lists the Leases and Other Agreements that pertain to the Communication Easement and the Utility Easement to be reserved in the Quitclaim Deed. Article 3 Section (v) of the Agreement is hereby deleted.

ARTICLE 4 - RAILROAD RELOCATION AND THIRD PARTY WORK

4.2. Design and Construction for Relocations. The parties have executed the Escrow Agreement, the Engineering Agreement and the Construction Agreement, governing the UP Relocation Project, the UP Related Project Work and related Third Party Work (as defined therein). Purchaser's performance under those agreements is a material part of the consideration for Seller's entering into this Agreement, and any material breach of any such agreement by Purchaser shall be deemed to be a breach of this Agreement.

4.3.2.2. Limon and Greeley Subdivisions/East Corridor. Seller also agrees to cooperate with Purchaser by taking those actions that Seller may deem appropriate or advisable in Seller's sole discretion to terminate certain customer contracts or property interests in anticipation of the termination of Seller's freight rail service on or prior to the Closing Date.

4.6.2 Project Representative. Seller designates Brad Waufle as Seller's project representative, and Purchaser designates Henry J. Stopplecamp as RTD's project representative. The parties' project representatives may be contacted as follows:

UP:

Brad Waufle
Manager Special Projects – Field Construction
1800 Westland Road
Cheyenne, WY 82001
Telephone: 307-778-3315
Facsimile: 307-778-3420
Email: bwaufle@up.com

RTD:

Regional Transportation District
Attn: Henry J. Stopplecamp
Engineering Technical Services Manager
1560 Broadway, Suite 700
Denver, CO 80202
Telephone: 303-299-6966
Facsimile: 303-299-6964
Email: henry.stopplecamp@rtd-fastracks.com

Each party reserves the right to change the designation of its representative from time to time by written notice to the other party.

ARTICLE 5 –CONSIDERATION

5.1 Purchase Price. In addition to all other amounts due from Purchaser to Seller pursuant to this Agreement, and subject to Section 2.3.1 above, Purchaser shall pay to Seller the sum of Eighteen Million Six Hundred Forty-one Thousand One Hundred Forty-nine Dollars and 24/100 Cents ($18,641.149.24) at the Closing as the additional Purchase Price for this Project Segment, payable in accordance with Article 5 of this Agreement. The Purchase Price may be adjusted by the parties prior to the Closing following the completion of the survey of the Property and resolution of any issues by the parties in connection therewith pursuant to Exhibit A.

ARTICLE 6 - TITLE

6.3 Title Review. Prior to the date hereof, Purchaser has received preliminary commitments for title insurance covering the Property for the Limon and Greeley Subdivisions/East Corridor. Purchaser hereby affirms that, except as to the street crossings (which areas are still undergoing due diligence), none of the exceptions to title included in such preliminary commitments for title insurance contain any information that Seller has no color of title for the Property, and Purchaser hereby waives its rights (except as to the street crossings) to raise any color of title issues contained in such exceptions to title. To the extent that Purchaser receives any updated title commitments for title insurance covering all or any portion of the Property for the Limon and Greeley Subdivisions/East Corridor that show any new exceptions to title that were not shown on any preliminary commitments for title insurance received by Purchaser prior to the date hereof, Purchaser shall have the right to specify that Seller has no color of title solely with respect to such new exceptions to title in accordance with the process set forth in this Section 6.3.

ARTICLE 7 - DUE DILIGENCE

7.7 Customer Information. Purchaser hereby acknowledges that, in addition to the Property Materials, Seller has delivered to Purchaser confidential information pertaining to certain existing and past customers that have received rail service from the Property. [illegible] Seller shall not want to create a covenant/duty to update this customer information.

ARTICLE 8 - REPRESENTATIONS AND WARRANTIES

8.1 Seller's Representations and Warranties. Schedule 8.1 is attached hereto, containing Seller's disclosures with respect to this Project Segment.

8.2.7 Purchaser Indemnities Not Inconsistent with Law. None of Purchaser's indemnities contained in this Addendum or in the Construction Agreement are inconsistent with or in contravention of either (i) the Regional Transportation District Act, C.R.S. §§ 32-9-101 *et seq.* or (ii) the GIA.

8.2.8 Waiver of Governmental Immunity on Purchaser Indemnities. To the extent provided in the resolution of Purchaser's board of directors, Purchaser's board of directors has taken all steps legally required by Section 104 of the GIA to waive any governmental immunity that Purchaser may have under the GIA in defense of any claims against Purchaser pursuant to any indemnities provided in this Addendum, the Construction Agreement or Engineering Agreement.

8.2.10 Purchaser's Funding. Prior to the attachment of this Addendum to the Agreement, Purchaser's board of directors has budgeted, authorized and appropriated sufficient funds to pay the full Purchase Price for this Project Segment, to the extent of the parties' current estimates of the full Purchase Price, which is which is Sixty-eight Million Eighty-eight Thousand Nine Hundred Sixty-three Dollars and 24/100 Cents ($68,088,963.24) (comprised of the following estimates: $18,641,149.24 for additional Purchase Price pursuant to Section 5.1 of this Agreement; $950,000.00 for the Engineering Design Costs pursuant to the Engineering Agreement; $47,339,914.00 for the construction Work pursuant to Article 4 of this Agreement and the Construction Agreement; $1,000,000.00 for the project representative costs pursuant to Article 4 of this Agreement; $7,900.00 for the fee due pursuant to the Utility License Agreement for Electric Wire Line Crossing; and $150,000.00 for the Seller Relocation Property Costs). Such amount is exclusive of all Costs that Purchaser is obligated to pay on its own behalf related to eminent domain, environmental remediation, Purchaser's construction obligations, insurance and similar transactional and litigation expenses.

ARTICLE 9 - DISCLAIMERS

No additional terms.

ARTICLE 10 - RESPONSIBILITY FOR HAZARDOUS SUBSTANCES

10.2.1 Property. Purchaser, for itself and its successors and assigns, hereby waives, releases, remises, acquits, forever discharges, indemnifies, and agrees to defend and hold harmless Seller, Affiliates of Seller, its and their respective officers, employees, agents, successors and assigns, and/or any other person acting on behalf of Seller, of, from and against any claims, actions, causes of action, demands, rights, Losses or compensation whatsoever, direct or indirect, that Purchaser or any third party now has, or may have in the future, on account of or in any way arising out of or in connection with (i) the known or unknown Environmental Condition of the Property (including without limitation, any contamination in, on, under or adjacent to the Property or Other Assets by any Hazardous Substances), or (ii) the Environmental Laws applicable to the Property. Purchaser shall obtain from all persons or

entities to which Purchaser transfers any fee or subsurface easement interest in the Property, and shall furnish to Seller, the written waiver of such transferees in favor of Seller in the form of this Section 10.2.1, and Purchaser acknowledges that any such transfer shall not release Purchaser from its liabilities under this Section 10.2.1.

ARTICLE 11 - COVENANTS

11.2.5 Further Appropriations. At any time prior to the Closing under this Addendum C, if either party determines that the amounts budgeted, authorized and appropriated by Purchaser's board of directors may be insufficient to meet Purchaser's obligations, Purchaser shall promptly budget, authorize and appropriate the additional amounts required. If a requested appropriation is denied by Purchaser's board of directors, the parties shall meet in good faith during the sixty (60) days following such denial to resolve any outstanding issues impacting the funding requirements, but after such sixty (60)-day period, Seller shall have all rights and remedies available to it at law or in equity, including without limitation, the right to stop performance under this Agreement and under all related agreements then in effect.

ARTICLE 12 - CONDITIONS PRECEDENT TO CLOSING

12.1.3 Freight Customer Service Modifications. For purposes only of this Addendum C, the following shall be added as a new last sentence to Section 12.1.3:

> In addition, Seller shall be reasonably satisfied with the status of all such freight rail customer relocations, service modifications and access mitigation plans.

12.1.14 Roadway Crossings. Seller shall have received, by and through the efforts of Purchaser and at Purchaser's sole cost and expense, all necessary rights for Seller's freight rail operations across all roadways within Seller's relocated Limon Subdivision right-of-way, including without limitation Colorado Public Utilities Commission and local governmental approvals and permits for operations and for track construction and removals, which rights shall be in form and substance satisfactory to Seller in its reasonable discretion and shall create no new conditions impacting Seller's operations or property rights.

12.1.15 Waiver and Release. For this Project Segment, all lessees, sublessees, licensees and easement owners of Seller shall have waived or released their respective interests in acquiring the Property, if any.

12.1.16 Legal Descriptions. The conditions for finalizing legal descriptions set forth in Exhibit A and Exhibit F shall have been met within the timeframes stated therein.

ARTICLE 13 - OPENING AND CLOSING OF ESCROW

No additional terms.

ARTICLE 14 - RISK OF LOSS; CONDEMNATION; DEFAULTS AND REMEDIES

No additional terms.

ARTICLE 15 – MISCELLANEOUS

No additional terms.

SCHEDULE 1 TO ADDENDUM C

(Attached to and made a part of
Addendum C to the Property Transfer and Railroad Relocation Agreement
Limon and Greeley Subdivisions/East Corridor)

Assigned Leases and Assigned Other Agreements

Assigned Leases:

(see attached)

SCHEDULE 1 TO ADDENDUM C

(Attached to and made a part of
Addendum C to the Property Transfer and Railroad Relocation Agreement
Limon and Greeley Subdivisions/East Corridor)

Assigned Leases and Assigned Other Agreements

Assigned Other Agreements:

(see attached)

SCHEDULE 2.2.1 TO ADDENDUM C

(Attached to and made a part of
Addendum C to the Property Transfer and Railroad Relocation Agreement
Limon and Greeley Subdivisions/East Corridor)

Excluded Parcels

None

SCHEDULE 2.2.2(ii)(b) TO ADDENDUM C

(Attached to and made a part of
Addendum C to the Property Transfer and Railroad Relocation Agreement
Limon and Greeley Subdivisions/East Corridor)

Excluded Improvements

[UP to verify]

SCHEDULE 2.2.2(ii)(c) TO ADDENDUM C

(Attached to and made a part of
Addendum C to the Property Transfer and Railroad Relocation Agreement
Limon and Greeley Subdivisions/East Corridor)

Excluded Railroad Facilities

[UP to verify]

SCHEDULE 3 TO ADDENDUM C

(Attached to and made a part of
Addendum C to the Property Transfer and Railroad Relocation Agreement
Limon and Greeley Subdivisions/East Corridor)

Leases and Other Agreements Pertaining to Communication Easement

(see attached)

SCHEDULE 3 TO ADDENDUM C

(Attached to and made a part of
Addendum C to the Property Transfer and Railroad Relocation Agreement
Limon and Greeley Subdivisions/East Corridor)

Leases and Other Agreements Pertaining to Utility Easement

(see attached)

SCHEDULE 8.1 TO ADDENDUM C

(Attached to and made a part of
Addendum C to the Property Transfer and Railroad Relocation Agreement
Limon and Greeley Subdivisions/East Corridor)

Seller's Disclosures

III. Limon and Greeley Subdivisions/East Corridor

1. Denver, CO - Vasquez Blvd. & I-70 NPL site.

2. Denver, CO - Former Stapleton Airport - Concourse D Jet Fuel release.

EXHIBIT A TO ADDENDUM C

(Attached to and made a part of
Addendum C to the Property Transfer and Railroad Relocation Agreement
Limon and Greeley Subdivisions/East Corridor)

THE PROPERTY

(see attached depictions)

As a condition to this Addendum C and the Closing contemplated hereunder (i) Purchaser shall perform a survey and prepare the legal descriptions for the Property (parts I and II of this Exhibit A) for Seller's approval at least sixty (60) days prior to the Closing; (ii) the parties shall then work jointly to resolve any legal description and/or survey issues; and (iii) both parties shall approve, initial and attach to this Exhibit A revised depictions and the complete legal descriptions for the Property at least thirty (30) days prior to the Closing.

The Property

I. Limon and Greeley Subdivisions/East Corridor

(see attached)

The Property

II. Flyover Easement Property

A. Rail Transit Flyover Easement Property

Exclusive Aerial Easement property:

The area that is expressly limited vertically (a) above a plane parallel with and twenty-three (23) feet six (6) inches above the top of the rail of the highest of Grantor's trackage facilities located on the real property described below and (b) below a plane parallel with and fifty-five (55) feet above the top of the rail of the highest of Grantor's trackage facilities located on the real property described below:

Non-exclusive Aerial Easement property:

The area that is expressly limited vertically at or above a plane parallel with and fifty-five (55) feet above the top of the rail of the highest of Grantor's trackage facilities located on the real property described below:

Real property above which the Aerial Easement property is located:

(see attached)

The Property

II. Flyover Easement Property

B. Pedestrian Flyover Easement Property

Exclusive Aerial Easement property:

The area that is expressly limited vertically (a) above a plane parallel with and twenty-three (23) feet six (6) inches above the top of the rail of the highest of Grantor's trackage facilities located on the real property described below and (b) below a plane parallel with and fifty-five (55) feet above the top of the rail of the highest of Grantor's trackage facilities located on the real property described below:

Non-exclusive Aerial Easement property:

The area that is expressly limited vertically at or above a plane parallel with and fifty-five (55) feet above the top of the rail of the highest of Grantor's trackage facilities located on the real property described below:

Real property above which the Aerial Easement property is located:

(see attached)

EXHIBIT B TO ADDENDUM C

(Attached to and made a part of
Addendum C to the Property Transfer and Railroad Relocation Agreement
Limon and Greeley Subdivisions/East Corridor)

Assignment and Assumption Agreement

FOR VALUE RECEIVED, UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Assignor") hereby assigns and transfers to Regional Transportation District, a political subdivision of the State of Colorado ("Assignee") all of Assignor's right, title and interest in and to the leases and other agreements (collectively, the "Assigned Agreements") and all amendments thereto, only to the extent the Assigned Agreements affect the real property described on Exhibit A attached hereto and incorporated herein by reference (the "Property"). The Assigned Agreements are listed on Exhibit B attached hereto and incorporated herein by reference.

This Assignment and Assumption Agreement is made and accepted without recourse against Assignor as to the performance by any party under the Assigned Agreements.

Assignee agrees to (i) perform all of the obligations of Assignor pursuant to the Assigned Agreements as they relate to the Property accruing on or after the date hereof, and (ii) indemnify and hold Assignor harmless from and against any and all claims, causes of actions and expenses (including reasonable attorneys' fees) incurred by Assignor and arising out of (a) Assignee's failure to comply with terms of the Assigned Agreements on or after the date hereof, and (b) claims under the Assigned Agreements by the tenant or other party named in the Assigned Agreements accruing on or after the date hereof.

Assignee agrees to manage the Assigned Agreements, and to enter into any new agreements with third parties, only in a manner that does not materially interfere with Assignor's rights under the Operations Agreement – Limon and Greeley Subdivisions/East Corridor between Assignor and Assignee, dated of even date herewith.

This Assignment and Assumption Agreement shall inure to and be binding upon the parties, their successors and assigns.

This Assignment and Assumption Agreement may be executed in one (1) or more counterparts, each of which, when so executed, shall be deemed to be an original. Such counterparts shall together constitute and be one and the same instrument.

Dated as of the ___ day of _____, 20___.

ASSIGNOR:

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

By: _____
Name: _____
Title: _____

ASSIGNEE:

REGIONAL TRANSPORTATION DISTRICT,
a political subdivision of the State of Colorado

By: _____
Name: _____
Title: General Manager

APPROVED AS TO LEGAL FORM FOR
THE REGIONAL TRANSPORTATION DISTRICT:

By: _____
Legal Counsel

Exhibit A

(Attached to and made a part of the
Assignment and Assumption Agreement dated as of _____, 20__.
between Union Pacific Railroad Company
and Regional Transportation District)

The Property

(see attached)

Exhibit B

(Attached to and made a part of the
Assignment and Assumption Agreement dated as of _____, 20__,
between Union Pacific Railroad Company
and Regional Transportation District)

Assigned Agreements

Assigned Leases:

(see attached)

Exhibit B

(Attached to and made a part of the
Assignment and Assumption Agreement dated as of _____, 20__,
between Union Pacific Railroad Company
and Regional Transportation District)

Assigned Agreements

Assigned Other Agreements:

(see attached)

EXHIBIT C TO ADDENDUM C

(Attached to and made a part of
Addendum C to the Property Transfer and Railroad Relocation Agreement
Limon and Greeley Subdivisions/East Corridor)

Bill of Sale

Quitclaim Bill of Sale

THIS QUITCLAIM BILL OF SALE ("Bill of Sale"), dated as of the _____ day of _____, 20__, is from UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Seller") to REGIONAL TRANSPORTATION DISTRICT, a political subdivision of the State of Colorado ("Purchaser"). This Bill of Sale is being delivered pursuant to Addendum C of that certain FasTracks Project -- Property Transfer and Railroad Relocation Agreement between Seller and Purchaser dated effective August ___, 2010, as amended (the "Agreement"). Capitalized terms used but not otherwise defined herein shall have the meaning ascribed thereto in the Agreement.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller hereby sells, assigns, transfers and quitclaims unto Purchaser, its successors and assigns, all of Seller's rights, interests and titles, if any, in and to the personalty listed on Exhibit A (the "Personal Property") that is located at or on the real property described on Exhibit B (the "Real Property") **[but excluding other personalty listed on Exhibit C]**.

Seller quitclaims the Personal Property "As Is," "Where Is" and with "All Faults" and has not made and does not make any representations or warranties as to the physical condition, operation, fitness for a particular purpose, or any other matter with respect to the Personal Property.

IN WITNESS WHEREOF, Seller has caused this Bill of Sale to be executed on the date first above written.

SELLER:

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

By: _____
Name: _____
Title: _____

Exhibit A

(Attached to and made a part of the
Bill of Sale dated as of _____, 20__,
from Union Pacific Railroad Company
to Regional Transportation District)

Personal Property

(see attached)

[None.]

Exhibit B

(Attached to and made a part of the
Bill of Sale dated as of _____, 20__,
from Union Pacific Railroad Company
to Regional Transportation District)

Real Property

(does not include the legal description of the Flyover Easement property)

Exhibit C

(Attached to and made a part of the
Bill of Sale dated as of _____, 20 _,
from Union Pacific Railroad Company
to Regional Transportation District)

Excluded Personalty

EXHIBIT D TO ADDENDUM C

(Attached to and made a part of
Addendum C to the Property Transfer and Railroad Relocation Agreement
Limon and Greeley Subdivisions/East Corridor)

Flyover Easement Agreement

(Limon and Greeley Subdivisions/East Corridor)

[Text applicable to the Flyover Easement Agreement for the pedestrian bridge near 38th Street is preceded by "a:"]

[Text applicable to the Flyover Easement Agreement for the rail bridge near Airport Road is preceded by "b:"]

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Jacobs Chase & Kelley, LLC
1050 17th Street, Suite 1500
Denver, CO 80265
Attn: Jill K. Rood, Esq.

FLYOVER EASEMENT AGREEMENT

(Limon and Greeley Subdivisions/East Corridor)

[a: City and County of Denver/
b: County of Adams], Colorado

THIS FLYOVER EASEMENT AGREEMENT ("Easement Agreement") is made and entered into as of the _____day of _____, 20___ by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Grantor") and REGIONAL TRANSPORTATION DISTRICT, a political subdivision of the State of Colorado ("Grantee"), whose legal address is 1600 Blake Street, Denver, Colorado 80202. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby agree as follows:

Grantor hereby grants to Grantee a flyover easement (the "Aerial Easement") to construct, reconstruct, maintain, repair, replace and use**[a: , and allow its invitees to use,]** an overpass in accordance with the Construction Plans and Specifications (as defined in Exhibit A attached hereto and incorporated herein by this reference) for purposes of **[a: pedestrian and non-motorized bicycle ingress and egress /b: passenger rail transit]** (the "Overpass") above certain real property located in the **[a: City and County of Denver /b: County of Adams]**, State

of Colorado, as such real property is more particularly described on Exhibit B attached hereto and incorporated herein by this reference ("Real Property"). All support columns, structures and systems that support the Overpass, if any, are collectively referred to herein with the Overpass as the "Bridge." The location of the Aerial Easement above the Real Property is identified on Exhibit C attached hereto and incorporated herein by this reference and is further described and delineated below (the "Flyover Easement Property").

The Flyover Easement Property shall include (i) an exclusive Aerial Easement within the area expressly limited vertically (a) above a plane parallel with and twenty-three (23) feet six (6) inches above the top of the rail of the highest of Grantor's trackage facilities located on the Real Property and (b) below a plane parallel with and fifty-five (55) feet above the top of the rail of the highest of Grantor's trackage facilities located on the Real Property, and (ii) a non-exclusive Aerial Easement within the area that is at or above a plane parallel with and fifty-five (55) feet above the top of the rail of the highest of Grantor's trackage facilities located on the Real Property.

If the Construction Plans and Specifications require any support columns or systems to be located on the Real Property in order to support the Overpass, Grantor agrees to grant to Grantee in the future, for no additional consideration, an exclusive surface and subsurface support easement (the "Support Easement") on a portion of the Real Property to construct, reconstruct, maintain, repair and replace such support columns, structures and/or systems for the Overpass in accordance with the Construction Plans and Specifications. The location of such support columns, structures and/or systems on the Real Property shall be approved by Grantor in its sole discretion, and such location shall become the location of the Support Easement to be granted by Grantor (the "Support Easement Property"). Within thirty (30) days after Grantor's approval of the location of the Support Easement, the parties shall amend this Easement Agreement to provide for Grantor's grant of the Support Easement to Grantee, to make the Support Easement and the Support Easement Property subject to the terms of this Easement Agreement and to revise Exhibit D of this Easement Agreement to attach the legal description of the Support Easement. Without limiting the foregoing, if this Easement Agreement is amended to include the Support Easement as provided herein, all references to Flyover Easement Property in Exhibit A of this Easement Agreement shall be deemed to include the Support Easement Property. **[If, at the time of closing of the Limon project segment, any necessary support structures to be located on the Real Property are built or the designs for the same are sufficient to permit a legal description to be prepared for the support easement area (e.g., subject to UP's confirmation, 90% designs), this section can be modified for the Airport Road flyover to provide for a contemporaneous grant of the support easement.]**

No later than three (3) months after substantial completion by Grantee of the Bridge, Grantee, at its sole expense, shall cause an as-built survey and revised legal descriptions to be made for those portions of the Real Property that are then encumbered by the Bridge, for the limited purposes of amending and more accurately identifying the Flyover Easement Property. The as-built survey and revised legal descriptions of the Flyover Easement Property shall be submitted to Grantor for its review and approval. After approval by Grantor of such as-built survey and revised legal descriptions, no later than thirty (30) days after Grantor provides a written request to Grantee, Grantee agrees to execute, acknowledge and deliver to Grantor a form

of amended and restated Easement Agreement in recordable form acceptable to Grantor, pursuant to which Exhibit C and Exhibit D, if applicable, of this Easement Agreement shall be amended to correspond to such as-built survey and revised legal descriptions. Upon the request of Grantor at any time, Grantee shall execute and deliver to Grantor a quitclaim deed as set forth in Section 14 of Exhibit A of this Easement Agreement. Subject only to Section 4.c of Exhibit A of this Easement Agreement, Grantee agrees to be responsible for all costs associated with the preparation of the as-built survey and revised legal descriptions and the preparation and recording of the amended and restated Easement Agreement and quitclaim deed described in this paragraph.

This Easement Agreement is expressly subject to the terms, conditions, limitations and covenants contained in Exhibit A, Exhibit E and Exhibit F attached hereto and incorporated by this reference. Grantee, by its acceptance of this Easement Agreement, agrees for itself, its successors and assigns, to observe each and all of the terms, conditions, limitations and covenants in this Easement Agreement, including, without limitation, those contained in Exhibit A, Exhibit E and Exhibit F.

This Easement Agreement shall be construed and enforced in accordance with the laws of the State of Colorado.

This Easement Agreement may be executed in one (1) or more counterparts, each of which, when so executed, shall be deemed to be an original. Such counterparts shall together constitute and be one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Easement Agreement as of the day and year first above written.

GRANTOR:

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

ATTEST:

By: _____
_____ Secretary

By: _____
Name: _____
Title: _____

(SEAL)

GRANTEE:

APPROVED AS TO LEGAL FORM FOR THE REGIONAL TRANSPORTATION DISTRICT:

By: _____
Legal Counsel

REGIONAL TRANSPORTATION DISTRICT,
a political subdivision of the State of Colorado

By: _____
Name: _____
Title: General Manager

STATE OF NEBRASKA)
)
COUNTY OF DOUGLAS)

On _____, 20___, before me, a Notary Public in and for said County and State, personally appeared _____ and _____, who are the _____ and the _____ Secretary, respectively, of UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

My Commission expires:

_____
Notary Public

(SEAL)

STATE OF COLORADO)
) ss
CITY AND COUNTY OF)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ _, by _____ as General Manager of the REGIONAL TRANSPORTATION DISTRICT, a political subdivision of the State of Colorado.

WITNESS my hand and official seal.

My Commission expires:

_____
Notary Public

(SEAL)

Exhibit A

(Attached to and made a part of the
Flyover Easement Agreement dated as of _____, 20___,
between Union Pacific Railroad Company
and Regional Transportation District)

Additional Terms and Conditions

This Exhibit A contains additional terms, conditions, limitations and covenants applicable to the Flyover Easement Agreement to which it is attached and incorporated by reference ("Easement Agreement"). Unless otherwise specified herein, the capitalized terms used in this Exhibit A shall have the meanings set forth in this Easement Agreement.

1. Limited Purpose; Limitations on this Easement Agreement.

a. This Easement Agreement is granted only for the purposes stated in this Easement Agreement, and shall not be construed as conveying or otherwise vesting in Grantee the right to install or to authorize the installation of any ditches, pipes, drains, sewer or underground structures, or the facilities of any telegraph, telephone, fiber optic or electric power lines or other utilities in, upon, over, under, across or along the Real Property or the Flyover Easement Property, except as reasonably necessary for maintenance or operation of the Bridge or **[b: or any passenger rail operations related thereto]**, and then only with the prior written consent of Grantor, which consent shall not be unreasonably withheld or delayed. Grantee shall not use or permit use of the Flyover Easement Property for any purposes other than those described in this Easement Agreement. No nonparty to this Easement Agreement (other than Grantee's employees, contractors, subcontractors, agents or **[a: pedestrian invitees crossing the Bridge/b: passengers of Grantee crossing the Bridge while riding Grantee's passenger rail train]**, subject to the terms set forth in this Exhibit A and Exhibit E of this Easement Agreement) shall be admitted by Grantee to use or occupy any part of the Flyover Easement Property without Grantor's prior written consent, which consent may be withheld in Grantor's sole and absolute discretion. Nothing contained in this Easement Agreement shall be deemed to be a gift or dedication of any portion of the Flyover Easement Property to or for the general public.

b. Grantor makes no covenant or warranty of title, for quiet possession or against encumbrances with respect to the Flyover Easement Property. This Easement Agreement is subject and subordinate to all licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens and claims of title that may affect the Flyover Easement Property or the Real Property now or in the future (whether public or private) and whether recorded or unrecorded (including, without limitation, those in favor of grantees and lessees of Grantor's property and others); provided however, that Grantor shall make no license, easement, covenant or encumbrance after initial execution of this Easement Agreement that shall materially and adversely affect Grantee's rights in and to the Aerial Easement or Support Easement, if applicable, without Grantee's prior written consent.

2. Governmental Approvals.

Grantee shall obtain all necessary governmental approvals to construct, reconstruct, maintain, repair, replace and use[**a: , and allow its pedestrian invitees to use,**] the Bridge. At the sole cost and expense of Grantee, Grantor shall reasonably cooperate with and, upon Grantee's prior written request, provide written statements of Grantor's support of, Grantee's efforts to obtain such governmental approvals.

3. Engineering and Design.

Prior to Grantee's commencement of construction or reconstruction of all or any portion of the Bridge, Grantee shall submit to Grantor for its review and approval (at Grantee's sole cost and expense) initial designs, plans and specifications for such construction or reconstruction that shall be to a design completion level of not less than sixty percent (60%). Thereafter, Grantee shall submit to Grantor for its review and approval (at Grantee's sole cost and expense) the designs, plans and specifications for the Bridge at the ninety-five percent (95%) and the one hundred percent (100%) design completion levels. Construction or reconstruction by Grantee shall not begin until Grantor has given its final approval of the submitted designs, plans and specifications at the one hundred percent (100%) design completion level for such construction or reconstruction (as approved, the "Construction Plans and Specifications"). Grantor reserves the right to enter into contracts with contractors for all or any portion of the review of the designs, plans and specifications (at Grantee's sole cost and expense). Approval by Grantor of any designs, plans and/or specifications shall not be deemed to have been given until the Vice President, Engineering of Grantor ("VP Engineering") (or the VP Engineering's authorized representative) has initialed or signed such designs, plans and/or specifications. Grantor shall use reasonable efforts to complete its review of such designs, plans and specifications within thirty (30) days after receipt, but Grantor may take up to sixty (60) days to review such items, based upon Grantor's scheduling constraints and the complexity of the items under review. In connection with Grantor's review and approval of any such designs, plans and specifications, Grantor shall have the right to consider, and condition its approval on, any future railroad facilities and/or operations (including without limitation Grantor's construction, maintenance, repair and use of a second main line on the Real Property) that may affect the designs, plans and specifications. Without limiting the scope of Grantor's review or approval, all designs, plans and specifications shall comply with, *inter alia*, all clearance, safety and other applicable standards of Grantor, as the same may be amended, modified or supplemented from time to time, and shall meet the terms and conditions of any then-existing agreements encumbering the Flyover Easement Property; provided that if there is a direct conflict between one of Grantor's standards and a requirement or standard of the Colorado Public Utilities Commission or the Federal Railroad Administration, the regulatory standard shall apply. [**a: Without limiting the foregoing, such designs, plans and specifications shall make provision for fencing, wire mesh or other protective barriers or screening (together with all support systems required in connection therewith) that are sufficient to protect against objects being thrown, pushed or placed over or suspended from the Bridge.**] Notwithstanding anything to the contrary contained in this Easement Agreement, Grantor's review of any designs, plans and/or specifications will be performed solely for its own purposes and benefit, and Grantor shall not be

deemed to be liable to Grantee or any other party for defects in any designs, plans and/or specifications approved by Grantor.

4. Construction; Maintenance and Operations; Relocations; Inspections.

a. Following approval of the Construction Plans and Specifications and obtaining all necessary governmental approvals, Grantee may construct or reconstruct (or cause the construction or reconstruction of) the Bridge, which construction or reconstruction shall be done in a good and workerlike manner substantially in accordance with the Construction Plans and Specifications, applicable covenants and applicable law, and shall be completed within a reasonable time, or within such period of time as may be agreed upon by the parties in writing. No part of the construction or reconstruction work provided for herein shall be suspended, discontinued or unduly delayed without Grantor's prior written consent, which shall not be unreasonably withheld or delayed, and shall be subject to such reasonable conditions as Grantor may specify. It is understood that Grantor's tracks at and in the vicinity of such work will be in constant or frequent use during progress of the construction, and that movement or stoppage of trains, engines or cars may cause delays in the construction of Grantee. Grantee hereby assumes the risk of any such delays and agrees that no claims for damage on account of any such delay shall be made against Grantor. In order to avoid disruptions to Grantor's freight rail service during construction of all or any portion of the Bridge, Grantee shall design a shoofly track for Grantor's freight rail service wherever reasonably possible, which design shall be subject to Grantor's approval pursuant to Section 3 above. However, if it is not reasonably possible for Grantee to construct a shoofly track, then upon receiving a written request from Grantee no later than thirty (30) days prior to the date such requested need arises, Grantee and Grantor's representatives will communicate to develop strategies to facilitate the completion of the Bridge. Both parties will cooperate in developing a phasing plan for the construction elements to make best use of work windows, if any, available in Grantor's freight operating schedule to reasonably accommodate Grantee's construction activities. All work and phasing plans will be subject to review and approval by Grantor's VP Engineering and Grantor's Operations Department prior to any work on the Bridge. Any adjustments to Grantor's freight rail operations schedule will in each case be subject to such timing constraints and other conditions as Grantor may impose in its sole discretion in order that it may at all times perform its obligations as a common carrier, meet its then-existing commitments to its customers and other third parties, and otherwise minimize the impact such schedule adjustments may have on, and avoid disruption to, Grantor's freight rail operations through the Real Property or anywhere else on Grantor's rail system. Such conditions shall include, without limitation, a requirement that Grantee reimburse Grantor for all of Grantor's costs associated with any such schedule adjustment, which costs may include, without limitation, Grantor's costs to stop, slow, reroute, detour or recrew any trains, make additional rail cars to be available or make other arrangements for alternative transportation of lading, or resume normal train operations after a stoppage or slowdown, or other train charges, congestion costs, penalties, or other liabilities incurred by Grantor, including as applicable Grantor's related direct and indirect labor costs for each such item along with railroad standard labor additives for each such item; provided however, so long as Grantee first complies with all such conditions imposed by Grantor, Grantor shall not refuse to adjust its schedule in a manner that effectively prevents Grantee from constructing the Bridge as contemplated hereunder.

b. If any construction or reconstruction of the Bridge is not done in accordance with the Construction Plans and Specifications (which determination may be made by Grantor in its reasonable discretion), Grantee, at its sole cost and expense, shall promptly correct such deficiencies to the satisfaction of Grantor. Should Grantee fail, neglect or refuse to promptly correct such deficiencies, reasonably necessary corrective measures may be performed by Grantor at Grantee's expense after receipt by Grantee of written notice of Grantor's intent to perform such measures, which notice shall include the anticipated timing for the performance of the corrective measures, and Grantor shall then have the right to enter upon the Flyover Easement Property, and any other property on which the Bridge is located, to perform diligently such corrective measures. All expenses incurred by Grantor for such corrective measures shall be paid promptly from time to time to Grantor upon demand, and if not paid within thirty (30) days following such demand shall accrue interest at the rate of eighteen percent (18%) per annum until paid in full.

c. Notwithstanding anything to the contrary contained in this Easement Agreement, at any time after initial construction of the Bridge, Grantor reserves the right to modify (or cause Grantee to modify) the Bridge, at Grantor's sole cost and expense if such modifications are not otherwise required as a result of Grantee's failure to comply with the requirements of Section 4.d of this Exhibit A. Such modifications may include without limitation raising and/or relocating the Overpass and relocating or modifying any related support columns, structures and/or systems, without regard to whether the same are located on property other than the Real Property. Any such modifications shall comply with applicable law. Grantor shall submit to Grantee for its prior approval the designs, plans and specifications for such modifications, which approval shall not be unreasonably withheld, conditioned or delayed and shall be based solely on its determination of whether Grantor's proposed modifications will materially and adversely impact Grantee's operations in terms of volume, schedule and cost. No later than three (3) months after substantial completion of any modifications described in this Section 4.c, Grantor, at its sole cost and expense, shall cause an as-built survey and revised legal descriptions to be made for those portions of the Real Property that are then encumbered by the Bridge, for the limited purposes of amending the legal descriptions of the Flyover Easement Property. Within thirty (30) days after Grantee receives written notice that the as-built survey and revised legal descriptions have been completed, Grantee agrees to execute, acknowledge and deliver to Grantor a form of amended and restated Easement Agreement in recordable form reasonably acceptable to Grantor, pursuant to which Exhibit C and Exhibit D, if applicable, of this Easement Agreement shall be amended to correspond to such revised legal descriptions. Upon the request of Grantor at any time, Grantee shall execute and deliver to Grantor a quitclaim deed as set forth in Section 14 of this Exhibit A. If Grantor exercises its right after commencement of passenger rail operations on the Bridge by Grantee, in consideration of the significant disruption to passenger service such modifications may cause, Grantor agrees to take reasonable measures to limit disruption of the public service volume and schedule of Grantee's passenger rail operations.

d. Following completion of the construction or any reconstruction of the Bridge, Grantee, at its expense, shall maintain and operate in a good and safe condition, and comply with all applicable federal, state and local laws, regulations and enactments applicable to, the Bridge, including the approaches thereto, and the **[b: passenger rail]** facilities, structures and systems related thereto (including without limitation lighting and drainage). Grantee acknowledges and

agrees that Grantor shall have no obligation to maintain or operate the Bridge or to contribute to the cost thereof.

e. Without limiting any obligations of Grantee or Grantee's contractors, subcontractors or agents pursuant to the Right of Entry Agreement (defined below), if any utility, fiber optic or communication facilities located on, under or across the Real Property or the Flyover Easement Property require relocation as a result of Grantee's work on the Flyover Easement Property, all such relocations shall be arranged by Grantee with the entities owning or controlling the facilities being relocated, at the sole expense and cost of entities other than Grantor.

f. Upon not less than forty-eight (48) hours prior notice to Grantee (and at any time in the event of an emergency), Grantor and/or Grantor's contractors, subcontractors or agents shall have the right to enter upon the Flyover Easement Property, and any other property on which the Bridge is located, with reasonable frequency, and inspect the Bridge to determine if it conforms with the requirements of the Construction Plans and Specifications and the operational and maintenance standards set forth above, on condition that Grantor and Grantor's contractors, subcontractors and agents, as applicable, conform to Grantee's health and safety requirements applicable to inspections of the Bridge as set forth in Grantee's standard form of right of entry agreement. Notwithstanding anything to the contrary contained in this Easement Agreement, Grantor's inspections will be performed solely for its own purposes and benefit, and Grantor shall not be deemed to be liable to Grantee or any other party for defects in the Construction Plans and Specifications or the operational and maintenance standards set forth above. Grantor will deliver prompt notice to Grantee of any perceived deficiencies or defects of which Grantor becomes aware during construction of the Project, on condition that failure to provide such notice shall not be deemed to be a default by Grantor hereunder and shall create no liability whatsoever for Grantor, whether to Grantee or to any third party. Grantee agrees to reimburse Grantor for its reasonable costs incurred in connection with (i) all inspections of the Bridge during any construction or reconstruction of the Bridge, (ii) all emergency inspections of the Bridge, (iii) one (1) inspection of the Bridge every calendar year after completion of the Bridge and (iv) any reports generated in connection with such inspections that relate specifically to the Bridge, within thirty (30) days after delivery to Grantee of an invoice therefor. Grantor shall provide to Grantee copies of any reports described in the preceding sentence within a reasonable time after a written request by Grantee therefor, provided that Grantee shall pay the direct costs for all such copies. Grantor shall have the right to post and maintain notices of non-responsibility on the Flyover Easement Property and the Real Property in locations that do not materially interfere with Grantee's work or operations on the Bridge.

g. Grantee shall bear the entire expense of designing (including without limitation Grantor's design review), constructing, reconstructing, maintaining, repairing, replacing and using the Bridge, subject to Section 4.c. Grantee acknowledges and agrees that any and all costs and expenses incurred by Grantor solely on account of the exercise of Grantee's rights and obligations under this Easement Agreement shall be reimbursed to Grantor by Grantee.

h. Grantee shall promptly remove all graffiti, litter, weeds, debris, trash and garbage from and on the Bridge at its sole cost and expense.

5. Right of Entry.

a. Grantee acknowledges and agrees that it shall be subject to, and comply with the terms and conditions of, Grantor's then-current form of the Contractor's Right of Entry Agreement attached as Exhibit E of this Easement Agreement ("Right of Entry Agreement"), except that Grantee shall have no obligation to pay any administrative fees therefor. Prior to commencing any work (including without limitation any construction, reconstruction, maintenance, repair, or replacement of the Bridge) on the Flyover Easement Property, Grantee shall execute the Right of Entry Agreement. If a contractor, subcontractor or agent of Grantee is to perform any work in connection with the Bridge, then Grantee shall require such contractor, subcontractor or agent to execute the Right of Entry Agreement prior to the commencement of any such work. Grantee acknowledges and agrees that it will inform its contractors, subcontractors and agents of the need to execute the Right of Entry Agreement prior to commencing any work on the Flyover Easement Property. Under no circumstances will Grantee or Grantee's contractors, subcontractors or agents be allowed onto the Flyover Easement Property (i) prior to executing the Right of Entry Agreement or (ii) if Grantee or such contractor, subcontractor or agent is in breach of any of the terms or conditions of this Easement Agreement or the Right of Entry Agreement. Grantor affirms that it will not seek to amend any of the terms or conditions of a Right of Entry Agreement entered into by Grantee or Grantee's contractors, subcontractors or agents after the date on which Grantee or such contractor, subcontractor or agent of Grantee, as applicable, commences construction, reconstruction, maintenance, repair or replacement of the Bridge; provided that Grantor reserves the right to cause Grantee and Grantee's contractors, subcontractors and agents to enter into an amended or modified Right of Entry Agreement after commencement of construction, reconstruction, maintenance, repair or replacement of the Bridge by any such party if such amendments or modifications are required by law or are otherwise being made by Grantor to its standard form of right of entry.

b. Following completion of the Bridge, none of Grantor or Grantor's contractors, subcontractors or agents shall enter on the Bridge (except in the event of an emergency) prior to entering into a limited form of Grantee's standard form of right of entry, which shall be granted at no additional consideration to Grantor or Grantor's contractors, subcontractors, or agents. Notwithstanding anything to the contrary contained herein, for the purposes of Grantor's inspections of the Bridge Grantee's standard form of right of entry shall be limited to Grantee's health and safety requirements, Grantee's insurance requirements and provisions related to reasonably minimizing the disruption of Grantee's operations.

6. Notice of Commencement of Work; Flagging.

If any emergency should arise requiring immediate attention, Grantee shall provide as much notice as practicable to Grantor before commencing any work on the Flyover Easement Property, or any other property on which the Bridge is located, relating to such emergency. In all other situations, Grantee shall notify Grantor at least ten (10) days (or such other time as Grantor may allow) in advance of the commencement of any work within the Flyover Easement Property in connection with constructing, reconstructing, maintaining, repairing and/or replacing the Bridge. Grantee shall also give at least five (5) days advance notice to Grantor (or such other

time as Grantor may allow) of proposed performance of any work by Grantee on the Flyover Easement Property, or any other property on which the Bridge is located, in which any person or equipment will be within twenty-five (25) feet of any track of Grantor, or will be near enough to any such track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of such track. Upon receipt of such notice, Grantor will determine and inform Grantee whether a flagman need be present and whether Grantee need implement any special protective or safety measures. If any flagman or other special protective or safety measures are performed by Grantor, such services will be provided at Grantee's expense with the understanding that if Grantor provides any flagging or other services Grantee shall not be relieved of any of its responsibilities set forth in this Easement Agreement. Grantee acknowledges and agrees that it shall be subject to and comply with the notice of commencement of work and flagging provisions as more particularly described in the Right of Entry Agreement.

7. No Interference with Grantor's Operations.

The Bridge shall be at all times, maintained, repaired, renewed and operated in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the tracks, property and facilities of Grantor, except (i) in case of emergency (in which event Grantee shall provide immediate notice to Grantor and shall coordinate its response with Grantor) and otherwise (ii) with the prior written consent of Grantor, which may be withheld in its sole discretion, except with respect to (1) construction scheduling adjustments which shall be governed by the approval process set forth in Section 4.a above and (2) Grantee's scheduled maintenance activities which shall be governed by the same approval process as set forth in Section 4.a above for construction. Nothing shall be done or suffered to be done by Grantee at any time that would in any manner impair the safety or efficient operation of the tracks, property and facilities of Grantor. This Easement Agreement is subject and subordinate to the prior right of Grantor, its successors and assigns, to use all of the Real Property and the Flyover Easement Property in the performance of its duty as a common carrier, and Grantee acknowledges and agrees that it shall not interfere with the performance of such duty by Grantor. Grantee agrees that any construction, reconstruction, maintenance, repair, replacement or use undertaken by Grantee or any of its contractors, subcontractors or agents as provided for herein shall be performed in a manner that preserves the functionality (in terms of speed, efficiency, capabilities and cost-effectiveness) of Grantor's freight rail operations, and that ensures that such operations will continue without interruption, except with the prior written consent of Grantor, which may be withheld in its sole discretion (except as otherwise expressly provided herein). Grantee agrees further that any utilities necessary for the maintenance or operation of the Bridge **[b: or the passenger rail operations related thereto]** shall not interfere (including without limitation any radio or electromagnetic interference) with any Grantor or third party utilities or other railroad operations (including without limitation any railroad communication systems), except with the prior written consent of Grantor, which may be withheld in its sole discretion (except as otherwise expressly provided herein).

8. Protection of Fiber Optic Cable Systems.

Grantee acknowledges and agrees that it shall be subject to and comply with the fiber optic cable system provisions as more particularly described in the Right of Entry Agreement. In addition to (and not in limitation of), and without prejudice to or limitation of any other

indemnity provisions or legal remedies in this Easement Agreement or any other remedies at law or in equity, subject to Section 19. Grantee shall indemnify, defend and hold harmless Grantor from and against all costs, liability and expenses whatsoever (including, without limitation, attorneys' fees, court costs and expenses) caused by or arising from the negligence of Grantee, its contractors, subcontractors, agents and/or employees, or the failure of Grantee to comply with the terms and conditions of the fiber optic cable system provisions contained in the Right of Entry Agreement, resulting in (i) any damage to or destruction of any fiber optic cable system located on or under the Real Property and/or the Flyover Easement Property and/or (ii) any injury to or death of any person employed by or on behalf of any telecommunications company owning such fiber optic cable, and/or its contractors, subcontractors agents and/or employees. Grantee further agrees that it shall not have or seek recourse against Grantor for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company owning such fiber optic cable or a customer or user of services of such fiber optic cable.

9. Insurance.

At all times during the term hereof and prior to any entry upon the Flyover Easement Property, Grantee shall comply with Grantor's insurance requirements attached as Exhibit F of this Easement Agreement, and any amendments or modifications by Grantor thereto; provided however that Grantor must provide Grantee with reasonable notice of any material changes to such insurance requirements.

10. Liability and Indemnity.

a. In addition to (and not in limitation of), and without prejudice to or limitation of any other indemnity provisions or legal remedies in this Easement Agreement or any other remedies at law or in equity (including without limitation those contained in the Operations Agreement – Limon and Greeley Subdivisions/East Corridor, between the parties and dated of even date herewith (the "Operations Agreement")), Grantee, for itself and its successors and assigns, shall indemnify, protect, defend and hold harmless Grantor, its agents, directors, officers and employees against all claims, actions, causes of action, demands, rights, damages (including without limitation all "damages" as such term is defined in Section 9601(6) of CERCLA (defined below)), costs, expenses, fees (including without limitation attorneys' fees and disbursements), penalties, fines or compensation whatsoever, direct or indirect, arising now or in the future, on account of or in any way arising out of or in connection with (i) death of or bodily injury to persons including, without limitation, the agents, directors, officers and employees of the parties hereto, (ii) damage to or loss of property including, without limitation, the property of the parties hereto, their agents, directors, officers, employees and invitees, (iii) (1) any presence, spill, leak, discharge, escape, migration, release or threat of release of Hazardous Substances (defined below) into the environment on, at, above or under the Real Property that emanates from the Flyover Easement Property, or (2) the Environmental Laws (defined below) applicable to the Real Property, or (iv) any other loss, damage or expense and all fines or penalties imposed upon or assessed against Grantor, and all expenses of investigating and defending against the same, arising in any manner out of (A) the use, occupancy or presence of Grantee, its contractors, subcontractors, employees, representatives, invitees or agents on or about the Real Property and/or the use, occupancy or presence of any trespassers on the Flyover Easement Property,

and/or (B) the performance of, or failure to perform by Grantee, its contractors, subcontractors, employees, agents or representatives, their rights or any obligation under this Easement Agreement, and/or (C) the sole or contributing acts or omissions of Grantee, its contractors, subcontractors, employees, representatives, invitees or agents on or about the Real Property. Grantee's indemnity is subject to Section 19 of this Easement Agreement and is in addition to, and not in limitation of, the insurance coverage required under Section 9 above. The provisions of this Section 10 shall survive the termination of the Aerial Easement, the Support Easement (if applicable) and this Easement Agreement.

b. Grantee agrees to comply fully with all Environmental Laws and applicable standards concerning Hazardous Substances. Grantee covenants that it shall not and shall cause its contractors, subcontractors, employees, representatives, invitees and agents not to, store, transport, release, treat or dispose of any Hazardous Substances on or about the Real Property. Grantee agrees to furnish Grantor (if requested) with proof reasonably satisfactory to Grantor that Grantee and/or its contractors, subcontractors, employees, representatives, invitees or agents is/are in such compliance. In the event of any presence, spill, leak, discharge, escape, migration, release or threat of release of Hazardous Substances into the environment on, at, above or under the Real Property by Grantee or its contractors, subcontractors, employees, representatives, invitees or agents or by trespassers on the Flyover Easement Property, Grantee shall give Grantor prompt notice of such event, and at its sole cost and expense, promptly clean or remediate such property to the standards required by law (including without limitation all Environmental Laws) or by any governmental agency or public body having jurisdiction in the matter. Should any such presence, spill, leak, discharge, escape, migration, release or threat of release result in a fine, penalty, cost or charge, Grantee shall promptly and fully pay such fine, penalty, cost or charge.

c. For purposes of this Easement Agreement, (i) the term "Hazardous Substances" means any material or substance (1) that is present in quantities and in a form that requires investigation, removal, cleanup, transportation, disposal, response or remedial action (as the terms "response" and "remedial action" are defined in Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 (23) and (24)) or under any Environmental Law; or (2) that is defined as a "hazardous waste," "hazardous substance," "pollutant" or "contaminant" under any Environmental Law; and (ii) the term "Environmental Law" means any and all laws, statutes, regulations, enforceable requirements, orders, decrees, agreements, judgments or injunctions validly issued, promulgated or entered by any court or governmental agency with jurisdiction, relating to the environment, to preservation or reclamation of natural resources, or to the management, release or threatened release of contaminants applicable to the Real Property, including without limitation the Hazardous Substances Transportation Act (49 U.S.C. § 1802 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 et seq.), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 et seq.) and the Hazardous and Solid Waste Amendments of 1984, the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), as amended by the Clean Water Act Amendments of 1977, the Clean Air Act of 1970 (42 U.S.C. § 7401 et seq.), as amended by the Clean Air Act Amendments of 1990, the Safe Drinking Water Act (42 U.S.C. § 300f et seq.), the

Toxic Substances Control Act of 1976 (15 U.S.C. § 2601 et seq.), any similar or implementing state or local law, and all amendments thereto and regulations or rules promulgated thereunder.

11. Safety Measures.

Grantee understands and recognizes that safety and continuity of Grantor's operations and communications are of the utmost importance; and in order that the same may be adequately safeguarded, protected and assured, and in order that accidents may be prevented and avoided, Grantee shall require all work on the Flyover Easement Property to be performed in a safe manner and in conformity with the following standards:

a. All references to Grantee in this Section 11 shall include Grantee's contractors, subcontractors, agents, officers and employees, and others acting under its or their authority; and all references to work of Grantee in this Section 11 shall include all work on or about the Flyover Easement Property in connection with the construction, reconstruction, maintenance, repair, replacement and/or use of the Bridge.

b. Grantee shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. Grantee shall use only such methods as are consistent with safety, as it concerns Grantee, Grantee's agents and employees, the officers, agents, employees and property of Grantor and the public in general. Without limiting the generality of the foregoing, Grantee shall comply with all applicable state and federal occupational safety and health acts and regulations.

c. Grantee, at its own expense, shall adequately police and supervise all work to be performed by Grantee. The responsibility of Grantee for safe conduct and adequate policing and supervision of its work shall not be lessened or otherwise affected by Grantor's approval of the Construction Plans and Specifications, or by Grantor's collaboration in performance of any work, or by the presence at the work site of Grantor's representatives, or by compliance by Grantee with any requests or recommendations made by such representatives. If a representative of Grantor is assigned to the job site, Grantee will give due consideration to suggestions and recommendations made by such representative for the safety and protection of Grantor's property and operations; provided however that Grantee shall not be required to take any action that is contrary to law or would compromise the safety of Grantee's contractors, employees or passengers.

d. Grantee shall not discharge, store or use any explosives on or about the Flyover Easement Property without the written prior consent of Grantor.

e. Grantee shall keep the Flyover Easement Property free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects that may affect the Flyover Easement Property. Grantee shall have a non-delegable duty to control its employees while they are on the Flyover Easement Property to be certain they do not use, be under the influence of or have in their possession any alcoholic beverage or illegally obtained drug, narcotic or other substance that may inhibit the safe performance of work, including without limitation any maintenance or operations described herein, by the employee. For the purposes of this Section 11.e, an "employee" of Grantee shall

mean a staff member of Grantee present on the Flyover Easement Property for purposes relating to Grantee's use of the Flyover Easement Property. Employees, vendors, or contractors of any agent, contractor, or vendor of Grantee shall not be deemed to be an employee of Grantee for the purposes of this Section 11.e. If in the opinion of Grantor any of Grantee's equipment is unsafe for use on the Flyover Easement Property, Grantee, at the request of Grantor, shall remove such equipment from the Flyover Easement Property.

f. Without limiting anything contained in the Construction Plans and Specifications, Grantee shall not cause, suffer or permit material or debris to be deposited or cast upon, or to slide or fall upon, any property or facilities of Grantor without the written prior consent of Grantor; and any such material and debris shall be promptly removed by Grantee at Grantee's own expense or by Grantor at the expense of Grantee. Grantee shall not excavate from existing slopes nor construct new slopes that are excessive or may create hazards of slides or falling rock, or impair or endanger the clearance between existing or new slopes and the tracks of Grantor. Grantee shall not undertake any work that will or may disturb the stability of the Real Property, the Flyover Easement Property or surrounding area or adversely affect Grantor's tracks or facilities without the written prior consent of Grantor. Grantee, at its own expense, shall install and maintain adequate shoring and cribbing for all excavation and/or trenching performed by Grantee in connection with any construction, reconstruction, maintenance, repair, replacement or use provided for herein. Grantee, at Grantee's own expense, shall provide adequate passageway for the waters of any streams, bodies of water and drainage facilities (either natural or artificial), so that said waters may not, because of any work described herein, be impeded, obstructed, diverted or caused to back up, overflow or damage the property of Grantor or any part thereof, or property of others. Grantee shall not obstruct or interfere with existing ditches or drainage facilities without the written prior consent of Grantor.

g. Grantee acknowledges and agrees that it shall be subject to and comply with the safety measures as more particularly described in the Right of Entry Agreement.

12. Claims and Liens for Labor and Material.

Grantee shall fully pay for all materials joined or affixed to and labor performed upon the Flyover Easement Property in connection with the construction, reconstruction, maintenance, repair, replacement and use of the Bridge, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the Real Property, Flyover Easement Property or other property of Grantor for any work done or materials furnished thereon at the instance or request or on behalf of Grantee.

13. Termination; Abandonment; Removal.

If, (i) at any time, Grantee provides written notice to Grantor that Grantee does not intend to use or will not use any portion of the Flyover Easement Property, or (ii) at any time, Grantee's final design or buildout of its East Corridor shows no portion of the Bridge located within the Flyover Easement Property, then this Easement Agreement shall automatically terminate. If the Construction Plans and Specifications of the Bridge result in the Bridge encumbering less than all of the Flyover Easement Property, then the Flyover Easement Property shall be reduced to automatically exclude the portion of the Flyover Easement Property that will not be encumbered

by the Bridge. At Grantor's sole discretion, at any time and from time to time prior to initial completion of the Bridge construction, Grantor may send a written inquiry to Grantee requesting information on the status of the Bridge (including without limitation, Grantee's intention to use or abandon the Flyover Easement Property and the status of Grantee's designs, plans or specifications). Grantor shall not send more than one (1) inquiry annually. If Grantee fails to deliver to Grantor a complete written response to any such inquiry on or before the date that is forty-five (45) days after the date of such inquiry, then Grantor may send a follow-up written notice advising Grantee of its prior inquiry. If Grantee fails to deliver to Grantor a complete written response to any such inquiry and follow-up notice on or before the date that is forty-five (45) days after the date of such follow-up notice, then Grantee shall be deemed to have abandoned its use of the Flyover Easement Property and this Easement Agreement shall automatically terminate. After termination of the Easement Agreement as provided herein, upon the request of Grantor at any time, Grantee shall execute and deliver to Grantor a quitclaim deed as set forth in Section 14 of this Exhibit A.

14. Quitclaim Deed.

In the event that (i) this Easement Agreement is amended and restated as provided herein, (ii) the Bridge is relocated pursuant to Section 4.c of this Exhibit A, (iii) this Easement Agreement terminates or all or any portion of the Flyover Easement Property is reduced or abandoned pursuant to Section 13 of this Exhibit A or (iv) the Flyover Easement Property is otherwise modified as provided in this Easement Agreement, the portion of the Flyover Easement Property that is excluded from this Easement Agreement by virtue of such amendment, relocation, termination, reduction, abandonment or other modification, as applicable, shall thereupon automatically be released from, and no longer subject to, this Easement Agreement. Upon the request of Grantor at any time, Grantee shall execute and deliver to Grantor a quitclaim deed, covering the portions of the Flyover Easement Property excluded by such amendment, relocation, termination, reduction, abandonment or other modification within thirty (30) days after such request.

15. Other Railroads.

All protective and indemnifying covenants of this Easement Agreement shall inure to the benefit of Grantor and any other railroad company lawfully using the Real Property or rail facilities located thereon or thereunder.

16. Arbitration.

Both Grantor and Grantee shall make every reasonable effort to settle disputes (excepting only those disputes requiring a determination of governmental powers or based upon formation of this Easement Agreement) arising out of their respective rights and obligations under this Easement Agreement through prompt and diligent negotiations. If at any time such a dispute shall arise between the parties hereto in connection with this Easement Agreement that the parties cannot resolve within thirty (30) days, such dispute shall be submitted to and settled by binding arbitration. The parties acknowledge that such arbitration may involve the joinder of one or more necessary party(ies) to resolve the disputed matters. Arbitration shall occur in

Denver, Colorado or in another location mutually agreed to by the parties. Unless otherwise agreed by the parties, arbitration between the parties pursuant to this Section 16 shall be governed by the rules and procedures set forth in this Section 16.

If the parties to the dispute are able to agree upon a single competent and disinterested arbitrator within fifteen (15) days after written notice by one party of its desire for arbitration to the other party, then the question or controversy shall be submitted to and settled by that single arbitrator. Otherwise, any party (the "notifying party") may notify the other party (the "noticed party") in writing of its request for arbitration and nomination of one competent and disinterested arbitrator. Within fifteen (15) days after receipt of such notice, the noticed party shall appoint a competent and disinterested arbitrator and notify the notifying party in writing of such appointment. Should the noticed party fail within fifteen (15) days after receipt of such notice to name its arbitrator, said arbitrator may be appointed by the Chief Judge (or acting Chief Judge) of the United States District Court for the District of Colorado upon application of either party after ten (10) days' written notice to the other party. The two arbitrators so chosen shall select one additional competent and disinterested arbitrator to complete the board within fifteen (15) days. If the arbitrators so chosen fail to agree upon an additional arbitrator, the additional arbitrator shall, upon application of either party, be appointed by such judge in the manner heretofore stated, provided that in such case the appointed arbitrator shall have experience in passenger and freight railroad track operations.

Upon selection of the arbitrator(s), said arbitrator(s) shall, with reasonable diligence and subject to the rights of the parties under this Section 16, determine the questions as disclosed in said notice of arbitration, give both parties reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, take such evidence as the arbitrator(s) shall deem reasonable or as either party may submit with witnesses required to be sworn, and hear arguments of counsel or others. If an arbitrator declines or fails to act within thirty (30) days after selection or appointment, the party (or parties in the case of a single arbitrator) by whom the arbitrator was chosen or said judge shall appoint another to act in the arbitrator's place.

After considering all evidence, testimony and arguments, such single arbitrator or the majority of said board of arbitrators shall promptly (and in no event more than thirty (30) days after the arbitration hearing) state such decision or award and the reasoning for such decision or award in writing which shall be final, binding, and conclusive on all parties to the arbitration when delivered to them. The award rendered by the arbitrator(s) shall be binding on the parties and may be entered as a judgment in any court having jurisdiction thereof and enforced as between the parties without further evidentiary proceeding, the same as entered as a judgment in any court having jurisdiction thereof and enforced as between the parties without further evidentiary proceeding, the same as entered by the court at the conclusion of a judicial proceeding in which no appeal was taken. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under this Easement Agreement shall continue in the manner and form existing prior to the rise of such question. After delivery of such first decision or award, each party shall forthwith comply with said first decision or award immediately after receiving it.

Each party to the arbitration shall pay all compensation, costs, and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits and counsel. The compensation, cost, and expenses of the single arbitrator in the board of arbitrators shall be paid in equal shares by all parties to the arbitration.

The parties may obtain discovery and offer evidence as directed by the arbitrators but in accordance with the Federal Rules of Civil Procedure Rules 26-37, and Federal Rules of Evidence, as each may be amended from time to time.

17. Notices.

All written notices and demands of any kind which either party may be required or may desire to serve on the other in connection with this Easement Agreement shall be served by personal delivery, electronic facsimile with a hard copy promptly posted in the U.S. mail, reputable overnight air courier or registered or certified mail, postage prepaid, return receipt requested, to the intended addressee at the address set forth below:

If to Grantor:

UNION PACIFIC RAILROAD COMPANY
Assistant Vice President Real Estate
1400 Douglas Street, Stop 1690
Omaha, NE 68179-1690
Telephone: 402-544-8640
Facsimile: 402-501-0340

with copies to:

UNION PACIFIC RAILROAD COMPANY
Patrick R. McGill, Esq.
Senior Counsel – Real Estate
1400 Douglas Street
Mail Stop 1580
Omaha, NE 68179
Telephone: 402-544-5761
Facsimile: 402-544-0132

JACOBS CHASE & KELLEY, LLC
Jill K. Rood, Esq.
1050 17th Street, Suite 1500
Denver, CO 80265
Telephone: 303-685-4800
Facsimile: 303-685-4869

If to Grantee:

REGIONAL TRANSPORTATION DISTRICT
Assistant General Manager for Capital Projects
1560 16th Street, 7th Floor
Denver, CO 80202
Telephone: 303-299-2300
Facsimile: 303-299-2363

with copies to:

REGIONAL TRANSPORTATION DISTRICT
Marla Lien, General Counsel
1600 Blake Street
Denver, CO 80202-1399
Telephone: 303-299-2207
Facsimile: 303-299-2217

KAPLAN KIRSCH & ROCKWELL LLP
Stephen Kaplan, Esq.
1675 Broadway, Suite 2300
Denver, CO 80202
Telephone: 303-825-7000
Facsimile: 303-825-7005

Any such communication shall be deemed to have been delivered (i) as of the date of receipt, in the case of personal delivery or electronic facsimile transmission, (ii) the date of receipt or first attempted delivery via reputable air courier, or (iii) as of the date of receipt or first attempted delivery, as evidenced by the return receipt card, in the case of mailing via certified or registered United States mail. Either may change the address at which it is to receive notice by so notifying the other party to this Easement Agreement in writing in the manner provided for above.

18. Assignment.

a. This Easement Agreement and the terms, covenants and conditions hereof shall be binding upon, and inure to the benefit of, the parties and, except as expressly limited herein, their respective permitted successors and assigns. The qualifications and reputation of Grantee are material inducements to Grantor in entering into this Easement Agreement. Therefore, Grantee may not assign, in whole or in part, any of its rights in or delegate any of its duties under this Easement Agreement (an "Assignment") to any third party, without the prior written consent of Grantor, which consent may be withheld in Grantor's sole discretion. Without limiting the generality of the foregoing, no third party shall be eligible to become an assignee until and unless it has been qualified as a Qualified Proposed Assignee pursuant to Section 18.b hereof. Any Assignment, in whole or in part, or attempted Assignment, in whole or in part, by Grantee whether voluntary, by operation of law or otherwise, in violation of this Section 18, shall be absolutely void.

(i) Grantee shall make its request for Grantor's consent to an Assignment in writing (for each proposed Assignment, a "Consent Request") and shall include with such request the proposed form of agreement that Grantee intends to use to formalize such Assignment and shall include an update of the qualifying information required to be delivered pursuant to Section 18.b. The assignment and assumption agreement shall, among other things (a) specify the rights and obligations of Grantee that will be assigned, with reference to this Easement Agreement and any other document(s) that are the subject of such Assignment, (b) expressly provide that the assignee shall assume and be bound by the terms and conditions of this Easement Agreement and any other document(s) that are the subject of such Assignment, (c) expressly provide that Grantee shall remain primarily liable to Grantor for such assigned rights and delegated duties, and (d) expressly provide that the provisions described in Section 19 below shall not inure to the benefit of such assignee.

(ii) Within thirty (30) days after the later of (a) Grantor's receipt of a Consent Request or (b) Grantor's receipt of the update of the qualifying information described in Section 18.b), Grantor shall respond to Grantee in writing setting forth (1) Grantor's consent to such Assignment, (2) Grantor's refusal to consent to such Assignment or (3) Grantor's conditional consent to such Assignment setting forth the conditions that Grantee or such proposed assignee shall satisfy prior to obtaining Grantor's consent (which conditions may include revisions to the assignment and assumption agreement). Should Grantor fail to provide Grantee with a written response to any Consent Request within such thirty (30) day period, Grantor shall have been deemed to have refused consent to such Assignment.

(iii) Notwithstanding anything to the contrary contained herein or in any assignment and assumption agreement, (a) no Assignment shall release Grantee from any of Grantee's rights or obligations under this Easement Agreement or any documents subject to the Assignment, and (b) Grantee shall remain primarily liable to Grantor for all such assigned rights or delegated duties. Grantee shall, no later than ten (10) days after the effective date thereof, provide Grantor with a fully executed copy of each assignment and assumption agreement.

b. Whenever Grantee desires to make an Assignment, Grantee shall seek Grantor's prior written approval of the proposed assignee as a "Qualified Proposed Assignee." All requests for Grantor's approval under this Section 18.b shall be in writing, shall state that Grantee intends to assign all or a portion of its rights and obligations under this Easement Agreement to such proposed assignee, shall describe the scope of the rights and obligations that Grantee intends to assign, and shall specify in detail the following qualifying information:

(i) legal name and address of the proposed assignee and the names, addresses and telephone numbers of the persons that own or have control of the proposed assignee;

(ii) information regarding the proposed assignee's prior business experience that may be relevant to Grantor;

(iii) bank and other credit references, business reputation references, financial statements and such other information as Grantor may reasonably require to assess the proposed assignee's business and financial responsibility and standing;

(iv) any other background information on such proposed assignee obtained by Grantee in connection with the Project; and

(v) any other follow-up information regarding such proposed assignee as Grantee may deem to be material or as may be requested by Grantor in its reasonable discretion.

Within thirty (30) days after the later of (a) Grantor's receipt of Grantee's request for approval of any proposed assignee or (b) Grantor's receipt of the necessary qualifying information regarding such proposed assignee, Grantor shall provide Grantee with written notice of Grantor's approval or disapproval of such proposed assignee as a Qualified Proposed Assignee. Grantor's failure to respond within such thirty (30) day period shall be deemed to be a disapproval by Grantor of the proposed assignee. Notwithstanding anything to the contrary contained in this Section 18.b an approval by Grantor of a Qualified Proposed Assignee hereunder shall not be deemed to be a consent to an Assignment under Section 18.a.

19. Limitations Specific to Regional Transportation District.

Notwithstanding anything to the contrary contained in this Easement Agreement, due to the special status of Regional Transportation District as a political subdivision of the State of Colorado, the following limitations shall apply with respect to Regional Transportation District in its capacity as a party hereto, only to the extent required by law (including without limitation any amendments to the Constitution of the State of Colorado) from time to time for purposes of enforceability: (i) the damages recoverable hereunder shall exclude punitive and exemplary damages; (ii) Grantee's waiver of governmental immunity and Grantee's liability for indemnifying Grantor under this Easement Agreement with respect to claims based upon bodily injury, death and/or property damage shall be limited to the monetary levels of Grantee's applicable insurance coverage requirements; and (iii) nothing in this Easement Agreement shall be construed as a multi-year fiscal obligation. In no event shall these limitations apply to or inure to the benefit of any successor or assign of Regional Transportation District. On or before each anniversary date of this Easement Agreement, Grantee shall deliver to Grantor (A) certificates evidencing Grantee's insurance policy renewals and (B) evidence of the annual appropriations authorized by Grantee's board of directors to satisfy Grantee's obligations and liabilities under this Easement Agreement.

20. No Waiver.

No delay on the part of any party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any waiver on the part of any party hereto of any right, power or privilege hereunder operate as a waiver of any other right, power or privilege hereunder, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof of the exercise of any other right, power or privilege hereunder.

21. Entire Agreement.

This Easement Agreement, that certain Property Transfer and Railroad Relocation Agreement by and between Grantor and Grantee dated effective August ___, 2010, as amended

(and documents executed in connection with the closing of the Limon and Greeley Subdivisions/East Corridor thereunder), that certain Agreement Regarding Engineering Design for Limon and Greeley Subdivisions/East Corridor Relocation by and between Grantor and Grantee dated March 13, 2009, as amended and/or restated. and the Operations Agreement are intended by the parties as a final expression of their agreement and intended to be a complete and exclusive statement of the agreement and understanding of the parties thereto in respect of the subject matter contained herein. There are no restrictions, promises, warranties or undertakings. other than those set forth or referred to in this Easement Agreement.

22. Binding Effect.

The parties intend that the promises and obligations of this Easement Agreement shall constitute covenants running with the land so as to benefit their respective permitted successors and assigns.

Exhibit B

(Attached to and made a part of the
Flyover Easement Agreement dated as of _____, 20___,
between Union Pacific Railroad Company
and Regional Transportation District)

Legal Description of Real Property

(see attached)

Exhibit C

(Attached to and made a part of the
Flyover Easement Agreement dated as of _____, 20___,
between Union Pacific Railroad Company
and Regional Transportation District)

Flyover Easement Property

Exclusive Aerial Easement property:

The area that is expressly limited vertically (a) above a plane parallel with and twenty-three (23) feet six (6) inches above the top of the rail of the highest of Grantor's trackage facilities located on the Real Property described in Exhibit B of this Easement Agreement and (b) below a plane parallel with and fifty-five (55) feet above the top of the rail of the highest of Grantor's trackage facilities located on the Real Property described in Exhibit B of this Easement Agreement.

Non-exclusive Aerial Easement property:

The area that is expressly limited vertically at or above a plane parallel with and fifty-five (55) feet above the top of the rail of the highest of Grantor's trackage facilities located on the Real Property described in Exhibit B of this Easement Agreement.

Exhibit D

(Attached to and made a part of the
Flyover Easement Agreement dated as of _____, 20___,
between Union Pacific Railroad Company
and Regional Transportation District)

Support Easement Property

[To be added by amendment for the Airport Road flyover if needed by Grantee and approved by Grantor.]

Exhibit E

(Attached to and made a part of the
Flyover Easement Agreement dated as of _____, 20___,
between Union Pacific Railroad Company
and Regional Transportation District)

Contractor's Right of Entry Agreement

(see attached)

CONTRACTOR'S
RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made and entered into as of the _____ day of _____, 20_____, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Railroad"); and _____, a _____ corporation ("Contractor").

RECITALS:

Contractor has been hired by _____ to perform work relating to _____ (the "work"), with all or a portion of such work to be performed on property of Railroad in the vicinity of Railroad's Milepost _____ on Railroad's _____ _____ [Subdivision] [Branch] [at or near DOT No. _____] located at or near _____, in _____ County, State of _____, as such location is in the general location shown on the print marked **Exhibit A**, attached hereto and hereby made a part hereof. [which work is the subject of a contract dated _____ between Railroad and _____].

Railroad is willing to permit Contractor to perform the work described above at the location described above subject to the terms and conditions contained in this Agreement

AGREEMENT:

NOW, THEREFORE, it is mutually agreed by and between Railroad and Contractor, as follows:

ARTICLE 1 - DEFINITION OF CONTRACTOR.

For purposes of this Agreement, all references in this agreement to Contractor shall include Contractor's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority.

ARTICLE 2 - RIGHT GRANTED; PURPOSE.

Railroad hereby grants to Contractor the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the property described in the Recitals for the purpose of performing the work described in the Recitals above. The right herein granted to Contractor is limited to those portions of Railroad's property specifically described herein, or as designated by the Railroad Representative named in Article 4.

ARTICLE 3 - TERMS AND CONDITIONS CONTAINED IN EXHIBITS B, C AND D.

The terms and conditions contained in **Exhibit B**, **Exhibit C** and **Exhibit D**, attached hereto, are hereby made a part of this Agreement.

ARTICLE 4 - ALL EXPENSES TO BE BORNE BY CONTRACTOR; RAILROAD REPRESENTATIVE.

A. Contractor shall bear any and all costs and expenses associated with any work performed by Contractor, or any costs or expenses incurred by Railroad relating to this Agreement.

B. Contractor shall coordinate all of its work with the following Railroad representative or his or her duly authorized representative (the "Railroad Representative"):

_____
_____
_____
_____

C. Contractor, at its own expense, shall adequately police and supervise all work to be performed by Contractor and shall ensure that such work is performed in a safe manner as set forth in Section 7 of **Exhibit B**. The responsibility of Contractor for safe conduct and adequate policing and supervision of Contractor's work shall not be lessened or otherwise affected by Railroad's approval of plans and specifications involving the work, or by Railroad's collaboration in performance of any work, or by the presence at the work site of a Railroad Representative, or by compliance by Contractor with any requests or recommendations made by Railroad Representative.

ARTICLE 5 - TERM; TERMINATION.

A. The grant of right herein made to Contractor shall commence on the date of this Agreement, and continue until ___ _____, unless sooner terminated as herein provided, or at such time as Contractor has completed its work on Railroad's property, whichever is earlier. Contractor agrees to notify the Railroad Representative in writing when it has completed its work on Railroad's property.

B. This Agreement may be terminated by either party on ten (10) days written notice to the other party.

ARTICLE 6 - CERTIFICATE OF INSURANCE.

A. Before commencing any work, Contractor will provide Railroad with the (i) insurance binders, policies, certificates and endorsements set forth in **Exhibit C** of this Agreement, and (ii) the insurance endorsements obtained by each subcontractor as required under Section 12 of **Exhibit B** of this Agreement.

B. All insurance correspondence, binders, policies, certificates and endorsements shall be sent to:

Union Pacific Railroad Company
_____
[Insert mailing address]
_____
_____
Attn:_____
Folder No. _____

ARTICLE 7 - DISMISSAL OF CONTRACTOR'S EMPLOYEE.

At the request of Railroad, Contractor shall remove from Railroad's property any employee of Contractor who fails to conform to the instructions of the Railroad Representative in connection with the work on Railroad's property, and any right of Contractor shall be suspended until such removal has occurred. Contractor shall indemnify Railroad against any claims arising from the removal of any such employee from Railroad's property.

ARTICLE 8 - ADMINISTRATIVE FEE.

Upon the execution and delivery of this Agreement, Contractor shall pay to Railroad _____ Dollars ($_____) as reimbursement for clerical, administrative and handling expenses in connection with the processing of this Agreement.

ARTICLE 9 - CROSSINGS.

No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's trackage shall be installed or used by Contractor without the prior written permission of Railroad.

ARTICLE 10 - EXPLOSIVES.

Explosives or other highly flammable substances shall not be stored on Railroad's property without the prior written approval of Railroad.

IN WITNESS WHEREOF, the parties hereto have duly executed this agreement in duplicate as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY

By: _____
Title: _____

_____
(Name of Contractor)

By: _____
Title: _____

EXHIBIT A
TO
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

General Location

(attached hereto)

EXHIBIT B
TO
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

Section 1. NOTICE OF COMMENCEMENT OF WORK FLAGGING.

A. Contractor agrees to notify the Railroad Representative at least ten (10) working days in advance of Contractor commencing its work and at least ten (10) working days in advance of proposed performance of any work by Contractor in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such ten (10)-day notice, the Railroad Representative will determine and inform Contractor whether a flagman need be present and whether Contractor needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Contractor for such expenses incurred by Railroad, unless Railroad and a federal, state or local governmental entity have agreed that Railroad is to bill such expenses to the federal, state or local governmental entity. If Railroad will be sending the bills to Contractor, Contractor shall pay such bills within thirty (30) days of Contractor's receipt of billing. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad. Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this Agreement.

B. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Contractor (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.

C. Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement

will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Contractor may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Contractor must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Contractor will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

Section 2. **LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.**

A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Railroad to use and maintain its entire property including the right and power of Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by Railroad without liability to Contractor or to any other party for compensation or damages.

B. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of Railroad's property, and others) and the right of Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 3. **NO INTERFERENCE WITH OPERATIONS OF RAILROAD AND ITS TENANTS.**

A. Contractor shall conduct its operations so as not to interfere with the continuous and uninterrupted use and operation of the railroad tracks and property of Railroad, including without limitation, the operations of Railroad's lessees, licensees or others, unless specifically authorized in advance by the Railroad Representative. Nothing shall be done or permitted to be done by Contractor at any time that would in any manner impair the safety of such operations. When not in use, Contractor's machinery and materials shall be kept at least fifty (50) feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroads tracks except at existing open public crossings.

B. Operations of Railroad and work performed by Railroad personnel and delays in the work to be performed by Contractor caused by such railroad operations and work are expected by Contractor, and Contractor agrees that Railroad shall have no liability to Contractor, or any other person or entity for any such delays. The Contractor shall coordinate its activities with those of Railroad and third parties so as to avoid interference with railroad operations. The safe operation of Railroad train movements and other activities by Railroad takes precedence over any work to be performed by Contractor.

Section 4. LIENS.

Contractor shall pay in full all persons who perform labor or provide materials for the work to be performed by Contractor. Contractor shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be created or enforced against any property of Railroad for any such work performed. Contractor shall indemnify and hold harmless Railroad from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished. If Contractor fails to promptly cause any lien to be released of record, Railroad may, at its election, discharge the lien or claim of lien at Contractor's expense.

Section 5. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

A. Fiber optic cable systems may be buried on Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Contractor shall telephone Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on Railroad's property to be used by Contractor. If it is, Contractor will telephone the telecommunications company(ies) involved, make arrangements for a cable locator and, if applicable, for relocation or other protection of the fiber optic cable. Contractor shall not commence any work until all such protection or relocation (if applicable) has been accomplished.

B. In addition to other indemnity provisions in this Agreement, Contractor shall indemnify, defend and hold Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of Contractor, its agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and/or (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Railroad's property. Contractor shall not have or seek recourse against Railroad for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Railroad's property or a customer or user of services of the fiber optic cable on Railroad's property.

Section 6. PERMITS - COMPLIANCE WITH LAWS.

In the prosecution of the work covered by this Agreement, Contractor shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

Section 7. SAFETY.

A. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Contractor. Contractor shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Contractor shall at a minimum comply with Railroad's safety standards listed in **Exhibit D**, hereto attached, to ensure uniformity with the safety standards followed by Railroad's own forces. As a part of Contractor's safety responsibilities, Contractor shall notify Railroad if Contractor determines that any of Railroad's safety standards are contrary to good safety practices. Contractor shall furnish copies of **Exhibit D** to each of its employees before they enter the job site.

B. Without limitation of the provisions of paragraph A above, Contractor shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job.

C. Contractor shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Contractor shall promptly notify Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. Contractor shall have a nondelegable duty to control its employees while they are on the job site or any other property of Railroad, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.

D. If and when requested by Railroad, Contractor shall deliver to Railroad a copy of Contractor's safety plan for conducting the work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require Contractor to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

Section 8. INDEMNITY.

A. To the extent not prohibited by applicable statute, Contractor shall indemnify, defend and hold harmless Railroad, its affiliates, and its and their officers, agents and employees (individually an "Indemnified Party" or collectively "Indemnified Parties") from and against any and all loss, damage, injury, liability, claim, demand, cost or expense (including, without limitation, attorney's, consultant's and expert's fees, and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, any Indemnified Party, Contractor, or any employee of Contractor or of any Indemnified Party) arising out of or in any manner connected with (i) any work performed by Contractor, or (ii) any act or omission of Contractor, its officers, agents or employees, or (iii) any breach of this Agreement by Contractor.

B. The right to indemnity under this Section 8 shall accrue upon occurrence of the event giving rise to the Loss, and shall apply regardless of any negligence or strict liability of any Indemnified Party, except where the Loss is caused by the sole active negligence of an Indemnified Party as established by the final judgment of a court of competent jurisdiction. The

sole active negligence of any Indemnified Party shall not bar the recovery of any other Indemnified Party.

C. Contractor expressly and specifically assumes potential liability under this Section 8 for claims or actions brought by Contractor's own employees. Contractor waives any immunity it may have under worker's compensation or industrial insurance acts to indemnify the Indemnified Parties under this Section 8. Contractor acknowledges that this waiver was mutually negotiated by the parties hereto.

D. No court or jury findings in any employee's suit pursuant to any worker's compensation act or the Federal Employers' Liability Act against a party to this Agreement may be relied upon or used by Contractor in any attempt to assert liability against any Indemnified Party.

E. The provisions of this Section 8 shall survive the completion of any work performed by Contractor or the termination or expiration of this Agreement. In no event shall this Section 8 or any other provision of this Agreement be deemed to limit any liability Contractor may have to any Indemnified Party by statute or under common law.

Section 9. . RESTORATION OF PROPERTY.

In the event Railroad authorizes Contractor to take down any fence of Railroad or in any manner move or disturb any of the other property of Railroad in connection with the work to be performed by Contractor, then in that event Contractor shall, as soon as possible and at Contractor's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed. Contractor shall remove all of Contractor's tools, equipment, rubbish and other materials from Railroad's property promptly upon completion of the work, restoring Railroad's property to the same state and condition as when Contractor entered thereon.

Section 10. WAIVER OF DEFAULT.

Waiver by Railroad of any breach or default of any condition, covenant or agreement herein contained to be kept, observed and performed by Contractor shall in no way impair the right of Railroad to avail itself of any remedy for any subsequent breach or default.

Section 11. MODIFICATION - ENTIRE AGREEMENT.

No modification of this Agreement shall be effective unless made in writing and signed by Contractor and Railroad. This Agreement and the exhibits attached hereto and made a part hereof constitute the entire understanding between Contractor and Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work to be performed by Contractor. Notwithstanding anything to the contrary contained in this Section 11, if Contractor is the Regional Transportation District, a political subdivision of the State of Colorado, the preceding sentence stating that this Agreement and the attached exhibits constitute the entire understanding between Contractor and Railroad and

supersede any prior agreements with respect to the work to be performed by Contactor shall not be applicable.

Section 12. ASSIGNMENT - SUBCONTRACTING.

Contractor shall not assign or subcontract this Agreement, or any interest therein, without the written consent of the Railroad. Contractor shall be responsible for the acts and omissions of all subcontractors. Before Contractor commences any work, the Contractor shall, except to the extent prohibited by law; (1) require each of its subcontractors to include the Contractor as "Additional Insured" in the subcontractor's Commercial General Liability policy and Business Automobile policies with respect to all liabilities arising out of the subcontractor's performance of work on behalf of the Contractor by endorsing these policies with ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage; (2) require each of its subcontractors to endorse their Commercial General Liability Policy with "Contractual Liability Railroads" ISO Form CG 24 17 10 01 (or a substitute form providing equivalent coverage) for the job site; and (3) require each of its subcontractors to endorse their Business Automobile Policy with "Coverage For Certain Operations In Connection With Railroads" ISO Form CA 20 70 10 01 (or a substitute form providing equivalent coverage) for the job site.

EXHIBIT C
TO
CONTRACTOR'S
RIGHT OF ENTRY AGREEMENT

Union Pacific Railroad Company
Insurance Provisions For
Contractor's Right of Entry Agreement

Contractor shall, at its sole cost and expense, procure and maintain during the course of the Project and until all Project work on Railroad's property has been completed and the Contractor has removed all equipment and materials from Railroad's property and has cleaned and restored Railroad's property to Railroad's satisfaction, the following insurance coverage:

A. **Commercial General Liability** insurance. Commercial general liability (CGL) with a limit of not less than $5,000,000 each occurrence and an aggregate limit of not less than $10,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.
- Designated Construction Project(s) General Aggregate Limit ISO Form CG 25 03 03 97 (or a substitute form providing equivalent coverage) showing the project on the form schedule.

B. **Business Automobile Coverage** insurance. **[RTD: this is corrected reference for the ISO form.]** Business auto coverage written on ISO form CA 00 01 03 06 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less $5,000,000 for each accident and coverage must include liability arising out of any auto (including owned, hired and non-owned autos).

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

C. **Workers' Compensation and Employers' Liability** insurance. Coverage must include but not be limited to:

- Contractor's statutory liability under the workers' compensation laws of the state where the work is being performed.
- Employers' Liability (Part B) with limits of at least $500,000 each accident, $500,000 disease policy limit $500,000 each employee.

If Contractor is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy must contain the following endorsement, which must be stated on the certificate of insurance:

- Alternate Employer endorsement ISO form WC 00 03 01 A (or a substitute form providing equivalent coverage) showing Railroad in the schedule as the alternate employer (or a substitute form providing equivalent coverage).

D. **Railroad Protective Liability** insurance. Contractor must maintain Railroad Protective Liability insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than $2,000,000 per occurrence and an aggregate of $6,000,000. A binder stating the policy is in place must be submitted to Railroad before the work may be commenced and until the original policy is forwarded to Railroad.

E. **Umbrella or Excess** insurance. If Contractor utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

F. **Pollution Liability** insurance. Pollution liability coverage must be written on ISO form Pollution Liability Coverage Form Designated Sites CG 00 39 12 04 (or a substitute form providing equivalent liability coverage), with limits of at least $5,000,000 per occurrence and an aggregate limit of $10,000,000.

If the scope of work as defined in this Agreement includes the disposal of any hazardous or non-hazardous materials from the job site, Contractor must furnish to Railroad evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of $1,000,000 per loss, and an annual aggregate of $2,000,000.

Other Requirements

G. All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the indemnity provisions of this Agreement.

H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.

I. Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.

J. Prior to commencing the work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.

K. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state where the work is being performed.

L. The fact that insurance is obtained by Contractor or by Railroad on behalf of Contractor will not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Contractor or any third party will not be limited by the amount of the required insurance coverage.

EXHIBIT D
TO
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

Minimum Safety Requirements

The term "employees" as used herein refer to all employees of Contractor as well as all employees of any subcontractor or agent of Contractor.

I. Clothing

A. All employees of Contractor will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Contractor's employees must wear:

(i) Waist-length shirts with sleeves.
(ii) Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
(iii) Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.

B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.

C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

II. Personal Protective Equipment

Contractor shall require its employees to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

(i) Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Contractor's company logo or name.
(ii) Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
(iii) Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:

- 100 feet of a locomotive or roadway/work equipment
- 15 feet of power operated tools
- 150 feet of jet blowers or pile drivers
- 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)

(iv) Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

III. On Track Safety

Contractor is responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

(i) Maintain a distance of twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.

(ii) Wear an orange, reflectorized workwear approved by the Railroad Representative.

(iii) Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Contractor must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Contractor will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

IV. Equipment

A. It is the responsibility of Contractor to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Contractor's equipment is unsafe for use, Contractor shall remove such equipment from Railroad's property. In addition, Contractor must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:

- Familiar and comply with Railroad's rules on lockout/tagout of equipment.
- Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
- Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other railbound equipment.

B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.

C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.

D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

V. General Safety Requirements

A. Contractor shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.

B. Contractor shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.

C. All track work performed by Contractor meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.

D. All employees comply with the following safety procedures when working around any railroad track:

(i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.

(ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.

(iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).

(iv) Avoid walking or standing on a track unless so authorized by the employee in charge.

(v) Before stepping over or crossing tracks, look in both directions first.

(vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.

E. All employees must comply with all federal and state regulations concerning workplace safety.

Exhibit F

(Attached to and made a part of the
Flyover Easement Agreement dated as of _____, 20___,
between Union Pacific Railroad Company
and Regional Transportation District)

Insurance Requirements

1. Grantee's Insurance Coverage -- During Bridge Construction.

In addition to the insurance coverages required by the Right of Entry Agreement and Section 3 below, Grantee shall procure and maintain at all times, for the period beginning on the date on which Grantee commences construction of the Bridge and continuing through the date on which Grantee commences its commuter rail service on the Bridge, at its sole cost and expense, the following insurance coverages:

1.1 Liability insurance: Commercial general liability (CGL) with a limit of not less than $200,000,000 each occurrence and an aggregate limit of not less than $200,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 or ISO claims made form CG 00 02 12 04 (or substitute forms providing equivalent coverage). Grantee also agrees to purchase an extended reporting period if the retroactive date is advanced or if the policy is canceled or not renewed and not replaced by another claims-made policy with the same (or an earlier) retroactive date during the term of this Easement Agreement. The policy must also contain the following endorsement, which must be stated on the certificate of insurance: "Contractual Liability Railroads" ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.

1.2 Automobile insurance: Business automobile coverage written on ISO form CA 00 01 03 06 (or substitute form providing equivalent liability coverage) with a limit not less $200,000,000 for each accident. Such insurance shall cover liability arising out of any automobile (including owned, hired, and non-owned automobiles). The policy must contain the following endorsements, which must be stated on the certificate of insurance: Coverage For Certain Operations In Connection With Railroads" ISO form CA 20 70 10 01 (or substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site, and Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

1.3 Workers' Compensation and Employers Liability insurance: Coverage must include but not be limited to: Grantee's statutory liability under the workers' compensation laws of the state of Colorado, Employers' Liability (Part B) with limits of at least $500,000 each accident, $500,000 employee for disease and $500,000 policy limit for disease. If Grantee is self-insured, evidence of state approval and excess workers' compensation coverage must be provided. Coverage must include liability arising out of the U.S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

1.4 Railroad Protective Liability insurance: Grantee must maintain "Railroad Protective Liability" insurance written on ISO occurrence form CG 00 35 12 04 (or substitute form providing equivalent coverage) on behalf of Grantor as Named Insured. with a limit of not less than $25,000,000 per occurrence and an aggregate of $25,000,000. A Binder of Insurance stating the policy is in place must be submitted to Grantor before work may be commenced and until the original policy is received by Grantor.

1.5 Pollution Liability insurance: Pollution Liability coverage must be included when any "hazardous" material that is injurious in or upon land, the atmosphere, or any watercourses; or may cause bodily injury at any time are upon property of Grantor. If required, coverage may be provided by a separate policy or by endorsement to Grantee's CGL policy. In either form coverage must be equivalent to that provided in ISO form "Pollution Liability Coverage Form Designated Sites" CG 00 39 12 04 with limits of at least $5,000,000 per occurrence and an aggregate limit of $10,000,000. If the scope of work includes the disposal of any hazardous or non-hazardous materials from the job site, Grantee must furnish Grantor evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of $5,000,000 per loss, and an annual aggregate of $10,000,000.

2. Grantee's Insurance Coverage -- Post-Completion of Bridge.

In addition to the insurance coverages required by the Right of Entry Agreement and Section 3 below, Grantee shall procure and maintain, for the period beginning on the date on which Grantee commences its commuter rail service on the Bridge and continuing until the termination of this Easement Agreement, at its sole cost and expense, the following insurance coverages:

2.1 Liability insurance: Commercial general liability (CGL) with a limit of not less than $400,000,000 each occurrence and an aggregate limit of not less than $400,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 or ISO claims made form CG 00 02 12 04 (or substitute forms providing equivalent coverage). Grantee also agrees to purchase an extended reporting period if the retroactive date is advanced or if the policy is canceled or not renewed and not replaced by another claims-made policy with the same (or an earlier) retroactive date during the term of this Easement Agreement. The policy must also contain the following endorsement, which must be stated on the certificate of insurance: "Contractual Liability Railroads" ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.

2.2 Automobile insurance: Business automobile coverage written on ISO form CA 00 01 03 06 (or substitute form providing equivalent liability coverage) with a limit not less $400,000,000 for each accident. Such insurance shall cover liability arising out of any automobile (including owned, hired, and non-owned automobiles). The policy must contain the following endorsements, which must be stated on the certificate of insurance: Coverage For Certain Operations In Connection With Railroads" ISO form CA 20 70 10 01 (or substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the

Designated Job Site, and Motor-Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

2.3 Workers' Compensation and Employers Liability insurance: Coverage must include but not be limited to: Grantee's statutory liability under the workers' compensation laws of the state of Colorado. Employers' Liability (Part B) with limits of at least $500,000 each accident, $500,000 employee for disease and $500,000 policy limit for disease. If Grantee is self-insured, evidence of state approval and excess workers' compensation coverage must be provided. Coverage must include liability arising out of the U.S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

2.4 Pollution Liability insurance: Pollution Liability coverage must be included when any "hazardous" material that is injurious in or upon land, the atmosphere, or any watercourses; or may cause bodily injury at any time are upon property of Grantor. If required, coverage may be provided by a separate policy or by endorsement to Grantee's CGL policy. In either form coverage must be equivalent to that provided in ISO form "Pollution Liability Coverage Form Designated Sites" CG 00 39 12 04 with limits of at least $5,000,000 per occurrence and an aggregate limit of $10,000,000. If the scope of work includes the disposal of any hazardous or non-hazardous materials from the job site, Grantee must furnish Grantor evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of $5,000,000 per loss, and an annual aggregate of $10,000,000.

3. Grantee's Insurance Coverage – During the Term of this Easement Agreement.

The following applies to all insurance coverages required to be obtained by Grantee pursuant to this Easement Agreement:

3.1 Umbrella or Excess insurance: If Grantee utilizes umbrella or excess policies to comply with the limits of coverage required, these policies must "follow form" and afford no less coverage than the primary policy.

3.2 All policy(ies) required above (except worker's compensation and employer's liability) must include Grantor as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Grantor as Additional Insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Grantor's negligence whether sole or partial, active or passive.

3.3 Any punitive damages exclusion must be deleted (and the deletion indicated on the certificate of insurance), unless (i) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this Easement Agreement, or (ii) Grantee would not be liable for such damages pursuant to C.R.S. § 24-10-114, as such statute may be amended.

3.4 Grantee waives all rights against Grantor, its affiliates, and their respective agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the workers' compensation and employer's liability or commercial umbrella or

excess liability insurance obtained by Grantee required by this Easement Agreement (which must be stated on the certificate of insurance.)

3.5 Prior to commencing any work on the Easement Property or the Bridge, Grantee shall furnish Grantor with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Easement Agreement.

3.6 All insurance policies must be written by a reputable insurance company acceptable to Grantor or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state of Colorado.

3.7 Subject to Section 19 of this Easement Agreement, the fact that insurance is obtained by Grantee will not be deemed to release or diminish the liability of Grantee, including without limitation, liability under the indemnity provisions of this Easement Agreement, and damages recoverable by Grantor from Grantee or any third party will not be limited by the amount of the required insurance coverage.

4. Self-Funding.

Grantee may elect to self-fund the first $10,000,000 of the coverage limits required hereunder, provided all coverages and named insureds are as set forth in this Easement Agreement. If Grantee so elects, it shall secure and maintain an unconditional and irrevocable standby Letter of Credit addressed to Grantor equal to the then current self-funded portion of the requirement. The issuer of the Letter of Credit shall be a bank with a long term senior debt rating of not less than "A(2)" by Moody's Investment Service or "A" by Standard & Poor's. In the event Grantee fails to meet its obligation with respect to claims within the self-funded retention under any insurance policy provided in this Easement Agreement, Grantor shall have the right, upon ten (10) days' notice to Grantee, to draw upon the Letter of Credit to satisfy such claims and seek interest from Grantee in the amount of 10 percent (10%) per annum retrospective to the date of any payment by Grantor.

5. Adjustments.

Within thirty (30) days after any amendment, expiration or repeal, or judicial invalidation of the statutory cap on liability set forth at 49 U.S.C. § 28103, and no more than once on each three (3) year anniversary of the date of this Easement Agreement, Grantee and Grantor shall consider the losses paid under the insurance and self-funded retentions described in this Easement Agreement, along with any other relevant information, and shall determine whether there are reasonable grounds to adjust the limits of insurance required by this Easement Agreement or the amount of or maximum for the self-funded retentions. In addition, once every five (5) years Grantor shall have the right to adjust insurance limits, and insurance coverages required by this Easement Agreement consistent with inflation and current insurance and risk management practice. Any disputes with respect to whether there are grounds for such adjustments shall be subject to arbitration in accordance with this Easement Agreement.

6. Review.

Grantor shall have the right to review and approve commercial insurance policies obtained by Grantee for compliance with the obligations set forth in this Easement Agreement; provided that such approval shall not constitute a waiver of any non-compliance with this Easement Agreement.

EXHIBIT E TO ADDENDUM C

(Attached to and made a part of
Addendum C to the Property Transfer and Railroad Relocation Agreement
Limon and Greeley Subdivisions/East Corridor)

Limon and Greeley Subdivisions/East Corridor Seller Relocation Property

(see attached depiction)

EXHIBIT F TO ADDENDUM C

(Attached to and made a part of
Addendum C to the Property Transfer and Railroad Relocation Agreement
Limon and Greeley Subdivisions/East Corridor)

Quitclaim Deed

[Two counties (Adams and Denver) – each County may have different reservations]

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Regional Transportation District
1600 Blake Street
Denver, CO 80202-1399
Attn: Marla L. Lien, Esq.

No Documentary Fee Required – Grantee is a Governmental Entity.

QUITCLAIM DEED

[City and] County of _____, Colorado

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Union Pacific Railroad Company, a Delaware corporation ("Grantor") remises, releases and quitclaims to Regional Transportation District, a political subdivision of the State of Colorado ("Grantee") whose legal address is 1600 Blake Street, Denver, Colorado 80202, all right, title, interest, claim and demand that Grantor has in and to that property, located in the **[City and]** County of _____, State of Colorado, as more particularly described in Exhibit A attached hereto and by this reference made a part hereof, together with improvements, if any, located thereon and other appurtenances thereto, including without limitation, all strips, gaps and gores (collectively, the "Property"), in as-is condition, subject to, *inter alia*, the exclusions, exceptions and reservations set forth below. Grantor and Grantee acknowledge that part of the Property is a portion of Grantor's federally granted railroad right-of-way, and that this quitclaim is made pursuant to the provisions of 43 U.S.C.§ 913, which authorizes the transfer of a portion of such right-of-way to certain governmental entities for use as a public highway or street.

EXCEPTING from this quitclaim and RESERVING unto Grantor, its successors and assigns (including without limitation, lessees, sublessees, easement owners and licensees of Grantor) forever, all minerals and all mineral rights of every kind and character (including

without limitation, all oil, gas, sulfur, iron ore, coal, lignite, uranium, limestone, building stone, caliche, rock, shale, gravel, and other minerals (whether or not of like kind or character) in and under the Property) now known to exist or hereafter discovered five hundred (500) feet or more below the surface, including, without limiting the generality of the foregoing, oil and gas and rights thereto, together with the sole, exclusive and perpetual right to explore for, remove and dispose of said minerals by any means or methods suitable to Grantor, its successors and assigns, but without entering upon or using the surface of the Property, and in such manner as not to damage the surface of said property or to compromise the frequency or safety of Grantee's passenger commuter rail service or to otherwise materially interfere with the surface or subsurface use or intended use thereof by Grantee.

ALSO EXCEPTING from this quitclaim and RESERVING unto Grantor, its successors and assigns (including without limitation, lessees, sublessees, easement owners and licensees of Grantor) forever, all surface and subsurface water rights pertaining or appurtenant to or used in connection with the Property, including without limitation, water rights reserved or granted by easements or judgments (the "**Water Rights**"), together with a perpetual easement for vehicular and pedestrian access in, on, over, under, across and through the Property for purposes of the use, enjoyment, maintenance, operation and access of and to the Water Rights; provided however, that the Water Rights shall be utilized in such manner as not to damage the surface of the Property or to compromise the frequency or safety of Grantee's passenger commuter rail service or to otherwise materially interfere with the surface or subsurface use or intended use thereof by Grantee.

[UP to verify prior to Closing if needed] ALSO EXCEPTING from this quitclaim and RESERVING unto Grantor, its successors and assigns (including without limitation, lessees, sublessees, licensees and easement owners of Grantor) forever, a perpetual, non-exclusive easement (the "**Access Easement**") in, on, under, upon, over, through and across a portion of the Property described in Exhibit B attached hereto and by this reference made a part hereof (the "**Access Easement Property**") for use as a roadway for vehicular and pedestrian ingress to and egress from the adjacent property owned by Grantor, and the construction and maintenance of improvements in connection therewith. Grantor, at its own cost and expense, shall construct and maintain any improvements necessary or convenient to facilitate Grantor's use of the Access Easement (the "**Access Improvements**"). Grantor shall also have the right to use the Access Easement for the purpose of construction and maintenance of the Access Improvements; provided however, that Grantor shall give Grantee at least ten (10) days' advance written notice of any intended entry upon the Access Easement Property for construction and maintenance purposes, and Grantor shall in any event conduct such construction and maintenance so as to avoid unnecessary interference with Grantee's activities on the Access Easement Property. The Access Easement shall be for the use by Grantor, and its employees, agents, contractors, lessees, licensees, easement owners, permittees, invitees, guests, successors and assigns, and shall run with and benefit Grantor's adjacent property.

ALSO EXCEPTING from this quitclaim and RESERVING unto Grantor, its successors and assigns (including, without limitation, lessees, sublessees, easement owners and licensees of Grantor) forever, a perpetual, non-exclusive easement (the "**Communication Easement**") in, on, under, upon, over, through and across the portion of the Property described in Exhibit B attached hereto and by this reference made a part hereof (the "**Communication**

Easement Property"), together with necessary rights of access for the easement purposes authorized hereunder in, on, over, through and across the Property; provided, however, that the necessary rights of access for the easement purposes shall be exercised in a manner that remains subject to the rights and powers of Grantee to construct, maintain, repair, remove, use, operate, change, modify or relocate railroad tracks, signal, communication or other wire or fiber lines, pipelines and other facilities upon, along or across any or all parts of the Property. When such access is needed by Grantor and/or its lessees, sublessees, licensees, easement owners, successors and/or assigns, Grantee shall not unreasonably withhold or delay consent and approval to methods and timing of all such access. Grantor and its lessees, sublessees, licensees, easement owners, successors and assigns shall have the right in, on, under, upon, over, through and across the Communication Easement Property to own, construct, reconstruct, maintain, repair, operate, use, relocate and/or remove, existing and future fiber optic and other communication systems, lines and facilities and all rights related thereto (collectively, the "**Communication Improvements**"). Grantee covenants that it shall not construct any structures or improvements in, on, under, upon, over, through or across the Communication Easement Property, except in accordance with the terms of Grantor's existing agreements for Communication Improvements and that Grantor shall not enter into any agreements with other third parties with respect to Communication Improvements on the Communication Easement Property after the date hereof.

The parties contemplate that some portions of the existing Communication Improvements may need to be relocated to accommodate Grantee's proposed public transportation project on the Property. In such event, upon notice from Grantee, Grantor will (i) provide notice to the impacted lessees, sublessees, easement owners and licensees, and (ii) review (and approve, in Grantor's sole discretion) any designs proposed by Grantee for relocating onto Grantor's adjacent property those utilities that cannot be accommodated on the Property due to Grantee's proposed public transportation project. The parties will cooperate to ensure that such project is performed in accordance with the terms of Grantor's existing agreements for Communications Improvements and the terms of the Agreement Regarding Engineering Design for Limon and Greeley Subdivisions/East Corridor Relocation between Grantor and Grantee, dated March 13, 2009, as amended and/or restated (the "Engineering Agreement"). Such relocation project shall be (a) constructed at the sole cost and expense of parties other than Grantor, in a manner that will provide Grantor and the owners of the Communication Improvements the ability to maintain continuous communications and utility connections and service at existing service levels, (b) closely coordinated with and reasonably approved by Grantor, (c) coordinated with and approved by the owners of the Communication Improvements, and (d) performed in accordance with the Engineering Agreement. After the Communication Improvements relocation project is completed, and on the conditions that (1) the relocated Communication Easement Property (including without limitation any relocated easement area that is not located within the Property) has been described in a manner acceptable to Grantor and, if not currently owned by Grantor, has been conveyed to Grantor and insured to Grantor's reasonable satisfaction by a title company reasonably acceptable to Grantor, at Grantee's expense, and (2) Grantee shall have executed and delivered a bill of sale either to Grantor or the owners of the Communication Improvements, as appropriate, for all of the Communication Improvements on the relocated Communication Easement Property, then Grantor shall quitclaim (subject to a reservation of Grantor's other remaining easement interests in the area) its existing Communication Easement in that portion of the Property from which such Communication Improvements have been relocated.

Notwithstanding any other provision of this Quitclaim Deed, Grantor's quitclaim in favor of Grantee hereunder is subject to, and the easement reserved herein shall allow Grantor to honor its grant and fulfill its other obligations and exercise its rights under, all existing agreements for Communication Improvements, and this Quitclaim Deed shall not impair, restrict or limit the rights of any communications company under any existing agreement. All Communication Improvements presently existing on or hereafter constructed on the Communication Easement Property shall remain the personal property of Grantor or the entity to which they belong. Grantor shall be entitled to all revenues and consideration derived from all current and future agreements to which Grantor is a party affecting the Communication Easement Property.

ALSO EXCEPTING from this quitclaim and RESERVING unto Grantor, its successors and assigns (including without limitation, lessees, sublessees, licensees and easement owners of Grantor) forever, a perpetual, non-exclusive easement (the "**Utility Easement**") in, on, under, upon, over, through and across the portion of the Property described in Exhibit B attached hereto and by this reference made a part hereof (the "**Utility Easement Property**"), together with necessary rights of access for the purposes of exercising the rights herein reserved in, on, under, upon, over, through and across the Property. Grantor and its lessees, sublessees, licensees, easement owners, successors and assigns shall have the right in, on, under, upon, over, through and across the Utility Easement Property to own, construct, reconstruct, install, maintain, inspect, repair, operate, use, relocate and/or remove existing and/or future fixtures, utility systems, lines, conduits, tubing, and facilities and all rights related thereto (collectively, the "**Utility Improvements**"). Grantee covenants that it shall not construct any structures or improvements under, over, in, on, through or across the Utility Easement Property, except in accordance with the terms of Grantor's existing agreements for Utility Improvements.

The parties contemplate that some portions of the existing Utility Improvements may need to be relocated to accommodate Grantee's proposed public transportation project on the Property. The parties will cooperate to ensure that such project is performed in accordance with the terms of Grantor's existing agreements for Utility Improvements and the terms of the Engineering Agreement. Such relocation project shall be (i) constructed at the sole cost and expense of parties other than Grantor, in a manner that will provide Grantor and the owners of the Utility Improvements the ability to maintain continuous utility connections and service at existing service levels, (ii) closely coordinated with and reasonably approved by Grantor, (iii) coordinated with and approved by the owners of the Utility Improvements, and (iv) performed in accordance with the Engineering Agreement. After the Utility Improvements relocation project is completed, and on the conditions that (a) the relocated Utility Easement Property (including without limitation any relocated easement area that is not located within the Property) has been described in a manner acceptable to Grantor and, if not currently owned by Grantor, has been conveyed to Grantor and insured to Grantor's reasonable satisfaction by a title company reasonably acceptable to Grantor, at Grantee's expense, and (b) Grantee shall have executed and delivered a bill of sale either to Grantor or the owners of the Utility Improvements, as appropriate, for all of the Utility Improvements on the relocated Utility Easement Property, then Grantor shall quitclaim (subject to a reservation of Grantor's other remaining easement interests in the area) its existing Utility Easement in that portion of the Property described from which such relocated Utility Improvements have been relocated.

Notwithstanding any other provision of this Quitclaim Deed, Grantor's quitclaim in favor of Grantee hereunder is subject to, and the easement reserved herein shall allow Grantor to honor its grant and fulfill its other obligations and exercise its rights under, all existing agreements for Utility Improvements, and this Quitclaim Deed shall not impair, restrict or limit the rights of any communications company under any existing agreement. All Utility Improvements presently existing on or hereafter constructed on the Utility Easement Property shall remain the personal property of the Grantor or the entity to which they belong. Grantor shall be entitled to all revenues and consideration derived from all current agreements to which Grantor is a party affecting the Utility Easement Property.

[UP to verify prior to Closing if needed] ALSO EXCEPTING from this quitclaim and RESERVING unto Grantor, its successors and assigns forever, a perpetual, exclusive easement (the "**Railroad Facilities Easement**") in, on and under the portion of the Property described in Exhibit B attached hereto and by this reference made a part hereof (the "**Railroad Facilities Easement Property**"), in which areas Grantor and its lessees, sublessees, easement owners, licensees, successors and assigns shall have the right to own, possess, use, store, construct, reconstruct, install, maintain, inspect, repair, operate, relocate, upgrade, renew, replace and/or remove existing and/or future railroad-related equipment and facilities and any related utilities, including without limitation those facilities described in Exhibit C attached hereto and by this reference made a part hereof (the "**Railroad Facilities**"). Grantee shall be prohibited from (i) using all or any portion of the Property for freight rail purposes, and (ii) without Grantor's prior written consent, removing, modifying or interfering in any manner with the Railroad Facilities located on the Railroad Facilities Easement Property.

Without limiting the foregoing, Grantee and its successors and assigns shall have the right to use the Property in any manner not inconsistent with Grantor's rights reserved in this Quitclaim Deed, and with Grantor's rights under the Operations Agreement – Limon and Greeley Subdivisions/East Corridor, between the parties and dated of even date herewith (the "**Operations Agreement**"), and consistent with applicable laws.

Except with respect to the income generated by any existing or future agreements relating to the reserved mineral rights, the Water Rights, the Communication Easement and the Utility Easement (which income is expressly reserved by Grantor), Grantee shall be entitled to all income (including without limitation, rentals and license fees) from any use rights granted by Grantor or Grantor's predecessors in interest. Grantee agrees that if Grantee receives any income that relates to any of Grantor's reservations in this Quitclaim Deed, Grantee will promptly forward the income to Grantor, but Grantee shall have no obligation to collect such income.

In addition to (and not in limitation of), and without prejudice to or limitation of any other indemnity provisions or legal remedies in this Quitclaim Deed or any other remedies at law or in equity, and subject to any limitations specific to Regional Transportation District contained in Section 12.10 of the Operations Agreement, Grantee agrees to defend and indemnify Grantor and Grantor's affiliates and their respective officers, directors and employees against all claims, suits and demands for Losses (as defined herein) arising out of injury or death sustained by any person, and/or damage to property with respect to the Property, Grantee's East Corridor and/or Grantor's Limon and Greeley Subdivisions when (a) such Loss would not have occurred but for Grantee's operation and maintenance of public passenger rail service or the

construction and/or presence of Grantee's infrastructure on Grantee's East Corridor (including without limitation the Property) or Grantor's Limon or Greeley Subdivisions, or (b) such Loss arose out of an incident occurring on Grantee's East Corridor. For purposes of this Quitclaim Deed, the term "Loss" or "Losses" shall mean all losses, damages, claims, demands, costs, liabilities, judgments and civil penalties, fees and expenses of any nature arising out of or in connection with the death of or injury to persons, or damage to or destruction of property (including repair and replacement expenses) and/or natural resources. "Loss" or "Losses" also shall include without limitation (i) investigation costs, cleanup costs, and remediation costs attributable to spills, emissions, discharges or other releases of hazardous materials; (ii) reduced revenues of Grantor and other economic losses to the extent the party claiming such losses can demonstrate that either damage to or destruction of property, or disruption of freight or passenger rail service, was the proximate cause of such losses; (iii) costs and expenses incurred in connection with the investigation, adjustment and defense of any claim, suit, appeal or arbitration pertaining to a Loss, including reasonable attorneys' and expert witness fees; and (iv) salaries or wages and associated benefits of, and out-of-pocket expenses incurred by or with respect to, employees of either party engaged directly in such investigation, adjustment and defense and a reasonable amount of allocated salaries and wages of employees providing support services to such employees so engaged directly in such work.

This Quitclaim Deed may be executed in one (1) or more counterparts, each of which, when so executed, shall be deemed to be an original. Such counterparts shall together constitute and be one and the same instrument.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Quitclaim Deed as of the ___ day of _____, 20__.

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
_____ Secretary

(SEAL)

REGIONAL TRANSPORTATION DISTRICT,
a political subdivision of the State of Colorado

By: _____
Name: _____
Title: General Manager

APPROVED AS TO LEGAL FORM FOR
THE REGIONAL TRANSPORTATION DISTRICT:

By: _____
Legal Counsel

STATE OF NEBRASKA)
)
COUNTY OF DOUGLAS)

On _____, 20_, before me, a Notary Public in and for said County and State, personally appeared _____ and _____, who are the _____ and the _____ Secretary, respectively, of UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

My Commission expires:

_____
Notary Public

(SEAL)

STATE OF COLORADO)
) ss
COUNTY OF)

The foregoing instrument was acknowledged before me this ___ day of _____, 20__, by _____ as General Manager of the REGIONAL TRANSPORTATION DISTRICT, a political subdivision of the State of Colorado.

WITNESS my hand and official seal.

My Commission expires:

_____
Notary Public

(SEAL)

Exhibit A

(Attached to and made a part of the
Quitclaim Deed dated as of _____, 20__,
from Union Pacific Railroad Company
to Regional Transportation District)

The Property

(see attached)

Exhibit B

(Attached to and made a part of the
Quitclaim Deed dated as of _____, 20__,
from Union Pacific Railroad Company
to Regional Transportation District)

Certain Easement Properties

ACCESS EASEMENT PROPERTY:

RAILROAD FACILITIES EASEMENT PROPERTY:

COMMUNICATION EASEMENT PROPERTY:

UTILITY EASEMENT PROPERTY:

(see attached depictions)

As a condition to this Addendum C and the Closing contemplated hereunder (i) Purchaser shall perform a survey and prepare the legal descriptions for the above easement properties for Seller's approval at least sixty (60) days prior to the Closing under Addendum C; (ii) the parties shall then work jointly to resolve any legal description and/or survey issues; and (iii) both parties shall approve, initial and attach to this Exhibit B revised depictions and the complete legal descriptions for the above easement properties at least thirty (30) days prior to such Closing.

Exhibit C

(Attached to and made a part of the
Quitclaim Deed dated as of _____, 20__,
from Union Pacific Railroad Company
to Regional Transportation District)

Excepted and Excluded Improvements and Railroad Facilities

Excluded Improvements:

Excluded Railroad Facilities:

EXHIBIT G TO ADDENDUM C

(Attached to and made a part of
Addendum C to the Property Transfer and Railroad Relocation Agreement
Limon and Greeley Subdivisions/East Corridor)

Operations Agreement and Memorandum thereof

(see attached)

RECORDING REQUESTED BY
AND WHEN RECORDED, MAIL TO:

Jacobs Chase & Kelley, LLC
1050 17th Street, Suite 1500
Denver, CO 80265
Attn: Jill K Rood, Esq.

MEMORANDUM OF OPERATIONS AGREEMENT — LIMON AND GREELEY SUBDIVISIONS / EAST CORRIDOR
[NEEDS TO BE RECORDED IN 2 COUNTIES]

THIS MEMORANDUM OF OPERATIONS AGREEMENT—LIMON AND GREELEY SUBDIVISIONS / EAST CORRIDOR (this "**Memorandum**") is entered into as of _____ __, 20__ (the "**Effective Date**"), by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("**UP**") and **REGIONAL TRANSPORTATION DISTRICT**, a political subdivision of the State of Colorado ("**RTD**") (collectively, the "**Parties**").

WITNESSETH

UP and RTD have entered into an Operations Agreement—Limon and Greeley Subdivisions / East Corridor as of the Effective Date (the "**Agreement**") setting forth the terms and conditions of UP and RTD's operation of their separate portions of the lines running generally parallel to and contiguous with one another on UP's Limon and Greeley Subdivisions and RTD's East Corridor, respectively, and generally located (i) east to west between UP's MP ___ and MP ___, and (ii) near UP's MP _____ where UP's Limon and Greeley Subdivisions and RTD's East Corridor have boundary lines lying within one hundred (100) feet of each other, as both lines are generally shown on Exhibit A attached hereto and by this reference made a part hereof. UP and RTD desire to record this Memorandum for the purpose of placing the public on notice of inquiry as to the specific provisions, terms, covenants and conditions of the Agreement, including without limitation certain provisions regarding Denver Union Station rights under Article 5, insurance under Article 7, liability under Article 8, labor protection under Article 10 and termination under Article 11 of the Agreement. All of the provisions of the Agreement are incorporated herein by reference with the same force and effect as if herein set forth in full.

This Memorandum is being recorded in lieu of recording the Agreement itself for the purpose of placing the public on notice of inquiry as to the specific provisions, terms, covenants and conditions thereof, and nothing herein contained is intended to or does change, modify or affect any of the terms or provisions of the Agreement or the rights, duties, obligations and covenants created thereby, all of which remain in full force and effect.

This Memorandum may be executed in one (1) or more counterparts, each of which, when so executed, shall be deemed to be an original. Such counterparts shall together constitute and be one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Memorandum to be executed by their duly authorized representatives as of the Effective Date.

ATTEST: By: _____ _____ Secretary *(SEAL)*	UNION PACIFIC RAILROAD COMPANY, a Delaware corporation By: _____ Name: _____ Title: _____
APPROVED AS TO LEGAL FORM FOR THE REGIONAL TRANSPORTATION DISTRICT: By: _____ Legal Counsel	REGIONAL TRANSPORTATION DISTRICT, a political subdivision of the State of Colorado By: _____ Name: _____ Title: General Manager

[Notary acknowledgments appear on the following page.]

STATE OF NEBRASKA)
)
COUNTY OF DOUGLAS)

On _____, 20__, before me, a Notary Public in and for said County and State, personally appeared _____ and _____, who are the _____ and the _____ Secretary, respectively, of UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

My Commission expires:

_____
Notary Public

(SEAL)

STATE OF COLORADO)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 20__, by _____ as General Manager of the REGIONAL TRANSPORTATION DISTRICT, a political subdivision of the State of Colorado.

WITNESS my hand and official seal.

My Commission expires:

_____
Notary Public

(SEAL)

Exhibit A

(Attached to and made a part of the
Memorandum of Operations Agreement — Limon and Greeley Subdivisions / East Corridor
between UP and RTD)

Depiction of the lines

(see attached)

EXHIBIT H TO ADDENDUM C

(Attached to and made a part of
Addendum C to the Property Transfer and Railroad Relocation Agreement
Limon and Greeley Subdivisions/East Corridor)

Private Crossing and Roadway License Agreement

(see attached)

PRIVATE CROSSING AND ROADWAY LICENSE AGREEMENT

Mile Post _____, Greeley Subdivision
Location: City and County of Denver, State of Colorado

THIS PRIVATE CROSSING AND ROADWAY LICENSE AGREEMENT (this "Agreement") is made by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (the "Licensor"), whose address is 1400 Douglas Street STOP 1690, Omaha, Nebraska 68179-1690, and REGIONAL TRANSPORTATION DISTRICT, a political subdivision of the State of Colorado (the "Licensee"), whose address is 1600 Blake Street, Denver, Colorado 80202. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Licensor and the Licensee hereby agree as follows:

Article 1. LICENSOR GRANTS RIGHT.

The Licensor hereby grants to the Licensee a non-exclusive license (the "License") in, on, over, through and across the private railroad track crossing and roadway depicted on Exhibit A, attached hereto and hereby made a part hereof, as "Roadway Crossing" and "Roadway," respectively, for purposes of (a) maintaining, repairing and replacing the Roadway Crossing and Roadway, including without limitation any traffic signs and devices, identification signs, drainage facilities and other improvements located on the Roadway Crossing and Roadway and (b) private vehicular ingress to and egress from the Roadway Crossing and Roadway, subject to the terms and conditions set forth in this Agreement and in Exhibit B, Exhibit C and Exhibit D, attached hereto and hereby made a part hereof. Notwithstanding anything to the contrary contained in the preceding sentence, the Licensee shall not have a license to conduct any work (including without limitation any maintenance, repair or replacement) on that portion of the Roadway Crossing lying between the rails of the tracks and for one (1) foot on the outside of each rail. The Licensee may allow its contractors, subcontractors, agents and invitees to use its License only in accordance with all terms and conditions of this Agreement (including without limitation executing a Right of Entry Agreement (defined below), but excluding Exhibit C hereto which is applicable only to Licensee).

Article 2. LICENSE FEE.

A. In consideration of the License, the Licensee agrees to observe and abide by the terms and conditions of this Agreement and to pay to the Licensor an annual license fee of Two Hundred Dollars ($200.00) ("License Fee"), payable in advance for each five (5) year period, and commencing on the date hereof.

B. Effective on or after the fifth (5th) anniversary of this Agreement and on or after the anniversary date of each subsequent five-year period, the Licensor may increase the base amount upon which the License Fee is computed after providing the Licensee written notice thereof. Any such increases in the License Fee may be made by means of automatic adjustment in billing, may be made only once during each such five-year period and shall not be applied retroactively.

Article 3. RIGHT OF ENTRY.

The Licensee acknowledges and agrees that, prior to each exercise of its License described in Article 1 subsection (a) above, it shall execute the Licensor's then-current form of the Contractor's Right of Entry Agreement ("Right of Entry Agreement"). The current form of the Right of Entry Agreement is attached hereto as Exhibit D. If a contractor, subcontractor or agent of the Licensee is to perform any work in connection with the Roadway Crossing or Roadway, then Licensee shall require and cause such contractor, subcontractor or agent to execute the Right of Entry Agreement prior to the commencement of any such work. Licensee acknowledges and agrees that it will inform its contractors, subcontractors and agents of the need to execute the Right of Entry Agreement prior to commencing any work on the Roadway Crossing or Roadway. Notwithstanding anything to the contrary contained herein, under no circumstances will Licensee or Licensee's contractors, subcontractors or agents be allowed to enter the Roadway Crossing or Roadway for any purpose (a) prior to executing the Right of Entry Agreement or (b) if Licensee or such contractor, subcontractor or agent is in breach of any of the terms or conditions of this Agreement or the Right of Entry Agreement.

Article 4. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.

The Licensee agrees to notify the Licensor at least ten (10) working days (or such other time as Licensor may allow in the event of an emergency or otherwise) in advance of the commencement of any maintenance, repair or replacement work authorized hereunder (including without limitation the proposed performance of any work in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track). No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of the Licensor's track(s) at any time, for any reason, unless and until a Licensor flagman is provided to watch for trains. Upon receipt of such ten (10)-day notice, the Licensor will determine and inform the Licensee or its contractor whether a flagman need be present and whether the Licensee or its contractor needs to implement any special protective or safety measures. If the Licensor performs any flagging, or other special protective or safety measures are performed by the Licensor, the Licensee or its contractor agrees that it is not relieved of any of its responsibilities or liabilities set forth in this Agreement. Licensee acknowledges and agrees that it shall be subject to and comply with the notice of commencement of work and flagging provisions as more particularly described in the Right of Entry Agreement.

Article 5. INSURANCE.

A. At all times during the term hereof and prior to any entry upon the Roadway Crossing or Roadway, the Licensee shall comply with Licensor's insurance requirements described in Exhibit C, attached hereto and hereby made a part hereof, and any amendments or modifications by the Licensor thereto; provided however that the Licensor must provide the Licensee with reasonable notice of any material changes to such insurance requirements.

B. The Licensee shall provide the Licensor with a certificate, identifying Folder No._____, issued by the insurance carrier providing the insurance coverage required pursuant to Exhibit C that contains the following endorsement:

> UNION PACIFIC RAILROAD COMPANY ("Licensor") is named as additional insured with respect to all liabilities arising out of Insured's (as the Licensee) construction, maintenance and use of the road encroachment on the Licensor's property.

C. The Licensee warrants that this Agreement has been thoroughly reviewed by its insurance agent(s)/broker(s) and that said agent(s)/broker(s) has been instructed to procure insurance coverage and an endorsement as required herein.

D. All insurance correspondence shall be directed to:

Union Pacific Railroad Company
Real Estate Department
1400 Douglas Street, Mail Stop 1690
Omaha, Nebraska 68179
Attn.: Folder No. _____.

Article 6. TERM.

This Agreement shall be effective as of the date first herein written, and shall continue in full force and effect until terminated as provided in Exhibit B.

Article 7. WARNING DEVICES.

If at any time the governing body having jurisdiction over the Roadway Crossing or Roadway or Licensor determines that active warning devices are required for any reason, all costs associated with the installation, design and maintenance of the same shall be at the sole expense of the Licensee. The Licensee shall be responsible to pay, at its sole expense, all costs associated with necessary improvements and maintenance costs incurred by the Licensor, for the entire Roadway Crossing surface (including without limitation on all tracks) and Roadway surface, if determined the Roadway Crossing or Roadway surface is in need of replacement or improvements.

Article 8. SPECIAL PROVISIONS.

None.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

LICENSOR:

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

By: _____
Name: _____
Title: _____

LICENSEE:

APPROVED AS TO LEGAL FORM FOR THE REGIONAL TRANSPORTATION DISTRICT:

By: _____
Legal Counsel

REGIONAL TRANSPORTATION DISTRICT,
a political subdivision of the State of Colorado

By: _____
Name: _____
Title: General Manager

Exhibit A

(Attached to and made a part of the
Private Crossing and Roadway License Agreement dated _____, 20___.
between Union Pacific Railroad Company
and Regional Transportation District)

Depiction of Roadway Crossing and Roadway

Exhibit B

(Attached to and made a part of the
Private Crossing and Roadway License Agreement dated _____, 20___,
between Union Pacific Railroad Company
and Regional Transportation District)

Additional Terms and Conditions

This Exhibit B contains additional terms, conditions, limitations and covenants applicable to the Private Crossing and Roadway License Agreement to which it is attached and incorporated by reference ("Agreement"). Unless otherwise specified herein, the capitalized terms used in this Exhibit B shall have the meanings set forth in this Agreement.

SECTION 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.

(a) The rights granted to the Licensee are subject and subordinate to the prior and continuing right and obligation of the Licensor to use and maintain its entire railroad right of way, and are also subject to the right and power of the Licensor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication, fiber optics or other wire lines, pipelines and other facilities upon, along or across any or all parts of said right of way, any of which may be freely done at any time by the Licensor without liability to the Licensee or to any other party for compensation or damages.

(b) The Licensor makes no covenant or warranty of title, for quiet possession or against encumbrances with respect to the Roadway Crossing or Roadway. This Agreement is subject and subordinate to all licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens and claims of title that may affect the Roadway Crossing or Roadway now or in the future (whether public or private) and whether recorded or unrecorded (including, without limitation, those in favor of grantees, lessees and licensees of the Licensor's property and others).

(c) It is expressly stipulated that the Roadway Crossing and Roadway are to be strictly private and are not intended for public use. The Licensee, without expense to the Licensor, will take any and all necessary action to preserve the private character of the Roadway Crossing and Roadway and to prevent use of the same as a public road.

SECTION 2. MAINTENANCE AND USE.

(a) The Licensor, at the sole expense of the Licensee, shall maintain, repair and replace the portion of the Roadway Crossing lying between the rails of the tracks and for one (1) foot on the outside of each rail; provided however, that such work shall be limited to that required for the safe and efficient operation of the Licensor's tracks, and such other maintenance as the Licensor has agreed to perform on specific prior written request of the Licensee. Notwithstanding anything to the contrary contained in this Agreement, the Licensee shall not perform any work within the portion of the Roadway Crossing described in the preceding sentence. The Licensee, at its own expense, shall maintain the Roadway and any portion of the Roadway Crossing not described in the first sentence of this Section 2 and shall keep the rail flangeways clear of obstructions.

(b) The Licensee shall, at its sole expense, maintain, repair, renew and replace the Roadway Crossing and Roadway road surfaces, together with all drainage facilities, traffic signs and devices, identification signs and drainage facilities that are located on or near the Roadway Crossing or Roadway, and shall maintain the same to a standard that is equal to or better than the condition of such road surfaces or improvements as of the date hereof. The Licensee shall, at its own expense, install and thereafter maintain any such appurtenances on the Roadway Crossing or Roadway that may subsequently be required by the Licensor, by law, or by any public authority having jurisdiction. The Licensee shall maintain and control vegetation along the Roadway and the right of way on each side of the Roadway Crossing so that the Licensee's line of sight to approaching trains is not impaired or obstructed by vegetation and in compliance with local zoning regulations. All work performed by the Licensee on the Roadway Crossing and/or Roadway shall be done to the satisfaction of the Licensor.

(c) The Licensee shall require all vehicles approaching the Roadway Crossing to stop a safe distance from the tracks before crossing the tracks. The Licensee shall not do, suffer or permit anything which will or may obstruct, endanger or interfere with, hinder or delay the maintenance and operation of the Licensor's railroad tracks or appurtenant facilities or the facilities or equipment of others lawfully using the Licensor's property. The Licensee shall adequately supervise and police use of said Roadway Crossing so that no person or vehicle stops or stands on the Licensor's tracks or attempts to cross the Licensor's railroad tracks when a railroad train, engine, equipment or car is approaching or occupying the Roadway Crossing.

(d) The Licensee, at the request of the Licensor and at Licensee's sole expense, shall erect a fence or barrier on the trackside of the Roadway to protect the Licensor's tracks and/or property.

(e) The Licensee shall not use the Roadway Crossing or Roadway for the storage of any material without the prior written consent and approval of the Licensor, which may be withheld in Licensor's sole discretion, and in no event shall the Licensee place material any closer than twenty (20) feet from the centerline of the track.

SECTION 3. MODIFICATION OR RELOCATION OF ROADWAY CROSSING OR ROADWAY.

Whenever the Licensor deems it necessary or desirable in the furtherance of its railroad operating requirements or for the improvement and use of its property to modify or relocate the Roadway Crossing or Roadway:

(a) the Licensor shall, at the sole expense of the Licensee, modify or move the portion of the Roadway Crossing lying between the rails of the tracks and for one (1) foot on the outside of each rail; and

(b) the Licensee shall, at the Licensee's sole expense, modify or move the remaining portion of the Roadway Crossing, Roadway and the appurtenances thereto.

All of the terms of this Agreement shall govern the continued maintenance and use of the Roadway Crossing and Roadway as modified or relocated pursuant to this Section.

SECTION 4. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

The Licensee acknowledges and agrees that it shall be subject to and comply with the fiber optic cable system provisions as more particularly described in the Right of Entry Agreement. In addition to (and not in limitation of), and without prejudice to or limitation of any other indemnity provisions or legal remedies in this Agreement or any other remedies at law or in equity, the Licensee shall indemnify, defend and hold the Licensor harmless against and from all costs, liability and expenses whatsoever (including, without limitation, attorneys' fees, court costs and expenses) caused by or arising out of or in any way contributed to by any act or omission of the Licensee, its contractor, agents and/or employees, that causes or in any way or degree contributes to, or results from the failure of Licensee to comply with the terms and conditions of the fiber optic cable system provisions contained in the Right of Entry Agreement. (a) any damage to or destruction of any fiber optic or telecommunications system on or near the Roadway Crossing or Roadway, (b) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on or near the Roadway Crossing or Roadway, and/or (c) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of, such telecommunication company(ies). The Licensee further agrees that it shall not have or seek recourse against the Licensor for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company owning such fiber optic cable or a customer or user of services of such fiber optic cable. The provisions of this Section 4 shall survive the termination of this Agreement.

SECTION 5. INDEMNITY.

(a) In addition to (and not in limitation of), and without prejudice to or limitation of any other indemnity provisions or legal remedies in this Agreement or any other remedies at law or in equity (including without limitation those contained in the Operations Agreement – Limon and Greeley Subdivisions/East Corridor, between the parties and dated of even date herewith), the Licensee, for itself and its successors and assigns, shall indemnify, protect, defend and hold harmless the Licensor, its agents, directors, officers and employees against all claims, actions, causes of action, demands, rights, damages (including without limitation all "damages" as such term is defined in Section 9601(6) of CERCLA (defined below)), costs, expenses, fees (including without limitation attorneys' fees and disbursement), penalties, fines or compensation whatsoever, direct or indirect, arising now or in the future, on account of or in any way arising out of or in connection (i) death of or bodily injury to persons including, without limitation, the agents, directors, officers, employees and invitees of the parties hereto, (ii) damage to or loss of property including, without limitation, the property of the parties hereto, their agents, directors, officers, employees and invitees, (iii) (1) any presence, spill, leak, discharge, escape, migration, release or threat of release of Hazardous Substances (defined below) into the environment on, at, above or under the Roadway Crossing and/or Roadway, or (2) the Environmental Laws (defined below) applicable to the Roadway Crossings and/or Roadway or (iv) any other loss, damage or expense and all fines or penalties imposed upon or assessed against the Licensor, and all expenses of investigating and defending against the same, arising in any manner out of (A) the use, occupancy or presence of the Licensee, its contractors, subcontractors, employees, representatives, invitees or agents on or about the Roadway Crossing or Roadway and/or the use, occupancy or presence of any trespassers on the Roadway Crossing and/or Roadway, and/or (B) the performance of, or failure to perform by the Licensee, its contractors, subcontractors,

employees, agents, representatives or invitees, their rights or any obligation under this Agreement, and/or (C) the sole or contributing acts or omissions of the Licensee, its contractors, subcontractors, employees, representatives, invitees or agents on or about the Roadway Crossing or Roadway. The foregoing indemnity is in addition to, and not in limitation of, the insurance coverage required under Article 5 above. The provisions of this Section 5 shall survive the termination of this Agreement.

(b) The Licensee agrees to comply fully with all Environmental Laws and applicable standards concerning Hazardous Substances. The Licensee covenants that it shall not and shall cause its contractors, subcontractors, employees, representatives, invitees and agents not to, store, transport, release, treat or dispose of any Hazardous Substances on or about the Roadway Crossing or Roadway. The Licensee agrees to furnish the Licensor (if requested) with proof reasonably satisfactory to the Licensor that the Licensee and/or its contractors, subcontractors, employees, representatives, invitees or agents is/are in such compliance. In the event of any presence, spill, leak, discharge, escape, migration, release or threat of release of Hazardous Substances into the environment on, at, above or under the Roadway Crossing or Roadway by the Licensee or its contractors, subcontractors, employees, representatives, invitees or agents or by trespassers on the Roadway Crossings or Roadway, the Licensee shall give the Licensor prompt notice of such event, and at its sole cost and expense, promptly clean or remediate such property to the standards required by law (including without limitation all Environmental Laws) or by any governmental agency or public body having jurisdiction in the matter. Should any such presence, spill, leak, discharge, escape, migration, release or threat of release result in a fine, penalty, cost or charge, the Licensee shall promptly and fully pay such fine, penalty, cost or charge.

(c) For purposes of this Agreement, (i) the term "Hazardous Substances" means any material or substance (1) that is present in quantities and in a form that requires investigation, removal, cleanup, transportation, disposal, response or remedial action (as the terms "response" and "remedial action" are defined in Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 (23) and (24)) or under any Environmental Law; or (2) that is defined as a "hazardous waste," "hazardous substance," "pollutant" or "contaminant" under any Environmental Law; and (ii) the term "Environmental Law" means any and all laws, statutes, regulations, enforceable requirements, orders, decrees, agreements, judgments or injunctions validly issued, promulgated or entered by any court or governmental agency with jurisdiction, relating to the environment, to preservation or reclamation of natural resources, or to the management, release or threatened release of contaminants applicable to the Real Property, including without limitation the Hazardous Substances Transportation Act (49 U.S.C. § 1802 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 et seq.), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 et seq.) and the Hazardous and Solid Waste Amendments of 1984, the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), as amended by the Clean Water Act Amendments of 1977, the Clean Air Act of 1970 (42 U.S.C. § 7401 et seq.), as amended by the Clean Air Act Amendments of 1990, the Safe Drinking Water Act (42 U.S.C. § 300f et seq.), the Toxic Substances Control Act of 1976 (15 U.S.C. § 2601 et seq.), any similar or implementing state or local law, and all amendments thereto and regulations or rules promulgated thereunder.

SECTION 6. TERMINATION ON BREACH OR ON NOTICE.

(a) It is agreed that the breach of any covenant, stipulation or condition herein contained to be kept and performed by the Licensee shall, at the option of the Licensor, forthwith work a termination of this agreement and all rights of the Licensee hereunder. Notwithstanding the foregoing, in the event the Licensor believes that the Licensee has failed to perform or comply with any of its obligations or the terms contained in this Agreement, the Licensor shall deliver to the Licensee a written notice identifying such failures ("Default Notice"). The Licensee shall have thirty (30) days from receipt of a Default Notice to resolve the failures identified therein. The Licensor may at its sole option, upon written request therefor from the Licensee, extend such thirty-day period. Should the Licensee fail to timely resolve such failures, the Licensor, at its option, may immediately terminate this Agreement by written notice. Failure of the Licensor to provide a Default Notice shall not constitute a waiver of any default hereunder.

(b) This Agreement may be terminated by either party on one hundred eighty (180) days' prior written notice to the other party.

SECTION 7. CLAIMS AND LIENS FOR LABOR AND MATERIAL.

The Licensee shall fully pay for all materials joined or affixed to and labor performed upon the Roadway Crossing and Roadway in connection with the maintenance, repair, replacement and use of the same, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the Roadway Crossing and Roadway or other property of Licensor for any work done or materials furnished thereon at the instance or request or on behalf of the Licensee.

SECTION 8. REMOVAL OF ROADWAY CROSSING.

(a) Upon termination of this Agreement howsoever, the Licensor shall, at its sole option and at the sole expense of the Licensee, remove the Roadway Crossing and restore the premises of the Licensor to a condition comparable to that existing immediately prior to the construction of the Roadway Crossing by Licensor for the benefit of Licensee.

(b) In the event of the removal of the Roadway Crossing as provided in this Section, the Licensor shall not be liable to the Licensee for any damage sustained by the Licensee for or on account of such removal, and such removal shall not prejudice or impair any right of action for damage, or otherwise, which the Licensor may have against the Licensee.

(c) The provisions of this Section 8 shall survive the termination of this Agreement.

SECTION 9. NOTICES.

All written notices and demands of any kind which either party may be required or may desire to serve on the other in connection with this Agreement shall be served by personal delivery, electronic facsimile with a hard copy promptly posted in the U.S. mail, reputable overnight air courier or registered or certified mail, postage prepaid, return receipt requested, to the intended addressee at the address set forth below:

If to the Licensor:

UNION PACIFIC RAILROAD COMPANY
Assistant Vice President Real Estate
1400 Douglas Street, Stop 1690
Omaha, NE 68179-1690
Telephone: 402-544-8640
Facsimile: 402-501-0340

with copies to:

UNION PACIFIC RAILROAD COMPANY
Patrick R. McGill, Esq.
Senior Counsel – Real Estate
1400 Douglas Street
Mail Stop 1580
Omaha, NE 68179
Telephone: 402-544-5761
Facsimile: 402-544-0132

JACOBS CHASE & KELLEY, LLC
Jill K. Rood, Esq.
1050 17th Street, Suite 1500
Denver, CO 80265
Telephone: 303-685-4800
Facsimile: 303-685-4869

If to the Licensee

REGIONAL TRANSPORTATION DISTRICT
Assistant General Manager for Capital Projects
1560 16th Street
Seventh Floor
Denver, CO 80202
Telephone: 303-299-2300
Facsimile: 303-299-2363

with copies to:

REGIONAL TRANSPORTATION DISTRICT
Marla Lien, General Counsel
1600 Blake Street
Denver, CO 80202-1399
Telephone: 303-299-2207
Facsimile: 303-299-2217

KAPLAN KIRSCH & ROCKWELL LLP
Stephen Kaplan, Esq.
1675 Broadway, Suite 2300
Denver, CO 80202
Telephone: 303-825-7000
Facsimile: 303-825-7005

Any such communication shall be deemed to have been delivered (a) as of the date of receipt, in the case of personal delivery or electronic facsimile transmission, (b) the date of receipt or first attempted delivery via reputable air courier, or (c) as of the date of receipt or first attempted delivery, as evidenced by the return receipt card, in the case of mailing via certified or registered United States mail. Either may change the address at which it is to receive notice by so notifying the other party to this Agreement in writing in the manner provided for above.

SECTION 10. WAIVER OF BREACH.

The waiver by the Licensor of the breach of any condition, covenant or agreement contained in this Agreement to be kept, observed and performed by the Licensee shall in no way impair the right of the Licensor to avail itself of any subsequent breach thereof.

SECTION 11. ASSIGNMENT.

This Agreement and the terms, covenants and conditions hereof shall be binding upon, and inure to the benefit of, the parties and, except as expressly limited herein, their respective permitted successors and assigns. The qualifications and reputation of the Licensee are material inducements to the Licensor in entering into this Agreement. Therefore, the Licensee shall not assign the License, in whole or in part, or assign any of Licensee's rights or delegate any of its duties, in whole or in part, under this Agreement to any third party without the prior written consent of the Licensor, which consent may be withheld in Licensor's sole discretion. Any assignment, in whole or in part, or attempted assignment, in whole or in part, by the Licensee whether voluntary, by operation of law or otherwise, in violation of this Section 11, shall be absolutely void.

SECTION 12. LIMITATIONS SPECIFIC TO REGIONAL TRANSPORTATION DISTRICT.

Notwithstanding anything to the contrary contained in this Agreement, due to the special status of Regional Transportation District as a political subdivision of the State of Colorado, the following limitations shall apply with respect to Regional Transportation District in its capacity

as a party hereto, only to the extent required by law (including without limitation any amendments to the Constitution of the State of Colorado) from time to time for purposes of enforceability: (a) the damages recoverable pursuant to Section 5 above shall exclude punitive and exemplary damages; (b) Licensee's liability for indemnifying Licensor under this Agreement shall be limited to the extent of Licensee's applicable insurance coverage, which coverage shall equal to or greater than the coverages required hereby; and (c) nothing in this Agreement shall be construed as a multi-year fiscal obligation. In no event shall these provisions apply to or inure to the benefit of any successor or assign of Regional Transportation District.

SECTION 13. NO WAIVER.

No delay on the part of any party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any waiver on the part of any party hereto of any right, power or privilege hereunder operate as a waiver of any other right, power or privilege hereunder, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof of the exercise of any other right, power or privilege hereunder.

SECTION 14. APPLICABLE LAW.

This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado.

SECTION 15. ENTIRE AGREEMENT.

This Agreement, the Property Transfer and Railroad Relocation Agreement between the parties dated effective August ___, 2010, as amended, the Agreement Regarding Engineering Design for Limon and Greeley Subdivisions/East Corridor Relocation between the parties dated as of March 13, 2009, as amended or restated, and the Operations Agreement - Limon and Greeley Subdivisions/East Corridor between the parties and dated of even date herewith, are intended by the parties as a final expression of their agreement and intended to be a complete and exclusive statement of the agreement and understanding of the parties thereto in respect of the subject matter contained herein. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to in this Agreement.

Exhibit C

(Attached to and made a part of the
Private Crossing and Roadway License Agreement dated _____, 20___.
between Union Pacific Railroad Company
and Regional Transportation District)

Union Pacific Railroad
Contract Insurance Requirements

In addition to the insurance coverages required by the Right of Entry Agreement, Licensee shall procure and maintain at its sole expense the following insurance coverages:

1. Liability insurance: Commercial general liability (CGL) with a limit of not less than $25,000,000 each occurrence and an aggregate limit of not less than $25,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 or ISO claims made form CG 00 02 12 04 (or substitute forms providing equivalent coverage). If the Licensee utilizes a claims-made form to meet this requirement the Licensee warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Agreement. The Licensee also agrees to purchase an extended reporting period if the retroactive date is advanced or if the policy is canceled or not renewed and not replaced by another claims-made policy with the same (or an earlier) retroactive date during the term of this Agreement. The policy must also contain the following endorsement, which must be stated on the certificate of insurance: "Contractual Liability Railroads" ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site, and "Designated Construction Project(s) General Aggregate Limit" ISO Form CG 25 03 03 97 (or substitute form providing equivalent coverage) showing the project location as described in this Agreement on the form schedule.

2. Automobile insurance: Business automobile coverage written on ISO form CA 00 01 10 01 (or substitute form providing equivalent liability coverage) with a limit not less $25,000,000 for each accident. Such insurance shall cover liability arising out of any automobile (including owned, hired, and non-owned automobiles). The policy must contain the following endorsements, which must be stated on the certificate of insurance: Coverage For Certain Operations In Connection With Railroads" ISO form CA 20 70 10 01 (or substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site, and Motor Carrier Act Endorsement – Hazardous materials clean up (MCS-90) if required by law.

3. Workers' Compensation and Employers Liability insurance: Coverage must include but not be limited to: the Licensee's statutory liability under the workers' compensation laws of the state of Colorado, Employers' Liability (Part B) with limits of at least $500,000 each accident, $500,000 employee for disease and $500,000 policy limit for disease, and Alternate Employer endorsement ISO form WC 00 03 01 A (or substitute form providing equivalent coverage) showing the Licensor in the schedule as the alternate employer (or substitute form providing equivalent coverage). If the Licensee is self-insured, evidence of state approval and excess workers' compensation coverage must be provided. Coverage must include liability

arising out of the U.S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

4. Railroad Protective Liability insurance: the Licensee must maintain "Railroad Protective Liability" insurance written on ISO occurrence form CG 00 35 12 04 (or substitute form providing equivalent coverage) on behalf of the Licensor as Named Insured, with a limit of not less than $25,000,000 per occurrence and an aggregate of $25,000,000. A Binder of Insurance stating the policy is in place must be submitted to the Licensor before work may be commenced and until the original policy is received by the Licensor.

5. Umbrella or Excess insurance: If the Licensee utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

6. Pollution Liability insurance: Pollution Liability coverage must be included when any "hazardous" material that is injurious in or upon land, the atmosphere, or any watercourses; or may cause bodily injury at any time are upon property of the Licensor. If required, coverage may be provided by a separate policy or by endorsement to the Licensee's CGL policy. In either form coverage must be equivalent to that provided in ISO form "Pollution Liability Coverage Form Designated Sites" CG 00 39 12 04 with limits of at least $5,000,000 per occurrence and an aggregate limit of $10,000,000. If the scope of work includes the disposal of any hazardous or non-hazardous materials from the job site, the Licensee must furnish the Licensor evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of $5,000,000 per loss, and an annual aggregate of $10,000,000.

7. All policy(ies) required above (except worker's compensation and employers liability) must include the Licensor as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to the Licensor as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for the Licensor's negligence whether sole or partial, active or passive, and shall not be limited to the Licensee's liability under the indemnity provisions of this Agreement.

8. Any punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (i) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this Agreement, or (ii) all punitive damages are prohibited by the state of Colorado.

9. The Licensee waives all rights against the Licensor, its affiliates, and their respective agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the workers' compensation and employer's liability or commercial umbrella or excess liability insurance obtained by the Licensee required by this Agreement (which must be stated on the certificate of insurance.)

10. Prior to commencing any work on the Roadway Crossing or Roadway, the Licensee shall furnish the Licensor with a certificate(s) of insurance, executed by a duly

authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.

11. All insurance policies must be written by a reputable insurance company acceptable to the Licensor or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the work is to be performed.

12. The fact that insurance is obtained by the Licensee will not be deemed to release or diminish the liability of the Licensee, including without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by the Licensor from the Licensee or any third party will not be limited by the amount of the required insurance coverage.

Exhibit D

(Attached to and made a part of the
Private Crossing and Roadway License Agreement dated _____, 20___,
between Union Pacific Railroad Company
and Regional Transportation District)

Contractor's Right of Entry Agreement

[to be attached]

EXHIBIT I TO ADDENDUM C

(Attached to and made a part of
Addendum C to the Property Transfer and Railroad Relocation Agreement
Limon and Greeley Subdivisions/East Corridor)

Utility License Agreement for Electric Wire Line Crossing

(see attached)

UTILITY LICENSE AGREEMENT
FOR ELECTRIC WIRE LINE CROSSING

Mile Post _____, Limon Subdivision
Location: City and County of Denver, State of Colorado

THIS UTILITY LICENSE AGREEMENT FOR ELECTRIC WIRE LINE CROSSING (this "Agreement") is made and entered into as of the _____ day of _____, 20__ by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Licensor"), whose address is 1400 Douglas Street, Stop 1690, Omaha, Nebraska 68179-1690, and REGIONAL TRANSPORTATION DISTRICT, a political subdivision of the State of Colorado ("Licensee"), whose address is 1600 Blake Street, Denver, Colorado 80202-1399. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Licensor and Licensee hereby agree as follows:

Article 1. LICENSOR GRANTS RIGHT.

Licensor hereby grants to Licensee a non-exclusive license (the "License") to install, maintain, operate, repair and replace a subsurface electric wire line and related conduit and facilities (the "Wire Line") under a portion of Licensor's right of way, tracks and other real property located in the City and County of Denver, State of Colorado, as such area is more particularly described on Exhibit A attached hereto and incorporated herein by this reference (which shall be referred to hereinafter as the "Property", or as a portion of "Licensor('s) property"), for the purpose of providing electrical power from Licensee's electric substation to Licensee's passenger rail transit facilities which are located on property adjacent to Licensor's property, subject to the terms and conditions set forth in this Agreement and in Exhibit B, Exhibit C, Exhibit D and Exhibit E, attached hereto and hereby made a part hereof. Under no circumstances shall Licensee use the Wire Line for a purpose other than the purpose set forth in this Article 1. Licensee may allow its contractors, subcontractors and agents performing work in connection with the Wire Line to use its License only in accordance with all the terms and conditions of this Agreement (including without limitation executing a Right of Entry Agreement (defined below), but excluding Exhibit C hereto which is applicable only to Licensee). In no event shall Licensee have any right to use Licensor's property for any purpose whatsoever except as may be provided in a Right of Entry Agreement.

Article 2. LICENSE FEE.

Concurrently with Licensee's execution and delivery to UP of this Agreement, Licensee shall pay to Licensor a one time fee of Seven Thousand Nine Hundred Dollars ($7,900.00) (the "License Fee").

Article 3. RIGHT OF ENTRY.

Licensee acknowledges and agrees that, prior to each exercise of its License described in Article 1 above, it shall execute Licensor's then-current form of the Contractor's Right of Entry

Agreement ("Right of Entry Agreement"). The current form of the Right of Entry Agreement is attached hereto as Exhibit D. If a contractor, subcontractor or agent of Licensee is to perform any work in connection with the Wire Line, then Licensee shall require and cause such contractor, subcontractor or agent to execute the Right of Entry Agreement prior to the commencement of any such work. Licensee acknowledges and agrees that it will inform its contractors, subcontractors and agents of the need to execute the Right of Entry Agreement prior to commencing any work on the Wire Line. Notwithstanding anything to the contrary contained herein, under no circumstances will Licensee or Licensee's contractors, subcontractors or agents be allowed to enter Licensor's property for any purpose (a) prior to executing the Right of Entry Agreement or (b) if Licensee or such contractor, subcontractor or agent is in breach of any of the terms or conditions of this Agreement or the Right of Entry Agreement.

Article 4. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.

Licensee agrees to notify Licensor at least ten (10) working days (or such other time as Licensor may allow in the event of emergency or otherwise) in advance of the commencement of any installation, maintenance, repair, renewal, replacement, modification, relocation, removal or reconstruction work authorized hereunder (including without limitation the proposed performance of any work in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track). No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Licensor's track(s) at any time, for any reason, unless and until a Licensor flagman is provided to watch for trains. Upon receipt of such ten (10)-day notice, Licensor will determine and inform Licensee or its contractor whether a flagman need be present and whether Licensee or its contractor needs to implement any special protective or safety measures. If Licensor performs any flagging, or other special protective or safety measures are performed by Licensor, Licensee or its contractor agrees that it is not relieved of any of its responsibilities or liabilities set forth in this Agreement. Licensee acknowledges and agrees that it shall be subject to and comply with the notice of commencement of work and flagging provisions as more particularly described in the Right of Entry Agreement.

Article 5. INSURANCE.

A. At all times during the term hereof and prior to any entry upon the Property, Licensee shall comply with Licensor's insurance requirements described in Exhibit C, attached hereto and hereby made a part hereof, and any amendments or modifications by Licensor thereto; provided, however, that Licensor must provide Licensee with reasonable notice of any material changes to such insurance requirements.

B. Licensee shall provide Licensor with a certificate, identifying Folder No._____, issued by the insurance carrier providing the insurance coverage required pursuant to Exhibit C that contains the following endorsement:

UNION PACIFIC RAILROAD COMPANY ("Licensor") is named as additional insured with respect to all liabilities arising out of Insured's (as Licensee) installation, maintenance, operation, repair, renewal, replacement, modification, relocation, removal and reconstruction of the electric wire line on Licensor's property.

C. Licensee warrants that this Agreement has been thoroughly reviewed by its insurance agent(s)/broker(s) and that said agent(s)/broker(s) has been instructed to procure insurance coverage and an endorsement as required herein.

D. All insurance correspondence shall be directed to:

Union Pacific Railroad Company
Real Estate Department
1400 Douglas Street, Mail Stop 1690
Omaha, NE 68179
Attn.: Folder No. _____

Article 6. TERM.

This Agreement shall be effective as of the date first herein written, and shall continue in full force and effect until terminated as provided in Exhibit B.

Article 7. SPECIAL PROVISIONS.

None.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

	LICENSOR: UNION PACIFIC RAILROAD COMPANY, a Delaware corporation By: _____ Name: _____ Title: _____
	LICENSEE: REGIONAL TRANSPORTATION DISTRICT, a political subdivision of the State of Colorado By: _____ Name: _____ Title: General Manager
APPROVED AS TO LEGAL FORM FOR THE REGIONAL TRANSPORTATION DISTRICT: By: _____ Legal Counsel	

Exhibit A

(Attached to and made a part of the
Utility License Agreement for Electric Wire Line Crossing
dated _____, 20___,
between Union Pacific Railroad Company
and Regional Transportation District)

Depiction of the Property

Exhibit B

(Attached to and made a part of the
Utility License Agreement for Electric Wire Line Crossing
dated _____, 20___,
between Union Pacific Railroad Company
and Regional Transportation District)

Additional Terms and Conditions

This Exhibit B contains additional terms, conditions, limitations and covenants applicable to the Utility License Agreement for Electric Wire Line Crossing to which it is attached and incorporated by reference ("Agreement"). Unless otherwise specified herein, the capitalized terms used in this Exhibit B shall have the meanings set forth in this Agreement.

SECTION 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.

(a) The rights granted to Licensee are subject and subordinate to the prior and continuing right and obligation of Licensor to use and maintain its entire property, and are also subject to the right and power of Licensor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication, fiber optics or other wire lines, pipelines and other facilities upon, along or across any or all parts of its property, any of which may be freely done at any time by Licensor without liability to Licensee or to any other party for compensation or damages.

(b) Licensor makes no covenant or warranty of title, for quiet possession or against encumbrances with respect to the Property. This Agreement is subject and subordinate to all licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens and claims of title that may affect the Property now or in the future (whether public or private) and whether recorded or unrecorded (including, without limitation, those in favor of grantees, lessees and licensees of Licensor's property and others).

SECTION 2. HORIZONTAL DIRECTIONAL DRILLING GUIDELINES.

(a) Subject to Section 3 below, Licensee shall install the proposed Wire Line under Licensor's railroad rights of way and trackage on the Property using Horizontal Directional Drilling ("HDD") in accordance with the guidelines issued by Licensor, as may be amended by Licensor in its sole discretion to comply with practices recommended by the American Railway Engineering and Maintenance-of-Way Association ("AREMA"). All designs, plans and specifications must include pipe specifications and the actual planned depth of the pipe to be installed under Licensor's railroad rights of way and trackage on the Property. All pipe used in connection with the installation of the Wire Line must satisfy AREMA recommendations and all applicable government and industry regulations.

(b) Licensee's designs, plans and specifications submitted to Licensor must include an installation plan describing: (i) the anticipated rig capacity; (ii) the proposed equipment to be used and the method for advancing the borehole through expected soil conditions; (iii) the

angles, depth and exact location of the exit ditch; (iv) the pilot hole diameter; (v) the proposed reaming plan, including the number and diameter of pre-reams/back-reams and the diameter of the final reamed borehole; and (vi) the contingency equipment and plans for dealing with soil conditions that a soil engineer could reasonably expect to encounter at the HDD installation site. The installation plan must also address the estimated hours of operation during the HDD borehole drilling and installation process, the minimum number of personnel required, and the responsibilities of on-site personnel during all HDD operations. In addition to the installation plan, Licensee, prior to drilling, must also provide to Licensor for review and approval a detailed fracture mitigation plan and establish a survey grid line along with a program to monitor and document the actual location of the borehole during HDD operations. The fracture mitigation plan must include a method for monitoring and capturing the return of drilling fluids and must set forth steps to prevent the inadvertent escape of drilling fluids which could potentially undermine Licensor's railroad right of way and tracks.

(c) Licensee's designs, plans and specifications submitted to Licensor must also include qualifications of the drilling contractor to be used by Licensee to perform the HDD installation of the Wire Line, which such qualifications shall include specific instances of the drilling contractor's successful experience in drilling under sensitive surface facilities.

(d) Licensee shall coordinate with Licensor prior to commencing any work within Licensor's railroad right of way or within twenty-five (25) feet of such right of way, as provided for in this Agreement. During the HDD process, representatives of Licensor and Licensee shall monitor the ground, ballast and track for movement during the drilling, reaming and pullback processes in connection with the installation of the Wire Line. If movement is detected, the installation of the Wire Line and all train movement on the tracks on or near the Property shall be immediately stopped. Licensee shall immediately notify Licensor of the damage caused by the HDD process, and the damage shall be immediately repaired, subject to Licensor's review, inspection and approval. Once the damage is repaired, Licensor shall review and approve the installation process (at Licensee's sole cost and expense), along with any modifications made by Licensee to such process in order to prevent future damage from occurring, prior to Licensee recommencing the installation of the Wire Line. Licensee shall pay all costs and expenses incurred by Licensor in connection with the installation of the Wire Line.

(e) Upon completion of the HDD installation work, Licensee shall provide to Licensor an accurate as-built drawing of the installed HDD segment, which drawing shall include both horizontal and profile plans, together with any additional information requested by Licensor in its sole discretion (at Licensee's sole cost and expense).

SECTION 3. PLANS AND SPECIFICATIONS; CONSTRUCTION; OPERATIONS.

(a) The designs, plans and specifications for the work contemplated in connection with the Wire Line at the design completion level of thirty percent (30%) are attached to this Agreement by reference as part of Exhibit E. Prior to commencement of any work in connection with the Wire Line, Licensee shall submit to Licensor for its review and approval (at Licensee's sole cost and expense) initial designs, plans and specifications for such work that shall be to a design completion level of not less than sixty percent (60%). Thereafter, Licensee shall submit to Licensor for its review and approval (at Licensee's sole cost and expense) the designs, plans

and specifications for the work at the ninety-five percent (95%) and the one hundred percent (100%) design completion levels. Construction or reconstruction of the Wire Line shall not begin until Licensor has given its final approval of the submitted designs, plans and specifications at the one hundred percent (100%) design completion level for such construction or reconstruction (as approved, the "Plans and Specifications"). Licensor reserves the right to enter into contracts with contractors for all or any portion of the review of the designs, plans and specifications (at Licensee's sole cost and expense). Approval by Licensor of any designs, plans and/or specifications shall not be deemed to have been given until the Vice President, Engineering of Licensor ("VP Engineering") (or the VP Engineering's authorized representative) has initialed or signed such designs, plans and/or specifications. Licensor shall use reasonable efforts to complete its review of such designs, plans and specifications within thirty (30) days after receipt, but Licensor may take up to sixty (60) days to review such items, based upon Licensor's scheduling constraints and the complexity of the items under review. Without limiting the scope of Licensor's review or approval, (i) all designs, plans and specifications shall meet all applicable Licensor standards governing structures, safety matters and similar matters (including without limitation the HDD process for the installation of the Wire Line); (ii) all designs, plans and specifications shall meet the terms and conditions of Licensor's then-existing agreements with third parties affecting the Limon Subdivision and shall not otherwise adversely impact the use or condition of the Limon Subdivision or any improvements thereon; and (iii) there shall be no interference with the functionality of the Limon Subdivision or Licensor's freight rail service during or after construction. No changes shall be made by Licensee to the Plans and Specifications without the prior review and approval of Licensor as provided herein. Licensor's review of the Plans and Specifications will be performed solely for its own purposes and benefit, and Licensor shall not be deemed to be liable to Licensee or any other party for defects in the Plans and Specifications or any other improvements related thereto, or the operations and maintenance standards set forth herein. All work performed by Licensee on the Property in connection with the Wire Line shall be done to the satisfaction of Licensor in its sole discretion.

(b) Licensor shall have the right, if it so elects, to provide such support as it may deem necessary for the safety of its track(s) during the time of Licensee's installation, maintenance, operations, repair or replacement of the Wire Line, and in the event Licensor provides such support, Licensee shall reimburse Licensor for all expenses incurred by Licensor in connection with providing such support.

(c) Licensee shall keep and maintain the soil over those portions of the Wire Line located outside of the roadbed of Licensor's right of way thoroughly compacted and at a grade even with the adjacent surface of the ground.

SECTION 4. INSPECTIONS.

Licensor and/or each of its contractors, subcontractors or agents shall have the right (at Licensee's sole cost and expense) to inspect the work related to the Wire Line to determine if it conforms with the requirements of the Plans and Specifications and the operational and maintenance standards set forth above in accordance with the Agreement Regarding Engineering Design for Limon and Greeley Subdivisions/East Corridor Relocation between the parties dated

as of March 13, 2009, as amended and/or restated (the "Engineering Agreement"), UP Folder No. _____.

SECTION 5. LICENSEE TO BEAR ENTIRE EXPENSE.

Licensee shall bear the entire cost and expense incurred in connection with the design, installation, maintenance, operation, maintenance, repair and replacement of the Wire Line, including any and all expenses which may be incurred by Licensor in connection therewith for any review, inspection, supervision, inspection, flagging or otherwise.

SECTION 6. REINFORCEMENT, RELOCATION OR REMOVAL OF WIRELINE.

(a) License herein granted is subject to the needs and requirements of Licensor in the safe and efficient operation of its railroad and in the improvement and use of its property. Licensee shall, at its sole expense, reinforce or otherwise modify the Wire Line, or move all or any portion of the Wire Line to such new location, as Licensor may designate, or remove the Wire Line from the Property, whenever, in furtherance of its needs and requirements, Licensor, in its sole discretion, finds such action necessary or desirable.

(b) All of the terms of this Agreement shall govern the continued installation, maintenance and operation of the Wire Line as reinforced, modified or relocated pursuant to this Section.

SECTION 7. NO INTERFERENCE WITH LICENSOR'S OPERATIONS.

(a) The Wire Line and all parts thereof within and outside of the limits of Licensor's property shall at all times be designed, installed, maintained, operated, repaired and replaced in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the tracks, property and facilities of Licensor (including without limitation, its tracks, pole lines, communication lines, radio equipment, wayside and/or cab based train signal systems, advanced train control systems, positive train separation systems, and grade crossing systems) or the facilities or equipment of others lawfully using Licensor's property, and nothing shall be done or suffered to be done by Licensee at any time that would in any manner impair the safety thereof.

(b) Licensee shall take all precaution to prevent any interference (by induction, leakage of electricity, or otherwise) with the operation of the signal, communication lines or other installations or facilities of Licensor or others lawfully using Licensor's property; and if, at any time, the operation or maintenance of the Wire Line results in any electrostatic effects that Licensor deems undesirable or harmful, or causes interference with the operation of the signal, communication lines or other installations or facilities, as now existing or which may hereafter be provided by Licensor and/or others lawfully using Licensor's property, Licensee shall, at its sole expense, immediately make such modifications or take such action as may be necessary to eliminate such interference. Licensee agrees to pay for all reasonable modifications, design changes, or increased costs that may be necessary now or in the future to ensure the safe and reliable maintenance and operation of the facilities of Licensor and/or others lawfully using Licensor's property to avoid interference from the Wire Line.

(c) Licensor's operations and work performed by Licensor's personnel may cause delays in the work to be performed by Licensee. Licensee accepts this risk and agrees that Licensor shall have no liability to Licensee or any other person or entity for any such delays. Licensee shall coordinate its activities with those of Licensor and third parties so as to avoid interference with railroad operations. The safe operation of Licensor's train movements and other activities by Licensor take precedence over any work to be performed by Licensee.

SECTION 8. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

Licensee acknowledges and agrees that it shall be subject to and comply with the fiber optic cable system provisions as more particularly described in the Right of Entry Agreement. In addition to (and not in limitation of), and without prejudice to or limitation of any other indemnity provisions or legal remedies in this Agreement or any other remedies at law or in equity, Licensee shall indemnify, defend and hold Licensor harmless against and from all costs, liability and expenses whatsoever (including, without limitation, attorneys' fees, court costs and expenses) caused by or arising out of or in any way contributed to by any act or omission of Licensee, its contractors, subcontractors, agents and/or employees, that causes or in any way or degree contributes to, or results from the failure of Licensee to comply with the terms and conditions of the fiber optic cable system provisions contained in the Right of Entry Agreement, (a) any damage to or destruction of any fiber optic or telecommunications system on or near the Wire Line or the Property, (b) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractors, agents and/or employees, on or near the Wire Line or the Property, and/or (c) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of, such telecommunication company(ies). Licensee further agrees that it shall not have or seek recourse against Licensor for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company owning such fiber optic cable or a customer or user of services of such fiber optic cable. The provisions of this Section 8 shall survive the termination of this Agreement.

SECTION 9. INDEMNITY.

(a) In addition to (and not in limitation of), and without prejudice to or limitation of any other indemnity provisions or legal remedies in this Agreement or any other remedies at law or in equity (including without limitation those contained in the Engineering Agreement), Licensee, for itself and its successors and assigns, shall indemnify, protect, defend and hold harmless Licensor, its agents, directors, officers and employees against all claims, actions, causes of action, demands, rights, damages (including without limitation all "damages" as such term is defined in Section 9601(6) of CERCLA (defined below)), costs, expenses, fees (including without limitation attorneys' fees and disbursements), penalties, fines or compensation whatsoever, direct or indirect, arising now or in the future, on account of or in any way arising out of or in connection with (i) death of or bodily injury to persons including, without limitation, the agents, directors, officers, employees and invitees of the parties hereto, (ii) damage to or loss of property including, without limitation, the property of the parties hereto, their agents, directors, officers, employees and invitees, (iii) (1) any presence, spill, leak, discharge, escape, migration, release or threat of release of Hazardous Substances (defined below) into the environment on, at, above or under the Property or other Licensor property, or (2) the

Environmental Laws (defined below) applicable to the Property or other Licensor property or (iv) any other loss, damage or expense and all fines or penalties imposed upon or assessed against Licensor, and all expenses of investigating and defending against the same, arising in any manner out of (A) the use, occupancy or presence of Licensee, its contractors, subcontractors, employees, representatives, invitees or agents on or about the Property and/or other Licensor property and/or the use, occupancy or presence of any trespassers on the Property and/or other Licensor property, and/or (B) the performance of, or failure to perform by Licensee, its contractors, subcontractors, employees, agents, representatives or invitees, their rights or any obligation under this Agreement, and/or (C) the sole or contributing acts or omissions of Licensee, its contractors, subcontractors, employees, representatives, invitees or agents on or about the Property and/or other Licensor property. The foregoing indemnity is subject to Section 17 of this Agreement and is in addition to, and not in limitation of, the insurance coverage required under Article 5 above. The provisions of this Section 9 shall survive the termination of this Agreement.

(b) Licensee agrees to comply fully with all Environmental Laws and applicable standards concerning Hazardous Substances. Licensee covenants that it shall not and shall cause its contractors, subcontractors, employees, representatives, invitees and agents not to, store, transport, release, treat or dispose of any Hazardous Substances on or about the Property and/or other Licensor property. Licensee agrees to furnish Licensor (if requested) with proof reasonably satisfactory to Licensor that Licensee and/or its contractors, subcontractors, employees, representatives, invitees or agents is/are in such compliance. In the event of any presence, spill, leak, discharge, escape, migration, release or threat of release of Hazardous Substances into the environment on, at, above or under the Property and/or other Licensor property by Licensee or its contractors, subcontractors, employees, representatives, invitees or agents or by trespassers on the Property and/or other Licensor property, Licensee shall give Licensor prompt notice of such event, and at its sole cost and expense, promptly clean or remediate such property to the standards required by law (including without limitation all Environmental Laws) or by any governmental agency or public body having jurisdiction in the matter. Should any such presence, spill, leak, discharge, escape, migration, release or threat of release result in a fine, penalty, cost or charge, Licensee shall promptly and fully pay such fine, penalty, cost or charge.

(c) For purposes of this Agreement, (i) the term "Hazardous Substances" means any material or substance (1) that is present in quantities and in a form that requires investigation, removal, cleanup, transportation, disposal, response or remedial action (as the terms "response" and "remedial action" are defined in Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 (23) and (24)) or under any Environmental Law; or (2) that is defined as a "hazardous waste," "hazardous substance," "pollutant" or "contaminant" under any Environmental Law; and (ii) the term "Environmental Law" means any and all laws, statutes, regulations, enforceable requirements, orders, decrees, agreements, judgments or injunctions validly issued, promulgated or entered by any court or governmental agency with jurisdiction, relating to the environment, to preservation or reclamation of natural resources, or to the management, release or threatened release of contaminants applicable to the Property and/or other Licensor property, including without limitation the Hazardous Substances Transportation Act (49 U.S.C. § 1802 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §

9601 et seq.), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 et seq.) and the Hazardous and Solid Waste Amendments of 1984, the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), as amended by the Clean Water Act Amendments of 1977, the Clean Air Act of 1970 (42 U.S.C. § 7401 et seq.), as amended by the Clean Air Act Amendments of 1990, the Safe Drinking Water Act (42 U.S.C. § 300f et seq.), the Toxic Substances Control Act of 1976 (15 U.S.C. § 2601 et seq.), any similar or implementing state or local law, and all amendments thereto and regulations or rules promulgated thereunder.

SECTION 10. TERMINATION.

(a) It is agreed that the breach of any covenant, stipulation or condition herein contained to be kept and performed by Licensee shall, at the option of Licensor, forthwith work a termination of this Agreement and all rights of Licensee hereunder. Notwithstanding the foregoing, in the event Licensor believes that Licensee has failed to perform or comply with any of its obligations or the terms contained in this Agreement, Licensor shall deliver to Licensee a written notice identifying such failures ("Default Notice"). Licensee shall have thirty (30) days from receipt of a Default Notice to resolve the failures identified therein. Licensor may at its sole option, upon written request therefor from Licensee, extend such thirty-day period. Should Licensee fail to timely resolve such failures, Licensor, at its option, may immediately terminate this Agreement by written notice. Failure of Licensor to provide a Default Notice shall not constitute a waiver of any default hereunder.

(b) If Licensee does not use the Wire Line for a continuous period of one (1) year or fails to commence construction of the Wire Line within five (5) years of the date of this Agreement, Licensor, at its option, may immediately terminate this Agreement by written notice.

(c) This Agreement may be terminated by either party on one hundred eighty (180) days' prior written notice to the other party.

SECTION 11. CLAIMS AND LIENS FOR LABOR AND MATERIAL; TAXES.

(a) Licensee shall fully pay for all materials joined or affixed to and labor performed upon the Property (or, pursuant to any Right of Entry Agreement, any of Licensor's property) in connection with the installation, maintenance, operation, repair, renewal, replacement, modification, relocation, removal or reconstruction of the Wire Line, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the Property or other Licensor property for any work done or materials furnished thereon at the insistence or request or on behalf of Licensee. Licensee shall indemnify and hold harmless Licensor against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed or material furnished.

(b) Licensee shall promptly pay of discharge all taxes, charges and assessments levied upon, in respect to, or on account of the Wire Line, to prevent the same from becoming a charge or lien upon Licensor's property, and so that the taxes, charges and assessments levied

upon or in respect to such property shall not be increased because of the location, construction or maintenance of the Wire Line or any improvement, appliance or fixture connected therewith placed upon Licensor's property, or on account of Licensor's interest therein. Where such tax, charge or assessment may not be separately made or assessed to Licensor but shall be included in the assessment of Licensor's property, then Licensee shall pay to Licensor an equitable proportion of such taxes determined by the value of Licensee's property upon Licensor's property as compared with the entire value of such property.

SECTION 12. RESTORATION OF LICENSOR'S PROPERTY.

In the event Licensee in any manner moves or disturbs any of Licensor's property in connection with the installation, maintenance, operation, repair or replacement of the Wire Line, then Licensee shall, as soon as possible and at Licensee's sole expense, restore Licensor's property to the same condition as the same were in before such property was moved or disturbed.

SECTION 13. REMOVAL OF WIRELINE.

(a) Upon termination of this Agreement, Licensee shall, at its sole expense, remove the Wire Line from those portions of the Property not occupied by the roadbed and track of Licensor and shall restore, to the satisfaction of Licensor, such portions of the Property to a condition comparable to that existing immediately prior to the installation of the Wire Line. If Licensee fails to do the foregoing, then Licensor may, but is not obligated to, perform such removal and restoration work at the sole cost and expense of Licensee.

(b) In the event of the removal of the Wire Line by Licensor as provided in this Section, Licensor shall not be liable to Licensee for any damage sustained by Licensee for or on account of such removal and restoration, and such removal and restoration shall not prejudice or impair any right of action for damages, or otherwise, which Licensor may have against Licensee.

(c) The provisions of this Section 13 shall survive the termination of this Agreement.

SECTION 14. NOTICES.

All written notices and demands of any kind which either party may be required or may desire to serve on the other in connection with this Agreement shall be served by personal delivery, electronic facsimile with a hard copy promptly posted in the U.S. mail, reputable overnight air courier or registered or certified mail, postage prepaid, return receipt requested, to the intended addressee at the address set forth below:

If to Licensor:

UNION PACIFIC RAILROAD COMPANY
Assistant Vice President Real Estate
1400 Douglas Street, Stop 1690
Omaha, NE 68179-1690
Telephone: 402-544-8640
Facsimile: 402-501-0340

with copies to:

UNION PACIFIC RAILROAD COMPANY
Patrick R. McGill, Esq.
Senior Counsel – Real Estate
1400 Douglas Street
Mail Stop 1580
Omaha, NE 68179
Telephone: 402-544-5761
Facsimile: 402-544-0132

JACOBS CHASE & KELLEY, LLC
Jill K. Rood, Esq.
1050 17th Street, Suite 1500
Denver, CO 80265
Telephone: 303-685-4800
Facsimile: 303-685-4869

If to Licensee:

REGIONAL TRANSPORTATION DISTRICT
Assistant General Manager for Capital Projects
1560 16th Street
Seventh Floor
Denver, CO 80202
Telephone: 303-299-2300
Facsimile: 303-299-2363

with copies to:

REGIONAL TRANSPORTATION DISTRICT
Marla Lien, General Counsel
1600 Blake Street
Denver, CO 80202-1399
Telephone: 303-299-2207
Facsimile: 303-299-2217

KAPLAN KIRSCH & ROCKWELL LLP
Stephen Kaplan, Esq.
1675 Broadway, Suite 2300
Denver, CO 80202
Telephone: 303-825-7000
Facsimile: 303-825-7005

Any such communication shall be deemed to have been delivered (a) as of the date of receipt, in the case of personal delivery or electronic facsimile transmission, (b) the date of receipt or first attempted delivery via reputable air courier, or (c) as of the date of receipt or first attempted

delivery, as evidenced by the return receipt card, in the case of mailing via certified or registered U.S. mail. Either may change the address at which it is to receive notice by so notifying the other party to this Agreement in writing in the manner provided for above.

SECTION 15. WAIVER OF BREACH.

The waiver by Licensor of the breach of any condition, covenant or agreement contained in this Agreement to be kept, observed and performed by Licensee shall in no way impair the right of Licensor to avail itself of any subsequent breach thereof.

SECTION 16. ASSIGNMENT.

This Agreement and the terms, covenants and conditions hereof shall be binding upon, and inure to the benefit of, the parties and, except as expressly limited herein, their respective permitted successors and assigns. The qualifications and reputation of Licensee are material inducements to Licensor in entering into this Agreement. Therefore, Licensee shall not assign the License, in whole or in part, or assign any of Licensee's rights or delegate any of its duties, in whole or in part, under this Agreement to any third party without the prior written consent of Licensor, which consent may be withheld in Licensor's sole discretion. Any assignment, in whole or in part, or attempted assignment, in whole or in part, by Licensee whether voluntary, by operation of law or otherwise, in violation of this Section 16, shall be absolutely void.

SECTION 17. LIMITATIONS SPECIFIC TO REGIONAL TRANSPORTATION DISTRICT.

Notwithstanding anything to the contrary contained in this Agreement, due to the special status of Regional Transportation District as a political subdivision of the State of Colorado, the following limitations shall apply with respect to Regional Transportation District in its capacity as a party hereto, only to the extent required by law (including without limitation any amendments to the Constitution of the State of Colorado) from time to time for purposes of enforceability: (a) the damages recoverable pursuant to Section 9 above shall exclude punitive and exemplary damages; (b) Licensee's liability for indemnifying Licensor under this Agreement shall be limited to the extent of Licensee's applicable insurance coverage, which coverage shall equal to or greater than the coverages required hereby; and (c) nothing in this Agreement shall be construed as a multi-year fiscal obligation. In no event shall these provisions apply to or inure to the benefit of any successor or assign of Regional Transportation District.

SECTION 18. NO WAIVER.

No delay on the part of any party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any waiver on the part of any party hereto of any right, power or privilege hereunder operate as a waiver of any other right, power or privilege hereunder, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof of the exercise of any other right, power or privilege hereunder.

SECTION 19. APPLICABLE LAW.

This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado.

SECTION 20. SEVERABILITY.

Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or unenforceable shall be invalid of unenforceable only to the extent of such determination, which shall not invalidate or otherwise render ineffective any other provision of this Agreement.

SECTION 21. ENTIRE AGREEMENT.

This Agreement, the Property Transfer and Railroad Relocation Agreement between the parties effective as of August __, 2010, as amended, UP Folder No. _____ (and documents executed in connection with the closing of the Limon and Greeley Subdivisions/East Corridor thereunder) and the Engineering Agreement, are intended by the parties as a final expression of their agreement and intended to be a complete and exclusive statement of the agreement and understanding of the parties thereto in respect of the subject matter contained herein. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to in this Agreement.

Exhibit C

(Attached to and made a part of the
Utility License Agreement for Electric Wire Line Crossing
dated _____, 20___,
between Union Pacific Railroad Company
and Regional Transportation District)

Union Pacific Railroad
Contract Insurance Requirements

In addition to the insurance coverages required by the Right of Entry Agreement, Licensee shall procure and maintain at its sole expense the following insurance coverages:

1. Liability insurance: Commercial general liability (CGL) with a limit of not less than $25,000,000 each occurrence and an aggregate limit of not less than $25,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 or ISO claims made form CG 00 02 12 04 (or substitute forms providing equivalent coverage). If Licensee utilizes a claims-made form to meet this requirement Licensee warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Agreement. Licensee also agrees to purchase an extended reporting period if the retroactive date is advanced or if the policy is canceled or not renewed and not replaced by another claims-made policy with the same (or an earlier) retroactive date during the term of this Agreement. The policy must also contain the following endorsement, which must be stated on the certificate of insurance: "Contractual Liability Railroads" ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site, and "Designated Construction Project(s) General Aggregate Limit" ISO Form CG 25 03 03 97 (or substitute form providing equivalent coverage) showing the project location as described in this Agreement on the form schedule.

2. Automobile insurance: Business automobile coverage written on ISO form CA 00 01 10 01 (or substitute form providing equivalent liability coverage) with a limit not less $25,000,000 for each accident. Such insurance shall cover liability arising out of any automobile (including owned, hired, and non-owned automobiles). The policy must contain the following endorsements, which must be stated on the certificate of insurance: Coverage For Certain Operations In Connection With Railroads" ISO form CA 20 70 10 01 (or substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site, and Motor Carrier Act Endorsement – Hazardous materials clean up (MCS-90) if required by law.

3. Workers' Compensation and Employers Liability insurance: Coverage must include but not be limited to: Licensee's statutory liability under the workers' compensation laws of the State of Colorado, Employers' Liability (Part B) with limits of at least $500,000 each accident, $500,000 each employee and $500,000 policy limit for disease, and Alternate Employer endorsement ISO form WC 00 03 01 A (or substitute form providing equivalent coverage) showing Licensor in the schedule as the alternate employer (or substitute form providing equivalent coverage). If Licensee is self-insured, evidence of state approval and

excess workers' compensation coverage must be provided. Coverage must include liability arising out of the U.S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

4. Railroad Protective Liability insurance: Licensee must maintain "Railroad Protective Liability" insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Licensor as Named Insured, with a limit of not less than $25,000,000 per occurrence and an aggregate of $25,000,000. A Binder of Insurance stating the policy is in place must be submitted to Licensor before work may be commenced and until the original policy is received by Licensor.

5. Umbrella or Excess insurance: If Licensee utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

6. Pollution Liability insurance: Pollution Liability coverage must be included when any "hazardous" material that is injurious in or upon land, the atmosphere, or any watercourses; or may cause bodily injury at any time are upon Licensor's property. If required, coverage may be provided by a separate policy or by endorsement to Licensee's CGL policy. In either form coverage must be equivalent to that provided in ISO form "Pollution Liability Coverage Form Designated Sites" CG 00 39 12 04 with limits of at least $5,000,000 per occurrence and an aggregate limit of $10,000,000. If the scope of work includes the disposal of any hazardous or non-hazardous materials from the job site, Licensee must furnish Licensor evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of $5,000,000 per loss, and an annual aggregate of $10,000,000.

7. All policy(ies) required above (except worker's compensation and employers liability) must include Licensor as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Licensor as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Licensor's negligence whether sole or partial, active or passive, and shall not be limited to Licensee's liability under the indemnity provisions of this Agreement.

8. Any punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (i) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this Agreement, or (ii) all punitive damages are prohibited by the State of Colorado.

9. Licensee waives all rights against Licensor, its affiliates, and their respective agents, officers, directors, shareholders and employees for recovery of damages to the extent these damages are covered by the workers' compensation and employer's liability or commercial umbrella or excess liability insurance obtained by Licensee required by this Agreement (which must be stated on the certificate of insurance.)

10. Prior to commencing any work on the Property, Licensee shall furnish Licensor with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.

11. All insurance policies must be written by a reputable insurance company acceptable to Licensor or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the State of Colorado.

12. The fact that insurance is obtained by Licensee will not be deemed to release or diminish the liability of Licensee, including without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Licensor from Licensee or any third party will not be limited by the amount of the required insurance coverage.

Exhibit D

(Attached to and made a part of the
Utility License Agreement for Electric Wire Line Crossing
dated _____, 20___,
between Union Pacific Railroad Company
and Regional Transportation District)

Contractor's Right of Entry Agreement

(see attached)

CONTRACTOR'S
RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made and entered into as of the _____ day of _____, 20_____, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Railroad"); and _____ _____, a _____ corporation ("Contractor").

RECITALS:

Contractor has been hired by _____ to perform work relating to _ _____ (the "work"), with all or a portion of such work to be performed on property of Railroad in the vicinity of Railroad's Milepost _____ on Railroad's _____ _____ [Subdivision] [Branch] [at or near DOT No. _____] located at or near _____, in _____ County, State of _____, as such location is in the general location shown on the print marked **Exhibit A**, attached hereto and hereby made a part hereof. [which work is the subject of a contract dated _____ between Railroad and _____].

Railroad is willing to permit Contractor to perform the work described above at the location described above subject to the terms and conditions contained in this Agreement

AGREEMENT:

NOW, THEREFORE, it is mutually agreed by and between Railroad and Contractor, as follows:

ARTICLE 1 - DEFINITION OF CONTRACTOR.

For purposes of this Agreement, all references in this agreement to Contractor shall include Contractor's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority.

ARTICLE 2 - RIGHT GRANTED; PURPOSE.

Railroad hereby grants to Contractor the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the property described in the Recitals for the purpose of performing the work described in the Recitals above. The right herein granted to Contractor is limited to those portions of Railroad's property specifically described herein, or as designated by the Railroad Representative named in Article 4.

ARTICLE 3 - TERMS AND CONDITIONS CONTAINED IN EXHIBITS B, C AND D.

The terms and conditions contained in **Exhibit B**, **Exhibit C** and **Exhibit D**, attached hereto, are hereby made a part of this Agreement.

ARTICLE 4 - ALL EXPENSES TO BE BORNE BY CONTRACTOR; RAILROAD REPRESENTATIVE.

A. Contractor shall bear any and all costs and expenses associated with any work performed by Contractor, or any costs or expenses incurred by Railroad relating to this Agreement.

B. Contractor shall coordinate all of its work with the following Railroad representative or his or her duly authorized representative (the "Railroad Representative"):

_____
_____
_____
_____

C. Contractor, at its own expense, shall adequately police and supervise all work to be performed by Contractor and shall ensure that such work is performed in a safe manner as set forth in Section 7 of **Exhibit B**. The responsibility of Contractor for safe conduct and adequate policing and supervision of Contractor's work shall not be lessened or otherwise affected by Railroad's approval of plans and specifications involving the work, or by Railroad's collaboration in performance of any work, or by the presence at the work site of a Railroad Representative, or by compliance by Contractor with any requests or recommendations made by Railroad Representative.

ARTICLE 5 - TERM; TERMINATION.

A. The grant of right herein made to Contractor shall commence on the date of this Agreement, and continue until _____, unless sooner terminated as herein provided, or at such time as Contractor has completed its work on Railroad's property, whichever is earlier. Contractor agrees to notify the Railroad Representative in writing when it has completed its work on Railroad's property.

B. This Agreement may be terminated by either party on ten (10) days written notice to the other party.

ARTICLE 6 - CERTIFICATE OF INSURANCE.

A. Before commencing any work, Contractor will provide Railroad with the (i) insurance binders, policies, certificates and endorsements set forth in **Exhibit C** of this Agreement, and (ii) the insurance endorsements obtained by each subcontractor as required under Section 12 of **Exhibit B** of this Agreement.

B. All insurance correspondence, binders, policies, certificates and endorsements shall be sent to:

Union Pacific Railroad Company
_____
[Insert mailing address]
_____
_____
Attn:_____
Folder No. _____

ARTICLE 7 - DISMISSAL OF CONTRACTOR'S EMPLOYEE.

At the request of Railroad, Contractor shall remove from Railroad's property any employee of Contractor who fails to conform to the instructions of the Railroad Representative in connection with the work on Railroad's property, and any right of Contractor shall be suspended until such removal has occurred. Contractor shall indemnify Railroad against any claims arising from the removal of any such employee from Railroad's property.

ARTICLE 8 - ADMINISTRATIVE FEE.

Upon the execution and delivery of this Agreement, Contractor shall pay to Railroad _____ Dollars ($_____) as reimbursement for clerical, administrative and handling expenses in connection with the processing of this Agreement.

ARTICLE 9 - CROSSINGS.

No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's trackage shall be installed or used by Contractor without the prior written permission of Railroad.

ARTICLE 10 - EXPLOSIVES.

Explosives or other highly flammable substances shall not be stored on Railroad's property without the prior written approval of Railroad.

IN WITNESS WHEREOF, the parties hereto have duly executed this agreement in duplicate as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY

By: _____
Title: _____

_____
(Name of Contractor)

By: _____
Title: _____

EXHIBIT A
TO
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

General Location

(attached hereto)

EXHIBIT B
TO
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

Section 1. NOTICE OF COMMENCEMENT OF WORK FLAGGING.

A. Contractor agrees to notify the Railroad Representative at least ten (10) working days in advance of Contractor commencing its work and at least ten (10) working days in advance of proposed performance of any work by Contractor in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such ten (10)-day notice, the Railroad Representative will determine and inform Contractor whether a flagman need be present and whether Contractor needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Contractor for such expenses incurred by Railroad, unless Railroad and a federal, state or local governmental entity have agreed that Railroad is to bill such expenses to the federal, state or local governmental entity. If Railroad will be sending the bills to Contractor, Contractor shall pay such bills within thirty (30) days of Contractor's receipt of billing. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this Agreement.

B. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Contractor (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.

C. Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement

will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Contractor may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Contractor must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Contractor will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

Section 2. **LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.**

A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Railroad to use and maintain its entire property including the right and power of Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by Railroad without liability to Contractor or to any other party for compensation or damages.

B. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of Railroad's property, and others) and the right of Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 3. **NO INTERFERENCE WITH OPERATIONS OF RAILROAD AND ITS TENANTS.**

A. Contractor shall conduct its operations so as not to interfere with the continuous and uninterrupted use and operation of the railroad tracks and property of Railroad, including without limitation, the operations of Railroad's lessees, licensees or others, unless specifically authorized in advance by the Railroad Representative. Nothing shall be done or permitted to be done by Contractor at any time that would in any manner impair the safety of such operations. When not in use, Contractor's machinery and materials shall be kept at least fifty (50) feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroads tracks except at existing open public crossings.

B. Operations of Railroad and work performed by Railroad personnel and delays in the work to be performed by Contractor caused by such railroad operations and work are expected by Contractor, and Contractor agrees that Railroad shall have no liability to Contractor, or any other person or entity for any such delays. The Contractor shall coordinate its activities with those of Railroad and third parties so as to avoid interference with railroad operations. The safe operation of Railroad train movements and other activities by Railroad takes precedence over any work to be performed by Contractor.

Section 4. LIENS.

Contractor shall pay in full all persons who perform labor or provide materials for the work to be performed by Contractor. Contractor shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be created or enforced against any property of Railroad for any such work performed. Contractor shall indemnify and hold harmless Railroad from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished. If Contractor fails to promptly cause any lien to be released of record, Railroad may, at its election, discharge the lien or claim of lien at Contractor's expense.

Section 5. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

A. Fiber optic cable systems may be buried on Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Contractor shall telephone Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on Railroad's property to be used by Contractor. If it is, Contractor will telephone the telecommunications company(ies) involved, make arrangements for a cable locator and, if applicable, for relocation or other protection of the fiber optic cable. Contractor shall not commence any work until all such protection or relocation (if applicable) has been accomplished.

B. In addition to other indemnity provisions in this Agreement, Contractor shall indemnify, defend and hold Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of Contractor, its agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and/or (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Railroad's property. Contractor shall not have or seek recourse against Railroad for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Railroad's property or a customer or user of services of the fiber optic cable on Railroad's property.

Section 6. PERMITS - COMPLIANCE WITH LAWS.

In the prosecution of the work covered by this Agreement, Contractor shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

Section 7. SAFETY.

A. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Contractor. Contractor shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Contractor shall at a minimum comply with Railroad's safety standards listed in **Exhibit D**, hereto attached, to ensure uniformity with the safety standards followed by Railroad's own forces. As a part of Contractor's safety responsibilities, Contractor shall notify Railroad if Contractor determines that any of Railroad's safety standards are contrary to good safety practices. Contractor shall furnish copies of **Exhibit D** to each of its employees before they enter the job site.

B. Without limitation of the provisions of paragraph A above, Contractor shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job.

C. Contractor shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Contractor shall promptly notify Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. Contractor shall have a nondelegable duty to control its employees while they are on the job site or any other property of Railroad, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.

D. If and when requested by Railroad, Contractor shall deliver to Railroad a copy of Contractor's safety plan for conducting the work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require Contractor to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

Section 8. INDEMNITY.

A. To the extent not prohibited by applicable statute, Contractor shall indemnify, defend and hold harmless Railroad, its affiliates, and its and their officers, agents and employees (individually an "Indemnified Party" or collectively "Indemnified Parties") from and against any and all loss, damage, injury, liability, claim, demand, cost or expense (including, without limitation, attorney's, consultant's and expert's fees, and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, any Indemnified Party, Contractor, or any employee of Contractor or of any Indemnified Party) arising out of or in any manner connected with (i) any work performed by Contractor, or (ii) any act or omission of Contractor, its officers, agents or employees, or (iii) any breach of this Agreement by Contractor.

B. The right to indemnity under this Section 8 shall accrue upon occurrence of the event giving rise to the Loss, and shall apply regardless of any negligence or strict liability of any Indemnified Party, except where the Loss is caused by the sole active negligence of an Indemnified Party as established by the final judgment of a court of competent jurisdiction. The

sole active negligence of any Indemnified Party shall not bar the recovery of any other Indemnified Party.

C. Contractor expressly and specifically assumes potential liability under this Section 8 for claims or actions brought by Contractor's own employees. Contractor waives any immunity it may have under worker's compensation or industrial insurance acts to indemnify the Indemnified Parties under this Section 8. Contractor acknowledges that this waiver was mutually negotiated by the parties hereto.

D. No court or jury findings in any employee's suit pursuant to any worker's compensation act or the Federal Employers' Liability Act against a party to this Agreement may be relied upon or used by Contractor in any attempt to assert liability against any Indemnified Party.

E. The provisions of this Section 8 shall survive the completion of any work performed by Contractor or the termination or expiration of this Agreement. In no event shall this Section 8 or any other provision of this Agreement be deemed to limit any liability Contractor may have to any Indemnified Party by statute or under common law.

Section 9. RESTORATION OF PROPERTY.

In the event Railroad authorizes Contractor to take down any fence of Railroad or in any manner move or disturb any of the other property of Railroad in connection with the work to be performed by Contractor, then in that event Contractor shall, as soon as possible and at Contractor's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed. Contractor shall remove all of Contractor's tools, equipment, rubbish and other materials from Railroad's property promptly upon completion of the work, restoring Railroad's property to the same state and condition as when Contractor entered thereon.

Section 10. WAIVER OF DEFAULT.

Waiver by Railroad of any breach or default of any condition, covenant or agreement herein contained to be kept, observed and performed by Contractor shall in no way impair the right of Railroad to avail itself of any remedy for any subsequent breach or default.

Section 11. MODIFICATION - ENTIRE AGREEMENT.

No modification of this Agreement shall be effective unless made in writing and signed by Contractor and Railroad. This Agreement and the exhibits attached hereto and made a part hereof constitute the entire understanding between Contractor and Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work to be performed by Contractor. Notwithstanding anything to the contrary contained in this Section 11, if Contractor is the Regional Transportation District, a political subdivision of the State of Colorado, the preceding sentence stating that this Agreement and the attached exhibits constitute the entire understanding between Contractor and Railroad and

supersede any prior agreements with respect to the work to be performed by Contactor shall not be applicable.

Section 12. ASSIGNMENT - SUBCONTRACTING.

Contractor shall not assign or subcontract this Agreement, or any interest therein, without the written consent of the Railroad. Contractor shall be responsible for the acts and omissions of all subcontractors. Before Contractor commences any work, the Contractor shall, except to the extent prohibited by law; (1) require each of its subcontractors to include the Contractor as "Additional Insured" in the subcontractor's Commercial General Liability policy and Business Automobile policies with respect to all liabilities arising out of the subcontractor's performance of work on behalf of the Contractor by endorsing these policies with ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage: (2) require each of its subcontractors to endorse their Commercial General Liability Policy with "Contractual Liability Railroads" ISO Form CG 24 17 10 01 (or a substitute form providing equivalent coverage) for the job site; and (3) require each of its subcontractors to endorse their Business Automobile Policy with "Coverage For Certain Operations In Connection With Railroads" ISO Form CA 20 70 10 01 (or a substitute form providing equivalent coverage) for the job site.

EXHIBIT C
TO
CONTRACTOR'S
RIGHT OF ENTRY AGREEMENT

Union Pacific Railroad Company
Insurance Provisions For
Contractor's Right of Entry Agreement

Contractor shall, at its sole cost and expense, procure and maintain during the course of the Project and until all Project work on Railroad's property has been completed and the Contractor has removed all equipment and materials from Railroad's property and has cleaned and restored Railroad's property to Railroad's satisfaction, the following insurance coverage:

A. **Commercial General Liability** insurance. Commercial general liability (CGL) with a limit of not less than $5,000,000 each occurrence and an aggregate limit of not less than $10,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.
- Designated Construction Project(s) General Aggregate Limit ISO Form CG 25 03 03 97 (or a substitute form providing equivalent coverage) showing the project on the form schedule.

B. **Business Automobile Coverage** insurance. Business auto coverage written on ISO form CA 00 01 03 06 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less $5,000,000 for each accident and coverage must include liability arising out of any auto (including owned, hired and non-owned autos).

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

C. **Workers' Compensation and Employers' Liability** insurance. Coverage must include but not be limited to:

- Contractor's statutory liability under the workers' compensation laws of the state where the work is being performed.

- Employers' Liability (Part B) with limits of at least $500,000 each accident. $500,000 disease policy limit $500,000 each employee.

If Contractor is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy must contain the following endorsement, which must be stated on the certificate of insurance:

- Alternate Employer endorsement ISO form WC 00 03 01 A (or a substitute form providing equivalent coverage) showing Railroad in the schedule as the alternate employer (or a substitute form providing equivalent coverage).

D. **Railroad Protective Liability** insurance. Contractor must maintain Railroad Protective Liability insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured. with a limit of not less than $2,000,000 per occurrence and an aggregate of $6,000,000. A binder stating the policy is in place must be submitted to Railroad before the work may be commenced and until the original policy is forwarded to Railroad.

E. **Umbrella or Excess** insurance. If Contractor utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

F. **Pollution Liability** insurance. Pollution liability coverage must be written on ISO form Pollution Liability Coverage Form Designated Sites CG 00 39 12 04 (or a substitute form providing equivalent liability coverage), with limits of at least $5,000,000 per occurrence and an aggregate limit of $10,000,000.

If the scope of work as defined in this Agreement includes the disposal of any hazardous or non-hazardous materials from the job site, Contractor must furnish to Railroad evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of $1,000,000 per loss, and an annual aggregate of $2,000,000.

Other Requirements

G. All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the indemnity provisions of this Agreement.

H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.

I. Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.

J. Prior to commencing the work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.

K. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state where the work is being performed.

L. The fact that insurance is obtained by Contractor or by Railroad on behalf of Contractor will not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Contractor or any third party will not be limited by the amount of the required insurance coverage.

EXHIBIT D
TO
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

Minimum Safety Requirements

The term "employees" as used herein refer to all employees of Contractor as well as all employees of any subcontractor or agent of Contractor.

I. Clothing

A. All employees of Contractor will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Contractor's employees must wear:

(i) Waist-length shirts with sleeves.
(ii) Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
(iii) Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.

B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.

C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

II. Personal Protective Equipment

Contractor shall require its employees to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

(i) Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Contractor's company logo or name.
(ii) Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
(iii) Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:

- 100 feet of a locomotive or roadway/work equipment
- 15 feet of power operated tools
- 150 feet of jet blowers or pile drivers
- 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)

(iv) Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

III. On Track Safety

Contractor is responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

(i) Maintain a distance of twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.

(ii) Wear an orange, reflectorized workwear approved by the Railroad Representative.

(iii) Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Contractor must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Contractor will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

IV. Equipment

A. It is the responsibility of Contractor to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Contractor's equipment is unsafe for use, Contractor shall remove such equipment from Railroad's property. In addition, Contractor must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:

- Familiar and comply with Railroad's rules on lockout/tagout of equipment.
- Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
- Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other railbound equipment.

B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.

C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.

D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

V. General Safety Requirements

A. Contractor shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.

B. Contractor shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.

C. All track work performed by Contractor meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.

D. All employees comply with the following safety procedures when working around any railroad track:

(i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.

(ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.

(iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).

(iv) Avoid walking or standing on a track unless so authorized by the employee in charge.

(v) Before stepping over or crossing tracks, look in both directions first.

(vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.

E. All employees must comply with all federal and state regulations concerning workplace safety.

Exhibit E

(Attached to and made a part of the
Utility License Agreement for Electric Wire Line Crossing
dated _____, 20___,
between Union Pacific Railroad Company
and Regional Transportation District)

Plans and Specifications

The cover sheets (dated and initialed by both Licensee and Licensor) for the designs, plans and specifications at the thirty percent (30%) design completion level for the Wire Line are attached hereto and by such attachment, the entire such designs, plans and specifications for the Wire Line are incorporated herein by reference.

4

Exhibit 4

Form of
Addendum D to FasTracks Project Property Transfer and Railroad Relocation Agreement
Moffat Tunnel Subdivision / Gold Line

[attached hereto]

Purchaser: _____ *JC Draft*
RTD Title: _____ *July 29, 2010*
Seller: _____ Escrow No.: Stewart File No. 932564
UP Title: _____ Escrow Holder: _____
Effective Date: _____ Date of Opening of Escrow: _____

ADDENDUM D

TO THE PROPERTY TRANSFER AND RAILROAD RELOCATION AGREEMENT

MOFFAT TUNNEL SUBDIVISION/GOLD LINE

This Addendum D is attached to and a part of the Property Transfer and Railroad Relocation Agreement, by and between Union Pacific Railroad Company and Regional Transportation District, originally executed June 24, 2009 with Addendum A for the Boulder Industrial Lead/North Metro Line and dated effective August ___, 2010, for the Moffat Tunnel Subdivision/Gold Line, as amended by that certain First Amendment to Property Transfer and Railroad Relocation Agreement, by and between Union Pacific Railroad Company and Regional Transportation District, dated effective August ___, 2010. This Addendum D contains additional terms and conditions applicable to consummating the transfer of the Moffat Tunnel Subdivision/Gold Line Project Segment, and is to be read together with the foregoing Articles and Sections of the Agreement, as noted herein.

The following schedules and exhibits are attached to this Addendum D and incorporated herein by reference:

Schedule 1	Assigned Leases and Assigned Other Agreements
Schedule 2.2.2(ii)(b)	Excluded Improvements
Schedule 2.2.2(ii)(c)	Excluded Railroad Facilities
Schedule 3	Leases and Other Agreements Pertaining to Communication Easement
Schedule 8.1	Seller's Disclosures
Exhibit A	The Property I. Moffat Tunnel Subdivision/Gold Line II. Flyover Easement Property A. Rail Transit Flyovers - West of Sheridan Boulevard II. Flyover Easement Property A. Rail Transit Flyovers - Utah Junction II. Flyover Easement Property B. Pedestrian Flyover (near 41st Street)
Exhibit B	Assignment and Assumption Agreement
Exhibit C	Bill of Sale
Exhibit D	Flyover Easement Agreement
Exhibit E	Moffat Tunnel Subdivision/Gold Line Seller Relocation Property
Exhibit F	Quitclaim Deed
Exhibit G	Operations Agreement and Memorandum thereof
Exhibit H	Utility License Agreement for Electric Wire Line Crossing
Exhibit I	Federal Funding Requirements

RECITALS

B. The Moffat Tunnel Subdivision and the Flyover Easement property associated therewith are more particularly depicted and/or described as the "Property" on Exhibit A attached to this Addendum D and made a part hereof.

D. Prior to the Effective Date of this Addendum D, Seller has executed a contract to acquire the Moffat Tunnel Subdivision/Gold Line Seller Relocation Property, and is currently performing its due diligence of such property. Seller will also be performing pre-closing relocation and construction work on its Moffat Tunnel Subdivision to facilitate Purchaser's Project. The parties agree that Seller's Moffat Tunnel Subdivision is essential to Seller's ability to fulfill its common carrier obligation, and therefore, this Project Segment shall not be transferred to Purchaser until, *inter alia*, the acquisition and entitlement of such Seller Relocation Property is completed, and the relocations and modifications of Seller's Railroad Facilities and of the Third Party Property on the Moffat Tunnel Subdivision are completed and operational.

E. Concurrently with the attachment of this Addendum D to the Agreement and subject to Section 15.5, Purchaser has provided Seller with a certified copy of the resolution of Purchaser's board of directors (i) authorizing Purchaser to enter into this Addendum D and the Related Agreements, and (ii) waiving any governmental immunity that Purchaser may have under the GIA in defense of any claims against Purchaser pursuant to any indemnities provided in this Addendum D and the Engineering Agreement.

ARTICLE 1 – ADDITIONAL DEFINITIONS

"Assigned Leases" for the Moffat Tunnel Subdivision/Gold Line shall refer collectively to the Leases listed in Schedule 1 attached hereto, only to the extent such Leases cover the Property (excluding the Flyover Easement property) and do not pertain to the Retained Rights.

"Assigned Other Agreements" for the Moffat Tunnel Subdivision/Gold Line shall refer collectively to the Other Agreements listed in Schedule 1 attached hereto, only to the extent such Other Agreements cover the Property (excluding the Flyover Easement property) and do not pertain to the Retained Rights.

"Assignment and Assumption Agreement" shall mean the assignment and assumption agreement transferring to Purchaser all of Seller's interests in the Assigned Leases and Assigned Other Agreements for this Project Segment, in the form attached to this Addendum D as Exhibit B.

"Bill of Sale" for this Project Segment shall mean the bill of sale quitclaiming to Purchaser all of Seller's right, title and interest in and to any personalty identified by Seller and located on the Property (excluding the Flyover Easement property), in the form attached to this Addendum D as Exhibit C.

"Excluded Improvements" shall have the meaning set forth in Section 2.2.2 below.

"Excluded Railroad Facilities" shall have the meaning set forth in Section 2.2.2 below.

"Flyover Easement" shall mean, collectively, the two (2) rail transit and one (1) pedestrian flyover easement agreements, in the form attached to this Addendum D as Exhibit D.

"Moffat Tunnel Subdivision/Gold Line Seller Relocation Property" shall mean the property depicted and/or described on Exhibit E to this Addendum D.

"Property" shall have the meaning set forth in Recital B above.

"Quitclaim Deeds" shall mean, collectively, the quitclaim deeds for this Project Segment (excluding the Flyover Easement property) covering two (2) counties within which this Project Segment is located, in the form attached to this Addendum D as Exhibit F.

"Related Agreements" shall mean, for this Project Segment, the Operations Agreement between the parties in the form attached to this Addendum D as Exhibit G, together with the Memorandum thereof to be recorded at the Closing, the Utility License Agreement for Electric Wire Line Crossing between the parties in the form attached to this Addendum D as Exhibit H, and the Engineering Agreement.

ARTICLE 2 – SALE AND PURCHASE; EXCHANGE

2.2.1 Property. The Property for the Moffat Tunnel Subdivision/Gold Line shall exclude the Retained Rights described in the Quitclaim Deeds.

2.2.2 Other Assets. Schedule 2.2.2 (ii)(b) attached hereto describes the improvements owned by Seller that are excluded from the Other Assets for this Project Segment ("Excluded Improvements"). Schedule 2.2.2 (ii)(c) attached hereto describes the Railroad Facilities owned by Seller that are excluded from the Other Assets for this Project Segment ("Excluded Railroad Facilities").

2.4 Moffat Tunnel Subdivision/Gold Line Seller Relocation Property. Purchaser shall cooperate fully with Seller in expediting the acquisition of the Moffat Tunnel Subdivision/Gold Line Seller Relocation Property. At Seller's option, if in Seller's opinion there is a material issue with the use of the Moffat Tunnel Subdivision/Gold Line Seller Relocation Property as contemplated, the parties shall (at Purchaser's sole cost and expense) modify the definition (together with the depiction and legal description thereof) of the Moffat Tunnel Subdivision/Gold Line Seller Relocation Property in the manner required to resolve such issue to Seller's satisfaction. In such event, the parties shall fully cooperate to minimize any delay of the Closing Date.

ARTICLE 3 – RETAINED RIGHTS

Seller's Retained Rights for the Moffat Tunnel Subdivision/Gold Line are described in the Quitclaim Deeds. Schedule 3 attached hereto lists the Leases and Other Agreements that pertain to the Communication Easement to be reserved in the Quitclaim Deeds.

ARTICLE 4 - RAILROAD RELOCATION AND THIRD PARTY WORK

4.2 Design and Construction for Relocations. Purchaser's performance under the Engineering Agreement is a material part of the consideration for Seller's entering into this Agreement, and any material breach of such agreement by Purchaser shall be deemed to be a breach of this Agreement. No Relocation and Construction Agreement is required for this Project Segment, as Seller is responsible for the design and construction of Seller's relocation Work and the related Third Party Work, subject to Purchaser's reimbursement obligations related thereto as set forth in this Agreement and in the Engineering Agreement. Seller shall keep Purchaser apprised of the scope of, and schedule for, Seller's Work, but shall have no obligation to commence its Work on this Project Segment unless and until, *inter alia*: (i) the Moffat Tunnel Subdivision/Gold Line Seller Relocation Property shall have been acquired and entitled for Seller's use; (ii) Seller has agreements in place with BNSF Railway governing both railroads' existing and future operations, including any construction work and easement modifications necessary in connection therewith, and associated real property rights, in the vicinity of Seller's Moffat Tunnel Subdivision; and (iii) other factors impacting Seller's construction schedule are in place, including without limitation: the timing of the Third Party Work and Purchaser's Project Work, obtaining all necessary Colorado Public Utilities Commission and local governmental approvals and permits for the Work and for Seller's intended uses, completing all necessary environmental reviews, estimating Work costs, ensuring labor force availability (particularly if more than one (1) Project Segment is under construction at the same time), and accounting for seasonal weather changes. **[RTD: UP needs the flexibility re labor force availability as the BNSF agreements and Barone acquisition are still in flux, and outside factors (such as the Burnham construction schedule) could impact UP's labor scheduling.]**

4.6.2 Project Representative. Seller designates Brad Waufle as Seller's project representative, and Purchaser designates Henry J. Stopplecamp as RTD's project representative. The parties' project representatives may be contacted as follows:

UP:

Brad Waufle
Manager Special Projects – Field Construction
1800 Westland Road
Cheyenne, WY 82001
Telephone: 307-778-3315
Facsimile: 307-778-3420
Email: bwaufle@up.com

RTD:

Regional Transportation District
Attn: Henry J. Stopplecamp
Engineering Technical Services Manager
1560 Broadway, Suite 700
Denver, CO 80202
Telephone: 303-299-6966
Facsimile: 303-299-6964
Email: henry.stopplecamp@rtd-fastracks.com

Each party reserves the right to change the designation of its representative from time to time by written notice to the other party.

ARTICLE 5 – CONSIDERATION

5.1 Purchase Price. In addition to all other amounts due from Purchaser to Seller pursuant to this Agreement, and subject to Section 2.3.1 above, Purchaser shall pay to Seller the sum of Two Million Two Hundred Ninety-nine Thousand Nine Hundred Forty-seven Dollars and Thirty Cents ($2,299,947.30) at the Closing as the additional Purchase Price for this Project Segment, payable in accordance with Article 5 of this Agreement. The Purchase Price may be adjusted by the parties prior to the Closing following the completion of the survey of the Property and the resolution of any issues by the parties in connection therewith pursuant to Exhibit A.

ARTICLE 6 - TITLE

6.3 Title Review. Prior to the date hereof, Purchaser has received preliminary commitments for title insurance covering the Property for the Moffat Tunnel Subdivision/Gold Line. Purchaser hereby affirms that none of the exceptions to title included in such preliminary commitments for title insurance contain any information that Seller has no color of title for the Property, and Purchaser hereby waives its rights to raise any color of title issues contained in such exceptions to title. To the extent that Purchaser receives any updated title commitments for title insurance covering all or any portion of the Property for the Moffat Tunnel Subdivision/Gold Line that show any new exceptions to title that were not shown on any preliminary commitments for title insurance received by Purchaser prior to the date hereof, Purchaser shall have the right to specify that Seller has no color of title solely with respect to such new exceptions to title in accordance with the process set forth in this Section 6.3.

ARTICLE 7 - DUE DILIGENCE

No additional terms.

ARTICLE 8 - REPRESENTATIONS AND WARRANTIES

8.1 Seller's Representations and Warranties. Schedule 8.1 is attached hereto, containing Seller's disclosures with respect to this Project Segment.

8.2.7 Purchaser Indemnities Not Inconsistent with Law. None of Purchaser's indemnities contained in this Addendum D or in the Engineering Agreement are inconsistent with or in contravention of either (i) the Regional Transportation District Act, C.R.S. §§ 32-9-101 *et seq.* or (ii)the GIA.

8.2.8 Waiver of Governmental Immunity on Purchaser Indemnities. To the extent provided in the resolution of Purchaser's board of directors, Purchaser's board of directors has taken all steps legally required by Section 104 of the GIA to waive any governmental immunity that Purchaser may have under the GIA in defense of any claims against Purchaser pursuant to any indemnities provided in this Addendum D or in the Engineering Agreement.

8.2.10 Purchaser's Funding. Prior to the attachment of this Addendum D to the Agreement, Purchaser's board of directors has budgeted, authorized and appropriated sufficient funds to pay the full Purchase Price for this Project Segment, to the extent of the parties' current estimates of the full Purchase Price, which is Eight Million One Hundred Seventeen Thousand Two Hundred Ninety Dollars and Thirty Cents ($8,117,290.30) (comprised of the following estimates: $2.299,947.30 for additional Purchase Price pursuant to Section 5.1 of this Agreement; $600,000.00 for the Engineering Design Costs pursuant to the Engineering Agreement; $4,826,543.00 for the additional signal system Work pursuant to Article 4 of this Agreement: $300,000.00 for the project representative costs pursuant to Article 4 of this Agreement; $15.800.00 for the fee due pursuant to the Utility License Agreement for Electric Wire Line Crossing between the parties; and $75,000.00 for the Seller Relocation Property Costs). Such amount is exclusive of all Costs that Purchaser is obligated to pay on its own behalf related to eminent domain, environmental remediation, Purchaser's construction obligations, insurance and similar transactional and litigation expenses.

8.2.11 Federal Funding Requirements. All or a portion of Purchaser's funding of the Purchase Price for this Project Segment is financed by a loan or includes a grant or other payment from the U.S. Government, and such financing or payment requires that Purchaser implement the requirements set forth on Exhibit I attached to this Addendum D and made a part hereof.

ARTICLE 9 - DISCLAIMERS

No additional terms.

ARTICLE 10 - RESPONSIBILITY FOR HAZARDOUS SUBSTANCES.

10.2.1 Property. Purchaser, for itself and its successors and assigns, hereby waives, releases, remises, acquits, forever discharges, indemnifies, and agrees to defend and hold harmless Seller, Affiliates of Seller, its and their respective officers, employees, agents, successors and assigns, and/or any other person acting on behalf of Seller, of, from and against any claims, actions, causes of action, demands, rights, Losses or compensation whatsoever, direct or indirect, that Purchaser or any third party now has, or may have in the future, on account of or in any way arising out of or in connection with (i) the known or unknown Environmental Condition of the Property (including without limitation, any contamination in, on, under or adjacent to the Property or Other Assets by any Hazardous Substances), or (ii) the

Environmental Laws applicable to the Property. Purchaser shall obtain from all persons or entities to which Purchaser transfers any fee or subsurface easement interest in the Property, and shall furnish to Seller, the written waiver of such transferees in favor of Seller in the form of this Section 10.2.1, and Purchaser acknowledges that any such transfer shall not release Purchaser from its liabilities under this Section 10.2.1.

ARTICLE 11 - COVENANTS

11.1.5 Compliance with Federal Funding Requirements. In reliance on Purchaser's representation set forth in Section 8.2.11 above, Seller shall comply with the requirements on Exhibit I, to the extent applicable to Seller's signal system work for its relocated Moffat Tunnel Subdivision right-of-way.

11.2.5 Further Appropriations. At any time prior to the Closing under this Addendum D, if either party determines that the amounts budgeted, authorized and appropriated by Purchaser's board of directors may be insufficient to meet Purchaser's obligations, Purchaser shall promptly budget, authorize and appropriate the additional amounts required. If a requested appropriation is denied by Purchaser's board of directors, the parties shall meet in good faith during the sixty (60) days following such denial to resolve any outstanding issues impacting the funding requirements, but after such sixty (60)-day period, Seller shall have all rights and remedies available to it at law or in equity, including without limitation, the right to stop performance under, and/or terminate, this Agreement and under all related agreements then in effect.

ARTICLE 12 - CONDITIONS PRECEDENT TO CLOSING

12.1.14 Burnham Yard Lead/West Corridor and Limon and Greeley Subdivisions/East Corridor Documents. Addendum B for the Burnham Yard Lead/West Corridor, the Relocation and Construction Agreement for such Project Segment, Addendum C for the Limon and Greeley Subdivisions/East Corridor, the Relocation and Construction Agreement for such Project Segment, the Engineering Agreement for the Limon and Greeley Subdivisions/East Corridor and the Escrow Agreement among Seller, Purchaser and U.S. Bank National Assocation, as escrow agent, dated of even date herewith, for such Project Segment shall have been initialed or executed (as applicable) by both parties.

12.1.15 Agreements with BNSF Railway. Seller shall have agreements in place with BNSF Railway in form and substance satisfactory to Seller in its sole discretion, governing both railroads' existing and future operations (which shall not include any at-grade crossings of those railroads), and any construction necessary in connection therewith, and real property rights, in the vicinity of the Property and the Moffat Tunnel Subdivision/Gold Line Seller Relocation Property, and all construction contemplated in such agreements to accommodate the Project shall have been fully completed.

12.1.16 Roadway Crossings. Seller shall have received all necessary rights for Seller's freight rail operations across all roadways within Seller's relocated Moffat Tunnel Subdivision right-of-way, including without limitation Colorado Public Utilities Commission

and local governmental approvals and permits for operations and for track construction and removals, which rights shall be in form and substance satisfactory to Seller in its sole discretion.

12.1.17 Waiver and Release. For this Project Segment, all lessees, sublessees, licensees and easement owners of Seller shall have waived or released their respective interests in acquiring the Property, if any.

12.1.18 Legal Descriptions. The conditions for finalizing legal descriptions set forth in Exhibit A and Exhibit F shall have been met within the timeframes stated therein.

ARTICLE 13 - OPENING AND CLOSING OF ESCROW

No additional terms.

ARTICLE 14 - RISK OF LOSS; CONDEMNATION; DEFAULTS AND REMEDIES

No additional terms.

ARTICLE 15 – MISCELLANEOUS

No additional terms.

SCHEDULE 1 TO ADDENDUM D

(Attached to and made a part of
Addendum D to the Property Transfer and Railroad Relocation Agreement
Moffat Tunnel Subdivision/Gold Line)

Assigned Leases and Assigned Other Agreements

Assigned Leases:

None

SCHEDULE 1 TO ADDENDUM D

(Attached to and made a part of
Addendum D to the Property Transfer and Railroad Relocation Agreement
Moffat Tunnel Subdivision/Gold Line)

Assigned Leases and Assigned Other Agreements

Assigned Other Agreements:

(see attached)

SCHEDULE 2.2.2(ii)(b) TO ADDENDUM D

(Attached to and made a part of
Addendum D to the Property Transfer and Railroad Relocation Agreement
Moffat Tunnel Subdivision/Gold Line)

Excluded Improvements

None

SCHEDULE 2.2.2(ii)(c) TO ADDENDUM D

(Attached to and made a part of
Addendum D to the Property Transfer and Railroad Relocation Agreement
Moffat Tunnel Subdivision/Gold Line)

Excluded Railroad Facilities

to be determined prior to Closing

SCHEDULE 3 TO ADDENDUM D

(Attached to and made a part of
Addendum D to the Property Transfer and Railroad Relocation Agreement
Moffat Tunnel Subdivision/Gold Line)

Leases and Other Agreements Pertaining to Communication Easement

(see attached)

SCHEDULE 8.1 TO ADDENDUM D

(Attached to and made a part of
Addendum D to the Property Transfer and Railroad Relocation Agreement
Moffat Tunnel Subdivision/Gold Line)

Seller's Disclosures

IV. Moffat Tunnel Subdivision/Gold Line

None

EXHIBIT A TO ADDENDUM D

(Attached to and made a part of
Addendum D to the Property Transfer and Railroad Relocation Agreement
Moffat Tunnel Subdivision/Gold Line)

THE PROPERTY

(see attached depictions)

As a condition to this Addendum D and the Closing contemplated hereunder (i) Purchaser shall perform a survey and prepare the legal descriptions for the Property (parts I and II of this Exhibit A) for Seller's approval on or before August 30, 2010; (ii) the parties shall then work jointly to resolve any legal description and/or survey issues; and (iii) both parties shall approve, initial and attach to this Exhibit A the complete legal descriptions for the Property at least fifteen (15) days prior to the Closing.

EXHIBIT A TO ADDENDUM D

(Attached to and made a part of
Addendum D to the Property Transfer and Railroad Relocation Agreement
Moffat Tunnel Subdivision/Gold Line)

The Property

I. Moffat Tunnel Subdivision/Gold Line

(see attached)

EXHIBIT A TO ADDENDUM D

(Attached to and made a part of
Addendum D to the Property Transfer and Railroad Relocation Agreement
Moffat Tunnel Subdivision/Gold Line)

The Property

II. Flyover Easement Property

A. Rail Transit Flyovers

West of Sheridan Boulevard

Exclusive Aerial Easement property:

The area that is expressly limited vertically (a) above a plane parallel with and twenty-three (23) feet six (6) inches above the top of the rail of the highest of Grantor's trackage facilities located on the real property described below and (b) below a plane parallel with and fifty-five (55) feet above the top of the rail of the highest of Grantor's trackage facilities located on the real property described below:

Non-exclusive Aerial Easement property:

The area that is expressly limited vertically at or above a plane parallel with and fifty-five (55) feet above the top of the rail of the highest of Grantor's trackage facilities located on the real property described below:

Real property above which the Aerial Easement property is located:

(see attached)

EXHIBIT A TO ADDENDUM D

(Attached to and made a part of
Addendum D to the Property Transfer and Railroad Relocation Agreement
Moffat Tunnel Subdivision/Gold Line)

The Property

II. Flyover Easement Property

A. Rail Transit Flyovers

Utah Junction

Exclusive Aerial Easement property:

The area that is expressly limited vertically (a) above a plane parallel with and twenty-three (23) feet six (6) inches above the top of the rail of the highest of Grantor's trackage facilities located on the real property described below and (b) below a plane parallel with and fifty-five (55) feet above the top of the rail of the highest of Grantor's trackage facilities located on the real property described below:

Non-exclusive Aerial Easement property:

The area that is expressly limited vertically at or above a plane parallel with and fifty-five (55) feet above the top of the rail of the highest of Grantor's trackage facilities located on the real property described below:

Real property above which the Aerial Easement property is located:

(see attached)

EXHIBIT A TO ADDENDUM D

(Attached to and made a part of
Addendum D to the Property Transfer and Railroad Relocation Agreement
Moffat Tunnel Subdivision/Gold Line)

The Property

II. Flyover Easement Property

B. Pedestrian Flyover (near 41st Street)

Exclusive Aerial Easement property:

The area that is expressly limited vertically (a) above a plane parallel with and twenty-three (23) feet six (6) inches above the top of the rail of the highest of Grantor's trackage facilities located on the real property described below and (b) below a plane parallel with and fifty-five (55) feet above the top of the rail of the highest of Grantor's trackage facilities located on the real property described below:

Non-exclusive Aerial Easement property:

The area that is expressly limited vertically at or above a plane parallel with and fifty-five (55) feet above the top of the rail of the highest of Grantor's trackage facilities located on the real property described below:

Real property above which the Aerial Easement property is located:

(see attached)

EXHIBIT B TO ADDENDUM D

(Attached to and made a part of
Addendum D to the Property Transfer and Railroad Relocation Agreement
Moffat Tunnel Subdivision/Gold Line)

Assignment and Assumption Agreement

FOR VALUE RECEIVED, UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Assignor") hereby assigns and transfers to Regional Transportation District, a political subdivision of the State of Colorado ("Assignee") all of Assignor's right, title and interest in and to the leases and other agreements (collectively, the "Assigned Agreements") and all amendments thereto, only to the extent the Assigned Agreements affect the real property described on Exhibit A attached hereto and incorporated herein by reference (the "Property"). The Assigned Agreements are listed on Exhibit B attached hereto and incorporated herein by reference.

This Assignment and Assumption Agreement is made and accepted without recourse against Assignor as to the performance by any party under the Assigned Agreements.

Assignee agrees to (i) perform all of the obligations of Assignor pursuant to the Assigned Agreements as they relate to the Property accruing on or after the date hereof, and (ii) indemnify and hold Assignor harmless from and against any and all claims, causes of actions and expenses (including reasonable attorneys' fees) incurred by Assignor and arising out of (a) Assignee's failure to comply with terms of the Assigned Agreements on or after the date hereof, and (b) claims under the Assigned Agreements by the tenant or other party named in the Assigned Agreements accruing on or after the date hereof.

Assignee agrees to manage the Assigned Agreements, and to enter into any new agreements with third parties, only in a manner that does not materially interfere with Assignor's rights under the Operations Agreement – Moffat Tunnel Subdivision/Gold Line between Assignor and Assignee, dated of even date herewith.

This Assignment and Assumption Agreement shall inure to and be binding upon the parties, their successors and assigns.

This Assignment and Assumption Agreement may be executed in one (1) or more counterparts, each of which, when so executed, shall be deemed to be an original. Such counterparts shall together constitute and be one and the same instrument.

Dated as of the ___ day of _____, 20__ _.

ASSIGNOR:

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

By: _____
Name: _____
Title: _____

ASSIGNEE:

REGIONAL TRANSPORTATION DISTRICT,
a political subdivision of the State of Colorado

By: _____
Name: _____
Title: General Manager

APPROVED AS TO LEGAL FORM FOR
THE REGIONAL TRANSPORTATION DISTRICT:

By: _____
Legal Counsel

Exhibit A

(Attached to and made a part of the
Assignment and Assumption Agreement dated as of _____, 20__,
between Union Pacific Railroad Company
and Regional Transportation District)

The Property

(see attached)

Exhibit B

(Attached to and made a part of the
Assignment and Assumption Agreement dated as of _____. 20__.
between Union Pacific Railroad Company
and Regional Transportation District)

Assigned Agreements

Assigned Leases:

None

Exhibit B

(Attached to and made a part of the
Assignment and Assumption Agreement dated as of _____, 20__,
between Union Pacific Railroad Company
and Regional Transportation District)

Assigned Agreements

Assigned Other Agreements:

(see attached)

EXHIBIT C TO ADDENDUM D

(Attached to and made a part of
Addendum D to the Property Transfer and Railroad Relocation Agreement
Moffat Tunnel Subdivision/Gold Line)

Bill of Sale

Quitclaim Bill of Sale

[Intentionally Deleted]

EXHIBIT D TO ADDENDUM D

(Attached to and made a part of
Addendum D to the Property Transfer and Railroad Relocation Agreement
Moffat Tunnel Subdivision/Gold Line)

Flyover Easement Agreement

(Moffat Tunnel Subdivision/Gold Line)

[Text applicable to the pedestrian flyover located near 41st Street is preceded by "a:", text applicable to the passenger rail flyover located near Utah Junction is preceded by "b:" and text applicable to the passenger rail flyover located west of Sheridan Boulevard is preceded by "c:"]

[Parties to identify whether any of the flyovers will not require surface or subsurface support on the Real Property.]

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Jacobs Chase & Kelley, LLC
1050 17th Street, Suite 1500
Denver, CO 80265
Attn: Jill K. Rood, Esq.

FLYOVER EASEMENT AGREEMENT

(Moffat Tunnel Subdivision/Gold Line)

[a: City and] County of **[a:Denver/b:Adams/c:Jefferson]**, Colorado

THIS FLYOVER EASEMENT AGREEMENT ("Easement Agreement") is made and entered into as of the _____day of _____, 20___ by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Grantor") and REGIONAL TRANSPORTATION DISTRICT, a political subdivision of the State of Colorado ("Grantee"), whose legal address is 1600 Blake Street, Denver, Colorado 80202. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby agree as follows:

Grantor hereby grants to Grantee a flyover easement (the "Aerial Easement") to construct, reconstruct, maintain, repair, replace and use **[a: ,and allow its invitees to use]** an overpass in accordance with the Construction Plans and Specifications (as defined in Exhibit A attached hereto and incorporated herein by this reference) for purposes of **[a: pedestrian and non-motorized bicycle ingress and egress /b: and c: passenger rail transit]** (the "Overpass")

above certain real property located in the **[a: City and]** County of **[a:Denver/b:Adams/c:Jefferson]**, State of Colorado, as such real property is more particularly described on Exhibit B attached hereto and incorporated herein by this reference ("Real Property"). All support columns, structures and systems that support the Overpass, if any, are collectively referred to herein with the Overpass as the "Bridge." The location of the Aerial Easement above the Real Property is identified on Exhibit C attached hereto and incorporated herein by this reference and is further described and delineated below (the "Flyover Easement Property").

The Flyover Easement Property shall include (i) an exclusive Aerial Easement within the area expressly limited vertically (a) above a plane parallel with and twenty-three (23) feet six (6) inches above the top of the rail of the highest of Grantor's trackage facilities located on the Real Property and (b) below a plane parallel with and fifty-five (55) feet above the top of the rail of the highest of Grantor's trackage facilities located on the Real Property, and (ii) a non-exclusive Aerial Easement within the area that is at or above a plane parallel with and fifty-five (55) feet above the top of the rail of the highest of Grantor's trackage facilities located on the Real Property.

If the Construction Plans and Specifications require any support columns or systems to be located on the Real Property in order to support the Overpass, Grantor agrees to grant to Grantee in the future, for no additional consideration, an exclusive surface and subsurface support easement (the "Support Easement") on a portion of the Real Property to construct, reconstruct, maintain, repair and replace such support columns, structures and/or systems for the Overpass in accordance with the Construction Plans and Specifications. The location of such support columns, structures and/or systems on the Real Property shall be approved by Grantor in its sole discretion, and such location shall become the location of the Support Easement to be granted by Grantor (the "Support Easement Property"). Within thirty (30) days after Grantor's approval of the location of the Support Easement, the parties shall amend this Easement Agreement to provide for Grantor's grant of the Support Easement to Grantee, to make the Support Easement and the Support Easement Property subject to the terms of this Easement Agreement and to revise Exhibit D of this Easement Agreement to attach the legal description of the Support Easement. Without limiting the foregoing, if this Easement Agreement is amended to include the Support Easement as provided herein, all references to Flyover Easement Property in Exhibit A of this Easement Agreement shall thereafter be deemed to include the Support Easement Property.

No later than three (3) months after substantial completion by Grantee of the Bridge, Grantee, at its sole expense, shall cause an as-built survey and revised legal descriptions to be made for those portions of the Real Property that are then encumbered by the Bridge, for the limited purposes of amending and more accurately identifying the Flyover Easement Property. The as-built survey and revised legal descriptions of the Flyover Easement Property shall be submitted to Grantor for its review and approval. After approval by Grantor of such as-built survey and revised legal descriptions, no later than thirty (30) days after Grantor provides a written request to Grantee, Grantee agrees to execute, acknowledge and deliver to Grantor a form of amended and restated Easement Agreement in recordable form acceptable to Grantor, pursuant to which Exhibit C and Exhibit D, if applicable, of this Easement Agreement shall be amended to correspond to such as-built survey and revised legal descriptions. Upon the request

of Grantor at any time, Grantee shall execute and deliver to Grantor a quitclaim deed as set forth in Section 14 of Exhibit A of this Easement Agreement. Subject only to Section 4.c of Exhibit A of this Easement Agreement, Grantee agrees to be responsible for all costs associated with the preparation of the as-built survey and revised legal descriptions and the preparation and recording of the amended and restated Easement Agreement and quitclaim deed described in this paragraph.

This Easement Agreement is expressly subject to the terms, conditions, limitations and covenants contained in Exhibit A, Exhibit E and Exhibit F attached hereto and incorporated by this reference. Grantee, by its acceptance of this Easement Agreement, agrees for itself, its successors and assigns, to observe each and all of the terms, conditions, limitations and covenants in this Easement Agreement, including, without limitation, those contained in Exhibit A, Exhibit E and Exhibit F.

This Easement Agreement shall be construed and enforced in accordance with the laws of the State of Colorado.

This Easement Agreement may be executed in one (1) or more counterparts, each of which, when so executed, shall be deemed to be an original. Such counterparts shall together constitute and be one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Easement Agreement as of the day and year first above written.

GRANTOR:

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

ATTEST:

By: _____
_____ Secretary

(SEAL)

By: _____
Name: _____
Title: _____

GRANTEE:

REGIONAL TRANSPORTATION DISTRICT,
a political subdivision of the State of Colorado

By: _____
Name: _____
Title: General Manager

APPROVED AS TO LEGAL FORM FOR THE REGIONAL TRANSPORTATION DISTRICT:

By: _____
Legal Counsel

STATE OF NEBRASKA)
)
COUNTY OF DOUGLAS)

On _____, 20___, before me, a Notary Public in and for said County and State, personally appeared _____ and _____, who are the _____ and the _____ Secretary, respectively, of UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

My Commission expires:

_____
Notary Public

(SEAL)

STATE OF COLORADO)
) ss
CITY AND COUNTY OF)

The foregoing instrument was acknowledged before me this ___ day of _____ _ . ____, 20 __. by _____ as General Manager of the REGIONAL TRANSPORTATION DISTRICT, a political subdivision of the State of Colorado.

WITNESS my hand and official seal.

My Commission expires:

_____
Notary Public

(SEAL)

Exhibit A

(Attached to and made a part of the
Flyover Easement Agreement dated as of _____, 20___,
between Union Pacific Railroad Company
and Regional Transportation District)

Additional Terms and Conditions

This Exhibit A contains additional terms, conditions, limitations and covenants applicable to the Flyover Easement Agreement to which it is attached and incorporated by reference ("Easement Agreement"). Unless otherwise specified herein, the capitalized terms used in this Exhibit A shall have the meanings set forth in this Easement Agreement.

1. Limited Purpose; Limitations on this Easement Agreement.

a. This Easement Agreement is granted only for the purposes stated in this Easement Agreement, and shall not be construed as conveying or otherwise vesting in Grantee the right to install or to authorize the installation of any ditches, pipes, drains, sewer or underground structures, or the facilities of any telegraph, telephone, fiber optic or electric power lines or other utilities in, upon, over, under, across or along the Real Property or the Flyover Easement Property, except as reasonably necessary for maintenance or operation of the Bridge or **[b: and c: or any passenger rail operations related thereto]**, and then only with the prior written consent of Grantor, which consent shall not be unreasonably withheld or delayed. Grantee shall not use or permit use of the Flyover Easement Property for any purposes other than those described in this Easement Agreement. No nonparty to this Easement Agreement (other than Grantee's employees, contractors, subcontractors, agents or **[a: pedestrian invitees crossing the Bridge/ b: and c: passengers of Grantee crossing the Bridge while riding Grantee's passenger rail train]**, subject to the terms set forth in this Exhibit A and Exhibit E of this Easement Agreement) shall be admitted by Grantee to use or occupy any part of the Flyover Easement Property without Grantor's prior written consent, which consent may be withheld in Grantor's sole and absolute discretion. Nothing contained in this Easement Agreement shall be deemed to be a gift or dedication of any portion of the Flyover Easement Property to or for the general public.

b. Grantor makes no covenant or warranty of title, for quiet possession or against encumbrances with respect to the Flyover Easement Property. This Easement Agreement is subject and subordinate to all licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens and claims of title that may affect the Flyover Easement Property or the Real Property now or in the future (whether public or private) and whether recorded or unrecorded (including, without limitation, those in favor of grantees and lessees of Grantor's property and others); provided however, that Grantor shall make no license, easement, covenant or encumbrance after initial execution of this Easement Agreement that shall materially and adversely affect Grantee's rights in and to the Aerial Easement or Support Easement, if applicable, without Grantee's prior written consent.

2. Governmental Approvals.

Grantee shall obtain all necessary governmental approvals to construct, reconstruct, maintain, repair, replace and use **[a: , and allow its pedestrian invitees to use,]** the Bridge. At the sole cost and expense of Grantee, Grantor shall reasonably cooperate with and, upon Grantee's prior written request, provide written statements of Grantor's support of, Grantee's efforts to obtain such governmental approvals.

3. Engineering and Design.

Prior to Grantee's commencement of construction or reconstruction of all or any portion of the Bridge, Grantee shall submit to Grantor for its review and approval (at Grantee's sole cost and expense) initial designs, plans and specifications for such construction or reconstruction that shall be to a design completion level of not less than sixty percent (60%). Thereafter, Grantee shall submit to Grantor for its review and approval (at Grantee's sole cost and expense) the designs, plans and specifications for the Bridge at the ninety-five percent (95%) and the one hundred percent (100%) design completion levels. Construction or reconstruction by Grantee shall not begin until Grantor has given its final approval of the submitted designs, plans and specifications at the one hundred percent (100%) design completion level for such construction or reconstruction (as approved, the "Construction Plans and Specifications"). Grantor reserves the right to enter into contracts with contractors for all or any portion of the review of the designs, plans and specifications (at Grantee's sole cost and expense). Approval by Grantor of any designs, plans and/or specifications shall not be deemed to have been given until the Vice President, Engineering of Grantor ("VP Engineering") (or the VP Engineering's authorized representative) has initialed or signed such designs, plans and/or specifications. Grantor shall use reasonable efforts to complete its review of such designs, plans and specifications within thirty (30) days after receipt, but Grantor may take up to sixty (60) days to review such items, based upon Grantor's scheduling constraints and the complexity of the items under review. In connection with Grantor's review and approval of any such designs, plans and specifications, Grantor shall have the right to consider, and condition its approval on, any future railroad facilities and/or operations (including without limitation Grantor's construction, maintenance, repair and use of a second main line on the Real Property) that may affect the designs, plans and specifications. Without limiting the scope of Grantor's review or approval, all designs, plans and specifications shall comply with, *inter alia*, all clearance, safety and other applicable standards of Grantor, as the same may be amended, modified or supplemented from time to time, and shall meet the terms and conditions of any then-existing agreements encumbering the Flyover Easement Property; provided that if there is a direct conflict between one of Grantor's standards and a requirement or standard of the Colorado Public Utilities Commission or the Federal Railroad Administration, the regulatory standard shall apply. **[a: Without limiting the foregoing, such designs, plans and specifications shall make provision for fencing, wire mesh or other protective barriers or screening (together with all support systems required in connection therewith) that are sufficient to protect against objects being thrown, pushed or placed over or suspended from the Bridge.]** Notwithstanding anything to the contrary contained in this Easement Agreement, Grantor's review of any designs, plans and/or specifications will be performed solely for its own purposes and benefit, and Grantor shall not be

deemed to be liable to Grantee or any other party for defects in any designs, plans and/or specifications approved by Grantor.

4. Construction; Maintenance and Operations; Relocations; Inspections.

a. Following approval of the Construction Plans and Specifications and obtaining all necessary governmental approvals, Grantee may construct or reconstruct (or cause the construction or reconstruction of) the Bridge, which construction or reconstruction shall be done in a good and workerlike manner substantially in accordance with the Construction Plans and Specifications, applicable covenants and applicable law, and shall be completed within a reasonable time, or within such period of time as may be agreed upon by the parties in writing. No part of the construction or reconstruction work provided for herein shall be suspended, discontinued or unduly delayed without Grantor's prior written consent, which shall not be unreasonably withheld or delayed, and shall be subject to such reasonable conditions as Grantor may specify. It is understood that Grantor's tracks at and in the vicinity of such work will be in constant or frequent use during progress of the construction, and that movement or stoppage of trains, engines or cars may cause delays in the construction of Grantee. Grantee hereby assumes the risk of any such delays and agrees that no claims for damage on account of any such delay shall be made against Grantor. In order to avoid disruptions to Grantor's freight rail service during construction of all or any portion of the Bridge, Grantee shall design a shoofly track for Grantor's freight rail service wherever reasonably possible, which design shall be subject to Grantor's approval pursuant to Section 3 above. However, if it is not reasonably possible for Grantee to construct a shoofly track, then upon receiving a written request from Grantee no later than thirty (30) days prior to the date such requested need arises, Grantee and Grantor's representatives will communicate to develop strategies to facilitate the completion of the Bridge. Both parties will cooperate in developing a phasing plan for the construction elements to make best use of work windows, if any, available in Grantor's freight operating schedule to reasonably accommodate Grantee's construction activities. All work and phasing plans will be subject to review and approval by Grantor's VP Engineering and Grantor's Operations Department prior to any work on the Bridge. Any adjustments to Grantor's freight rail operations schedule will in each case be subject to such timing constraints and other conditions as Grantor may impose in its sole discretion in order that it may at all times perform its obligations as a common carrier, meet its then-existing commitments to its customers and other third parties, and otherwise minimize the impact such schedule adjustments may have on, and avoid disruption to, Grantor's freight rail operations through the Real Property or anywhere else on Grantor's rail system. Such conditions shall include, without limitation, a requirement that Grantee reimburse Grantor for all of Grantor's costs associated with any such schedule adjustment, which costs may include, without limitation, Grantor's costs to stop, slow, reroute, detour or recrew any trains, make additional rail cars to be available or make other arrangements for alternative transportation of lading, or resume normal train operations after a stoppage or slowdown, or other train charges, congestion costs, penalties, or other liabilities incurred by Grantor, including as applicable Grantor's related direct and indirect labor costs for each such item along with railroad standard labor additives for each such item; provided, however, so long as Grantee first complies with all such conditions imposed by Grantor, Grantor shall not refuse to adjust its schedule in a manner that effectively prevents Grantee from constructing the Bridge as contemplated hereunder.

b. If any construction or reconstruction of the Bridge is not done in accordance with the Construction Plans and Specifications (which determination may be made by Grantor in its reasonable discretion), Grantee, at its sole cost and expense, shall promptly correct such deficiencies to the satisfaction of Grantor. Should Grantee fail, neglect or refuse to promptly

correct such deficiencies, reasonably necessary corrective measures may be performed by Grantor at Grantee's expense after receipt by Grantee of written notice of Grantor's intent to perform such measures, which notice shall include the anticipated timing for the performance of the corrective measures, and Grantor shall then have the right to enter upon the Flyover Easement Property, and any other property on which the Bridge is located, to perform diligently such corrective measures. All expenses incurred by Grantor for such corrective measures shall be paid promptly from time to time to Grantor upon demand, and if not paid within thirty (30) days following such demand shall accrue interest at the rate of eighteen percent (18%) per annum until paid in full.

c. Notwithstanding anything to the contrary contained in this Easement Agreement, at any time after initial construction of the Bridge, Grantor reserves the right to modify (or cause Grantee to modify) the Bridge, at Grantor's sole cost and expense if such modifications are not otherwise required as a result of Grantee's failure to comply with the requirements of Section 4.d of this Exhibit A. Such modifications may include without limitation raising and/or relocating the Overpass and relocating or modifying any related support columns, structures and/or systems, without regard to whether the same are located on property other than the Real Property. Any such modifications shall comply with applicable law. Grantor shall submit to Grantee for its prior approval the designs, plans and specifications for such modifications, which approval shall not be unreasonably withheld, conditioned or delayed and shall be based solely on its determination of whether Grantor's proposed modifications will materially and adversely impact Grantee's operations in terms of volume, schedule and cost. No later than three (3) months after substantial completion of any modifications described in this Section 4.c, Grantor, at its sole cost and expense, shall cause an as-built survey and revised legal descriptions to be made for those portions of the Real Property that are then encumbered by the Bridge, for the limited purposes of amending the legal descriptions of the Flyover Easement Property. Within thirty (30) days after Grantee receives written notice that the as-built survey and revised legal descriptions have been completed, Grantee agrees to execute, acknowledge and deliver to Grantor a form of amended and restated Easement Agreement in recordable form reasonably acceptable to Grantor, pursuant to which Exhibit C and Exhibit D, if applicable, of this Easement Agreement shall be amended to correspond to such revised legal descriptions. Upon the request of Grantor at any time, Grantee shall execute and deliver to Grantor a quitclaim deed as set forth in Section 14 of this Exhibit A. If Grantor exercises its right after commencement of passenger rail operations on the Bridge by Grantee, in consideration of the significant disruption to passenger service such modifications may cause, Grantor agrees to take reasonable measures to limit disruption of the public service volume and schedule of Grantee's passenger rail operations.

d. Following completion of the construction or any reconstruction of the Bridge, Grantee, at its expense, shall maintain and operate in a good and safe condition, and comply with all applicable federal, state and local laws, regulations and enactments applicable to, the Bridge, including the approaches thereto, and the **[b: and c: passenger rail]** facilities, structures and systems related thereto (including without limitation lighting and drainage). Grantee acknowledges and agrees that Grantor shall have no obligation to maintain or operate the Bridge or to contribute to the cost thereof.

e. Without limiting any obligations of Grantee or Grantee's contractors, subcontractors or agents pursuant to the Right of Entry Agreement (defined below), if any utility,

fiber optic or communication facilities located on, under or across the Real Property or the Flyover Easement Property require relocation as a result of Grantee's work on the Flyover Easement Property, all such relocations shall be arranged by Grantee with the entities owning or controlling the facilities being relocated, at the sole expense and cost of entities other than Grantor.

f. Upon not less than forty-eight (48) hours prior notice to Grantee (and at any time in the event of an emergency), Grantor and/or Grantor's contractors, subcontractors or agents shall have the right to enter upon the Flyover Easement Property, and any other property on which the Bridge is located, with reasonable frequency, and inspect the Bridge to determine if it conforms with the requirements of the Construction Plans and Specifications and the operational and maintenance standards set forth above, on condition that Grantor and Grantor's contractors, subcontractors and agents, as applicable, conform to Grantee's health and safety requirements applicable to inspections of the Bridge as set forth in Grantee's standard form of right of entry agreement. Notwithstanding anything to the contrary contained in this Easement Agreement, Grantor's inspections will be performed solely for its own purposes and benefit, and Grantor shall not be deemed to be liable to Grantee or any other party for defects in the Construction Plans and Specifications or the operational and maintenance standards set forth above. Grantor will deliver prompt notice to Grantee of any perceived deficiencies or defects of which Grantor becomes aware during construction of the Project, on condition that failure to provide such notice shall not be deemed to be a default by Grantor hereunder and shall create no liability whatsoever for Grantor, whether to Grantee or to any third party. Grantee agrees to reimburse Grantor for its reasonable costs incurred in connection with (i) all inspections of the Bridge during any construction or reconstruction of the Bridge, (ii) all emergency inspections of the Bridge, (iii) one (1) inspection of the Bridge every calendar year after completion of the Bridge and (iv) any reports generated in connection with such inspections that relate specifically to the Bridge, within thirty (30) days after delivery to Grantee of an invoice therefor. Grantor shall provide to Grantee copies of any reports described in the preceding sentence within a reasonable time after a written request by Grantee therefor, provided that Grantee shall pay the direct costs for all such copies. Grantor shall have the right to post and maintain notices of non-responsibility on the Flyover Easement Property and the Real Property in locations that do not materially interfere with Grantee's work or operations on the Bridge.

g. Grantee shall bear the entire expense of designing (including without limitation Grantor's design review), constructing, reconstructing, maintaining, repairing, replacing and using the Bridge, subject to Section 4.c. Grantee acknowledges and agrees that any and all costs and expenses incurred by Grantor solely on account of the exercise of Grantee's rights and obligations under this Easement Agreement shall be reimbursed to Grantor by Grantee.

h. Grantee shall promptly remove all graffiti, litter, weeds, debris, trash and garbage from and on the Bridge at its sole cost and expense.

5. Right of Entry.

a. Grantee acknowledges and agrees that it shall be subject to, and comply with the terms and conditions of, Grantor's then-current form of the Contractor's Right of Entry Agreement attached as Exhibit E of this Easement Agreement ("Right of Entry Agreement").

except that Grantee shall have no obligation to pay any administrative fees therefor. Prior to commencing any work (including without limitation any construction, reconstruction, maintenance, repair, or replacement of the Bridge) on the Flyover Easement Property, Grantee shall execute the Right of Entry Agreement. If a contractor, subcontractor or agent of Grantee is to perform any work in connection with the Bridge, then Grantee shall require such contractor, subcontractor or agent to execute the Right of Entry Agreement prior to the commencement of any such work. Grantee acknowledges and agrees that it will inform its contractors, subcontractors and agents of the need to execute the Right of Entry Agreement prior to commencing any work on the Flyover Easement Property. Under no circumstances will Grantee or Grantee's contractors, subcontractors or agents be allowed onto the Flyover Easement Property (i) prior to executing the Right of Entry Agreement or (ii) if Grantee or such contractor, subcontractor or agent is in breach of any of the terms or conditions of this Easement Agreement or the Right of Entry Agreement. Grantor affirms that it will not seek to amend any of the terms or conditions of a Right of Entry Agreement entered into by Grantee or Grantee's contractors, subcontractors or agents after the date on which Grantee or such contractor, subcontractor or agent of Grantee, as applicable, commences construction, reconstruction, maintenance, repair or replacement of the Bridge; provided that Grantor reserves the right to cause Grantee and Grantee's contractors, subcontractors and agents to enter into an amended or modified Right of Entry Agreement after commencement of construction, reconstruction, maintenance, repair or replacement of the Bridge by any such party if such amendments or modifications are required by law or are otherwise being made by Grantor to its standard form of right of entry.

b. Following completion of the Bridge, none of Grantor or Grantor's contractors, subcontractors or agents shall enter on the Bridge (except in the event of an emergency) prior to entering into a limited form of Grantee's standard form of right of entry, which shall be granted at no additional consideration to Grantor or Grantor's contractors, subcontractors, or agents. Notwithstanding anything to the contrary contained herein, for the purposes of Grantor's inspections of the Bridge Grantee's standard form of right of entry shall be limited to Grantee's health and safety requirements, Grantee's insurance requirements and provisions related to reasonably minimizing the disruption of Grantee's operations.

6. Notice of Commencement of Work; Flagging.

If any emergency should arise requiring immediate attention, Grantee shall provide as much notice as practicable to Grantor before commencing any work on the Flyover Easement Property, or any other property on which the Bridge is located, relating to such emergency. In all other situations, Grantee shall notify Grantor at least ten (10) days (or such other time as Grantor may allow) in advance of the commencement of any work within the Flyover Easement Property in connection with constructing, reconstructing, maintaining, repairing and/or replacing the Bridge. Grantee shall also give at least five (5) days advance notice to Grantor (or such other time as Grantor may allow) of proposed performance of any work by Grantee on the Flyover Easement Property, or any other property on which the Bridge is located, in which any person or equipment will be within twenty-five (25) feet of any track of Grantor, or will be near enough to any such track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of such track. Upon receipt of such notice, Grantor will determine and inform Grantee whether a flagman need be present and whether Grantee need

implement any special protective or safety measures. If any flagman or other special protective or safety measures are performed by Grantor, such services will be provided at Grantee's expense with the understanding that if Grantor provides any flagging or other services Grantee shall not be relieved of any of its responsibilities set forth in this Easement Agreement. Grantee acknowledges and agrees that it shall be subject to and comply with the notice of commencement of work and flagging provisions as more particularly described in the Right of Entry Agreement.

7. No Interference with Grantor's Operations.

The Bridge shall be at all times, maintained, repaired, renewed and operated in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the tracks, property and facilities of Grantor, except (i) in case of emergency (in which event Grantee shall provide immediate notice to Grantor and shall coordinate its response with Grantor) and otherwise (ii) with the prior written consent of Grantor, which may be withheld in its sole discretion, except with respect to (1) construction scheduling adjustments, which shall be governed by the approval process set forth in Section 4.a above and (2) Grantee's scheduled maintenance activities which shall be governed by the same approval process as set forth in Section 4.a above for construction. Nothing shall be done or suffered to be done by Grantee at any time that would in any manner impair the safety or efficient operation of the tracks, property and facilities of Grantor. This Easement Agreement is subject and subordinate to the prior right of Grantor, its successors and assigns, to use all of the Real Property and the Flyover Easement Property in the performance of its duty as a common carrier, and Grantee acknowledges and agrees that it shall not interfere with the performance of such duty by Grantor. Grantee agrees that any construction, reconstruction, maintenance, repair, replacement or use undertaken by Grantee or any of its contractors, subcontractors or agents as provided for herein shall be performed in a manner that preserves the functionality (in terms of speed, efficiency, capabilities and cost-effectiveness) of Grantor's freight rail operations, and that ensures that such operations will continue without interruption, except with the prior written consent of Grantor, which may be withheld in its sole discretion (except as otherwise expressly provided herein). Grantee agrees further that any utilities necessary for the maintenance or operation of the Bridge **[b: and c: or the passenger rail operations related thereto]** shall not interfere (including without limitation any radio or electromagnetic interference) with any Grantor or third party utilities or other railroad operations (including without limitation any railroad communication systems), except with the prior written consent of Grantor, which may be withheld in its sole discretion (except as otherwise expressly provided herein).

8. Protection of Fiber Optic Cable Systems.

Grantee acknowledges and agrees that it shall be subject to and comply with the fiber optic cable system provisions as more particularly described in the Right of Entry Agreement. In addition to (and not in limitation of), and without prejudice to or limitation of any other indemnity provisions or legal remedies in this Easement Agreement or any other remedies at law or in equity, subject to Section 19, Grantee shall indemnify, defend and hold harmless Grantor from and against all costs, liability and expenses whatsoever (including, without limitation, attorneys' fees, court costs and expenses) caused by or arising from the negligence of Grantee, its contractors, subcontractors, agents and/or employees, or the failure of Grantee to comply with the terms and conditions of the fiber optic cable system provisions contained in the Right of

Entry Agreement, resulting in (i) any damage to or destruction of any fiber optic cable system located on or under the Real Property and/or the Flyover Easement Property and/or (ii) any injury to or death of any person employed by or on behalf of any telecommunications company owning such fiber optic cable, and/or its contractors, subcontractors agents and/or employees. Grantee further agrees that it shall not have or seek recourse against Grantor for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company owning such fiber optic cable or a customer or user of services of such fiber optic cable.

9. Insurance.

At all times during the term hereof and prior to any entry upon the Flyover Easement Property, Grantee shall comply with Grantor's insurance requirements attached as Exhibit F of this Easement Agreement, and any amendments or modifications by Grantor thereto; provided however that Grantor must provide Grantee with reasonable notice of any material changes to such insurance requirements.

10. Liability and Indemnity.

a. In addition to (and not in limitation of), and without prejudice to or limitation of any other indemnity provisions or legal remedies in this Easement Agreement or any other remedies at law or in equity (including without limitation those contained in the Operations Agreement--Moffat Tunnel Subdivision/Gold Line, between the parties and dated of even date herewith (the "Operations Agreement")), Grantee, for itself and its successors and assigns, shall indemnify, protect, defend and hold harmless Grantor, its agents, directors, officers and employees against all claims, actions, causes of action, demands, rights, damages (including without limitation all "damages" as such term is defined in Section 9601(6) of CERCLA (defined below)), costs, expenses, fees (including without limitation attorneys' fees and disbursements), penalties, fines or compensation whatsoever, direct or indirect, arising now or in the future, on account of or in any way arising out of or in connection with (i) death of or bodily injury to persons including, without limitation, the agents, directors, officers and employees of the parties hereto, (ii) damage to or loss of property including, without limitation, the property of the parties hereto, their agents, directors, officers, employees and invitees, (iii) (1) any presence, spill, leak, discharge, escape, migration, release or threat of release of Hazardous Substances (defined below) into the environment on, at, above or under the Real Property that emanates from the Flyover Easement Property, or (2) the Environmental Laws (defined below) applicable to the Real Property, or (iv) any other loss, damage or expense and all fines or penalties imposed upon or assessed against Grantor, and all expenses of investigating and defending against the same, arising in any manner out of (A) the use, occupancy or presence of Grantee, its contractors, subcontractors, employees, representatives, invitees or agents on or about the Real Property and/or the use, occupancy or presence of any trespassers on the Flyover Easement Property, and/or (B) the performance of, or failure to perform by Grantee, its contractors, subcontractors, employees, agents or representatives, their rights or any obligation under this Easement Agreement, and/or (C) the sole or contributing acts or omissions of Grantee, its contractors, subcontractors, employees, representatives, invitees or agents on or about the Real Property. Grantee's indemnity is subject to Section 19 of this Easement Agreement and is in addition to, and not in limitation of, the insurance coverage required under Section 9 above. The provisions

of this Section 10 shall survive the termination of the Aerial Easement, the Support Easement (if applicable) and this Easement Agreement.

b. Grantee agrees to comply fully with all Environmental Laws and applicable standards concerning Hazardous Substances. Grantee covenants that it shall not and shall cause its contractors, subcontractors, employees, representatives, invitees and agents not to, store, transport, release, treat or dispose of any Hazardous Substances on or about the Real Property. Grantee agrees to furnish Grantor (if requested) with proof reasonably satisfactory to Grantor that Grantee and/or its contractors, subcontractors, employees, representatives, invitees or agents is/are in such compliance. In the event of any presence, spill, leak, discharge, escape, migration, release or threat of release of Hazardous Substances into the environment on, at, above or under the Real Property by Grantee or its contractors, subcontractors, employees, representatives, invitees or agents or by trespassers on the Flyover Easement Property, Grantee shall give Grantor prompt notice of such event, and at its sole cost and expense, promptly clean or remediate such property to the standards required by law (including without limitation all Environmental Laws) or by any governmental agency or public body having jurisdiction in the matter. Should any such presence, spill, leak, discharge, escape, migration, release or threat of release result in a fine, penalty, cost or charge, Grantee shall promptly and fully pay such fine, penalty, cost or charge.

c. For purposes of this Easement Agreement, (i) the term "Hazardous Substances" means any material or substance (1) that is present in quantities and in a form that requires investigation, removal, cleanup, transportation, disposal, response or remedial action (as the terms "response" and "remedial action" are defined in Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 (23) and (24)) or under any Environmental Law; or (2) that is defined as a "hazardous waste," "hazardous substance," "pollutant" or "contaminant" under any Environmental Law; and (ii) the term "Environmental Law" means any and all laws, statutes, regulations, enforceable requirements, orders, decrees, agreements, judgments or injunctions validly issued, promulgated or entered by any court or governmental agency with jurisdiction, relating to the environment, to preservation or reclamation of natural resources, or to the management, release or threatened release of contaminants applicable to the Real Property, including without limitation the Hazardous Substances Transportation Act (49 U.S.C. § 1802 *et seq.*), the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 *et seq.*), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 *et seq.*) and the Hazardous and Solid Waste Amendments of 1984, the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*), as amended by the Clean Water Act Amendments of 1977, the Clean Air Act of 1970 (42 U.S.C. § 7401 *et seq.*), as amended by the Clean Air Act Amendments of 1990, the Safe Drinking Water Act (42 U.S.C. § 300f *et seq.*), the Toxic Substances Control Act of 1976 (15 U.S.C. § 2601 *et seq.*), any similar or implementing state or local law, and all amendments thereto and regulations or rules promulgated thereunder.

11. Safety Measures.

Grantee understands and recognizes that safety and continuity of Grantor's operations and communications are of the utmost importance; and in order that the same may be adequately safeguarded, protected and assured, and in order that accidents may be prevented and avoided, Grantee shall require all work on the Flyover Easement Property to be performed in a safe manner and in conformity with the following standards:

a. All references to Grantee in this Section 11 shall include Grantee's contractors, subcontractors, agents, officers and employees, and others acting under its or their authority; and all references to work of Grantee in this Section 11 shall include all work on or about the Flyover Easement Property in connection with the construction, reconstruction, maintenance, repair, replacement and/or use of the Bridge.

b. Grantee shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. Grantee shall use only such methods as are consistent with safety, as it concerns Grantee, Grantee's agents and employees, the officers, agents, employees and property of Grantor and the public in general. Without limiting the generality of the foregoing, Grantee shall comply with all applicable state and federal occupational safety and health acts and regulations.

c. Grantee, at its own expense, shall adequately police and supervise all work to be performed by Grantee. The responsibility of Grantee for safe conduct and adequate policing and supervision of its work shall not be lessened or otherwise affected by Grantor's approval of the Construction Plans and Specifications, or by Grantor's collaboration in performance of any work, or by the presence at the work site of Grantor's representatives, or by compliance by Grantee with any requests or recommendations made by such representatives. If a representative of Grantor is assigned to the job site, Grantee will give due consideration to suggestions and recommendations made by such representative for the safety and protection of Grantor's property and operations; provided however that Grantee shall not be required to take any action that is contrary to law or would compromise the safety of Grantee's contractors, employees or passengers.

d. Grantee shall not discharge, store or use any explosives on or about the Flyover Easement Property without the written prior consent of Grantor.

e. Grantee shall keep the Flyover Easement Property free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects that may affect the Flyover Easement Property. Grantee shall have a non-delegable duty to control its employees while they are on the Flyover Easement Property to be certain they do not use, be under the influence of or have in their possession any alcoholic beverage or illegally obtained drug, narcotic or other substance that may inhibit the safe performance of work, including without limitation any maintenance or operations described herein, by the employee. For the purposes of this Section 11.e, an "employee" of Grantee shall mean a staff member of Grantee present on the Flyover Easement Property for purposes relating to Grantee's use of the Flyover Easement Property. Employees, vendors, or contractors of any agent, contractor, or vendor of Grantee shall not be deemed to be an employee of Grantee for the purposes of this Section 11.e. If in the opinion of Grantor any of Grantee's equipment is unsafe

for use on the Flyover Easement Property. Grantee, at the request of Grantor, shall remove such equipment from the Flyover Easement Property.

f. Without limiting anything contained in the Construction Plans and Specifications, Grantee shall not cause, suffer or permit material or debris to be deposited or cast upon, or to slide or fall upon, any property or facilities of Grantor without the written prior consent of Grantor; and any such material and debris shall be promptly removed by Grantee at Grantee's own expense or by Grantor at the expense of Grantee. Grantee shall not excavate from existing slopes nor construct new slopes that are excessive or may create hazards of slides or falling rock, or impair or endanger the clearance between existing or new slopes and the tracks of Grantor. Grantee shall not undertake any work that will or may disturb the stability of the Real Property, the Flyover Easement Property or surrounding area or adversely affect Grantor's tracks or facilities without the written prior consent of Grantor. Grantee, at its own expense, shall install and maintain adequate shoring and cribbing for all excavation and/or trenching performed by Grantee in connection with any construction, reconstruction, maintenance, repair, replacement or use provided for herein. Grantee, at Grantee's own expense, shall provide adequate passageway for the waters of any streams, bodies of water and drainage facilities (either natural or artificial), so that said waters may not, because of any work described herein, be impeded, obstructed, diverted or caused to back up, overflow or damage the property of Grantor or any part thereof, or property of others. Grantee shall not obstruct or interfere with existing ditches or drainage facilities without the written prior consent of Grantor.

g. Grantee acknowledges and agrees that it shall be subject to and comply with the safety measures as more particularly described in the Right of Entry Agreement.

12. Claims and Liens for Labor and Material.

Grantee shall fully pay for all materials joined or affixed to and labor performed upon the Flyover Easement Property in connection with the construction, reconstruction, maintenance, repair, replacement and use of the Bridge, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the Real Property, Flyover Easement Property or other property of Grantor for any work done or materials furnished thereon at the instance or request or on behalf of Grantee.

13. Termination; Abandonment; Removal.

If, (i) at any time, Grantee provides written notice to Grantor that Grantee does not intend to use or will not use any portion of the Flyover Easement Property, or (ii) at any time, Grantee's final design or buildout of its Gold Line shows no portion of the Bridge located within the Flyover Easement Property, then this Easement Agreement shall automatically terminate. If the Construction Plans and Specifications of the Bridge result in the Bridge encumbering less than all of the Flyover Easement Property, then the Flyover Easement Property shall be reduced to automatically exclude the portion of the Flyover Easement Property that will not be encumbered by the Bridge. At Grantor's sole discretion, at any time and from time to time prior to initial completion of the Bridge construction, Grantor may send a written inquiry to Grantee requesting information on the status of the Bridge (including without limitation, Grantee's intention to use or abandon the Flyover Easement Property and the status of Grantee's designs, plans or

specifications). Grantor shall not send more than one (1) inquiry annually. If Grantee fails to deliver to Grantor a complete written response to any such inquiry on or before the date that is forty-five (45) days after the date of such inquiry, then Grantor may send a follow-up written notice advising Grantee of its prior inquiry. If Grantee fails to deliver to Grantor a complete written response to any such inquiry and follow-up notice on or before the date that is forty-five (45) days after the date of such follow-up notice, then Grantee shall be deemed to have abandoned its use of the Flyover Easement Property and this Easement Agreement shall automatically terminate. After termination of the Easement Agreement as provided herein, upon the request of Grantor at any time, Grantee shall execute and deliver to Grantor a quitclaim deed as set forth in Section 14 of this Exhibit A.

14. Quitclaim Deed.

In the event that (i) this Easement Agreement is amended and restated as provided herein, (ii) the Bridge is relocated pursuant to Section 4.c of this Exhibit A, (iii) this Easement Agreement terminates or all or any portion of the Flyover Easement Property is reduced or abandoned pursuant to Section 13 of this Exhibit A or (iv) the Flyover Easement Property is otherwise modified as provided in this Easement Agreement, the portion of the Flyover Easement Property that is excluded from this Easement Agreement by virtue of such amendment, relocation, termination, reduction, abandonment or other modification, as applicable, shall thereupon automatically be released from, and no longer subject to, this Easement Agreement. Upon the request of Grantor at any time, Grantee shall execute and deliver to Grantor a quitclaim deed, covering the portions of the Flyover Easement Property excluded by such amendment, relocation, termination, reduction, abandonment or other modification within thirty (30) days after such request.

15. Other Railroads.

All protective and indemnifying covenants of this Easement Agreement shall inure to the benefit of Grantor and any other railroad company lawfully using the Real Property or rail facilities located thereon or thereunder.

16. Arbitration.

Both Grantor and Grantee shall make every reasonable effort to settle disputes (excepting only those disputes requiring a determination of governmental powers or based upon formation of this Easement Agreement) arising out of their respective rights and obligations under this Easement Agreement through prompt and diligent negotiations. If at any time such a dispute shall arise between the parties hereto in connection with this Easement Agreement that the parties cannot resolve within thirty (30) days, such dispute shall be submitted to and settled by binding arbitration. The parties acknowledge that such arbitration may involve the joinder of one or more necessary party(ies) to resolve the disputed matters. Arbitration shall occur in Denver, Colorado or in another location mutually agreed to by the parties. Unless otherwise agreed by the parties, arbitration between the parties pursuant to this Section 16 shall be governed by the rules and procedures set forth in this Section 16.

If the parties to the dispute are able to agree upon a single competent and disinterested arbitrator within fifteen (15) days after written notice by one party of its desire for arbitration to the other party, then the question or controversy shall be submitted to and settled by that single arbitrator. Otherwise, any party (the "notifying party") may notify the other party (the "noticed party") in writing of its request for arbitration and nomination of one competent and disinterested arbitrator. Within fifteen (15) days after receipt of such notice, the noticed party shall appoint a competent and disinterested arbitrator and notify the notifying party in writing of such appointment. Should the noticed party fail within fifteen (15) days after receipt of such notice to name its arbitrator, said arbitrator may be appointed by the Chief Judge (or acting Chief Judge) of the United States District Court for the District of Colorado upon application of either party after ten (10) days' written notice to the other party. The two arbitrators so chosen shall select one additional competent and disinterested arbitrator to complete the board within fifteen (15) days. If the arbitrators so chosen fail to agree upon an additional arbitrator, the additional arbitrator shall, upon application of either party, be appointed by such judge in the manner heretofore stated, provided that in such case the appointed arbitrator shall have experience in passenger and freight railroad track operations.

Upon selection of the arbitrator(s), said arbitrator(s) shall, with reasonable diligence and subject to the rights of the parties under this Section 16, determine the questions as disclosed in said notice of arbitration, give both parties reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, take such evidence as the arbitrator(s) shall deem reasonable or as either party may submit with witnesses required to be sworn, and hear arguments of counsel or others. If an arbitrator declines or fails to act within thirty (30) days after selection or appointment, the party (or parties in the case of a single arbitrator) by whom the arbitrator was chosen or said judge shall appoint another to act in the arbitrator's place.

After considering all evidence, testimony and arguments, such single arbitrator or the majority of said board of arbitrators shall promptly (and in no event more than thirty (30) days after the arbitration hearing) state such decision or award and the reasoning for such decision or award in writing which shall be final, binding, and conclusive on all parties to the arbitration when delivered to them. The award rendered by the arbitrator(s) shall be binding on the parties and may be entered as a judgment in any court having jurisdiction thereof and enforced as between the parties without further evidentiary proceeding, the same as entered as a judgment in any court having jurisdiction thereof and enforced as between the parties without further evidentiary proceeding, the same as entered by the court at the conclusion of a judicial proceeding in which no appeal was taken. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under this Easement Agreement shall continue in the manner and form existing prior to the rise of such question. After delivery of such first decision or award, each party shall forthwith comply with said first decision or award immediately after receiving it.

Each party to the arbitration shall pay all compensation, costs, and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits and counsel. The compensation, cost, and expenses of the single arbitrator in the board of arbitrators shall be paid in equal shares by all parties to the arbitration.

The parties may obtain discovery and offer evidence as directed by the arbitrators but in accordance with the Federal Rules of Civil Procedure Rules 26-37, and Federal Rules of Evidence, as each may be amended from time to time.

17. Notices.

All written notices and demands of any kind which either party may be required or may desire to serve on the other in connection with this Easement Agreement shall be served by personal delivery, electronic facsimile with a hard copy promptly posted in the U.S. mail, reputable overnight air courier or registered or certified mail, postage prepaid, return receipt requested, to the intended addressee at the address set forth below:

If to Grantor:

UNION PACIFIC RAILROAD COMPANY
Assistant Vice President Real Estate
1400 Douglas Street, Stop 1690
Omaha, NE 68179-1690
Telephone: 402-544-8640
Facsimile: 402-501-0340

with copies to:

UNION PACIFIC RAILROAD COMPANY
Patrick R. McGill, Esq.
Senior Counsel – Real Estate
1400 Douglas Street
Mail Stop 1580
Omaha, NE 68179
Telephone: 402-544-5761
Facsimile: 402-544-0132

JACOBS CHASE & KELLEY, LLC
Jill K. Rood, Esq.
1050 17th Street, Suite 1500
Denver, CO 80265
Telephone: 303-685-4800
Facsimile: 303-685-4869

If to Grantee:

REGIONAL TRANSPORTATION DISTRICT
Assistant General Manager for Capital Projects
1560 16th Street, 7th Floor
Denver, CO 80202
Telephone: 303-299-2300
Facsimile: 303-299-2363

with copies to:

REGIONAL TRANSPORTATION DISTRICT
Marla Lien, General Counsel
1600 Blake Street
Denver, CO 80202-1399
Telephone: 303-299-2207
Facsimile: 303-299-2217

KAPLAN KIRSCH & ROCKWELL LLP
Stephen Kaplan, Esq.
1675 Broadway, Suite 2300
Denver, CO 80202
Telephone: 303-825-7000
Facsimile: 303-825-7005

Any such communication shall be deemed to have been delivered (i) as of the date of receipt, in the case of personal delivery or electronic facsimile transmission, (ii) the date of receipt or first attempted delivery via reputable air courier, or (iii) as of the date of receipt or first attempted delivery, as evidenced by the return receipt card, in the case of mailing via certified or registered United States mail. Either may change the address at which it is to receive notice by so notifying the other party to this Easement Agreement in writing in the manner provided for above.

18. Assignment.

a. This Easement Agreement and the terms, covenants and conditions hereof shall be binding upon, and inure to the benefit of, the parties and, except as expressly limited herein, their respective permitted successors and assigns. The qualifications and reputation of Grantee are material inducements to Grantor in entering into this Easement Agreement. Therefore, Grantee may not assign, in whole or in part, any of its rights in or delegate any of its duties under this Easement Agreement (an "Assignment") to any third party, without the prior written consent of Grantor, which consent may be withheld in Grantor's sole discretion. Without limiting the generality of the foregoing, no third party shall be eligible to become an assignee until and unless it has been qualified as a Qualified Proposed Assignee pursuant to Section 18.b hereof. Any Assignment, in whole or in part, or attempted Assignment, in whole or in part, by Grantee whether voluntary, by operation of law or otherwise, in violation of this Section 18, shall be absolutely void.

(i) Grantee shall make its request for Grantor's consent to an Assignment in writing (for each proposed Assignment, a "Consent Request") and shall include with such request the proposed form of agreement that Grantee intends to use to formalize such Assignment and shall include an update of the qualifying information required to be delivered pursuant to Section 18.b. The assignment and assumption agreement shall, among other things (a) specify the rights and obligations of Grantee that will be assigned, with reference to this Easement Agreement and any other document(s) that are the subject of such Assignment, (b) expressly provide that the assignee shall assume and be bound by the terms and conditions of

this Easement Agreement and any other document(s) that are the subject of such Assignment, (c) expressly provide that Grantee shall remain primarily liable to Grantor for such assigned rights and delegated duties, and (d) expressly provide that the provisions described in Section 19 below shall not inure to the benefit of such assignee.

(ii) Within thirty (30) days after the later of (a) Grantor's receipt of a Consent Request or (b) Grantor's receipt of the update of the qualifying information described in Section 18.b), Grantor shall respond to Grantee in writing setting forth (1) Grantor's consent to such Assignment, (2) Grantor's refusal to consent to such Assignment or (3) Grantor's conditional consent to such Assignment setting forth the conditions that Grantee or such proposed assignee shall satisfy prior to obtaining Grantor's consent (which conditions may include revisions to the assignment and assumption agreement). Should Grantor fail to provide Grantee with a written response to any Consent Request within such thirty (30) day period, Grantor shall have been deemed to have refused consent to such Assignment.

(iii) Notwithstanding anything to the contrary contained herein or in any assignment and assumption agreement, (a) no Assignment shall release Grantee from any of Grantee's rights or obligations under this Easement Agreement or any documents subject to the Assignment, and (b) Grantee shall remain primarily liable to Grantor for all such assigned rights or delegated duties. Grantee shall, no later than ten (10) days after the effective date thereof, provide Grantor with a fully executed copy of each assignment and assumption agreement.

b. Whenever Grantee desires to make an Assignment, Grantee shall seek Grantor's prior written approval of the proposed assignee as a "Qualified Proposed Assignee." All requests for Grantor's approval under this Section 18.b shall be in writing, shall state that Grantee intends to assign all or a portion of its rights and obligations under this Easement Agreement to such proposed assignee, shall describe the scope of the rights and obligations that Grantee intends to assign, and shall specify in detail the following qualifying information:

(i) legal name and address of the proposed assignee and the names, addresses and telephone numbers of the persons that own or have control of the proposed assignee;

(ii) information regarding the proposed assignee's prior business experience that may be relevant to Grantor;

(iii) bank and other credit references, business reputation references, financial statements and such other information as Grantor may reasonably require to assess the proposed assignee's business and financial responsibility and standing;

(iv) any other background information on such proposed assignee obtained by Grantee in connection with the Project; and

(v) any other follow-up information regarding such proposed assignee as Grantee may deem to be material or as may be requested by Grantor in its reasonable discretion.

Within thirty (30) days after the later of (a) Grantor's receipt of Grantee's request for approval of any proposed assignee or (b) Grantor's receipt of the necessary qualifying information regarding such proposed assignee, Grantor shall provide Grantee with written notice

of Grantor's approval or disapproval of such proposed assignee as a Qualified Proposed Assignee. Grantor's failure to respond within such thirty (30) day period shall be deemed to be a disapproval by Grantor of the proposed assignee. Notwithstanding anything to the contrary contained in this Section 18.b, an approval by Grantor of a Qualified Proposed Assignee hereunder shall not be deemed to be a consent to an Assignment under Section 18.a.

19. Limitations Specific to Regional Transportation District.

Notwithstanding anything to the contrary contained in this Easement Agreement, due to the special status of Regional Transportation District as a political subdivision of the State of Colorado, the following limitations shall apply with respect to Regional Transportation District in its capacity as a party hereto, only to the extent required by law (including without limitation any amendments to the Constitution of the State of Colorado) from time to time for purposes of enforceability: (i) the damages recoverable hereunder shall exclude punitive and exemplary damages; (ii) Grantee's waiver of governmental immunity and Grantee's liability for indemnifying Grantor under this Easement Agreement with respect to claims based upon bodily injury, death and/or property damage shall be limited to the monetary levels of Grantee's applicable insurance coverage requirements; and (iii) nothing in this Easement Agreement shall be construed as a multi-year fiscal obligation. In no event shall these limitations apply to or inure to the benefit of any successor or assign of Regional Transportation District. On or before each anniversary date of this Easement Agreement, Grantee shall deliver to Grantor (A) certificates evidencing Grantee's insurance policy renewals and (B) evidence of the annual appropriations authorized by Grantee's board of directors to satisfy Grantee's obligations and liabilities under this Easement Agreement.

20. No Waiver.

No delay on the part of any party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any waiver on the part of any party hereto of any right, power or privilege hereunder operate as a waiver of any other right, power or privilege hereunder, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof of the exercise of any other right, power or privilege hereunder.

21. Entire Agreement.

This Easement Agreement, that certain Property Transfer and Railroad Relocation Agreement by and between Grantor and Grantee dated effective August ___, 2010, as amended (and documents executed in connection with the closing of the Moffat Tunnel Subdivision/Gold Line thereunder), that certain Agreement Regarding Engineering Design for Moffat Tunnel Subdivision/Gold Line Modifications by and between Grantor and Grantee dated March 13, 2009, as amended and/or restated, and the Operations Agreement are intended by the parties as a final expression of their agreement and intended to be a complete and exclusive statement of the agreement and understanding of the parties thereto in respect of the subject matter contained herein. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to in this Easement Agreement.

22. Binding Effect.

The parties intend that the promises and obligations of this Easement Agreement shall constitute covenants running with the land so as to benefit their respective permitted successors and assigns.

[c: Exhibit B

(Attached to and made a part of the
Flyover Easement Agreement dated as of _____ ___, 20___.
between Union Pacific Railroad Company
and Regional Transportation District)

Legal Description of Real Property

West of Sheridan Boulevard

(see attached)]

[b: Exhibit B

(Attached to and made a part of the
Flyover Easement Agreement dated as of _____, 20___,
between Union Pacific Railroad Company
and Regional Transportation District)

Legal Description of Real Property

Utah Junction

(see attached)]

[a: Exhibit B

(Attached to and made a part of the
Flyover Easement Agreement dated as of _____, 20___,
between Union Pacific Railroad Company
and Regional Transportation District)

Legal Description of Real Property

Near 41st Street

(see attached)]

[c: Exhibit C

(Attached to and made a part of the
Flyover Easement Agreement dated _____, 20___,
between Union Pacific Railroad Company
and Regional Transportation District)

Flyover Easement Property

West of Sheridan Boulevard

Exclusive Aerial Easement property:

The area that is expressly limited vertically (a) above a plane parallel with and twenty-three (23) feet six (6) inches above the top of the rail of the highest of Grantor's trackage facilities located on the Real Property described in Exhibit B of this Easement Agreement and (b) below a plane parallel with and fifty-five (55) feet above the top of the rail of the highest of Grantor's trackage facilities located on the Real Property described in Exhibit B of this Easement Agreement.

Non-exclusive Aerial Easement property:

The area that is expressly limited vertically at or above a plane parallel with and fifty-five (55) feet above the top of the rail of the highest of Grantor's trackage facilities located on the Real Property described in Exhibit B of this Easement Agreement.]

[b: Exhibit C

(Attached to and made a part of the
Flyover Easement Agreement dated as of _____, 20 ___.
between Union Pacific Railroad Company
and Regional Transportation District)

Flyover Easement Property

Utah Junction

Exclusive Aerial Easement property:

The area that is expressly limited vertically (a) above a plane parallel with and twenty-three (23) feet six (6) inches above the top of the rail of the highest of Grantor's trackage facilities located on the Real Property described in Exhibit B of this Easement Agreement and (b) below a plane parallel with and fifty-five (55) feet above the top of the rail of the highest of Grantor's trackage facilities located on the Real Property described in Exhibit B of this Easement Agreement.

Non-exclusive Aerial Easement property:

The area that is expressly limited vertically at or above a plane parallel with and fifty-five (55) feet above the top of the rail of the highest of Grantor's trackage facilities located on the Real Property described in Exhibit B of this Easement Agreement.]

[a: Exhibit C

(Attached to and made a part of the
Flyover Easement Agreement dated as of _____, 20___,
between Union Pacific Railroad Company
and Regional Transportation District)

Flyover Easement Property

Near 41st Street

Exclusive Aerial Easement property:

The area that is expressly limited vertically (a) above a plane parallel with and twenty-three (23) feet six (6) inches above the top of the rail of the highest of Grantor's trackage facilities located on the Real Property described in Exhibit B of this Easement Agreement and (b) below a plane parallel with and fifty-five (55) feet above the top of the rail of the highest of Grantor's trackage facilities located on the Real Property described in Exhibit B of this Easement Agreement.

Non-exclusive Aerial Easement property:

The area that is expressly limited vertically at or above a plane parallel with and fifty-five (55) feet above the top of the rail of the highest of Grantor's trackage facilities located on the Real Property described in Exhibit B of this Easement Agreement.]

Exhibit D

(Attached to and made a part of the
Flyover Easement Agreement dated as of _____, 20___,
between Union Pacific Railroad Company
and Regional Transportation District)

Support Easement Property

[To be added by amendment if needed by Grantee and approved by Grantor.]

Exhibit E

(Attached to and made a part of the
Flyover Easement Agreement dated as of _____, 20___,
between Union Pacific Railroad Company
and Regional Transportation District)

Contractor's Right of Entry Agreement

(see attached)

CONTRACTOR'S
RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made and entered into as of the _____ day of _____, 20_____, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Railroad"); and _____ _____, a _____ corporation ("Contractor").

RECITALS:

Contractor has been hired by _____ to perform work relating to _____ _____ _____(the "work"), with all or a portion of such work to be performed on property of Railroad in the vicinity of Railroad's Milepost _____ on Railroad's _____ [Subdivision] [Branch] [at or near DOT No. _____] located at or near _____, in _____ County, State of _____, as such location is in the general location shown on the print marked **Exhibit A**, attached hereto and hereby made a part hereof. [which work is the subject of a contract dated _____ between Railroad and _____ _____].

Railroad is willing to permit Contractor to perform the work described above at the location described above subject to the terms and conditions contained in this Agreement

AGREEMENT:

NOW, THEREFORE, it is mutually agreed by and between Railroad and Contractor, as follows:

ARTICLE 1 - DEFINITION OF CONTRACTOR.

For purposes of this Agreement, all references in this agreement to Contractor shall include Contractor's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority.

ARTICLE 2 - RIGHT GRANTED; PURPOSE.

Railroad hereby grants to Contractor the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the property described in the Recitals for the

purpose of performing the work described in the Recitals above. The right herein granted to Contractor is limited to those portions of Railroad's property specifically described herein, or as designated by the Railroad Representative named in Article 4.

ARTICLE 3 - TERMS AND CONDITIONS CONTAINED IN EXHIBITS B, C AND D.

The terms and conditions contained in **Exhibit B**, **Exhibit C** and **Exhibit D**, attached hereto, are hereby made a part of this Agreement.

ARTICLE 4 - ALL EXPENSES TO BE BORNE BY CONTRACTOR; RAILROAD REPRESENTATIVE.

A. Contractor shall bear any and all costs and expenses associated with any work performed by Contractor, or any costs or expenses incurred by Railroad relating to this Agreement.

B. Contractor shall coordinate all of its work with the following Railroad representative or his or her duly authorized representative (the "Railroad Representative"):

_____
_____
_____
_____

C. Contractor, at its own expense, shall adequately police and supervise all work to be performed by Contractor and shall ensure that such work is performed in a safe manner as set forth in Section 7 of **Exhibit B**. The responsibility of Contractor for safe conduct and adequate policing and supervision of Contractor's work shall not be lessened or otherwise affected by Railroad's approval of plans and specifications involving the work, or by Railroad's collaboration in performance of any work, or by the presence at the work site of a Railroad Representative, or by compliance by Contractor with any requests or recommendations made by Railroad Representative.

ARTICLE 5 - TERM; TERMINATION.

A. The grant of right herein made to Contractor shall commence on the date of this Agreement, and continue until _____, unless sooner terminated as herein provided, or at such time as Contractor has completed its work on Railroad's property, whichever is earlier. Contractor agrees to notify the Railroad Representative in writing when it has completed its work on Railroad's property.

B. This Agreement may be terminated by either party on ten (10) days written notice to the other party.

ARTICLE 6 - CERTIFICATE OF INSURANCE.

A. Before commencing any work, Contractor will provide Railroad with the (i) insurance binders, policies, certificates and endorsements set forth in **Exhibit C** of this Agreement, and (ii) the insurance endorsements obtained by each subcontractor as required under Section 12 of **Exhibit B** of this Agreement.

B. All insurance correspondence, binders, policies, certificates and endorsements shall be sent to:

Union Pacific Railroad Company
_____
[Insert mailing address]
_____
_____
Attn:_____
Folder No. _____

ARTICLE 7 - DISMISSAL OF CONTRACTOR'S EMPLOYEE.

At the request of Railroad, Contractor shall remove from Railroad's property any employee of Contractor who fails to conform to the instructions of the Railroad Representative in connection with the work on Railroad's property, and any right of Contractor shall be suspended until such removal has occurred. Contractor shall indemnify Railroad against any claims arising from the removal of any such employee from Railroad's property.

ARTICLE 8 - ADMINISTRATIVE FEE.

Upon the execution and delivery of this Agreement, Contractor shall pay to Railroad _____ Dollars ($_____) as reimbursement for clerical, administrative and handling expenses in connection with the processing of this Agreement.

ARTICLE 9 - CROSSINGS.

No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's trackage shall be installed or used by Contractor without the prior written permission of Railroad.

ARTICLE 10 - EXPLOSIVES.

Explosives or other highly flammable substances shall not be stored on Railroad's property without the prior written approval of Railroad.

IN WITNESS WHEREOF, the parties hereto have duly executed this agreement in duplicate as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY

By: _____
Title: _____

_____
(Name of Contractor)

By: _____
Title: _____

EXHIBIT A
TO
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

General Location

(attached hereto)

EXHIBIT B
TO
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

Section 1. NOTICE OF COMMENCEMENT OF WORK FLAGGING.

A. Contractor agrees to notify the Railroad Representative at least ten (10) working days in advance of Contractor commencing its work and at least ten (10) working days in advance of proposed performance of any work by Contractor in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such ten (10)-day notice, the Railroad Representative will determine and inform Contractor whether a flagman need be present and whether Contractor needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Contractor for such expenses incurred by Railroad, unless Railroad and a federal, state or local governmental entity have agreed that Railroad is to bill such expenses to the federal, state or local governmental entity. If Railroad will be sending the bills to Contractor, Contractor shall pay such bills within thirty (30) days of Contractor's receipt of billing. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this Agreement.

B. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Contractor (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.

C. Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement

will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work , even though Contractor may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Contractor must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Contractor will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

Section 2. **LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.**

A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Railroad to use and maintain its entire property including the right and power of Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by Railroad without liability to Contractor or to any other party for compensation or damages.

B. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of Railroad's property, and others) and the right of Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 3. **NO INTERFERENCE WITH OPERATIONS OF RAILROAD AND ITS TENANTS.**

A. Contractor shall conduct its operations so as not to interfere with the continuous and uninterrupted use and operation of the railroad tracks and property of Railroad, including without limitation, the operations of Railroad's lessees, licensees or others, unless specifically authorized in advance by the Railroad Representative. Nothing shall be done or permitted to be done by Contractor at any time that would in any manner impair the safety of such operations. When not in use, Contractor's machinery and materials shall be kept at least fifty (50) feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroads tracks except at existing open public crossings.

B. Operations of Railroad and work performed by Railroad personnel and delays in the work to be performed by Contractor caused by such railroad operations and work are expected by Contractor, and Contractor agrees that Railroad shall have no liability to Contractor, or any other person or entity for any such delays. The Contractor shall coordinate its activities with those of Railroad and third parties so as to avoid interference with railroad operations. The safe operation of Railroad train movements and other activities by Railroad takes precedence over any work to be performed by Contractor.

Section 4. LIENS.

Contractor shall pay in full all persons who perform labor or provide materials for the work to be performed by Contractor. Contractor shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be created or enforced against any property of Railroad for any such work performed. Contractor shall indemnify and hold harmless Railroad from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished. If Contractor fails to promptly cause any lien to be released of record, Railroad may, at its election, discharge the lien or claim of lien at Contractor's expense.

Section 5. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

A. Fiber optic cable systems may be buried on Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Contractor shall telephone Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1 800 336 9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on Railroad's property to be used by Contractor. If it is, Contractor will telephone the telecommunications company(ies) involved, make arrangements for a cable locator and, if applicable, for relocation or other protection of the fiber optic cable. Contractor shall not commence any work until all such protection or relocation (if applicable) has been accomplished.

B. In addition to other indemnity provisions in this Agreement, Contractor shall indemnify, defend and hold Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of Contractor, its agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and/or (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Railroad's property. Contractor shall not have or seek recourse against Railroad for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Railroad's property or a customer or user of services of the fiber optic cable on Railroad's property.

Section 6. PERMITS - COMPLIANCE WITH LAWS.

In the prosecution of the work covered by this Agreement, Contractor shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

Section 7. SAFETY.

A. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Contractor. Contractor shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Contractor shall at a minimum comply with Railroad's safety standards listed in **Exhibit D**, hereto attached, to ensure uniformity with the safety standards followed by Railroad's own forces. As a part of Contractor's safety responsibilities, Contractor shall notify Railroad if Contractor determines that any of Railroad's safety standards are contrary to good safety practices. Contractor shall furnish copies of **Exhibit D** to each of its employees before they enter the job site.

B. Without limitation of the provisions of paragraph A above, Contractor shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job.

C. Contractor shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Contractor shall promptly notify Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. Contractor shall have a nondelegable duty to control its employees while they are on the job site or any other property of Railroad, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.

D. If and when requested by Railroad, Contractor shall deliver to Railroad a copy of Contractor's safety plan for conducting the work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require Contractor to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

Section 8. INDEMNITY.

A. To the extent not prohibited by applicable statute, Contractor shall indemnify, defend and hold harmless Railroad, its affiliates, and its and their officers, agents and employees (individually an "Indemnified Party" or collectively "Indemnified Parties") from and against any and all loss, damage, injury, liability, claim, demand, cost or expense (including, without limitation, attorney's, consultant's and expert's fees, and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, any Indemnified Party, Contractor, or any employee of Contractor or of any Indemnified Party) arising out of or in any manner connected with (i) any work performed by Contractor, or (ii) any act or omission of Contractor, its officers, agents or employees, or (iii) any breach of this Agreement by Contractor.

B. The right to indemnity under this Section 8 shall accrue upon occurrence of the event giving rise to the Loss, and shall apply regardless of any negligence or strict liability of any Indemnified Party, except where the Loss is caused by the sole active negligence of an Indemnified Party as established by the final judgment of a court of competent jurisdiction. The

sole active negligence of any Indemnified Party shall not bar the recovery of any other Indemnified Party.

C. Contractor expressly and specifically assumes potential liability under this Section 8 for claims or actions brought by Contractor's own employees. Contractor waives any immunity it may have under worker's compensation or industrial insurance acts to indemnify the Indemnified Parties under this Section 8. Contractor acknowledges that this waiver was mutually negotiated by the parties hereto.

D. No court or jury findings in any employee's suit pursuant to any worker's compensation act or the Federal Employers' Liability Act against a party to this Agreement may be relied upon or used by Contractor in any attempt to assert liability against any Indemnified Party.

E. The provisions of this Section 8 shall survive the completion of any work performed by Contractor or the termination or expiration of this Agreement. In no event shall this Section 8 or any other provision of this Agreement be deemed to limit any liability Contractor may have to any Indemnified Party by statute or under common law.

Section 9. RESTORATION OF PROPERTY.

In the event Railroad authorizes Contractor to take down any fence of Railroad or in any manner move or disturb any of the other property of Railroad in connection with the work to be performed by Contractor, then in that event Contractor shall, as soon as possible and at Contractor's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed. Contractor shall remove all of Contractor's tools, equipment, rubbish and other materials from Railroad's property promptly upon completion of the work, restoring Railroad's property to the same state and condition as when Contractor entered thereon.

Section 10. WAIVER OF DEFAULT.

Waiver by Railroad of any breach or default of any condition, covenant or agreement herein contained to be kept, observed and performed by Contractor shall in no way impair the right of Railroad to avail itself of any remedy for any subsequent breach or default.

Section 11. MODIFICATION - ENTIRE AGREEMENT.

No modification of this Agreement shall be effective unless made in writing and signed by Contractor and Railroad. This Agreement and the exhibits attached hereto and made a part hereof constitute the entire understanding between Contractor and Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work to be performed by Contractor. Notwithstanding anything to the contrary contained in this Section 11, if Contractor is the Regional Transportation District, a political subdivision of the State of Colorado, the preceding sentence stating that this Agreement and the attached exhibits constitute the entire understanding between Contractor and Railroad and

supersede any prior agreements with respect to the work to be performed by Contactor shall not be applicable.

Section 12. ASSIGNMENT - SUBCONTRACTING.

Contractor shall not assign or subcontract this Agreement, or any interest therein, without the written consent of the Railroad. Contractor shall be responsible for the acts and omissions of all subcontractors. Before Contractor commences any work, the Contractor shall, except to the extent prohibited by law; (1) require each of its subcontractors to include the Contractor as "Additional Insured" in the subcontractor's Commercial General Liability policy and Business Automobile policies with respect to all liabilities arising out of the subcontractor's performance of work on behalf of the Contractor by endorsing these policies with ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage; (2) require each of its subcontractors to endorse their Commercial General Liability Policy with "Contractual Liability Railroads" ISO Form CG 24 17 10 01 (or a substitute form providing equivalent coverage) for the job site; and (3) require each of its subcontractors to endorse their Business Automobile Policy with "Coverage For Certain Operations In Connection With Railroads" ISO Form CA 20 70 10 01 (or a substitute form providing equivalent coverage) for the job site.

EXHIBIT C
TO
CONTRACTOR'S
RIGHT OF ENTRY AGREEMENT

Union Pacific Railroad Company
Insurance Provisions For
Contractor's Right of Entry Agreement

Contractor shall, at its sole cost and expense, procure and maintain during the course of the Project and until all Project work on Railroad's property has been completed and the Contractor has removed all equipment and materials from Railroad's property and has cleaned and restored Railroad's property to Railroad's satisfaction, the following insurance coverage:

A. **Commercial General Liability** insurance. Commercial general liability (CGL) with a limit of not less than $5,000,000 each occurrence and an aggregate limit of not less than $10,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.
- Designated Construction Project(s) General Aggregate Limit ISO Form CG 25 03 03 97 (or a substitute form providing equivalent coverage) showing the project on the form schedule.

B. **Business Automobile Coverage** insurance. Business auto coverage written on ISO form CA 00 01 03 06 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less $5,000,000 for each accident and coverage must include liability arising out of any auto (including owned, hired and non-owned autos).

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

C. **Workers' Compensation and Employers' Liability** insurance. Coverage must include but not be limited to:

- Contractor's statutory liability under the workers' compensation laws of the state where the work is being performed.

- Employers' Liability (Part B) with limits of at least $500,000 each accident, $500,000 disease policy limit $500,000 each employee.

If Contractor is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy must contain the following endorsement, which must be stated on the certificate of insurance:

- Alternate Employer endorsement ISO form WC 00 03 01 A (or a substitute form providing equivalent coverage) showing Railroad in the schedule as the alternate employer (or a substitute form providing equivalent coverage).

D. **Railroad Protective Liability** insurance. Contractor must maintain Railroad Protective Liability insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than $2,000,000 per occurrence and an aggregate of $6,000,000. A binder stating the policy is in place must be submitted to Railroad before the work may be commenced and until the original policy is forwarded to Railroad.

E. **Umbrella or Excess** insurance. If Contractor utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

F. **Pollution Liability** insurance. Pollution liability coverage must be written on ISO form Pollution Liability Coverage Form Designated Sites CG 00 39 12 04 (or a substitute form providing equivalent liability coverage), with limits of at least $5,000,000 per occurrence and an aggregate limit of $10,000,000.

If the scope of work as defined in this Agreement includes the disposal of any hazardous or non-hazardous materials from the job site, Contractor must furnish to Railroad evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of $1,000,000 per loss, and an annual aggregate of $2,000,000.

Other Requirements

G. All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the indemnity provisions of this Agreement.

H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.

I. Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.

J. Prior to commencing the work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.

K. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state where the work is being performed.

L. The fact that insurance is obtained by Contractor or by Railroad on behalf of Contractor will not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Contractor or any third party will not be limited by the amount of the required insurance coverage.

EXHIBIT D
TO
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

Minimum Safety Requirements

The term "employees" as used herein refer to all employees of Contractor as well as all employees of any subcontractor or agent of Contractor.

I. Clothing

A. All employees of Contractor will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Contractor's employees must wear:

(i) Waist-length shirts with sleeves.
(ii) Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
(iii) Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.

B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.

C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

II. Personal Protective Equipment

Contractor shall require its employees to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

(i) Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Contractor's company logo or name.
(ii) Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
(iii) Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:

- 100 feet of a locomotive or roadway/work equipment
- 15 feet of power operated tools
- 150 feet of jet blowers or pile drivers
- 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection - plugs and muffs)

(iv) Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

III. On Track Safety

Contractor is responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

(i) Maintain a distance of twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.
(ii) Wear an orange, reflectorized workwear approved by the Railroad Representative.
(iii) Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Contractor must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Contractor will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

IV. Equipment

A. It is the responsibility of Contractor to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Contractor's equipment is unsafe for use, Contractor shall remove such equipment from Railroad's property. In addition, Contractor must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:

- Familiar and comply with Railroad's rules on lockout/tagout of equipment.
- Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
- Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other railbound equipment.

B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.

C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.

D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

V. General Safety Requirements

A. Contractor shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.

B. Contractor shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.

C. All track work performed by Contractor meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.

D. All employees comply with the following safety procedures when working around any railroad track:

(i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
(ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
(iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).
(iv) Avoid walking or standing on a track unless so authorized by the employee in charge.
(v) Before stepping over or crossing tracks, look in both directions first.
(vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.

E. All employees must comply with all federal and state regulations concerning workplace safety.

Exhibit F

(Attached to and made a part of the
Flyover Easement Agreement dated as of _____, 20_ ,
between Union Pacific Railroad Company
and Regional Transportation District)

Insurance Requirements

In addition to the insurance coverages required by the Right of Entry Agreement and Section 2 below, Grantee shall procure and maintain, at all times and at its sole cost and expense, the following insurance coverages:

1.1 Liability insurance: Commercial general liability (CGL) with a limit of not less than $400,000,000 each occurrence and an aggregate limit of not less than $400,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 or ISO claims made form CG 00 02 12 04 (or substitute forms providing equivalent coverage). Grantee also agrees to purchase an extended reporting period if the retroactive date is advanced or if the policy is canceled or not renewed and not replaced by another claims-made policy with the same (or an earlier) retroactive date during the term of this Easement Agreement. The policy must also contain the following endorsement, which must be stated on the certificate of insurance: "Contractual Liability Railroads" ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.

1.2 Automobile insurance: Business automobile coverage written on ISO form CA 00 01 03 06 (or substitute form providing equivalent liability coverage) with a limit not less $400,000,000 for each accident. Such insurance shall cover liability arising out of any automobile (including owned, hired, and non-owned automobiles). The policy must contain the following endorsements, which must be stated on the certificate of insurance: Coverage For Certain Operations In Connection With Railroads" ISO form CA 20 70 10 01 (or substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site, and Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

1.3 Workers' Compensation and Employers Liability insurance: Coverage must include but not be limited to: Grantee's statutory liability under the workers' compensation laws of the state of Colorado, Employers' Liability (Part B) with limits of at least $500,000 each accident, $500,000 employee for disease and $500,000 policy limit for disease. If Grantee is self-insured, evidence of state approval and excess workers' compensation coverage must be provided. Coverage must include liability arising out of the U.S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

1.4 Pollution Liability insurance: Pollution Liability coverage must be included when any "hazardous" material that is injurious in or upon land, the atmosphere, or any

watercourses; or may cause bodily injury at any time are upon property of Grantor. If required, coverage may be provided by a separate policy or by endorsement to Grantee's CGL policy. In either form coverage must be equivalent to that provided in ISO form "Pollution Liability Coverage Form Designated Sites" CG 00 39 12 04 with limits of at least $5,000.000 per occurrence and an aggregate limit of $10,000,000. If the scope of work includes the disposal of any hazardous or non-hazardous materials from the job site, Grantee must furnish Grantor evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of $5,000,000 per loss, and an annual aggregate of $10,000,000.

2. In addition, the following applies to all insurance coverages required to be obtained by Grantee pursuant to this Easement Agreement:

2.1 Umbrella or Excess insurance: If Grantee utilizes umbrella or excess policies to comply with the limits of coverage required, these policies must "follow form" and afford no less coverage than the primary policy.

2.2 All policy(ies) required above (except worker's compensation and employer's liability) must include Grantor as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Grantor as Additional Insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Grantor's negligence whether sole or partial, active or passive.

2.3 Any punitive damages exclusion must be deleted (and the deletion indicated on the certificate of insurance), unless (i) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this Easement Agreement, or (ii) Grantee would not be liable for such damages pursuant to C.R.S. § 24-10-114, as such statute may be amended.

2.4 Grantee waives all rights against Grantor, its affiliates, and their respective agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the workers' compensation and employer's liability or commercial umbrella or excess liability insurance obtained by Grantee required by this Easement Agreement (which must be stated on the certificate of insurance.)

2.5 Prior to commencing any work on the Easement Property or the Bridge, Grantee shall furnish Grantor with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Easement Agreement.

2.6 All insurance policies must be written by a reputable insurance company acceptable to Grantor or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state of Colorado.

2.7 Subject to Section 19 of this Easement Agreement, the fact that insurance is obtained by Grantee will not be deemed to release or diminish the liability of Grantee, including without limitation, liability under the indemnity provisions of this Easement

Agreement, and damages recoverable by Grantor from Grantee or any third party will not be limited by the amount of the required insurance coverage.

3. Grantee may elect to self-fund the first $10,000,000 of the coverage limits required hereunder, provided all coverages and named insureds are as set forth in this Easement Agreement. If Grantee so elects, it shall secure and maintain an unconditional and irrevocable standby Letter of Credit addressed to Grantor equal to the then current self-funded portion of the requirement. The issuer of the Letter of Credit shall be a bank with a long term senior debt rating of not less than "A(2)" by Moody's Investment Service or "A" by Standard & Poor's. In the event Grantee fails to meet its obligation with respect to claims within the self-funded retention under any insurance policy provided in this Easement Agreement, Grantor shall have the right, upon ten (10) days' notice to Grantee, to draw upon the Letter of Credit to satisfy such claims and seek interest from Grantee in the amount of 10 percent (10%) per annum retrospective to the date of any payment by Grantor.

4. Within thirty (30) days after any amendment, expiration or repeal, or judicial invalidation of the statutory cap on liability set forth at 49 U.S.C. § 28103, and no more than once on each three (3) year anniversary of the date of this Easement Agreement, Grantee and Grantor shall consider the losses paid under the insurance and self-funded retentions described in this Easement Agreement, along with any other relevant information, and shall determine whether there are reasonable grounds to adjust the limits of insurance required by this Easement Agreement or the amount of or maximum for the self-funded retentions. In addition, once every five (5) years Grantor shall have the right to adjust insurance limits, and insurance coverages required by this Easement Agreement consistent with inflation and current insurance and risk management practice. Any disputes with respect to whether there are grounds for such adjustments shall be subject to arbitration in accordance with this Easement Agreement.

5. Grantor shall have the right to review and approve commercial insurance policies obtained by Grantee for compliance with the obligations set forth in this Easement Agreement; provided that such approval shall not constitute a waiver of any non-compliance with this Easement Agreement.

EXHIBIT E TO ADDENDUM D

(Attached to and made a part of
Addendum D to the Property Transfer and Railroad Relocation Agreement
Moffat Tunnel Subdivision/Gold Line)

Moffat Tunnel Subdivision/Gold Line Seller Relocation Property

(see attached depiction)

EXHIBIT F TO ADDENDUM D

(Attached to and made a part of
Addendum D to the Property Transfer and Railroad Relocation Agreement
Moffat Tunnel Subdivision/Gold Line)

Quitclaim Deed

**[Two counties (Adams and Jefferson) –
each County may have different reservations]**

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

Regional Transportation District
1600 Blake Street
Denver, CO 80202-1399
Attn: Marla L. Lien, Esq.

No Documentary Fee Required – Grantee is a Governmental Entity

QUITCLAIM DEED

County of _____, Colorado

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Union Pacific Railroad Company, a Delaware corporation ("Grantor") remises, releases and quitclaims to Regional Transportation District, a political subdivision of the State of Colorado ("Grantee"), whose legal address is 1600 Blake Street, Denver, Colorado 80202, all right, title, interest, claim and demand that Grantor has in and to that property, located in the County of _____, State of Colorado, as more particularly described in Exhibit A attached hereto and by this reference made a part hereof, together with improvements, if any, located thereon and other appurtenances thereto, including without limitation, all strips, gaps and gores (collectively, the "Property"), in as-is condition, subject to, *inter alia*, the exclusions, exceptions and reservations set forth below.

EXCEPTING from this quitclaim and RESERVING unto Grantor, its successors and assigns (including without limitation, lessees, sublessees, easement owners and licensees of Grantor) forever, all minerals and all mineral rights of every kind and character (including without limitation, all oil, gas, sulfur, iron ore, coal, lignite, uranium, limestone, building stone, caliche, rock, shale, gravel, and other minerals (whether or not of like kind or character) in and under the Property) now known to exist or hereafter discovered five hundred (500) feet or more below the surface, including, without limiting the generality of the foregoing, oil and gas and

rights thereto, together with the sole, exclusive and perpetual right to explore for, remove and dispose of said minerals by any means or methods suitable to Grantor, its successors and assigns, but without entering upon or using the surface of the Property, and in such manner as not to damage the surface of said property or to compromise the frequency or safety of Grantee's passenger commuter rail service or to otherwise materially interfere with the surface or subsurface use or intended use thereof by Grantee.

ALSO EXCEPTING from this quitclaim and RESERVING unto Grantor, its successors and assigns (including without limitation, lessees, sublessees, easement owners and licensees of Grantor) forever, all surface and subsurface water rights pertaining or appurtenant to or used in connection with the Property, including without limitation, water rights reserved or granted by easements or judgments (the "Water Rights"), together with a perpetual easement for vehicular and pedestrian access in, on, over, under, across and through the Property for purposes of the use, enjoyment, maintenance, operation and access of and to the Water Rights; provided however, that the Water Rights shall be utilized in such manner as not to damage the surface of the Property or to compromise the frequency or safety of Grantee's passenger commuter rail service or to otherwise materially interfere with the surface or subsurface use or intended use thereof by Grantee.

[UP to verify if needed.] ALSO EXCEPTING from this quitclaim and RESERVING unto Grantor, its successors and assigns (including without limitation, lessees, sublessees, licensees and easement owners of Grantor) forever, a perpetual, non-exclusive easement (the "**Access Easement**") in, on, under, upon, over, through and across a portion of the Property described in Exhibit B attached hereto and by this reference made a part hereof (the "**Access Easement Property**") for use as a roadway for vehicular and pedestrian ingress to and egress from the adjacent property owned by Grantor, and the construction and maintenance of improvements in connection therewith. Grantor, at its own cost and expense, shall construct and maintain any improvements necessary or convenient to facilitate Grantor's use of the Access Easement (the "**Access Improvements**"). Grantor shall also have the right to use the Access Easement for the purpose of construction and maintenance of the Access Improvements; provided however, that Grantor shall give Grantee at least ten (10) days' advance written notice of any intended entry upon the Access Easement Property for construction and maintenance purposes, and Grantor shall in any event conduct such construction and maintenance so as to avoid unnecessary interference with Grantee's activities on the Access Easement Property. The Access Easement shall be for the use by Grantor, and its employees, agents, contractors, lessees, licensees, easement owners, permittees, invitees, guests, successors and assigns, and shall run with and benefit Grantor's adjacent property.

[The parties to verify if needed.] ALSO EXCEPTING from this quitclaim and RESERVING unto Grantor, its successors and assigns (including, without limitation, lessees, sublessees, easement owners and licensees of Grantor) forever, a perpetual, non-exclusive easement (the "**Communication Easement**") in, on, under, upon, over, through and across a portion of the Property described in Exhibit B attached hereto and by this reference made a part hereof (the "**Communication Easement Property**"), together with necessary rights of access for the easement purposes authorized hereunder in, on, over, through and across the Property; provided, however, that the necessary rights of access for the easement purposes shall be exercised in a manner that remains subject to the rights and powers of Grantee to construct,

maintain, repair, remove, use, operate, change, modify or relocate railroad tracks, signal, communication or other wire or fiber lines, pipelines and other facilities upon, along or across any or all parts of the Property. When such access is needed by Grantor and/or its lessees, sublessees, licensees, easement owners, successors and/or assigns, Grantee shall not unreasonably withhold or delay consent and approval to methods and timing of all such access. Grantor and its lessees, sublessees, licensees, easement owners, successors and assigns shall have the right in, on, under, upon, over, through and across the Communication Easement Property to own, construct, reconstruct, maintain, repair, operate, use, relocate and/or remove existing and future fiber optic and other communication systems, lines and facilities and all rights related thereto (collectively, the "**Communication Improvements**"). Grantee covenants that it shall not construct any structures or improvements in, on, under, upon, over, through or across the Communication Easement Property, except in accordance with the terms of Grantor's existing agreements for Communication Improvements and that Grantor shall not enter into any agreements with other third parties with respect to Communication Improvements on the Communication Easement Property after the date hereof.

The parties contemplate that some portions of the existing Communication Improvements may need to be relocated to accommodate Grantee's proposed public transportation project on the Property. The parties will cooperate to ensure that such relocation project is performed in accordance with the terms of Grantor's existing agreements for Communications Improvements and the terms of the Agreement Regarding Engineering Design for Moffat Tunnel Subdivision/ Gold Line Modifications between Grantor and Grantee, dated March 13, 2009, as amended and/or restated (the "**Engineering Agreement**"). In such event, upon notice from Grantee, Grantor will (i) provide notice to the impacted lessees, sublessees, easement owners and licensees, and (ii) review (and approve, in Grantor's sole discretion) any designs proposed by Grantee for relocating onto Grantor's adjacent property those utilities that cannot be accommodated on the Property due to Grantee's proposed public transportation project. Such relocation project shall be (a) constructed at the sole cost and expense of parties other than Grantor, in a manner that will provide Grantor and the owners of the Communication Improvements the ability to maintain continuous communications and utility connections and service at existing service levels, (b) closely coordinated with and reasonably approved by Grantor, (c) coordinated with and approved by the owners of the Communication Improvements, and (d) performed in accordance with the Engineering Agreement. Nothing herein shall be construed as a waiver of Grantee's authority to require a utility company to construct, modify or relocate its utilities in the event that such utilities affect Grantee's proposed public transportation project, as provided in Colo. Rev. Stat. § 32-9-119.1. After the Communication Improvements relocation project is completed, and on the conditions that (1) the relocated Communication Easement Property (including without limitation any relocated easement area that is not located within the Property) has been described in a manner acceptable to Grantor and, if not currently owned by Grantor, has been conveyed to Grantor and insured to Grantor's reasonable satisfaction by a title company reasonably acceptable to Grantor, at Grantee's expense, and (2) Grantee shall have executed and delivered a bill of sale either to Grantor or the owners of the Communication Improvements, as appropriate, for all of the Communication Improvements on the relocated Communication Easement Property, then Grantor shall quitclaim (subject to a reservation of Grantor's other remaining easement interests in the area) its existing Communication Easement

in that portion of the Property from which such Communication Improvements have been relocated.

Notwithstanding any other provision of this Quitclaim Deed, Grantor's quitclaim in favor of Grantee hereunder is subject to, and the easement reserved herein shall allow Grantor to honor its grant and fulfill its other obligations and exercise its rights under, all existing agreements for Communication Improvements, and this Quitclaim Deed shall not impair, restrict or limit the rights of any communications company under any existing agreement. All Communication Improvements presently existing on or hereafter constructed on the Communication Easement Property shall remain the personal property of Grantor or the entity to which they belong. Grantor shall be entitled to all revenues and consideration derived from all current and future agreements to which Grantor is a party affecting the Communication Easement Property.

[The parties to verify if needed.] ALSO EXCEPTING from this quitclaim and RESERVING unto Grantor, its successors and assigns forever, a perpetual, exclusive easement (the "**Railroad Facilities Easement**") in, on, under, upon, over, through and across the portion of the Property described in Exhibit B attached hereto and by this reference made a part hereof (the "**Railroad Facilities Easement Property**"), in which areas Grantor and its lessees, sublessees, easement owners, licensees, successors and assigns shall have the right to own, possess, use, store, construct, reconstruct, install, maintain, inspect, repair, operate, relocate, upgrade, renew, replace and/or remove existing and/or future railroad-related equipment and facilities and any related utilities, including without limitation those facilities described in Exhibit C attached hereto and by this reference made a part hereof (the "**Railroad Facilities**"). Grantee shall be prohibited from (i) using all or any portion of the Property for freight rail purposes, and (ii) without Grantor's prior written consent, removing, modifying or interfering in any manner with the Railroad Facilities located on the Railroad Facilities Easement Property.

Without limiting the foregoing, Grantee and its successors and assigns shall have the right to use the Property in any manner not inconsistent with Grantor's rights reserved in this Quitclaim Deed, and with Grantor's rights under the Operations Agreement – Moffat Tunnel Subdivision/Gold Line, between the parties and dated of even date herewith (the "**Operations Agreement**"), and consistent with applicable laws.

Except with respect to the income generated by any existing or future agreements relating to the reserved mineral rights, the Water Rights and/or the Communication Easement (which income is expressly reserved by Grantor), Grantee shall be entitled to all income (including without limitation, rentals and license fees) from any use rights granted by Grantor or Grantor's predecessors in interest. Grantee agrees that if Grantee receives any income that relates to any of Grantor's reservations in this Quitclaim Deed, Grantee will promptly forward the income to Grantor, but Grantee shall have no obligation to collect such income.

In addition to (and not in limitation of), and without prejudice to or limitation of any other indemnity provisions or legal remedies in this Quitclaim Deed or any other remedies at law or in equity, and subject to any limitations specific to Regional Transportation District contained in Section 12.10 of the Operations Agreement, Grantee agrees to defend and indemnify Grantor and Grantor's affiliates and their respective officers, directors and employees against all claims, suits and demands for Losses (as defined herein) arising out of injury or death

sustained by any person and/or damage to property with respect to the Property, Grantee's Gold Line and/or Grantor's Moffat Tunnel Subdivision, when (a) such Loss would not have occurred but for Grantee's operation and maintenance of public passenger rail service or the construction and/or presence of Grantee's infrastructure on Grantee's Gold Line (including without limitation the Property) or Grantor's Moffat Tunnel Subdivision, or (b) such Loss arose out of an incident occurring on Grantee's Gold Line. For purposes of this Quitclaim Deed, the term "Loss" or "Losses" shall mean all losses, damages, claims, demands, costs, liabilities, judgments and civil penalties, fees and expenses of any nature arising out of or in connection with the death of or injury to persons, or damage to or destruction of property (including repair and replacement expenses) and/or natural resources. "Loss" or "Losses" also shall include without limitation (i) investigation costs, cleanup costs, and remediation costs attributable to spills, emissions, discharges or other releases of hazardous materials; (ii) reduced revenues of Grantor and other economic losses to the extent the party claiming such losses can demonstrate that either damage to or destruction of property, or disruption of freight or passenger rail service, was the proximate cause of such losses; (iii) costs and expenses incurred in connection with the investigation, adjustment and defense of any claim, suit, appeal or arbitration pertaining to a Loss, including reasonable attorneys' and expert witness fees; and (iv) salaries or wages and associated benefits of, and out-of-pocket expenses incurred by or with respect to, employees of either party engaged directly in such investigation, adjustment and defense and a reasonable amount of allocated salaries and wages of employees providing support services to such employees so engaged directly in such work.

This Quitclaim Deed may be executed in one (1) or more counterparts, each of which, when so executed, shall be deemed to be an original. Such counterparts shall together constitute and be one and the same instrument.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Quitclaim Deed as of the ___ day of _____, 20__.

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
_____ Secretary

(SEAL)

REGIONAL TRANSPORTATION DISTRICT,
a political subdivision of the State of Colorado

By: _____
Name: _____
Title: General Manager

APPROVED AS TO LEGAL FORM FOR
THE REGIONAL TRANSPORTATION DISTRICT:

By: _____
Legal Counsel

STATE OF NEBRASKA)
)
COUNTY OF DOUGLAS)

On _____ ___, 20_, before me, a Notary Public in and for said County and State, personally appeared _____ _____ _____ and _____ _____, who are the _____ _____ _____ and the _____ Secretary, respectively, of UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

My Commission expires:

_____
Notary Public

(SEAL)

STATE OF COLORADO)
) ss
COUNTY OF)

The foregoing instrument was acknowledged before me this ___ day of _____ _____, 20__, by _____ as General Manager of the REGIONAL TRANSPORTATION DISTRICT, a political subdivision of the State of Colorado.

WITNESS my hand and official seal.

My Commission expires:

_____
Notary Public

(SEAL)

Exhibit A

(Attached to and made a part of the
Quitclaim Deed dated as of _____, 20__,
from Union Pacific Railroad Company
to Regional Transportation District)

The Property

(see attached)

[excludes the Flyover Easement property]

Exhibit B

(Attached to and made a part of the
Quitclaim Deed dated as of _____, 20__.
from Union Pacific Railroad Company
to Regional Transportation District)

Certain Easement Properties

ACCESS EASEMENT PROPERTY:

COMMUNICATION EASEMENT PROPERTY:

RAILROAD FACILITIES EASEMENT PROPERTY:

(see attached depiction)

As a condition to this Addendum D and the Closing contemplated hereunder (i) Purchaser shall perform a survey and prepare the legal descriptions for the above easement properties for Seller's approval on or before August 30, 2010; (ii) the parties shall then work jointly to resolve any legal description and/or survey issues; and (iii) both parties shall approve, initial and attach the complete legal descriptions for the above easement properties at least fifteen (15) days prior to the Closing.

Exhibit C

(Attached to and made a part of the
Quitclaim Deed dated as of _____, 20__,
from Union Pacific Railroad Company
to Regional Transportation District)

Excepted and Excluded Railroad Facilities

Excluded Railroad Facilities:

EXHIBIT G TO ADDENDUM D

(Attached to and made a part of
Addendum D to the Property Transfer and Railroad Relocation Agreement
Moffat Tunnel Subdivision/Gold Line)

Operations Agreement and Memorandum thereof

(see attached)

RECORDING REQUESTED BY
AND WHEN RECORDED, MAIL TO:

Jacobs Chase & Kelley, LLC
1050 17th Street, Suite 1500
Denver, CO 80265
Attn Jill K. Rood, Esq.

MEMORANDUM OF OPERATIONS AGREEMENT — MOFFAT TUNNEL SUBDIVISION / GOLD LINE
[NEEDS TO BE RECORDED IN 2 COUNTIES]

THIS MEMORANDUM OF OPERATIONS AGREEMENT—MOFFAT TUNNEL SUBDIVISION / GOLD LINE (this "**Memorandum**") is entered into as of _____ _____ __, 20__ (the "**Effective Date**"), by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("**UP**") and **REGIONAL TRANSPORTATION DISTRICT**, a political subdivision of the State of Colorado ("**RTD**") (collectively, the "**Parties**").

WITNESSETH

UP and RTD have entered into an Operations Agreement--Moffat Tunnel Subdivision / Gold Line as of the Effective Date (the "**Agreement**") setting forth the terms and conditions of UP and RTD's operation of their separate portions of the lines running generally parallel to and contiguous with one another on UP's Moffat Tunnel Subdivision and RTD's Gold Line, respectively, and generally located (i) east to west between UP's MP 4.4 and MP 6.5, and (ii) near UP's MP 3.4 at Utah Junction where UP's Moffat Tunnel Subdivision and RTD's Gold Line have boundary lines lying within one hundred (100) feet of each other, as both lines are generally shown on Exhibit A attached hereto and by this reference made a part hereof. UP and RTD desire to record this Memorandum for the purpose of placing the public on notice of inquiry as to the specific provisions, terms, covenants and conditions of the Agreement, including without limitation certain provisions regarding insurance under Article 7, liability under Article 8, labor protection under Article 10 and termination under Article 11 of the Agreement. All of the provisions of the Agreement are incorporated herein by reference with the same force and effect as if herein set forth in full.

This Memorandum is being recorded in lieu of recording the Agreement itself for the purpose of placing the public on notice of inquiry as to the specific provisions, terms, covenants and conditions thereof, and nothing herein contained is intended to or does change, modify or affect any of the terms or provisions of the Agreement or the rights, duties, obligations and covenants created thereby, all of which remain in full force and effect.

This Memorandum may be executed in one (1) or more counterparts, each of which, when so executed, shall be deemed to be an original. Such counterparts shall together constitute and be one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Memorandum to be executed by their duly authorized representatives as of the Effective Date.

ATTEST: By: _____ _____ Secretary *(SEAL)*	UNION PACIFIC RAILROAD COMPANY, a Delaware corporation By: _____ Name: _____ Title: _____
APPROVED AS TO LEGAL FORM FOR THE REGIONAL TRANSPORTATION DISTRICT: By: _____ Legal Counsel	REGIONAL TRANSPORTATION DISTRICT, a political subdivision of the State of Colorado By: _____ Name: _____ Title: General Manager

[Notary acknowledgments appear on the following page.]

STATE OF NEBRASKA)
)
COUNTY OF DOUGLAS)

On _____ _____, 20__, before me, a Notary Public in and for said County and State, personally appeared _____ _____ and _____, who are the _____ and the _____ Secretary, respectively, of UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

My Commission expires:

_____
Notary Public

(SEAL)

STATE OF COLORADO)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 20__, by _____ as General Manager of the REGIONAL TRANSPORTATION DISTRICT, a political subdivision of the State of Colorado.

WITNESS my hand and official seal.

My Commission expires:

_____
Notary Public

(SEAL)

Exhibit A

(Attached to and made a part of the
Memorandum of Operations Agreement — Moffat Tunnel Subdivision / Gold Line
between UP and RTD)

Depiction of the Lines

(see attached)

EXHIBIT H TO ADDENDUM D

(Attached to and made a part of
Addendum D to the Property Transfer and Railroad Relocation Agreement
Moffat Tunnel Subdivision/Gold Line)

Utility License Agreement for Electric Wire Line Crossing

(see attached)

UTILITY LICENSE AGREEMENT
FOR ELECTRIC WIRE LINE CROSSING

Mile Post _____, Moffat Tunnel Subdivision
Location: City and County of Denver, State of Colorado

THIS UTILITY LICENSE AGREEMENT FOR ELECTRIC WIRE LINE CROSSING (this "Agreement") is made and entered into as of the _____ day of _____, 20__ by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Licensor"), whose address is 1400 Douglas Street, Stop 1690, Omaha, Nebraska 68179-1690, and REGIONAL TRANSPORTATION DISTRICT, a political subdivision of the State of Colorado ("Licensee"), whose address is 1600 Blake Street, Denver, Colorado 80202-1399. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Licensor and Licensee hereby agree as follows:

Article 1. LICENSOR GRANTS RIGHT.

Licensor hereby grants to Licensee a non-exclusive license (the "License") to install, maintain, operate, repair and replace a subsurface electric wire line and related conduit and facilities (the "Wire Line") under a portion of Licensor's right of way, tracks and other real property located in the City and County of Denver, State of Colorado, as such area is more particularly described on Exhibit A attached hereto and incorporated herein by this reference (which shall be referred to hereinafter as the "Property", or as a portion of "Licensor('s) property"), for the purpose of providing electrical power to Licensee's property adjacent to Licensor's property, subject to the terms and conditions set forth in this Agreement and in Exhibit B, Exhibit C, Exhibit D and Exhibit E, attached hereto and hereby made a part hereof. Under no circumstances shall Licensee use the Wire Line for a purpose other than the purpose set forth in this Article 1. Licensee may allow its contractors, subcontractors and agents performing work in connection with the Wire Line to use its License only in accordance with all the terms and conditions of this Agreement (including without limitation executing a Right of Entry Agreement (defined below), but excluding Exhibit C hereto which is applicable only to Licensee). In no event shall Licensee have any right to use Licensor's property for any purpose whatsoever except as may be provided in a Right of Entry Agreement.

Article 2. LICENSE FEE.

Concurrently with Licensee's execution and delivery to UP of this Agreement, Licensee shall pay to Licensor a one time fee of Fifteen Thousand Eight Hundred Dollars ($15,800.00) (the "License Fee").

Article 3. RIGHT OF ENTRY.

Licensee acknowledges and agrees that, prior to each exercise of its License described in Article 1 above, it shall execute Licensor's then-current form of the Contractor's Right of Entry Agreement ("Right of Entry Agreement"). The current form of the Right of Entry Agreement is

attached hereto as Exhibit D. If a contractor, subcontractor or agent of Licensee is to perform any work in connection with the Wire Line, then Licensee shall require and cause such contractor, subcontractor or agent to execute the Right of Entry Agreement prior to the commencement of any such work. Licensee acknowledges and agrees that it will inform its contractors, subcontractors and agents of the need to execute the Right of Entry Agreement prior to commencing any work on the Wire Line. Notwithstanding anything to the contrary contained herein, under no circumstances will Licensee or Licensee's contractors, subcontractors or agents be allowed to enter Licensor's property for any purpose (a) prior to executing the Right of Entry Agreement or (b) if Licensee or such contractor, subcontractor or agent is in breach of any of the terms or conditions of this Agreement or the Right of Entry Agreement.

Article 4. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.

Licensee agrees to notify Licensor at least ten (10) working days (or such other time as Licensor may allow in the event of emergency or otherwise) in advance of the commencement of any installation, maintenance, repair, renewal, replacement, modification, relocation, removal or reconstruction work authorized hereunder (including without limitation the proposed performance of any work in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track). No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Licensor's track(s) at any time, for any reason, unless and until a Licensor flagman is provided to watch for trains. Upon receipt of such ten (10)-day notice, Licensor will determine and inform Licensee or its contractor whether a flagman need be present and whether Licensee or its contractor needs to implement any special protective or safety measures. If Licensor performs any flagging, or other special protective or safety measures are performed by Licensor, Licensee or its contractor agrees that it is not relieved of any of its responsibilities or liabilities set forth in this Agreement. Licensee acknowledges and agrees that it shall be subject to and comply with the notice of commencement of work and flagging provisions as more particularly described in the Right of Entry Agreement.

Article 5. INSURANCE.

A. At all times during the term hereof and prior to any entry upon the Property, Licensee shall comply with Licensor's insurance requirements described in Exhibit C, attached hereto and hereby made a part hereof, and any amendments or modifications by Licensor thereto; provided, however, that Licensor must provide Licensee with reasonable notice of any material changes to such insurance requirements.

B. Licensee shall provide Licensor with a certificate, identifying Folder No._____, issued by the insurance carrier providing the insurance coverage required pursuant to Exhibit C that contains the following endorsement:

> UNION PACIFIC RAILROAD COMPANY ("Licensor") is named as additional insured with respect to all liabilities arising out of Insured's (as

Licensee) installation, maintenance, operation, repair, renewal, replacement, modification, relocation, removal and reconstruction of the electric wire line on Licensor's property.

C. Licensee warrants that this Agreement has been thoroughly reviewed by its insurance agent(s)/broker(s) and that said agent(s)/broker(s) has been instructed to procure insurance coverage and an endorsement as required herein.

D. All insurance correspondence shall be directed to:

Union Pacific Railroad Company
Real Estate Department
1400 Douglas Street, Mail Stop 1690
Omaha, NE 68179
Attn.: Folder No. _____

Article 6. TERM.

This Agreement shall be effective as of the date first herein written, and shall continue in full force and effect until terminated as provided in Exhibit B.

Article 7. SPECIAL PROVISIONS.

None.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

	LICENSOR: UNION PACIFIC RAILROAD COMPANY, a Delaware corporation By: _____ Name: _____ Title: _____
APPROVED AS TO LEGAL FORM FOR THE REGIONAL TRANSPORTATION DISTRICT: By: _____ Legal Counsel	LICENSEE: REGIONAL TRANSPORTATION DISTRICT, a political subdivision of the State of Colorado By: _____ Name: _____ Title: General Manager

Exhibit A

(Attached to and made a part of the
Utility License Agreement for Electric Wire Line Crossing
dated _____, 20___,
between Union Pacific Railroad Company
and Regional Transportation District)

Depiction of the Property

Exhibit B

(Attached to and made a part of the
Utility License Agreement for Electric Wire Line Crossing
dated _____, 20__.
between Union Pacific Railroad Company
and Regional Transportation District)

Additional Terms and Conditions

This Exhibit B contains additional terms, conditions, limitations and covenants applicable to the Utility License Agreement for Electric Wire Line Crossing to which it is attached and incorporated by reference ("Agreement"). Unless otherwise specified herein, the capitalized terms used in this Exhibit B shall have the meanings set forth in this Agreement.

SECTION 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.

(a) The rights granted to Licensee are subject and subordinate to the prior and continuing right and obligation of Licensor to use and maintain its entire property, and are also subject to the right and power of Licensor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication, fiber optics or other wire lines, pipelines and other facilities upon, along or across any or all parts of its property, any of which may be freely done at any time by Licensor without liability to Licensee or to any other party for compensation or damages.

(b) Licensor makes no covenant or warranty of title, for quiet possession or against encumbrances with respect to the Property. This Agreement is subject and subordinate to all licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens and claims of title that may affect the Property now or in the future (whether public or private) and whether recorded or unrecorded (including, without limitation, those in favor of grantees, lessees and licensees of Licensor's property and others).

SECTION 2. HORIZONTAL DIRECTIONAL DRILLING GUIDELINES.

(a) Subject to Section 3 below, Licensee shall install the proposed Wire Line under Licensor's railroad rights of way and trackage on the Property using Horizontal Directional Drilling ("HDD") in accordance with the guidelines issued by Licensor, as may be amended by Licensor in its sole discretion to comply with practices recommended by the American Railway Engineering and Maintenance-of-Way Association ("AREMA"). All designs, plans and specifications must include pipe specifications and the actual planned depth of the pipe to be installed under Licensor's railroad rights of way and trackage on the Property. All pipe used in connection with the installation of the Wire Line must satisfy AREMA recommendations and all applicable government and industry regulations.

(b) Licensee's designs, plans and specifications submitted to Licensor must include an installation plan describing: (i) the anticipated rig capacity; (ii) the proposed equipment to be used and the method for advancing the borehole through expected soil conditions; (iii) the angles, depth and exact location of the exit ditch; (iv) the pilot hole diameter; (v) the proposed reaming plan, including the number and diameter of pre-reams/back-reams and the diameter of

the final reamed borehole; and (vi) the contingency equipment and plans for dealing with soil conditions that a soil engineer could reasonably expect to encounter at the HDD installation site. The installation plan must also address the estimated hours of operation during the HDD borehole drilling and installation process, the minimum number of personnel required, and the responsibilities of on-site personnel during all HDD operations. In addition to the installation plan, Licensee, prior to drilling, must also provide to Licensor for review and approval a detailed fracture mitigation plan and establish a survey grid line along with a program to monitor and document the actual location of the borehole during HDD operations. The fracture mitigation plan must include a method for monitoring and capturing the return of drilling fluids and must set forth steps to prevent the inadvertent escape of drilling fluids which could potentially undermine Licensor's railroad right of way and tracks.

(c) Licensee's designs, plans and specifications submitted to Licensor must also include qualifications of the drilling contractor to be used by Licensee to perform the HDD installation of the Wire Line, which such qualifications shall include specific instances of the drilling contractor's successful experience in drilling under sensitive surface facilities.

(d) Licensee shall coordinate with Licensor prior to commencing any work within Licensor's railroad right of way or within twenty-five (25) feet of such right of way, as provided for in this Agreement. During the HDD process, representatives of Licensor and Licensee shall monitor the ground, ballast and track for movement during the drilling, reaming and pullback processes in connection with the installation of the Wire Line. If movement is detected, the installation of the Wire Line and all train movement on the tracks on or near the Property shall be immediately stopped. Licensee shall immediately notify Licensor of the damage caused by the HDD process, and the damage shall be immediately repaired, subject to Licensor's review, inspection and approval. Once the damage is repaired, Licensor shall review and approve the installation process (at Licensee's sole cost and expense), along with any modifications made by Licensee to such process in order to prevent future damage from occurring, prior to Licensee recommencing the installation of the Wire Line. Licensee shall pay all costs and expenses incurred by Licensor in connection with the installation of the Wire Line.

(e) Upon completion of the HDD installation work, Licensee shall provide to Licensor an accurate as-built drawing of the installed HDD segment, which drawing shall include both horizontal and profile plans, together with any additional information requested by Licensor in its sole discretion (at Licensee's sole cost and expense).

SECTION 3. PLANS AND SPECIFICATIONS; CONSTRUCTION; OPERATIONS.

(a) The designs, plans and specifications for the work contemplated in connection with the Wire Line at the design completion level of thirty percent (30%) are attached to this Agreement by reference as part of Exhibit E. Prior to commencement of any work in connection with the Wire Line, Licensee shall submit to Licensor for its review and approval (at Licensee's sole cost and expense) initial designs, plans and specifications for such work that shall be to a design completion level of not less than sixty percent (60%). Thereafter, Licensee shall submit to Licensor for its review and approval (at Licensee's sole cost and expense) the designs, plans and specifications for the work at the ninety-five percent (95%) and the one hundred percent (100%) design completion levels. Construction or reconstruction of the Wire Line shall not begin until Licensor has given its final approval of the submitted designs, plans and specifications at the one hundred percent (100%) design completion level for such construction

or reconstruction (as approved, the "Plans and Specifications"). Licensor reserves the right to enter into contracts with contractors for all or any portion of the review of the designs, plans and specifications (at Licensee's sole cost and expense). Approval by Licensor of any designs, plans and/or specifications shall not be deemed to have been given until the Vice President, Engineering of Licensor ("VP Engineering") (or the VP Engineering's authorized representative) has initialed or signed such designs, plans and/or specifications. Licensor shall use reasonable efforts to complete its review of such designs, plans and specifications within thirty (30) days after receipt, but Licensor may take up to sixty (60) days to review such items, based upon Licensor's scheduling constraints and the complexity of the items under review. Without limiting the scope of Licensor's review or approval, (i) all designs, plans and specifications shall meet all applicable Licensor standards governing structures, safety matters and similar matters (including without limitation the HDD process for the installation of the Wire Line); (ii) all designs, plans and specifications shall meet the terms and conditions of Licensor's then-existing agreements with third parties affecting the Moffat Tunnel Subdivision and shall not otherwise adversely impact the use or condition of the Moffat Tunnel Subdivision or any improvements thereon; and (iii) there shall be no interference with the functionality of the Moffat Tunnel Subdivision or Licensor's freight rail service during or after construction. No changes shall be made by Licensee to the Plans and Specifications without the prior review and approval of Licensor as provided herein. Licensor's review of the Plans and Specifications will be performed solely for its own purposes and benefit, and Licensor shall not be deemed to be liable to Licensee or any other party for defects in the Plans and Specifications or any other improvements related thereto, or the operations and maintenance standards set forth herein. All work performed by Licensee on the Property in connection with the Wire Line shall be done to the satisfaction of Licensor in its sole discretion.

(b) Licensor shall have the right, if it so elects, to provide such support as it may deem necessary for the safety of its track(s) during the time of Licensee's installation, maintenance, operations, repair or replacement of the Wire Line, and in the event Licensor provides such support. Licensee shall reimburse Licensor for all expenses incurred by Licensor in connection with providing such support.

(c) Licensee shall keep and maintain the soil over those portions of the Wire Line located outside of the roadbed of Licensor's right of way thoroughly compacted and at a grade even with the adjacent surface of the ground.

SECTION 4. INSPECTIONS.

Licensor and/or each of its contractors, subcontractors or agents shall have the right (at Licensee's sole cost and expense) to inspect the work related to the Wire Line to determine if it conforms with the requirements of the Plans and Specifications and the operational and maintenance standards set forth above in accordance with the Agreement Regarding Engineering Design for Moffat Tunnel Subdivision/Gold Line Modifications between the parties dated as of March 13, 2009, as amended and/or restated (the "Engineering Agreement"), UP Folder No. _____.

SECTION 5. LICENSEE TO BEAR ENTIRE EXPENSE.

Licensee shall bear the entire cost and expense incurred in connection with the design, installation, maintenance, operation, maintenance, repair and replacement of the Wire Line,

including any and all expenses which may be incurred by Licensor in connection therewith for any review, inspection, supervision, inspection, flagging or otherwise.

SECTION 6. REINFORCEMENT, RELOCATION OR REMOVAL OF WIRELINE.

(a) License herein granted is subject to the needs and requirements of Licensor in the safe and efficient operation of its railroad and in the improvement and use of its property. Licensee shall, at its sole expense, reinforce or otherwise modify the Wire Line, or move all or any portion of the Wire Line to such new location, as Licensor may designate, or remove the Wire Line from the Property, whenever, in furtherance of its needs and requirements, Licensor, in its sole discretion, finds such action necessary or desirable.

(b) All of the terms of this Agreement shall govern the continued installation, maintenance and operation of the Wire Line as reinforced, modified or relocated pursuant to this Section.

SECTION 7. NO INTERFERENCE WITH LICENSOR'S OPERATIONS.

(a) The Wire Line and all parts thereof within and outside of the limits of Licensor's property shall at all times be designed, installed, maintained, operated, repaired and replaced in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the tracks, property and facilities of Licensor (including without limitation, its tracks, pole lines, communication lines, radio equipment, wayside and/or cab based train signal systems, advanced train control systems, positive train separation systems, and grade crossing systems) or the facilities or equipment of others lawfully using Licensor's property, and nothing shall be done or suffered to be done by Licensee at any time that would in any manner impair the safety thereof.

(b) Licensee shall take all precaution to prevent any interference (by induction, leakage of electricity, or otherwise) with the operation of the signal, communication lines or other installations or facilities of Licensor or others lawfully using Licensor's property; and if, at any time, the operation or maintenance of the Wire Line results in any electrostatic effects that Licensor deems undesirable or harmful, or causes interference with the operation of the signal, communication lines or other installations or facilities, as now existing or which may hereafter be provided by Licensor and/or others lawfully using Licensor's property, Licensee shall, at its sole expense, immediately make such modifications or take such action as may be necessary to eliminate such interference. Licensee agrees to pay for all reasonable modifications, design changes, or increased costs that may be necessary now or in the future to ensure the safe and reliable maintenance and operation of the facilities of Licensor and/or others lawfully using Licensor's property to avoid interference from the Wire Line.

(c) Licensor's operations and work performed by Licensor's personnel may cause delays in the work to be performed by Licensee. Licensee accepts this risk and agrees that Licensor shall have no liability to Licensee or any other person or entity for any such delays. Licensee shall coordinate its activities with those of Licensor and third parties so as to avoid interference with railroad operations. The safe operation of Licensor's train movements and other activities by Licensor take precedence over any work to be performed by Licensee.

SECTION 8. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

Licensee acknowledges and agrees that it shall be subject to and comply with the fiber optic cable system provisions as more particularly described in the Right of Entry Agreement. In addition to (and not in limitation of), and without prejudice to or limitation of any other indemnity provisions or legal remedies in this Agreement or any other remedies at law or in equity, Licensee shall indemnify, defend and hold Licensor harmless against and from all costs, liability and expenses whatsoever (including, without limitation, attorneys' fees, court costs and expenses) caused by or arising out of or in any way contributed to by any act or omission of Licensee, its contractors, subcontractors, agents and/or employees, that causes or in any way or degree contributes to, or results from the failure of Licensee to comply with the terms and conditions of the fiber optic cable system provisions contained in the Right of Entry Agreement, (a) any damage to or destruction of any fiber optic or telecommunications system on or near the Wire Line or the Property, (b) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractors, agents and/or employees, on or near the Wire Line or the Property, and/or (c) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of, such telecommunication company(ies). Licensee further agrees that it shall not have or seek recourse against Licensor for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company owning such fiber optic cable or a customer or user of services of such fiber optic cable. The provisions of this Section 8 shall survive the termination of this Agreement.

SECTION 9. INDEMNITY.

(a) In addition to (and not in limitation of), and without prejudice to or limitation of any other indemnity provisions or legal remedies in this Agreement or any other remedies at law or in equity (including without limitation those contained in the Operations Agreement – Moffat Tunnel Subdivision/Gold Line, between the parties and dated of even date herewith, as amended (the "Operations Agreement"), UP Folder No. _____ and the Engineering Agreement), Licensee, for itself and its successors and assigns, shall indemnify, protect, defend and hold harmless Licensor, its agents, directors, officers and employees against all claims, actions, causes of action, demands, rights, damages (including without limitation all "damages" as such term is defined in Section 9601(6) of CERCLA (defined below)), costs, expenses, fees (including without limitation attorneys' fees and disbursements), penalties, fines or compensation whatsoever, direct or indirect, arising now or in the future, on account of or in any way arising out of or in connection with (i) death of or bodily injury to persons including, without limitation, the agents, directors, officers, employees and invitees of the parties hereto, (ii) damage to or loss of property including, without limitation, the property of the parties hereto, their agents, directors, officers, employees and invitees, (iii) (1) any presence, spill, leak, discharge, escape, migration, release or threat of release of Hazardous Substances (defined below) into the environment on, at, above or under the Property or other Licensor property, or (2) the Environmental Laws (defined below) applicable to the Property or other Licensor property or (iv) any other loss, damage or expense and all fines or penalties imposed upon or assessed against Licensor, and all expenses of investigating and defending against the same, arising in any manner out of (A) the use, occupancy or presence of Licensee, its contractors, subcontractors, employees, representatives, invitees or agents on or about the Property and/or other Licensor property and/or the use, occupancy or presence of any trespassers on the Property and/or other

Licensor property, and/or (B) the performance of, or failure to perform by Licensee, its contractors, subcontractors, employees. agents. representatives or invitees, their rights or any obligation under this Agreement, and/or (C) the sole or contributing acts or omissions of Licensee, its contractors, subcontractors, employees, representatives, invitees or agents on or about the Property and/or other Licensor property. The foregoing indemnity is subject to Section 17 of this Agreement and is in addition to, and not in limitation of, the insurance coverage required under Article 5 above. The provisions of this Section 9 shall survive the termination of this Agreement.

(b) Licensee agrees to comply fully with all Environmental Laws and applicable standards concerning Hazardous Substances. Licensee covenants that it shall not and shall cause its contractors, subcontractors, employees, representatives, invitees and agents not to, store, transport, release, treat or dispose of any Hazardous Substances on or about the Property and/or other Licensor property. Licensee agrees to furnish Licensor (if requested) with proof reasonably satisfactory to Licensor that Licensee and/or its contractors, subcontractors, employees, representatives, invitees or agents is/are in such compliance. In the event of any presence, spill, leak, discharge, escape, migration. release or threat of release of Hazardous Substances into the environment on, at, above or under the Property and/or other Licensor property by Licensee or its contractors, subcontractors, employees, representatives, invitees or agents or by trespassers on the Property and/or other Licensor property, Licensee shall give Licensor prompt notice of such event, and at its sole cost and expense, promptly clean or remediate such property to the standards required by law (including without limitation all Environmental Laws) or by any governmental agency or public body having jurisdiction in the matter. Should any such presence, spill, leak. discharge, escape, migration, release or threat of release result in a fine, penalty, cost or charge, Licensee shall promptly and fully pay such fine, penalty, cost or charge.

(c) For purposes of this Agreement, (i) the term "Hazardous Substances" means any material or substance (1) that is present in quantities and in a form that requires investigation, removal, cleanup, transportation, disposal, response or remedial action (as the terms "response" and "remedial action" are defined in Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 (23) and (24)) or under any Environmental Law; or (2) that is defined as a "hazardous waste," "hazardous substance," "pollutant" or "contaminant" under any Environmental Law; and (ii) the term "Environmental Law" means any and all laws, statutes, regulations, enforceable requirements, orders, decrees, agreements, judgments or injunctions validly issued, promulgated or entered by any court or governmental agency with jurisdiction, relating to the environment, to preservation or reclamation of natural resources, or to the management, release or threatened release of contaminants applicable to the Property and/or other Licensor property, including without limitation the Hazardous Substances Transportation Act (49 U.S.C. § 1802 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 et seq.), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 et seq.) and the Hazardous and Solid Waste Amendments of 1984, the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), as amended by the Clean Water Act Amendments of 1977, the Clean Air Act of 1970 (42 U.S.C. § 7401 et seq.), as amended by the Clean Air Act Amendments of 1990, the Safe Drinking Water

Act (42 U.S.C. § 300f et seq.), the Toxic Substances Control Act of 1976 (15 U.S.C. § 2601 et seq.), any similar or implementing state or local law, and all amendments thereto and regulations or rules promulgated thereunder.

SECTION 10. TERMINATION.

(a) It is agreed that the breach of any covenant, stipulation or condition herein contained to be kept and performed by Licensee shall, at the option of Licensor, forthwith work a termination of this Agreement and all rights of Licensee hereunder. Notwithstanding the foregoing, in the event Licensor believes that Licensee has failed to perform or comply with any of its obligations or the terms contained in this Agreement, Licensor shall deliver to Licensee a written notice identifying such failures ("Default Notice"). Licensee shall have thirty (30) days from receipt of a Default Notice to resolve the failures identified therein. Licensor may at its sole option, upon written request therefor from Licensee, extend such thirty-day period. Should Licensee fail to timely resolve such failures, Licensor, at its option, may immediately terminate this Agreement by written notice. Failure of Licensor to provide a Default Notice shall not constitute a waiver of any default hereunder.

(b) If Licensee does not use the Wire Line for a continuous period of one (1) year or fails to commence construction of the Wire Line within five (5) years of the date of this Agreement, Licensor, at its option, may immediately terminate this Agreement by written notice.

(c) This Agreement may be terminated by either party on one hundred eighty (180) days' prior written notice to the other party.

SECTION 11. CLAIMS AND LIENS FOR LABOR AND MATERIAL; TAXES.

(a) Licensee shall fully pay for all materials joined or affixed to and labor performed upon the Property (or, pursuant to any Right of Entry Agreement, any of Licensor's property) in connection with the installation, maintenance, operation, repair, renewal, replacement, modification, relocation, removal or reconstruction of the Wire Line, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the Property or other Licensor property for any work done or materials furnished thereon at the insistence or request or on behalf of Licensee. Licensee shall indemnify and hold harmless Licensor against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed or material furnished.

(b) Licensee shall promptly pay of discharge all taxes, charges and assessments levied upon, in respect to, or on account of the Wire Line, to prevent the same from becoming a charge or lien upon Licensor's property, and so that the taxes, charges and assessments levied upon or in respect to such property shall not be increased because of the location, construction or maintenance of the Wire Line or any improvement, appliance or fixture connected therewith placed upon Licensor's property, or on account of Licensor's interest therein. Where such tax, charge or assessment may not be separately made or assessed to Licensor but shall be included in the assessment of Licensor's property, then Licensee shall pay to Licensor an equitable proportion of such taxes determined by the value of Licensee's property upon Licensor's property as compared with the entire value of such property.

SECTION 12. RESTORATION OF LICENSOR'S PROPERTY.

In the event Licensee in any manner moves or disturbs any of Licensor's property in connection with the installation, maintenance, operation, repair or replacement of the Wire Line, then Licensee shall, as soon as possible and at Licensee's sole expense, restore Licensor's property to the same condition as the same were in before such property was moved or disturbed.

SECTION 13. REMOVAL OF WIRELINE.

(a) Upon termination of this Agreement, Licensee shall, at its sole expense, remove the Wire Line from those portions of the Property not occupied by the roadbed and track of Licensor and shall restore, to the satisfaction of Licensor, such portions of the Property to a condition comparable to that existing immediately prior to the installation of the Wire Line. If Licensee fails to do the foregoing, then Licensor may, but is not obligated to, perform such removal and restoration work at the sole cost and expense of Licensee.

(b) In the event of the removal of the Wire Line by Licensor as provided in this Section, Licensor shall not be liable to Licensee for any damage sustained by Licensee for or on account of such removal and restoration, and such removal and restoration shall not prejudice or impair any right of action for damages, or otherwise, which Licensor may have against Licensee.

(c) The provisions of this Section 13 shall survive the termination of this Agreement.

SECTION 14. NOTICES.

All written notices and demands of any kind which either party may be required or may desire to serve on the other in connection with this Agreement shall be served by personal delivery, electronic facsimile with a hard copy promptly posted in the U.S. mail, reputable overnight air courier or registered or certified mail, postage prepaid, return receipt requested, to the intended addressee at the address set forth below:

If to Licensor:

UNION PACIFIC RAILROAD COMPANY
Assistant Vice President Real Estate
1400 Douglas Street, Stop 1690
Omaha, NE 68179-1690
Telephone: 402-544-8640
Facsimile: 402-501-0340

with copies to:

UNION PACIFIC RAILROAD COMPANY
Patrick R. McGill, Esq.
Senior Counsel – Real Estate
1400 Douglas Street
Mail Stop 1580
Omaha, NE 68179
Telephone: 402-544-5761
Facsimile: 402-544-0132

JACOBS CHASE & KELLEY, LLC
Jill K. Rood, Esq.
1050 17th Street, Suite 1500
Denver, CO 80265
Telephone: 303-685-4800
Facsimile: 303-685-4869

If to Licensee:

REGIONAL TRANSPORTATION DISTRICT
Assistant General Manager for Capital Projects
1560 16th Street
Seventh Floor
Denver, CO 80202
Telephone: 303-299-2300
Facsimile: 303-299-2363

with copies to:

REGIONAL TRANSPORTATION DISTRICT
Marla Lien, General Counsel
1600 Blake Street
Denver, CO 80202-1399
Telephone: 303-299-2207
Facsimile: 303-299-2217

KAPLAN KIRSCH & ROCKWELL LLP
Stephen Kaplan, Esq.
1675 Broadway, Suite 2300
Denver, CO 80202
Telephone: 303-825-7000
Facsimile: 303-825-7005

Any such communication shall be deemed to have been delivered (a) as of the date of receipt, in the case of personal delivery or electronic facsimile transmission, (b) the date of receipt or first attempted delivery via reputable air courier, or (c) as of the date of receipt or first attempted delivery, as evidenced by the return receipt card, in the case of mailing via certified or registered U.S. mail. Either may change the address at which it is to receive notice by so notifying the other party to this Agreement in writing in the manner provided for above.

SECTION 15. WAIVER OF BREACH.

The waiver by Licensor of the breach of any condition, covenant or agreement contained in this Agreement to be kept, observed and performed by Licensee shall in no way impair the right of Licensor to avail itself of any subsequent breach thereof.

SECTION 16. ASSIGNMENT.

This Agreement and the terms, covenants and conditions hereof shall be binding upon, and inure to the benefit of, the parties and, except as expressly limited herein, their respective permitted successors and assigns. The qualifications and reputation of Licensee are material inducements to Licensor in entering into this Agreement. Therefore, Licensee shall not assign the License, in whole or in part, or assign any of Licensee's rights or delegate any of its duties, in whole or in part, under this Agreement to any third party without the prior written consent of Licensor, which consent may be withheld in Licensor's sole discretion. Any assignment, in whole or in part, or attempted assignment, in whole or in part, by Licensee whether voluntary, by operation of law or otherwise, in violation of this Section 16, shall be absolutely void.

SECTION 17. LIMITATIONS SPECIFIC TO REGIONAL TRANSPORTATION DISTRICT.

Notwithstanding anything to the contrary contained in this Agreement, due to the special status of Regional Transportation District as a political subdivision of the State of Colorado, the following limitations shall apply with respect to Regional Transportation District in its capacity as a party hereto, only to the extent required by law (including without limitation any amendments to the Constitution of the State of Colorado) from time to time for purposes of enforceability: (a) the damages recoverable pursuant to Section 9 above shall exclude punitive and exemplary damages; (b) Licensee's liability for indemnifying Licensor under this Agreement shall be limited to the extent of Licensee's applicable insurance coverage, which coverage shall equal to or greater than the coverages required hereby; and (c) nothing in this Agreement shall be construed as a multi-year fiscal obligation. In no event shall these provisions apply to or inure to the benefit of any successor or assign of Regional Transportation District.

SECTION 18. NO WAIVER.

No delay on the part of any party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any waiver on the part of any party hereto of any right, power or privilege hereunder operate as a waiver of any other right, power or privilege hereunder, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof of the exercise of any other right, power or privilege hereunder.

SECTION 19. APPLICABLE LAW.

This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado.

SECTION 20. SEVERABILITY.

Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or unenforceable shall be invalid of unenforceable only to the extent of such determination, which shall not invalidate or otherwise render ineffective any other provision of this Agreement.

SECTION 21. ENTIRE AGREEMENT.

This Agreement, the Property Transfer and Railroad Relocation Agreement between the parties dated effective August ___, 2010, as amended, UP Folder No. _____, the Engineering Agreement and the Operations Agreement, are intended by the parties as a final expression of their agreement and intended to be a complete and exclusive statement of the agreement and understanding of the parties thereto in respect of the subject matter contained herein. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to in this Agreement.

Exhibit C

(Attached to and made a part of the
Utility License Agreement for Electric Wire Line Crossing
dated _____, 20___,
between Union Pacific Railroad Company
and Regional Transportation District)

Union Pacific Railroad
Contract Insurance Requirements

In addition to the insurance coverages required by the Right of Entry Agreement. Licensee shall procure and maintain at its sole expense the following insurance coverages:

1. Liability insurance: Commercial general liability (CGL) with a limit of not less than $25,000.000 each occurrence and an aggregate limit of not less than $25,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 or ISO claims made form CG 00 02 12 04 (or substitute forms providing equivalent coverage). If Licensee utilizes a claims-made form to meet this requirement Licensee warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Agreement. Licensee also agrees to purchase an extended reporting period if the retroactive date is advanced or if the policy is canceled or not renewed and not replaced by another claims-made policy with the same (or an earlier) retroactive date during the term of this Agreement. The policy must also contain the following endorsement, which must be stated on the certificate of insurance: "Contractual Liability Railroads" ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site, and "Designated Construction Project(s) General Aggregate Limit" ISO Form CG 25 03 03 97 (or substitute form providing equivalent coverage) showing the project location as described in this Agreement on the form schedule.

2. Automobile insurance: Business automobile coverage written on ISO form CA 00 01 10 01 (or substitute form providing equivalent liability coverage) with a limit not less $25,000,000 for each accident. Such insurance shall cover liability arising out of any automobile (including owned, hired, and non-owned automobiles). The policy must contain the following endorsements, which must be stated on the certificate of insurance: Coverage For Certain Operations In Connection With Railroads" ISO form CA 20 70 10 01 (or substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site, and Motor Carrier Act Endorsement – Hazardous materials clean up (MCS-90) if required by law.

3. Workers' Compensation and Employers Liability insurance: Coverage must include but not be limited to: Licensee's statutory liability under the workers' compensation laws of the State of Colorado, Employers' Liability (Part B) with limits of at least $500,000 each accident, $500,000 each employee and $500,000 policy limit for disease, and Alternate Employer endorsement ISO form WC 00 03 01 A (or substitute form providing equivalent coverage) showing Licensor in the schedule as the alternate employer (or substitute form providing equivalent coverage). If Licensee is self-insured, evidence of state approval and

excess workers' compensation coverage must be provided. Coverage must include liability arising out of the U.S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

4. Railroad Protective Liability insurance: Licensee must maintain "Railroad Protective Liability" insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Licensor as Named Insured, with a limit of not less than $25,000,000 per occurrence and an aggregate of $25,000,000. A Binder of Insurance stating the policy is in place must be submitted to Licensor before work may be commenced and until the original policy is received by Licensor.

5. Umbrella or Excess insurance: If Licensee utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

6. Pollution Liability insurance: Pollution Liability coverage must be included when any "hazardous" material that is injurious in or upon land, the atmosphere, or any watercourses; or may cause bodily injury at any time are upon Licensor's property. If required, coverage may be provided by a separate policy or by endorsement to Licensee's CGL policy. In either form coverage must be equivalent to that provided in ISO form "Pollution Liability Coverage Form Designated Sites" CG 00 39 12 04 with limits of at least $5,000,000 per occurrence and an aggregate limit of $10,000,000. If the scope of work includes the disposal of any hazardous or non-hazardous materials from the job site, Licensee must furnish Licensor evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of $5,000,000 per loss, and an annual aggregate of $10,000,000.

7. All policy(ies) required above (except worker's compensation and employers liability) must include Licensor as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Licensor as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Licensor's negligence whether sole or partial, active or passive, and shall not be limited to Licensee's liability under the indemnity provisions of this Agreement.

8. Any punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (i) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this Agreement, or (ii) all punitive damages are prohibited by the State of Colorado.

9. Licensee waives all rights against Licensor, its affiliates, and their respective agents, officers, directors, shareholders and employees for recovery of damages to the extent these damages are covered by the workers' compensation and employer's liability or commercial umbrella or excess liability insurance obtained by Licensee required by this Agreement (which must be stated on the certificate of insurance.)

10. Prior to commencing any work on the Property, Licensee shall furnish Licensor with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.

11. All insurance policies must be written by a reputable insurance company acceptable to Licensor or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the State of Colorado.

12. The fact that insurance is obtained by Licensee will not be deemed to release or diminish the liability of Licensee, including without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Licensor from Licensee or any third party will not be limited by the amount of the required insurance coverage.

Exhibit D

(Attached to and made a part of the
Utility License Agreement for Electric Wire Line Crossing
dated _____, 20___,
between Union Pacific Railroad Company
and Regional Transportation District)

Contractor's Right of Entry Agreement

[to be attached]

Exhibit E

(Attached to and made a part of the
Utility License Agreement for Electric Wire Line Crossing
dated _____, 20___,
between Union Pacific Railroad Company
and Regional Transportation District)

Plans and Specifications

[RTD to prepare for UP's approval - - to be attached hereto]

The cover sheets (dated and initialed by both Licensee and Licensor) for the designs, plans and specifications at the **[thirty percent (30%)]** design completion level for the Wire Line are attached hereto and by such attachment, the entire such designs, plans and specifications for the Wire Line are incorporated herein by reference. **[Design completion level to be adjusted accordingly prior to closing of Moffat.]**

EXHIBIT I TO ADDENDUM D

(Attached to and made a part of
Addendum D to the Property Transfer and Railroad Relocation Agreement,
Moffat Tunnel Subdivision/Gold Line)

Federal Funding Requirements

(see attached)

FEDERAL FUNDING REQUIREMENTS

Seller shall comply with the requirements of the Federal Transit Administration's ("FTA") "Buy America" program, the Davis-Bacon Act and federal Uniform Administrative procedures as set forth below. Seller shall include the provisions or certifications shown below in italics in all of its bid or proposal solicitations, subject to the requirements set forth in this Exhibit I.

A. FTA "Buy America" Requirements pursuant to 49 U.S.C. § 5323; 49 C.F.R. Part 661 and FTA guidance documents:

When Seller purchases steel, iron, rail or other manufactured products (such as new track work, signals, or infrastructure) exceeding $100,000 in value (as such limit is set forth at 49 C.F.R. § 18.36(d) and as may be amended), Seller must comply with FTA's "Buy America" requirements at 49 U.S.C. § 5323(j)(1), as follows:

1. General Requirements

a. Steel and iron: All steel and iron manufacturing processes must take place in the U.S, as set forth at 49 C.F.R. §§ 661.5(a), (b), and (c). These requirements apply to all construction materials made primarily of steel or iron and used in infrastructure projects such as transit or maintenance facilities, rail lines, and bridges. The requirements do not apply to steel or iron used as components or subcomponents of other manufactured products.

b. Manufactured products: Pursuant to 49 C.F.R. § 661.5(d), the product itself must be manufactured in the U.S. with 100 percent U.S. components. Foreign-manufactured subcomponents are allowed.

c. Construction contracts: Except for the iron and steel used in a construction contract, FTA treats the procurement of a construction project as the procurement of a "manufactured product" subject to 49 C.F.R. § 661.5(d), as specified in FTA's Best Practices Procurement Manual ("BPPM"), Sec. 4.3.3.2.2.

2. Waivers – Upon Seller's written request, Purchaser will apply to FTA's Regional Administrator for a waiver in connection with a specific item or material. Under 49 U.S.C. § 5323(j)(2); 49 C.F.R. § 661.7, FTA may grant a waiver to the Buy America requirements on a case-by-case basis in any of the following three circumstances based on the waiver applicant's demonstration that it satisfies the criteria for a waiver. Seller must provide Purchaser with sufficient documentation to demonstrate the necessity of the requested waiver according to the criteria below:

a. Waiver is in the public interest: This waiver requires a determination by the FTA Administrator that to require compliance is "inconsistent with the public interest."

b. Materials are not available from the U.S.: This waiver requires a determination by the FTA Regional Administrator that the materials for which a waiver is requested are not produced in the U.S. in sufficient and reasonably available quantities and of a satisfactory quality. If no responsive and responsible bid is received offering an item produced

in the U.S., it will be presumed the conditions exist to grant this non-availability waiver. In the case of a sole source procurement, the waiver will be granted only if the waiver applicant provides sufficient information which indicates that the item to be procured is only available from a single source or that the item to be procured is not produced in sufficient and reasonably available quantities of a satisfactory quality in the U.S.

c. Cost of the domestic product is more than 25 percent higher than that of the foreign product: This waiver requires a determination by the FTA Regional Administrator that including a domestic item or domestic material will increase the cost of the contract between the grantee and its supplier of that item or material by more than 25 percent. This waiver cannot be applied to components or subcomponents of a manufactured item other than rolling stock.

3. Notice to Bidders and Bidder Certification Requirements

a. Seller must include notice in conformance with 49 C.F.R. § 661.13 to all prospective suppliers, bidders, vendors and other proposers of FTA's Buy America requirements at the time of the bid or proposal solicitation, as part of the solicitation document, in substantial conformance with the following:

> *Buy America Provision. This solicitation and the resulting contract are subject to the Buy America requirements of 49 U.S.C. Section 5323(j) and the Federal Transit Administration's implementing regulations found at 49 C.F.R. Part 661. These regulations require, as a matter of responsiveness, that the bidder or offeror submit with its offer a completed certification in accordance with Part 661.6 or Part 661.12, as appropriate. These certifications are set forth in this solicitation at [identify where the certifications are].*

b. Under 49 C.F.R. § 661.13(b), **Seller must require each bidder or offeror to certify as to its respective bid's or offer's compliance with Buy America requirements, including certification of non-compliance, if applicable**. Seller must require certification as a condition of a responsive bid or proposal. If a bidder or offeror certifies that it will comply, then it will not be eligible for a waiver if it later finds itself unable to comply, subject to any relief it may be permitted to seek pursuant to 49 C.F.R. Part 661. The bidder or offeror must submit with the bid or offer a completed Buy America certificate in one of two forms provided below, either:

(i) certifying that the bidder will comply with the Buy America requirements:

Certificate of Compliance with 49 U.S.C. § 5323(j)(1)

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. § 5323(j)(1), and the applicable regulations in 49 CFR Part 661.

Date _____

Signature _____

Company _____

Name _____

Title _____

OR

(ii) certifying that the bidder cannot comply, but may qualify for an exception under the waiver provisions:

Certificate of Non-Compliance with 49 U.S.C. § 5323(j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. § 5323(j), but it may qualify for an exception to the requirements pursuant to 49 U.S.C. § 5323(j)(2), as amended and the applicable regulations in 49 C.F.R. § 661.7.

Date _____

Signature _____

Company _____

Name _____

Title _____

B. Davis-Bacon Act and Copeland Anti-Kickback Act Requirements - 40 U.S.C. §§ 3141 et seq.; 18 U.S.C. § 74; 49 U.S.C. § 5333; and FTA guidance documents:

Seller must require all construction contracts and subcontracts valued at over $2,000 that "at least partly are financed by a loan or grant from the Federal Government," to comply with the employee-protection requirements of the Davis-Bacon Act and Copeland Anti-Kickback Act, as set forth at 40 U.S.C. §§ 3142(a), 3145(a); 49 U.S.C. § 5333; 29 C.F.R. §§ 5.2(h), 5.5(a) and 49 C.F.R. § 18.36(i)(5). Pursuant to 29 C.F.R. § 5.5(a), "construction," for purposes of the Acts, includes "actual construction, alteration and/or repair, including painting and decorating."

1. Seller must include in all solicitations the then-current prevailing Davis-Bacon wage rates, as determined by the U.S. Department of Labor. The prevailing wages applicable to the Counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso, Jefferson, Larimer, Mesa, Pueblo and Weld in Colorado are updated periodically and are available on the U.S. Department of Labor's website at http://www.wdol.gov/wdol/scafiles/davisbacon/co.html.

2. FTA violation reporting requirements. Seller must require every suspected or reported violation of the Davis Bacon Act or its implementing regulations that is required to be reported to FTA.

3. Required contract provisions. Seller must include contract provisions in all contracts subject to Davis-Bacon in accordance with 29 C.F.R. § 5.5(a). All contracts must also

include a listing of the current prevailing Davis-Bacon wage rates. Provisions published by FTA for use in contracts supported by full funding grant agreements are as follows:

a. Minimum wages:

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 C.F.R. Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto **[ATTACH PREVAILING DAVIS-BACON WAGE RATES AS ISSUED BY U.S. DEPARTMENT OF LABOR]** *and made a part hereof, regardless of any contractual relationship which may be alleged to exist between [Contractor] and such laborers and mechanics.*

Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) (as per 29 C.F.R. § 5.5(a) and FTA guidance) *of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 C.F.R. § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii)* (as per 29 C.F.R. § 5.5(a) and FTA guidance) *of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by [Contractor] and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.*

(ii) (A) Any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. [Contractor] may request [Railroad] to approve such additional classification and wage rate and fringe benefits therefor only upon [Contractor's] written request and submission of documentation demonstrating the following criteria have been met:

(1) Except with respect to helpers as defined as 29 C.F.R. § 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination, and

(4) With respect to helpers as defined in 29 C.F.R. § 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If [Contractor] and the laborers and mechanics to be employed in the classification (if known), or their representatives, and [Railroad] agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by [Railroad] to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise [Railroad] or will notify [Railroad] within the 30-day period that additional time is necessary.

(C) In the event [Contractor], the laborers or mechanics to be employed in the classification or their representatives, and [Railroad] do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), [Railroad] shall refer the questions, including the views of all interested parties and the recommendation of [Railroad], to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise [Railroad] or will notify [Railroad] within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) (as per 29 C.F.R. § 5.5(a) and FTA guidance) *of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.*

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, [Contractor] shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If [Contractor] does not make payments to a trustee or other third person, [Contractor] may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of [Contractor], that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require [Contractor] to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v) (A) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. [Contractor] may request [Railroad] to approve such additional classification and wage rate and fringe benefits therefor only upon [Contractor's] written request and submission of documentation demonstrating the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If [Contractor] and the laborers and mechanics to be employed in the classification (if known), or their representatives, and [Railroad] agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by [Railroad] to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise [Railroad] or will notify [Railroad] within the 30-day period that additional time is necessary.

(C) In the event [Contractor], the laborers or mechanics to be employed in the classification or their representatives, and [Railroad] do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), [Railroad] shall refer the questions, including the views of all interested parties and the recommendation of [Railroad], to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise [Railroad] or will notify [Railroad] within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) (as per 29 C.F.R. § 5.5(a) and FTA guidance) *of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.*

b. <u>Withholding</u>: [Railroad] shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from [Contractor] under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices,

trainees, and helpers, employed by [Contractor] or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, [Railroad] may, after written notice to [Contractor], sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

c. Payrolls and basic records:

(i) Payrolls and basic records relating thereto shall be maintained by [Contractor] during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 C.F.R. § 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, [Contractor] shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii) (A) [Contractor] shall submit weekly for each week in which any contract work is performed a copy of all payrolls to [Railroad] for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under Section 5.5(a)(3)(i) of Regulations, 29 C.F.R. Part 5 (subject to any applicable exceptions in the Regulations). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Website at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The [Contractor] is responsible for the submission of copies of payrolls by any and all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by [Contractor] or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under Section 5 5(a)(3)(i) of Regulations, 29 C.F.R. Part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 C.F.R. Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) (as per 29 C.F.R. § 5.5(a) and FTA guidance) *of this section.*

(D) The falsification of any of the above certifications may subject [Contractor] or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) (as per 29 C.F.R. § 5.5(a) and FTA guidance) *of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If [Contractor] or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to [Contractor], sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 C.F.R. § 5.12.*

d. Apprentices and trainees:

(i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen

on the job site in any craft classification shall not be greater than the ratio permitted to [Contractor] as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in [Contractor's] or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, or authorized representative determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, [Contractor] will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 C.F.R. § 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, [Contractor] will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 C.F.R. Part 30.

e. Compliance with Copeland Act requirements: The contractor shall comply with the requirements of 29 C.F.R. Part 3, which are incorporated by reference in this contract.

f. Subcontracts: The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 C.F.R. §§ 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 C.F.R. § 5.5.

g. Contract termination; debarment: A breach of the contract clauses in 29 C.F.R. § 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 C.F.R. § 5.12.

h. Compliance with Davis-Bacon and Related Act requirements: All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 C.F.R. Parts 1, 3, and 5 are herein incorporated by reference in this contract.

i. Disputes concerning labor standards: Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 C.F.R. Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between [Contractor] (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

j. Certification of eligibility:

(i) By entering into this contract, [Contractor] certifies that neither it (nor he or she) nor any person or firm who has an interest in [Contractor's] firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 C.F.R. § 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 C.F.R. § 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. § 1001.

C. Federal Uniform Administrative Requirements – 49 C.F.R. § 18.36

Seller must retain, and must require its contractors to retain, all books, documents and papers, and records directly relating to the work being supported by federal grant monies, as required under 49 C.F.R. § 18.36(i)(10), through [NOT LESS THAN THREE YEARS

FOLLOWING FINAL PAYMENT BY RTD UNDER GRANT]. Seller must maintain such records in such a manner that they are accessible during normal business hours for the purpose of making audits, examination, excerpts and transcriptions by Purchaser, FTA, the Comptroller General of the United States or any of their duly authorized representatives.

Seller must include in all construction contracts for procurement under a federal grant a clause substantially in the form of the following:

> *All books, documents, papers and records directly relating to this contract shall be made available during normal business hours upon [Railroad's] request for audit, examination, excerpt or transcription. All records relating to this contract must be retained through [NOT LESS THAN THREE YEARS FOLLOWING FINAL PAYMENT BY RTD UNDER GRANT].*

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Exhibit 5

Form of
Relocation and Construction Agreement
Limon and Greeley Subdivisions / East Corridor

[attached hereto]

RTDC Draft
July 27, 2010

RELOCATION AND CONSTRUCTION AGREEMENT

LIMON AND GREELEY SUBDIVISIONS/EAST CORRIDOR

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RELOCATION AND CONSTRUCTION AGREEMENT

LIMON AND GREELEY SUBDIVISIONS/EAST CORRIDOR

THIS RELOCATION AND CONSTRUCTION AGREEMENT – LIMON AND GREELEY SUBDIVISIONS/EAST CORRIDOR ("Agreement") is made as of the __ day of _____, 20__, by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("UP") and REGIONAL TRANSPORTATION DISTRICT, a political subdivision of the State of Colorado ("RTD").

RECITALS

A. RTD plans to construct a portion of its FasTracks Passenger Rail Network pursuant to the FasTracks plan adopted by RTD's board of directors on April 22, 2004 (the "Project") on UP's existing Limon and Greeley Subdivisions in Adams County and the City and County of Denver, Colorado, as more particularly described in Addendum C of the Property Transfer and Railroad Relocation Agreement, dated effective of even date herewith between the parties, as amended (the "Transfer Agreement").

B. Construction of the Project will require (i) modifying and relocating portions of UP's existing Limon and Greeley Subdivisions onto UP's adjacent land and the Limon and Greeley Subdivisions/East Corridor Seller Relocation Property, (ii) modifying and relocating certain third-party facilities and (iii) constructing Project improvements on and in the vicinity of the Property (defined below). The construction will occur over a period of time, in phases linked to separate segments of the Property.

C. UP and RTD entered into the Reimbursement Agreement (defined below) which permitted UP to commence construction of the Railroad Work for Construction Segment 1 (defined below) prior to the signing of this Agreement. All future Work for Construction Segment 1 will now be governed by this Agreement.

D. RTD desires to commence construction of its Project on UP Property prior to the closing under the Transfer Agreement, and RTD acknowledges the paramount rights of UP to conduct its Freight Rail Service on the UP Property. Accordingly, except as otherwise expressly provided herein, all RTD rights hereunder are subject and subordinate to the prior and continuing right and obligation of UP to use and maintain the UP Property, including the right and power of UP to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of the UP Property, all or any of which may be freely done at any time or times by UP without liability to RTD or to any other party for compensation or damages.

E. The parties now desire to set forth their understanding and agreement with respect to the modifications and relocations impacting portions of the existing Limon and Greeley Subdivisions and the related Third Party Work, and the UP Related Project Work, on the terms and conditions set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE 1 - DEFINED TERMS

Capitalized terms used but not otherwise defined herein shall have the meaning ascribed thereto in the Transfer Agreement.

"Agreement" shall mean this Relocation and Construction Agreement - Limon and Greeley Subdivisions/East Corridor.

"AREMA Standards" shall have the meaning set forth in Section 4.1.4 below.

"Construction Segment(s)" shall mean the portion(s) of the UP Property described on Exhibit A attached hereto and incorporated herein by reference, together with the applicable portion(s) of the UP Relocation Project Work, the Third Party Work and the UP Related Project Work to be constructed within such portions of the UP Property, all as described in Exhibit A.

"Contractor" shall mean any contractor who performs Work, whether engaged by or on behalf of RTD, UP, or a third party for the Third Party Work, including subcontractors and suppliers, regardless of tier.

"Costs" shall mean all costs, fees and expenses, including without limitation, attorneys' fees and consultants' fees and disbursements, and including any Customary Additives, and including any overtime expenses approved by RTD.

"Customary Additives" shall mean elements of cost added to billings that generally are calculated as a percentage of direct labor costs and are intended to compensate for, without limitation, paid holidays, vacation and personal leave days, health and welfare benefits, payroll taxes and administrative and supervisory expenses that include direct and general overhead, inclusive of a customary one percent (1%) additive for special administrative costs related to billing preparation, and are subject to periodic changes depending upon industry practices.

"Designs" shall have the meaning set forth in Section 2.1.4 below.

"Engineering Agreement" shall mean the Agreement Regarding Engineering Design for Limon and Greeley Subdivisions/East Corridor Relocation, dated March 13, 2009, between UP and RTD, as the same may be amended and/or restated from time to time.

"Escrow" shall mean the escrow account established by the Escrow Agreement.

"Escrow Agent" shall mean [_____].

"Escrow Agreement" shall mean the Escrow Agreement among UP, RTD and **Escrow Agent** dated of even date herewith, establishing an escrow account for, *inter alia*, financing the UP Relocation Project Work and other UP Costs and Losses.

"Facilities" shall mean all rails, fastenings, switches, switch mechanisms and frogs complete, ties, ballast, signals, bumpers, roadbed, embankments, bridges, trestles, culverts, or any other structures or things necessary for the support thereof and, if any portion thereof is located in a thoroughfare, the term shall include pavement, crossing planks and other similar materials or facilities used in lieu of pavement or other street surfacing materials at vehicular and pedestrian crossings of tracks, culverts, drainage facilities, automatic warning devices, and any and all structures and facilities required by lawful authority in connection with the construction, renewal, maintenance and operation of any of the foregoing.

"Force Majeure Event" shall mean any occurrence, affecting the UP Property or the UP Relocation Project, the Third Party Work and/or the UP Related Project Work, beyond a party's reasonable control and/or beyond the reasonable control of its vendors and Contractors, including but not limited to a riot, insurrection, act of terrorism or war, strikes or lockouts, derailments, wrecks, freight embargoes, inability to procure critical materials, fire, earthquake, flood, cloudburst, tornado or other phenomena of nature beyond the power of a party to foresee, accidents, or other unforeseeable circumstances (such as encountering historical artifacts or burial grounds). A rain, windstorm or other natural phenomenon of normal intensity, based on U.S. Weather Bureau reports for a particular locality and for the particular season of the year during which the Work is being prosecuted, shall not be deemed a Force Majeure Event.

"FRA" shall mean the Federal Railroad Administration.

"Freight Rail Service" shall mean the common carrier freight rail operations on and in the vicinity of the UP Property, including without limitation, operations in furtherance of transporting freight commodities of all types and descriptions in trains, personnel training and the use of equipment for such operations.

"Functionality" shall mean, as determined by UP in its reasonable discretion, that level of Freight Rail Service equivalent to the level of Freight Rail Service provided by UP within the immediate vicinity of the UP Property as of the date of this Agreement, with respect to safety and to UP's current levels of time efficiency and cost effectiveness in providing such service.

"Losses" shall mean all losses, damages, claims, demands, Costs, liabilities, judgments and civil penalties, fees and expenses of any nature.

"Noticed Party" shall have the meaning set forth in Section 9.2.2 below.

"Notifying Party" shall have the meaning set forth in Section 9.2.2 below.

"Optional UP Related Project Work" shall mean, with respect to any Construction Segment, the portion of the UP Related Project Work described in Exhibit A as being permitted construction only after completion of the UP Relocation Project Work and the Third Party Work for that Construction Segment. The Optional UP Related Project Work shall exclude any UP Related Project Work that pertains to the Overpasses.

"Other UP Work" shall mean any work performed by UP, in its sole discretion, other than the Railroad Work, whether for the UP Relocation Project, the Project and/or the Third Party Work (for example, rail traffic coordination, reviewing RTD's designs or performing inspections of Third Party Work).

"Overpasses" shall mean, collectively, RTD's two (2) proposed overpasses (the passenger rail transit overpass near Airport Road and the pedestrian overpass near 38th Street) over the Limon and Greeley Subdivisions/East Corridor contemplated by the form of Flyover Easement Agreement in Addendum C of the Transfer Agreement, and as generally shown in Exhibit B.

"Past Due Interest Rate" shall have the meaning set forth in Section 7.5 below.

"Plans and Specifications" shall have the meaning set forth in Section 2.1.4 below.

"Project" shall have the meaning set forth in Recital A above.

"Property" shall have the meaning ascribed thereto in Addendum C of the Transfer Agreement.

"Punch list" shall have the meaning set forth in Section 8.1.2 below.

"Railroad Work" shall mean that portion of the UP Relocation Project Work that is designed and/or constructed by UP, both on and off the UP Property, as determined in accordance with Section 3.2 below and as set forth, in part, in Exhibit A.

"Reimbursement Agreement" shall mean that certain Limon and Greeley Subdivisions/East Corridor Cost Reimbursement Agreement between UP and RTD, dated June 22, 2010.

"Review Standards" shall have the meaning set forth in Section 2.1.2 below.

"RTD" shall mean Regional Transportation District, a political subdivision of the State of Colorado, and its successors and assigns.

"RTD Freight Work" shall mean that portion of the UP Relocation Project Work that is designed and/or constructed, or caused to be constructed, by RTD, both on and off the UP Property, as determined in accordance with Section 3.2 below and as set forth, in part, in Exhibit A.

"Sufficient Funds" shall have the meaning set forth in Section 7.2.1 below.

"Third Party Work" shall mean all Work done by or on behalf of third parties, in connection with, caused by, or being coordinated with, the Project and/or the UP Relocation Project, and affecting the UP Property, including without limitation, utility protective measures and/or relocations (including construction and installation of fiber optic conduit), grade separation projects, street closures, quiet zone measures, and any work required by the BNSF Railway.

"Tolling Conditions" shall have the meaning set forth in Section 3.5.3 below.

"Transfer Agreement" shall have the meaning set forth in Recital A above.

"UP" shall mean Union Pacific Railroad Company, a Delaware corporation, and its successors and assigns.

"UP Invoices" shall have the meaning set forth in Section 7.5 below.

"UP Property" shall mean property owned (in fee or easement) by UP in the general vicinity of the Property, including without limitation, the Property, Seller's adjacent property and the Limon and Greeley Subdivisions/East Corridor Seller Relocation Property.

"UP Related Project Work" shall mean the Work for the Project both on and off the UP Property, performed by or on behalf of RTD, that could impact UP's Freight Rail Service or the UP Property (including without limitation the Overpasses and the work for the private crossing and roadway license area), and includes but is not limited to the furnishing of all materials and the doing of all Work contemplated by the Designs and Plans and Specifications for the UP Related Project Work. Exhibit B attached to this Agreement and incorporated herein by reference shows the general scope of the UP Related Project Work, as such designs may be revised from time to time in accordance with Article II below. Exhibit A generally divides such UP Related Project Work by Construction Segments, and prohibits any construction Work pertaining to the Overpasses during the term of this Agreement.

"UP Relocation Project" shall mean the project to construct a new alignment for UP's freight rail line known as the Limon and Greeley Subdivisions and all related Facilities, on and in the general vicinity of the UP Property, to ensure that the Functionality of UP's Freight Rail Service is maintained at its current level, as set forth in the Designs and Plans and Specifications for the UP Relocation Project. Exhibit B shows the general scope of the UP Relocation Project, as such designs may be revised from time to time in accordance with Article II below.

"UP Relocation Project Work" shall mean all Work performed on and in the general vicinity of the UP Property relating to the UP Relocation Project, and includes but is not limited to, the furnishing of all materials and the doing of all Work contemplated by the Designs and Plans and Specifications for the UP Relocation Project. Exhibit A generally divides such Work by Construction Segment. The UP Relocation Project Work generally includes the following activities to be performed by UP and/or RTD:

(i) constructing temporary trackage, removing and relocating existing trackage, and constructing new trackage and signal and crossing warning systems;

(ii) constructing temporary or permanent communication facilities and making signal line adjustments;

(iii) rail traffic coordination in connection with the UP Relocation Project Work;

(iv) constructing permanent trackage for UP's Freight Rail Service on permanent alignments, in conjunction with constructing retaining walls, fences and drainage structures and removing existing trackage;

(v) constructing, changing or modifying Facilities, including implementing any quiet zone measures, as required to complete the UP Relocation Project, whether such changes are temporary or permanent in nature;

(vi) performing engineering, surveying and design review;

(vii) performing any and all other Work that the parties mutually agree to be necessary for the completion of the UP Relocation Project, including without limitation inspections; and

(viii) constructing buffer walls and/or fences as needed on the UP Property.

"UP Work Prerequisites" shall have the meaning set forth in Section 3.5.2 below.

"VP Engineering" shall have the meaning set forth in Section 2.1.2 below.

"Work" shall have the meaning set forth in Section 3.1 below.

"Work Prerequisites" shall have the meaning set forth in Section 3.5.2 below.

ARTICLE II – DESIGN

2.1 Design Work.

2.1.1 RTD and UP have approved the designs, plans and specifications for the UP Related Project Work at the design completion level of thirty percent (30%), and for the UP Relocation Project at the design completion level of ninety-five percent (95%), in accordance with the Engineering Agreement and the Review Standards. Such approved designs are attached to this Agreement by reference as Exhibit B; the cover sheets (dated and initialed by both RTD and UP) for the design sets are attached, and by and through such attachment the entire design sets are incorporated herein by reference. The parties acknowledge that UP has provided substantial comments on the UP Relocation Project designs (including without limitation, requiring that a bridge be redesigned) and RTD is currently revising such designs to resubmit to UP for its approval in accordance with this Article II. RTD hereby represents to UP that (i) RTD has obtained from the City and County of Denver any required approval for the designs, plans and specifications included in Exhibit B, and (ii) RTD will obtain from the City and County of Denver any required approval of all future iterations thereof and modifications thereto, and of all designs, plans and specifications for the Third Party Work. The parties agree to work cooperatively throughout the design process for the Third Party Work. RTD and its Contractors shall prepare the designs, cost estimates and plans and specifications for the Third Party Work, in cooperation with and subject to the approval of UP and UP's lessees, sublessees, licensees and easement owners and, as applicable, the City and County of Denver.

2.1.2 UP shall have the continuing right to review and approve or disapprove all designs and plans and specifications and proposed changes thereto for the UP Relocation Project, the Third Party Work and the UP Related Project Work (including without limitation subsequent iterations of the designs, plans and specifications), with respect to, *inter alia*, compliance with the Review Standards and, as applicable, the terms of the Engineering Agreement. Approval by UP of any designs, plans and/or specifications shall not be deemed to have been given until the Vice President, Engineering of UP ("VP Engineering") (or the VP Engineering's authorized representative) has initialed or signed such designs, plans and/or specifications. UP shall use reasonable efforts to complete its review within thirty (30) days after receipt, but UP may take up to sixty (60) days to review such items, based upon UP's scheduling constraints and the complexity of the items under review. In addition to those review principles set forth in Section 2.2 below, UP's scope of review shall include, *inter alia*, determining whether (i) the designs, plans and specifications (preliminary and final) and/or changes meet all applicable then-current UP standards governing structures and trackage, clearances, utilities, drainage, buffer walls or fences, safety matters, and similar matters, with respect to the UP Property, UP's Freight Rail Service, or its continuing rights and interests in the UP Property; (ii) the designs, plans and specifications (preliminary and final) and/or changes meet the terms and conditions of UP's then-existing agreements with third parties affecting the UP Property, as applicable, and do not otherwise adversely impact the use or condition of the UP Property or any improvements thereon; (iii) there will be any interference with or danger to the UP Property, UP's Freight Rail Service, or its continuing rights and interests in the UP Property, during or after construction (subject to Section 2.4 below); and (iv) the freight rail trackage is completely separate from the Project's passenger rail trackage, without connections, so that neither party may operate its trains over the trackage of the other party; subject however, to RTD's right to fly over the UP freight rail trackage on the Overpasses in accordance with the Flyover Easement to be executed by the parties at the Closing under Addendum C of the Transfer Agreement (collectively, the "Review Standards"). Notwithstanding anything contained in this Agreement to the contrary, UP's review will be performed solely for its own purposes and benefit, and UP shall not be deemed to be liable to RTD or any other party for defects in the Designs and Plans and Specifications for the Project, the RTD Freight Work or the Third Party Work.

2.1.3 Prior to RTD's commencement of construction of all or any portion of the Work, RTD shall submit to UP for its review and approval (at RTD's sole cost and expense) the designs, plans and specifications for such Work at the sixty percent (60%), ninety-five percent (95%) and the one hundred percent (100%) design completion levels. No construction shall begin until (i) UP and, as applicable, the City and County of Denver have given final approval of the submitted designs, plans and specifications at the one hundred percent (100%) design completion level in accordance with this Article II and (ii) the Work Prerequisites and UP Work Prerequisites applicable thereto have been met to the satisfaction of both parties to this Agreement.

2.1.4 The final one hundred percent (100%) designs (i) for the UP Relocation Project Work and for the UP Related Project Work, as approved by RTD and UP and, as applicable, the City and County of Denver, and (ii) for the Third Party Work, as approved by RTD, UP, the appropriate third party and, as applicable, the City and County of Denver, or any portion of such designs, as supplemented and/or modified from time to time in accordance with Section 2.2 below, are referred to herein (as the context requires) either separately as the

"Designs" for the UP Relocation Project Work, the UP Related Project Work or the Third Party Work, or collectively as the "Designs" for all Work. The final, detailed one hundred percent (100%) construction plans and specifications (a) for the UP Relocation Project Work and for the UP Related Project Work, as approved by RTD and UP and, as applicable, the City and County of Denver, and (b) for the Third Party Work, as approved by RTD, UP, the appropriate third party and, as applicable, the City and County of Denver, or any portion of such plans and specifications, as supplemented and/or modified from time to time in accordance with Section 2.2 below, are referred to herein (as the context requires) either separately as the "Plans and Specifications" for the UP Relocation Project Work, the UP Related Project Work or the Third Party Work, or collectively as the "Plans and Specifications" for all Work.

2.1.5 **No construction Work by RTD shall begin for any Construction Segment until:**

(i) UP and, as applicable, the City and County of Denver has(ve) given (a) final approval of all Designs and Plans and Specifications for the UP Relocation Project Work for all Construction Segments, (b) approval at the sixty percent (60%) design completion level of all designs and plans and specifications for the Third Party Work and the UP Related Project Work for all Construction Segments, and (c) final approval of the Designs and Plans and Specifications for the type of Work that RTD intends to construct (as applicable, the Third Party Work and/or the UP Related Project Work) for such Construction Segment, and

(ii) the Work Prerequisites and UP Work Prerequisites applicable to such Construction Segment have been met to the satisfaction of both parties to this Agreement.

In no event shall any construction work of any nature whatsoever be performed on the UP Property during the term of this Agreement other than construction Work, nor shall any construction Work related to the Overpasses be performed on the UP Property during the term of this Agreement.

2.1.6 No construction Work by UP shall begin for any Construction Segment until the Work Prerequisites and the UP Work Prerequisites applicable to such Construction Segment have been met to UP's satisfaction.

2.2 Covenant to Cooperate.

The parties acknowledge and agree that the designs and plans and specifications (preliminary and/or final) for the UP Relocation Project Work, the Third Party Work and the UP Related Project Work, may need to be prepared, supplemented, re-ordered and/or revised from time to time, both prior to construction and (through the use of construction change orders) during construction. Either party (or a third party, with respect to Third Party Work) may request a Designs modification, a Plans and Specifications change, a revision to the Construction Segments, and/or a construction change order by notifying the other party (in accordance with Section 12.1 below) of such requested modification and the details thereof (for construction change orders, the request shall also include the estimated cost thereof). Accordingly, the parties agree to cooperate with respect to all proposed modifications. Each request shall be subject to the consent of the other party(ies), which shall not be unreasonably withheld, conditioned or

delayed. Consideration of any proposed modification, whether proposed by RTD, UP or a third party, shall be based upon all of the following principles:

(i) the Functionality of UP's Freight Rail Service will be maintained;

(ii) the parties will give due consideration to (a) the needs and requests of UP's freight rail customers (and to any party desiring Freight Rail Service), and (b) any change in the circumstances of such customers that has an impact on their freight service needs;

(iii) the Review Standards shall be met; and

(iv) any such modification shall not require the removal of any improvements constructed as part of the Work that are in compliance with the Designs and Plans and Specifications.

Each party shall use its best efforts to complete its review within thirty (30) days after receipt, but such party may take up to sixty (60) days to review such items, based upon its scheduling constraints and the complexity of the items under review.

2.3 Engineering Data.

2.3.1 All diagrams, plans, drawings (including but not limited to the Designs), models, prototype devices, specifications (including but not limited to the Plans and Specifications), magnetic tapes, computer discs, data and notes, memoranda and other writings of a technical or economic nature that are furnished to RTD by UP or its Contractors in connection with the Project or the UP Relocation Project shall be and remain the property of UP, provided that RTD is hereby granted a permanent, irrevocable right to use all such materials in connection with the Project.

2.3.2 All diagrams, plans, drawings (including but not limited to the Designs), models, prototype devices, specifications (including but not limited to the Plans and Specifications), magnetic tapes, computer discs, data and notes and other writings of a technical or economic nature that are prepared by RTD or its Contractors, shall be and remain the property of RTD, provided that UP is hereby granted a permanent, irrevocable right to use all such materials pertaining to the Facilities, UP Property, or property to be owned by any utility company.

ARTICLE III – WORK; RIGHTS OF ENTRY; INSURANCE

3.1 Work Defined.

The "Work" shall consist of all or any portion of the combined work that is part of, or is caused by, the Project and/or the UP Relocation Project, and is comprised of UP Relocation Project Work, Third Party Work and UP Related Project Work. Work shall include, without limitation, the preparation and review of the Designs and Plans and Specifications, and all engineering, and construction and inspection work for the UP Relocation Project, the Third Party Work and the UP Related Project Work.

3.2 Performance of Work; RTD's Cost.

The parties shall jointly determine and list as part of Exhibit A and/or the Plans and Specifications which portions of the UP Relocation Project Work are Railroad Work, and which portions are RTD Freight Work; provided that (i) Railroad Work shall include, at a minimum, all Work required to be completed by UP forces under labor contracts, and (ii) RTD Freight Work shall include, at a minimum, at UP's option with respect to the UP Property, the drainage work and related improvements, and the grading work to the top of the subgrade (subballast). RTD shall perform and complete all RTD Freight Work, Third Party Work and UP Related Project Work in strict accordance with the Plans and Specifications, at its sole cost and expense. UP shall perform and complete all the Railroad Work and any Other UP Work, whether done in-house or by UP Contractors or consultants, in strict accordance with the Plans and Specifications, at RTD's sole cost and expense. Each party shall provide and furnish, as part of the Work to be completed by it hereunder, all personnel and services and all required materials, equipment and other items required for performance of such Work.

3.2.1 UP reserves the right to enter into contracts with Contractors for all or any portion of the Railroad Work or Other UP Work. RTD agrees at all times to cooperate fully with such Contractors and to give them reasonable opportunity for the introduction and storage of their materials and equipment and for the performance of their Work. RTD shall properly coordinate its Work with the Work of such Contractors.

3.2.2 Should either party cause damage to the Work of any other party or its Contractor, the party that caused the damage agrees to repair, or to remove from the UP Property and to replace such Work or to cause such Work to be repaired, or to be removed and replaced, all at the damaging party's sole cost and expense.

3.2.3 While the Work is in progress, the parties shall not allow waste materials or rubbish to accumulate on or about the UP Property and shall comply with all housekeeping and safety standards in effect at the UP Property.

3.2.4 RTD shall remove from the UP Property all hazardous substances discovered, as well as all waste materials and rubbish generated by RTD, RTD's Contactor and/or any Contractor for Third Party Work, in the course of, or in connection with, the Work and shall handle, transport and lawfully dispose of such waste materials and rubbish.

3.2.5 No disruption of Freight Rail Service through the UP Property shall be permitted at any time during the design and construction of the Project, the UP Relocation Project or the Third Party Work, with the exceptions of the time required to execute the necessary tie-ins (including signal cut-overs). The Project, the UP Relocation Project and the Third Party Work shall also be constructed in a manner that (i) will provide UP the ability to maintain continuous Freight Rail Service at existing service levels, and (ii) will provide the owners of the communications and pipeline facilities the ability to maintain continuous communications and utility connections and service at existing service levels, except as may be otherwise expressly agreed between RTD, UP and such owners.

3.3 Rights of Entry.

RTD and each RTD Contractor and/or Contractor for Third Party Work (excluding subcontractors and suppliers) shall execute UP's then standard Contractor's Right of Entry Agreement prior to commencing any Work on the UP Property; provided that RTD, its Contractors and any Contractors for Third Party Work (including subcontractors and suppliers) shall comply with any system interface and/or other construction procedures and protocols adopted by UP pertaining to the prosecution of the Work on the UP Property. RTD shall also notify UP, and RTD and each RTD Contractor and/or Contractor for Third Party Work (excluding subcontractors and suppliers) shall execute UP's then standard Contractor's Right of Entry Agreement, prior to any entry onto any portion of the UP Property that is within twenty-five (25) feet of any UP Facilities, or near enough to any UP Facilities that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any UP Facilities (whether on or adjacent to the UP Property).

3.4 Project Representatives.

3.4.1 Each party will keep the other party's project representative informed on all UP Related Project Work, UP Relocation Project Work and Third Party Work matters, such as (i) providing a minimum of twenty-one (21) days' prior notice of the dates of any entry onto the UP Property (including without limitation for the commencement of any construction Work), to perform any Work that is on the UP Property or is within twenty-five (25) feet of any UP Facilities or near enough to any UP Facilities that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any UP Facilities (whether on or adjacent to the UP Property), or that otherwise may impact UP's Freight Rail Service, (ii) any changes in the construction schedule, and/or (iii) any changes or modifications to the UP Related Project Work, the UP Relocation Project Work and/or the Third Party Work. The project representatives will provide observation and coordination with the parties during construction. The parties' project representatives may be contacted as follows:

UP:

Brad Waufle
Manager Special Projects – Field Construction
1800 Westland Road
Cheyenne, WY 82001
Telephone: 307-778-3315
Facsimile: 307-778-3420
Email: bwaufle@up.com

RTD:

Regional Transportation District
Attn: Henry J. Stopplecamp
Engineering Technical Services Manager
1560 Broadway, Suite 700
Denver, CO 80202
Telephone: 303-299-6966
Facsimile: 303-299-6964
Email: henry.stopplecamp@rtd-fastracks.com

Each party reserves the right to change the designation of its representative from time to time by written notice to the other party.

3.4.2 UP's project representative is hereby given authority, on behalf of UP, to give approvals and to take action to the extent necessary for the orderly and expeditious prosecution of the Work, but the project representative shall not have authority to amend, modify or terminate this Agreement. UP's project representative shall have the right, by giving written notice to RTD from time to time, to delegate his/her responsibilities to other UP representatives in connection with specific portions of the Work.

3.5 Construction Schedule.

3.5.1 It is the intent of the parties, and each party shall use all reasonable efforts, to complete the Construction Segments within RTD's construction schedule for the Project, which schedule shall not be effective until it has been approved and initialed by both parties to this Agreement.

3.5.2 The parties recognize that commencement of the Work for any Construction Segment will be influenced by many factors beyond the control of one (1) or both of the parties. These factors (the "Work Prerequisites") include, without limitation: the timing of the Third Party Work, the UP Related Project Work and the RTD Freight Work for such Construction Segment, entitling and encumbering the Limon and Greeley Subdivisions/East Corridor Seller Relocation Property, obtaining from the City and County of Denver (as applicable) final design approvals, obtaining all necessary permits and approvals for such Construction Segment Work (including without limitation obtaining all permits and approvals from the City and County of Denver and the Colorado Public Utilities Commission to perform

such Work), RTD's performing all geotechnical testing as required by UP in its sole discretion, completing all necessary environmental reviews, estimating Work costs for such Construction Segment, labor force availability (particularly if more than one (1) Construction Segment is under construction at the same time), insufficient Escrow funding, and seasonal weather changes that can increase the time required for certain construction activities. In no event shall RTD have the right to commence the construction Work for any Construction Segment until the Work Prerequisites have been met for such Construction Segment to the satisfaction of both parties to this Agreement. Notwithstanding anything to the contrary contained in this Section 3.5.2, in no event shall UP have any obligation to commence its portion of any construction Work for such Construction Segment unless and until the following additional prerequisites (the "UP Work Prerequisites") have been satisfied (which UP Work Prerequisites are in addition to the Work Prerequisites): (i) all RTD Freight Work, Third Party Work and UP Related Project Work required to permit UP to perform the Railroad Work for such Construction Segment shall have been completed in strict accordance with the Designs and Plans and Specifications; and (ii) RTD shall have obtained (on UP's behalf) all applicable permits and approvals for the Railroad Work and UP's intended uses on the UP Property (including without limitation obtaining all permits and approvals from the City and County of Denver and the Colorado Public Utilities Commission to perform such Work and to permit such intended uses). Without limiting any rights of UP to stop or delay the construction Work as provided in this Agreement, UP shall have no liability whatsoever for failing to commence the construction Work prior to the Work Prerequisites and the UP Work Prerequisites for such Construction Segment having been satisfied in UP's reasonable discretion

3.5.3 As the Work for any Construction Segment proceeds, the construction schedule may be impacted by Force Majeure Events or by other factors (collectively, the Force Majeure Events and other factors are hereinafter referred to as the "Tolling Conditions") beyond the control of one (1) or both parties to this Agreement. Neither party shall be liable for default or delay in performance actually caused by a Force Majeure Event or other Tolling Condition that is not within the control of such party. These Tolling Conditions may include, without limitation: delays in the Third Party Work for such Construction Segment; delays necessitated by any environmental testing and remediation; permitting issues; scheduling or supply problems due to working on more than one (1) Construction Segment at the same time; insufficient Escrow funding; delays in the Work being performed by the other party for such Construction Segment; any Work stoppage under Article VI; claims by any freight rail customer (or party desiring Freight Rail Service) or other third party related to the Project, the UP Relocation Project or the Third Party Work; delays in approval of change orders for such Construction Segment, including without limitation delays in approval of changes orders for revised cost estimates; expiration or termination of required insurance coverage; testing, special handling and/or remediation requirements for any soils or groundwater in the construction area; demobilization/mobilization scheduling impacts due to other construction schedule delays; delays caused by any Work Prerequisites and/or UP Work Prerequisites that were not completed prior to commencement of construction; and/or a material default by the other party under this Agreement, any Contractor's Right of Entry Agreement, the Reimbursement Agreement, the Engineering Agreement, the Escrow Agreement or the Transfer Agreement. In the event of any Tolling Condition, the party whose performance is delayed or stopped shall notify the other party thereof in writing promptly after the commencement of such occurrence, setting forth the full particulars in connection

therewith, and shall promptly give written notice to the other party of the cessation of such occurrence.

3.5.4 In the event that any Work by either party, or any Third Party Work, has fallen behind the construction schedule for any Construction Segment, at RTD's option the parties shall cooperate and use all reasonable efforts to bring such Work back into compliance with the construction schedule in a reasonable manner that best suits the needs of the Project. For example, in the event that Railroad Work has fallen behind schedule due to a Tolling Condition and RTD desires to expedite such Work, then RTD may agree to increase the estimated and approved costs for any portion of the Railroad Work as necessary to mobilize additional labor forces, or both RTD and UP may agree to work existing forces overtime, to bring Railroad Work into compliance with the construction schedule for such Construction Segment.

3.5.5 In the event of a Force Majeure Event causing an unforeseen catastrophic railroad emergency within UP's system, UP reserves the right to reallocate those of its labor forces assigned to perform the Railroad Work when UP believes in good faith that such reallocation is necessary to provide for the immediate restoration of the railroad operations of UP or its affiliates or to protect persons or property on or near any property owned by UP or any related railroad. UP shall reassign such labor forces to again perform Railroad Work when, in its good faith opinion, such emergency condition no longer exists. In no event shall UP be liable for any additional costs or expenses of the Project or the UP Relocation Project or the Third Party Work resulting from any such reallocation of its labor forces.

3.6 Conflicts.

The Work shall be performed and completed in compliance with the terms and conditions of this Agreement and the Designs and Plans and Specifications, and in compliance with (i) the terms of the existing agreements for communications and utility facilities between UP and communications companies or utility companies, (ii) the terms of the easements to be reserved to UP in the deeds from UP to RTD for the Property (as applicable), (iii) the terms of the Engineering Agreement, and (iv) the terms of the Transfer Agreement. The order of precedence of the foregoing documents shall be as follows in resolving any conflict: (a) the existing agreements for communications and utility facilities, (b) this Agreement and the Designs and Plans and Specifications, (c) the easements to be reserved to UP in the deeds, (d) the Engineering Agreement, and (e) the Transfer Agreement.

3.7 RTD Insurance.

In addition to the insurance coverages required by the Contractor's Right of Entry Agreement and any amendments or modifications by UP thereto (provided however that UP must provide RTD with reasonable notice of any material changes to the insurance requirements contained therein), RTD shall procure and maintain at all times, at its sole cost and expense, the following insurance coverages:

3.7.1 Liability insurance: Commercial general liability (CGL) with a limit of not less than $200,000,000 each occurrence and an aggregate limit of not less than $200,000,000.

CGL insurance must be written on ISO occurrence form CG 00 01 12 04 or ISO claims made form CG 00 02 12 04 (or substitute forms providing equivalent coverage). RTD also agrees to purchase an extended reporting period if the retroactive date is advanced or if the policy is canceled or not renewed and not replaced by another claims-made policy with the same (or an earlier) retroactive date during the term of this Agreement. The policy must also contain the following endorsement, which must be stated on the certificate of insurance: "Contractual Liability Railroads" ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.

3.7.2 Automobile insurance: Business automobile coverage written on ISO form CA 00 01 03 06 (or substitute form providing equivalent liability coverage) with a limit not less $200,000,000 for each accident. Such insurance shall cover liability arising out of any automobile (including owned, hired, and non-owned automobiles). The policy must contain the following endorsements, which must be stated on the certificate of insurance: "Coverage For Certain Operations In Connection With Railroads" ISO form CA 20 70 10 01 (or substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site, and Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

3.7.3 Workers' Compensation and Employers' Liability insurance: Coverage must include but not be limited to: RTD's statutory liability under the workers' compensation laws of the state of Colorado. Employers' Liability (Part B) with limits of at least $500,000 each accident, $500,000 employee for disease and $500,000 policy limit for disease. If RTD is self-insured, evidence of state approval and excess workers' compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

3.7.4 Railroad Protective Liability insurance: RTD must maintain "Railroad Protective Liability" insurance written on ISO occurrence form CG 00 35 12 04 (or substitute form providing equivalent coverage) on behalf of UP as Named Insured, with a limit of not less than $25,000,000 per occurrence and an aggregate of $25,000,000. A Binder of Insurance stating the policy is in place must be submitted to UP before work may be commenced and until the original policy is received by UP.

3.7.5 Umbrella or Excess insurance: If RTD utilizes umbrella or excess policies to comply with limits of coverage required, these policies must "follow form" and afford no less coverage than the primary policy.

3.7.6 Pollution Liability insurance: Pollution Liability coverage must be included when any "hazardous" material that is injurious in or upon land, the atmosphere, or any watercourses; or may cause bodily injury at any time are upon the UP Property. If required, coverage may be provided by a separate policy or by endorsement to RTD's CGL policy. In either form, coverage must be equivalent to that provided in ISO form "Pollution Liability Coverage Form Designated Sites" CG 00 39 12 04 with limits of at least $5,000,000 per occurrence and an aggregate limit of $10,000,000. If the scope of work includes the disposal of any hazardous or non-hazardous materials from the job site, RTD must furnish UP evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from

the insured facility accepting the materials, with coverage in minimum amounts of $5,000,000 per loss, and an annual aggregate of $10.000.000.

3.7.7 All policy(ies) required above (except worker's compensation and employers' liability) must include UP as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26. and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to UP as Additional Insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26 and CA 20 48. provide coverage for UP's negligence whether sole or partial. active or passive.

3.7.8 Any punitive damages exclusion must be deleted (and the deletion indicated on the certificate of insurance), unless (i) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this Agreement, or (ii) RTD would not be liable for such damages pursuant to C.R.S. Section 24-10-114, as such statute may be amended.

3.7.9 RTD waives all rights against UP, its affiliates, and their respective agents. officers. directors and employees for recovery of damages to the extent these damages are covered by the workers' compensation and employers' liability or commercial umbrella or excess liability insurance obtained by RTD required by this Agreement (which must be stated on the certificate of insurance.)

3.7.10 Prior to commencing the Work, RTD shall furnish UP with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.

3.7.11 All insurance policies must be written by a reputable insurance company acceptable to UP or with a current Best's Insurance Guide Rating of A- and Class VII or better. and authorized to do business in the state of Colorado.

3.7.12 Subject to Section 12.5 below, the fact that insurance is obtained by RTD will not be deemed to release or diminish the liability of RTD, including without limitation, liability under the indemnity provisions of this Agreement. and damages recoverable by UP from RTD or any third party will not be limited by the amount of the required insurance coverage.

3.7.13 RTD may elect to self-fund the first $10,000,000 of the coverage limits required hereunder, provided all coverages and named insureds are as set forth in this Agreement. If RTD so elects, it shall secure and maintain an unconditional and irrevocable standby Letter of Credit addressed to UP equal to the then current self-funded portion of the requirement. The issuer of the Letter of Credit shall be a bank with a long term senior debt rating of not less than "A(2)" by Moody's Investment Service or "A" by Standard & Poor's. In the event RTD fails to meet its obligation with respect to claims within the self-funded retention under any insurance policy provided in this Agreement, UP shall have the right, upon ten (10) days' notice to RTD, to draw upon the Letter of Credit to satisfy such claims and seek interest from RTD in the amount of ten percent (10%) per annum retrospective to the date of any payment by UP.

3.7.14 Within thirty (30) days after any amendment, expiration or repeal, or judicial invalidation of the statutory cap on liability set forth at 49 U.S.C. Section 28103, and no more than once on each three (3) year anniversary of the date of this Agreement, RTD and UP shall consider the losses paid under the insurance and self-funded retentions described in this Agreement, along with any other relevant information, and shall determine whether there are reasonable grounds to adjust the limits of insurance required by this Agreement or the amount of maximum and self-funded retentions. In addition, once every five (5) years UP shall have the right to adjust insurance limits, and insurance coverages required by this Agreement consistent with inflation and current insurance and risk management practice. Any disputes with respect to whether there are grounds for such adjustments shall be subject to arbitration in accordance with this Agreement.

3.7.15 UP shall have the right to review and approve commercial insurance policies obtained by RTD for compliance with the obligations set forth in this Agreement: provided that such approval shall not constitute a waiver of any non-compliance with this Agreement.

ARTICLE IV – CONTRACTORS; PERMITS; UTILITIES

4.1 Contractors.

Each party shall supervise the operations of its Contractors, who shall be competent and qualified field personnel, to ensure their compliance with the terms of this Agreement.

4.1.1 Each party shall comply with, and shall cause its employees and all its vendors and Contractors to abide by, all health, safety, environmental, security and work rules, regulations and requirements in force on the Project and the UP Relocation Project, including but not limited to the provisions of the latest applicable Occupational Safety and Health Administration requirements, including but not limited to 29 CFR Parts 1910 and 1926, as applicable.

4.1.2 When employees, vendors and/or Contractors are performing any Work on the UP Property within twenty-five (25) feet of any active freight rail trackage, or near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track, they must abide by applicable FRA On Track Safety Rules and Regulations, 49 CFR, Part 214, Subpart C, and UP's On-Track Safety Program which was implemented in compliance with the FRA Rules. Copies of the UP program will be available from UP's engineering department. If either party or its Contractors provide rail traffic coordinators for railroad operations, that party will assure that all such rail traffic coordinators are fully qualified under UP and FRA rules and regulations for such service, and UP and RTD shall cooperate to provide such rail traffic coordinators with radios, equipped with appropriate channels, to communicate with UP train crews and dispatchers.

4.1.3 Prior to starting any Work within twenty-five (25) feet of any active freight rail trackage, or near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track, each party will adopt an appropriate safety training plan meeting the minimum standard UP safety requirements,

which standards will be provided to RTD at least five (5) days prior to commencement of the Work. Emergency phone numbers shall be posted in a conspicuous place in all field offices. For those persons who will be performing Work, each party or its Contractor(s) shall conduct a weekly safety meeting. UP's project representative will attend these meetings as may be required. No red clothing will be worn within twenty-five (25) feet of any freight rail tracks.

4.1.4 RTD's primary Contractor shall have a copy of the American Railway Engineering and Maintenance of Way Association Manual for Railway Engineering (hereinafter "AREMA Standards") on the UP Property and available for reference at all times.

4.2 Permits and Licenses; Laws, Ordinances, Governmental Rules and Regulations.

4.2.1 All necessary permits and licenses necessary for the Work shall be obtained by RTD, including permits and licenses which are required from and are to be obtained by UP, with the exception of permits and licenses which are required to be in UP's name, in which case UP shall use reasonable efforts to obtain the same all at RTD's sole cost and expense.

4.2.2 RTD shall give all necessary notices and shall pay all fees which are required by such laws, ordinances, and governmental rules and regulations as are applicable to the Work and/or to labor employed to perform the Work.

4.2.3 If RTD's or any third party's performance of any portion of the Work, or if the result of such portion of the Work, is not in compliance with the aforementioned permits and licenses, and with all applicable laws, ordinances, and governmental rules and regulations, RTD shall correct such portion of the Work and such result, to the extent necessary to be in compliance therewith, at RTD's sole expense; provided, however, if RTD believes that such noncompliance is caused solely by conformance to any of the Plans and Specifications, RTD shall notify UP in writing of the variance between the Plans and Specifications and such permits, licenses, laws, ordinances, rules and regulations which in its opinion would cause such noncompliance, before RTD or such third party performs such portion of the Work, and RTD or the third party shall not proceed with any portion of the Work affected by such variance until UP notifies it to proceed. UP shall use reasonable efforts to notify RTD in writing, within six (6) business days after receipt of RTD's written notice of such variance, to proceed with the Work in accordance with a change notice to be issued by UP to correct such variance.

4.2.4 Each party and its Contractors and the Contractors for the Third Party Work shall comply with all laws, ordinances, and governmental rules and regulations applicable to the performance and/or results of the Work, including but not limited to labor employed on the Work, and to the preservation of safety and health.

4.3 Emergency Work.

RTD agrees to reimburse UP for Other UP Work of an emergency nature caused by any act or omission of RTD or a third party in connection with the Project, the UP Relocation Project or the Third Party Work that UP reasonably deems necessary for the immediate restoration of railroad operations, or for the protection of persons, or property owned, controlled or leased by UP within or in the vicinity of the construction area. Such Other UP Work may be performed by UP without the prior approval of RTD if prior notice and approval are not practicable under the

emergency circumstances. RTD agrees to fully and promptly reimburse UP through the Escrow for all such emergency Other UP Work associated with the Project, the UP Relocation Project or the Third Party Work. RTD shall be responsible for paying or reimbursing UP for the Costs of all services (including rail traffic coordination and/or warning services) and materials supplied for any such emergency Other UP Work, performed for any RTD Contractor or any Contractor for Third Party Work, by UP or any UP Contractor, unless paid for by RTD Contractors or a third party. UP shall provide invoices to the Escrow Agent for any Costs not paid for by RTD Contractors.

4.4 Utilities.

4.4.1 RTD and UP agree that this Agreement shall not affect or authorize any change, disruption to, modification, or relocation of existing utilities, unless the same are in accordance with (i) the terms of the related utility licenses or other agreements between UP and the applicable utility company and (ii) the Designs and Plans and Specifications. Nothing herein shall be construed as a waiver of RTD's authority to require a utility company to construct, modify or relocate its utilities in the event that such utilities affect the Project, as provided in C.R.S. § 32-9-119.1. It shall be RTD's sole responsibility to coordinate the protection, modification and/or relocation, as necessary, of all existing utilities as required for the Project, the UP Relocation Project, the Third Party Work, or for any other purpose, including fiber optic lines and pipelines, at the sole cost and expense of parties or entities other than UP, subject to UP's review and approval according to UP's Review Standards, to UP's standards for aerial utilities and to AREMA Standards for all other utilities. RTD shall prepare all transmittals to the utility companies in connection therewith, subject to UP's review and approval which shall not be unreasonably withheld; UP has approved the form letter attached hereto as Exhibit C and incorporated herein by reference. RTD shall indemnify, defend and hold harmless UP and its agents, directors, officers and employees from and against any and all Losses from injury to or death of any person(s), damage to or loss or destruction of property and/or contractual damages (including without limitation, liability for repurchase fees) that in any way arise out of or result from RTD's relocation and/or protection of utility improvements on or adjacent to the UP Property. The indemnity herein is in addition to (and not in limitation of), and without prejudice to or limitation of any other indemnity provisions or legal remedies, or to the obligations of RTD and its Contractors set forth herein concerning insurance coverage.

4.4.2 Fiber optic cable systems are buried on the UP Property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. RTD shall telephone UP at 1-800-336-9193 (a twenty-four (24)-hour number) to determine if fiber optic cable is buried anywhere on the UP Property. RTD shall telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, and will commence no Work on the UP Property until all such protection or relocation has been accomplished.

ARTICLE V - REIMBURSEMENT OBLIGATIONS; PATENTS

5.1 Falsework and Shoring.

In accordance with Article II above, RTD Contractors or Contractors for Third Party Work shall submit through RTD to UP for approval or directly to UP, prior to construction, plans and calculations certified by a licensed professional engineer of Colorado for falsework or shoring used in connection with the UP Relocation Project Work, the UP Related Project Work and/or the Third Party Work that will be within twenty-five (25) feet of any UP Facilities, or near enough to any UP Facilities that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any UP Facilities (whether on or adjacent to the UP Property), or that otherwise may impact UP's Freight Rail Service. None of the foregoing Work shall be started until written approval is obtained from UP. UP shall use best efforts to complete its review within thirty (30) days after receipt of such plans from RTD or such Contractors, but UP may take up to sixty (60) days to review such plans, based upon UP's scheduling constraints and the complexity of the plans under review. The RTD Contractor and/or the Contractor for the Third Party Work shall at all times keep covered all pits or openings near or under trackage, except during the time required for actual operations in making such pits or openings and performing work therein. The provisions of this Section 5.1 shall not be construed as relieving the RTD Contractor or the Contractor for Third Party Work from, or subjecting UP or RTD to, any responsibility or liability for any of such Contractor's operations, methods and procedures, or as constituting any such Contractor as a third-party beneficiary of this Agreement.

5.2 UP Reimbursement for Rail Traffic Coordination Services.

RTD shall cause each RTD Contractor and Contractor for Third Party Work to reimburse UP directly for all rail traffic coordination and other services performed by UP for such Contractor. UP will submit progress billings of incurred Costs in amounts not less than One Thousand Dollars ($1,000.00) per billing to such Contractor (except that the final billing may be less than such amount). Such Contractor shall pay UP for any such progress billing within thirty (30) days after receipt thereof. Interest will be paid at the rate of eight percent (8%) per annum if any such progress billing has not been paid by such Contractor within thirty (30) days after receipt. RTD shall remain liable for all unpaid billings.

5.3 Patents, Trademarks and Know-How.

RTD shall defend or settle, at its sole expense, any and all suits and proceedings against UP for infringement of any patent arising out of the performance of the RTD Freight Work solely by reason of RTD's and/or its Contractor(s)' use of a particular process, or of materials or equipment of a particular manufacturer, and RTD shall defend, indemnify and hold harmless UP from and against all claims, damages, loss and expenses on account of such infringement. RTD's indemnification obligation shall not apply if RTD used a particular process, materials or equipment of a particular manufacturer solely pursuant to UP's written instructions.

ARTICLE VI - RIGHT TO STOP WORK

6.1 Work Stoppage.

If (i) any RTD Contractor or Contractor for Third Party Work shall perform any portion of the Work contrary to the Designs and Plans and Specifications, or in a manner UP deems to be hazardous to its employees, property or operations (whether owned, controlled, or leased by UP), Facilities, or the safe and expeditious movement of its trains, locomotives and railroad cars, or (ii) the insurance described in Article III above or in the UP Contractor's Right of Entry Agreement signed by such Contractor shall be canceled during the course of any portion of the Work, then RTD or such Contractor shall, upon notice received from UP pursuant to Section 12.1 of this Agreement, stop that portion of the Work until the acts or omissions of RTD or such Contractor have been fully rectified to UP's reasonable satisfaction or, as the case may be, additional insurance has been delivered to and accepted by UP. Such Work stoppage shall not give rise to or impose upon UP any liability to RTD or to any such Contractor. The right of UP to stop a portion of the Work shall be in addition to any other rights UP may have which include, but are not limited to, actions for damages or lost profits. In the event that UP shall desire to stop a portion of the Work, UP agrees to give immediate notice thereof to:

REGIONAL TRANSPORTATION DISTRICT
Attn: Henry J. Stopplecamp
Engineering Technical Services Manager
1560 Broadway, Suite 700
Denver, CO 80202

UP shall have the right to request that any employee or Contractor of RTD or a third party, or any employee of any such Contractor, be removed from the Project, the UP Relocation Project, and/or the Third Party Work, and from the UP Property for incompetence, neglect of duty, unsafe conduct or misconduct, and UP shall state the cause for such removal in its request. If RTD or such Contractor elects not to honor such request for removal from the UP Property, UP may stop that portion of the Work until the matter has been fully rectified to UP's reasonable satisfaction. After the offending person(s) has(ve) been removed from the Project, the UP Relocation Project and/or the Third Party Work, and the UP Property, and the situation has been otherwise rectified to UP's reasonable satisfaction, the Work may be re-commenced upon notice to UP's project representative.

6.2 Extended Work Stoppage.

In the event that the Work has been stopped pursuant to this Article VI for a period of thirty (30) consecutive days or more, RTD, at its sole cost and expense, shall take all necessary actions, including without limitation construction, to insure that UP is provided a rail route on and in the vicinity of the UP Property with the equivalent Functionality that existed as of the date of this Agreement, taking into consideration, *inter alia*, UP's existing maintenance costs and requirements, the speed of train operations and condition of the track, accessibility to customers, the type of drainage, and the type of warning devices at grade crossings.

ARTICLE VII – COSTS AND PAYMENTS

7.1 Reimbursements; Escrow.

RTD agrees to reimburse UP for all of UP's Costs and Losses pursuant to this Agreement, the Engineering Agreement, the Contractor's Right of Entry Agreement(s) and the Transfer Agreement. To facilitate such reimbursements, RTD and UP have entered into the Escrow Agreement, establishing the Escrow. UP is entitled to all earnings and income (including interest) earned on the escrowed funds and is the only party entitled to make withdrawals from the Escrow until the Escrow is closed after completion of the Work (in accordance with Section 8.1 below) for all Construction Segments, at which time RTD and UP shall issue joint instructions to the escrow agent regarding the disbursement of any remaining funds.

7.2 Funding.

7.2.1 RTD shall pay all other Costs allocated to RTD by this Agreement, the Engineering Agreement, the Contractor's Right of Entry Agreement(s) and the Transfer Agreement, in accordance therewith. Notwithstanding anything to the contrary in this Agreement, UP shall have no obligation whatsoever to perform any Work, or to pay or incur any additional Costs, unless the Escrow has funds sufficient to pay for (i) all Costs and Losses incurred by UP and unpaid to date, as well as (ii) all future UP Costs and Losses as estimated by UP ("Sufficient Funds"). UP shall receive copies of all Escrow account statements, and may assess the sufficiency of the Escrow funding on an ongoing basis. UP's assessments are for its own purposes and benefit and shall not be relied upon by RTD; RTD bears the sole responsibility for funding (and replenishing, if needed) the Escrow. At any time that Sufficient Funds are not on deposit in the Escrow, RTD shall remain liable for all amounts shown on UP Invoices (and interest at the Past Due Interest Rate as applicable). If at any time UP reasonably determines that the Escrow may lack Sufficient Funds for the current calendar year, UP will use reasonable efforts to notify RTD at least sixty (60) days in advance of such anticipated shortage and RTD shall promptly budget, authorize and appropriate, as required, the additional amounts required. If a requested appropriation is denied by Purchaser's board of directors, the parties shall meet in good faith during the sixty (60) days following such denial to resolve any outstanding issues impacting the funding requirements, but after such sixty (60)-day period, Seller shall have all rights and remedies available to it at law or in equity, including without limitation, the right to stop performance under this Agreement and under all related agreements then in effect. The parties shall meet and confer on or before September 1 of each year to review anticipated Escrow funding requirements for the following calendar year.

7.2.2 If UP delays or stops its Work due to lack of payment, reimbursement or Sufficient Funds by RTD, RTD shall be liable for, among other Costs, all demobilization and mobilization Costs incurred for such stoppage. In the alternative, if UP decides to continue its Work despite the lack of Sufficient Funds, RTD shall remain liable for all Costs associated with such Work (and interest at the Past Due Interest Rate as applicable).

7.3 Costs of Third Party Work.

UP shall not be liable for any Costs related to any Third Party Work, including without limitation, the utility work described in Section 4.4 above, or any grade separation projects affecting the Project. Any Costs related to Third Party Work that are not paid by the related third party shall be paid by RTD.

7.4 Revision Costs.

RTD shall pay through the Escrow all of UP's Costs related to revisions, supplements, change orders or other modifications that are approved by the parties pursuant to Article II above.

7.5 Submittals; Disputes.

7.5.1 UP shall send invoices to RTD and Escrow Agent ("UP Invoices") not more frequently than monthly describing the amount to be paid by RTD to UP. Payment from the Escrow shall be due within thirty (30) calendar days after delivery of a UP Invoice to RTD and Escrow Agent. RTD acknowledges that the UP Invoices and backup documentation may be in electronic format utilizing UP's Contract Administration System, or may be in other formats. Any amounts owing that remain unpaid forty-five (45) days after delivery of a UP Invoice shall accrue interest at the Past Due Interest Rate. RTD shall pay interest on past due amounts at the rate of one percent (1%) per month (the "Past Due Interest Rate"). Except as provided in the preceding sentence, UP shall be solely responsible, and RTD shall not pay UP, for any late charges or fees that accrue due to UP's failure to pay amounts to UP's Contractors when due.

7.5.2 If RTD disputes any item on a UP Invoice, such disputes shall be governed by the Escrow Agreement.

7.6 UP to Be Named as Obligee; Construction Notices.

As additional security for RTD's (and its Contractors') performance under this Agreement, the Engineering Agreement, the Transfer Agreement and the Contractor's Right of Entry Agreement(s), RTD shall name UP as an additional Obligee on all surety or performance bonds, letters of credit or other forms of security that it obtains from its Contractors. In addition, UP shall have the right (but not the obligation) to post in a conspicuous place on the UP Property and to keep posted thereon a notice pursuant to the provisions of C.R.S. Section 38-22-105(2) that UP's interest in the UP Property shall not be subject to any liens in favor of any person or entity performing any erection, construction, alteration, removal, addition, repair or other improvements on the UP Property, and to take such other actions as UP deems necessary to comply with the provisions of such statute.

ARTICLE VIII – COMPLETION; POST-COMPLETION OBLIGATIONS

8.1 Inspection; Completion of Work.

8.1.1 RTD shall provide and maintain safe access for the inspection by UP of all portions of the UP Relocation Project Work, the Third Party Work and the UP Related Project Work, including access to the shops in which any portion of such Work is in preparation. If laws, ordinances, or governmental rules or regulations require any portion of the Work to be inspected and/or tested, RTD shall perform, as part of Work, the inspection and/or tests so required.

8.1.2 Each party shall provide at least ten (10) business days' prior written notice to the other party's project representative of projected completion of (as applicable) its UP Relocation Project Work, Third Party Work and UP Related Project Work for any Construction Segment. For all RTD Freight Work, UP Related Project Work or Third Party Work with respect to any Construction Segment, the parties shall thereafter meet on site at a mutually agreeable time to review the Work and to prepare a "punch list" of items that must be completed or repaired prior to approval by UP. Upon satisfactory completion of the items on the punch list, UP shall notify RTD in writing that it approves (as applicable) the RTD Freight Work, the UP Related Project Work and the Third Party Work. Completion of the Work for any Construction Segment for purposes of this Agreement and the Transfer Agreement shall be deemed to occur only after (i) the Railroad Work and Other UP Work have been completed for such Construction Segment to UP's satisfaction, and UP has resumed normal Freight Rail Service on the relocated portions of its Limon and Greeley Subdivisions for such Construction Segment (which resumption may be held up depending on the sequencing of the Construction Segments, or the need to complete multiple Construction Segments); (ii) the RTD Freight Work, the UP Related Project Work (which, at RTD's option may or may not include the Optional UP Related Project Work for such Construction Segment) and the Third Party Work have all been completed for such Construction Segment and approved by UP; and (iii) UP and all Contractors have been fully paid by RTD for such Construction Segment. In no event shall any construction work of any nature whatsoever be performed by RTD on the UP Property during the term of this Agreement other than construction Work, nor shall any construction Work related to the Overpasses be performed on the UP Property during the term of this Agreement.

8.2 As-Builts.

Upon completion of any Third Party Work, UP Relocation Project Work or UP Related Project Work, RTD will furnish UP one (1) set of "as-built plans" at no cost to UP, prepared in U.S. Customary Units, and one (1) set of computer diskettes, containing as-built CAD drawings of such Work, in Micro Station software. The "as-built plans" will depict all information in UP engineering stationing and milepost pluses. The "as-built plans" will also include plan and profile, structural bridge drawings and specifications, and drainage plans. All improvements and Facilities will be shown. All right-of-way boundaries will be distinguished by ownership and dimensioned with appropriate distances and bearings and will have dimensioned references from right-of-way corners, angle points, and curve points to the centerline of adjacent tracks.

8.3 Bills of Sale.

Upon completion of the Work for all Construction Segments, RTD shall execute and deliver to UP a bill of sale for all tracks, track structures, signals, crossing arms and related Facilities and equipment for the UP Relocation Project, and shall deliver to UP or the communications or pipeline company, as appropriate, a bill of sale for all communications and pipeline facilities (including without limitation, all areas covered by UP's perpetual easement rights).

8.4 Settling.

For a period of three (3) years after the date of completion of the Work, RTD shall reimburse UP in a timely manner for UP's actual Costs to correct settling, and other conditions associated with settling, of the UP Relocation Project and the Third Party Work Facilities.

ARTICLE IX - DISPUTE RESOLUTION AND BINDING ARBITRATION

9.1 Settlement of Disputes.

Both of the parties hereto shall make reasonable efforts to settle any disputes (excepting only those disputes requiring a determination of governmental powers or based upon formation of this Agreement) arising out of their respective rights and obligations under this Agreement by prompt and diligent negotiations.

9.2 Controversies Subject to Arbitration.

9.2.1 Submission. Both RTD and UP shall make every reasonable effort to settle disputes (excepting only those disputes requiring a determination of governmental powers or based upon formation of this Agreement) arising out of their respective rights or obligations under this Agreement, through prompt and diligent negotiations. If at any time such a dispute shall arise between the parties hereto in connection with the Agreement that the parties cannot resolve within thirty (30) days, such dispute shall be submitted to and settled by binding arbitration. The parties acknowledge that such arbitration may involve the joinder of one or more necessary party(ies) to resolve the disputed matters. Arbitration shall occur in Denver, Colorado, or in another location mutually agreed to by the parties. Unless otherwise agreed by the parties, arbitration between the parties pursuant to this Section 9.2.1 shall be governed by the rules and procedures set forth in this Section 9.2.

9.2.2 Selection of Arbitrator. If the parties to the dispute are able to agree upon a single competent and disinterested arbitrator within fifteen (15) days after written notice by one party of its desire for arbitration to the other party, then the question or controversy shall be submitted to and settled by that single arbitrator. Otherwise, any party (the "Notifying Party") may notify the other party (the "Noticed Party") in writing of its request for arbitration and nomination of one competent and disinterested arbitrator. Within fifteen (15) days after receipt of such notice, the Noticed Party shall appoint a competent and disinterested arbitrator and notify the Notifying Party in writing of such appointment. Should the Noticed Party fail within fifteen (15) days after receipt of such notice to name its arbitrator, said arbitrator may be appointed by the Chief Judge (or acting Chief Judge) of the United States District Court for the District of

Colorado upon application of either party after ten (10) days' written notice to the other party. The two arbitrators so chosen shall select one additional competent and disinterested arbitrator to complete the board within fifteen (15) days. If the arbitrators so chosen fail to agree upon an additional arbitrator, the additional arbitrator shall, upon application of either party, be appointed by such judge in the manner heretofore stated, provided that in such case the appointed arbitrator shall have experience in passenger and freight railroad track operations.

9.2.3 Hearing. Upon selection of the arbitrator(s), said arbitrator(s) shall, with reasonable diligence and subject to the rights of the parties under Section 9.2.6, determine the questions as disclosed in said notice of arbitration, give both parties to this Agreement reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, take such evidence as the arbitrator(s) shall deem reasonable or as either party may submit with witnesses required to be sworn, and hear arguments of counsel or others. If an arbitrator declines or fails to act, the party (or parties in the case of a single arbitrator) by whom the arbitrator was chosen or said judge shall appoint another to act in the arbitrator's place.

9.2.4 Decision. After considering all evidence, testimony and arguments, such single arbitrator or the majority of said board of arbitrators shall promptly (and in no event more than thirty (30) days after the arbitration hearing) state such decision or award and the reasoning for such decision or award in writing which shall be final, binding, and conclusive on all parties to the arbitration when delivered to them. The award rendered by the arbitrator(s) shall be binding on the parties and may be entered as a judgment in any court having jurisdiction thereof and enforced as between the parties without further evidentiary proceeding, the same as entered as a judgment in any court having jurisdiction thereof and enforced as between the parties without further evidentiary proceeding, the same as entered by the court at the conclusion of a judicial proceeding in which no appeal was taken. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under the Agreement shall continue in the manner and form existing prior to the rise of such question. After delivery of such first decision or award, each party shall forthwith comply with said first decision or award immediately after receiving it.

9.2.5 Costs. Each party to the arbitration shall pay all compensation, Costs, and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits and counsel. The compensation, Costs, and expenses of the single arbitrator in the board of arbitrators shall be paid in equal shares by all parties to the arbitration.

9.2.6 Discovery. The parties to the arbitration may obtain discovery and offer evidence as directed by the arbitrators but in accordance with the Federal Rules of Civil Procedure Rules 26-37, and Federal Rules of Evidence, as each may be amended from time to time.

ARTICLE X - LIABILITY AND INDEMNITY

With respect to the Project, the UP Relocation Project and the Third Party Work, RTD shall indemnify, defend and save harmless UP, its agents, directors, officers and employees against all Losses from (i) death of or bodily injury to persons including, without limitation, the agents, directors, officers, employees and invitees of the parties hereto; (ii) damage to or loss of property including, without limitation, the property of the parties hereto, their agents, directors, officers, employees and invitees; (iii) any contractual damages; arising in any manner out of (a) the use, occupancy or presence of RTD, its Contractors, employees, representatives, invitees or agents, and/or any third party performing Third Party Work, in, on or in the vicinity of the UP Property, (b) the performance, or failure to perform, by RTD, its Contractors, employees, agents or representatives and/or any third party performing Third Party Work, of the Work, or any other obligation under this Agreement, and/or (c) the sole or contributing acts or omissions of RTD, its Contractors, employees, representatives, invitees or agents, and/or any third party performing Third Party Work, in, on or in the vicinity of the UP Property. In addition, RTD shall indemnify, defend and save harmless UP, its agents, directors, officers and employees against all Losses from the failure or alleged failure of UP, RTD, their Contractors, employees, agents or representatives and/or any third party performing Third Party Work, to comply with any applicable voluntary cleanup plan and/or related management plans or Environmental Laws. The above indemnities shall apply even if it is alleged by a complainant that any Losses were caused by, or contributed to by, the negligence or alleged negligence, active or passive or otherwise, of the indemnified party, its officers, agents, directors or employees. The indemnities herein are in addition to (and not in limitation of), and without prejudice to or limitation of any other indemnity provisions or legal remedies, or to the obligations of RTD and its Contractors set forth herein concerning insurance coverage.

ARTICLE XI - TERMINATION

11.1 Termination Date; Restoration.

11.1.1 This Agreement shall terminate upon the earliest to occur of:

(i) the date on which both of the following have occurred: (a) the completion of the UP Relocation Project, the Third Party Work and the UP Related Project Work (which, at RTD's option, may or may not include the Optional UP Related Project Work) for all Construction Segments, all as provided in Section 8.1 above, and (b) the Closing under Addendum C of the Transfer Agreement;

(ii) the date on which the Transfer Agreement has been terminated;

(iii) the date of termination set forth in a written notice from UP to RTD following an event of default by RTD under this Agreement, the Reimbursement Agreement, the Escrow Agreement, the Transfer Agreement or the Engineering Agreement that has not been cured within any applicable cure period;

(iv) the date of termination set forth in a written notice from UP to RTD following an event of default by RTD or any Contractor under its Right of Entry Agreement that has not been cured within any applicable cure period; or

(v) December 31, 2017.

The parties will memorialize the termination date in writing if requested by either party, and shall cease to accrue further liabilities as soon as is reasonably practicable following termination or notice thereof, whichever occurs first. All accrued liabilities shall survive and continue to be fully enforceable in accordance with the terms thereof notwithstanding termination of this Agreement.

11.1.2 Upon termination of this Agreement other than pursuant to Subsection 11.1.1(i) above, RTD shall, as soon as possible after the date of such termination and at RTD's sole cost and expense, restore the UP Property to the same condition as existed prior to the commencement of RTD of any Work thereon. RTD shall remove all of RTD's tools, equipment and materials from the UP Property, restoring the UP Property to the same state and condition as when RTD entered thereon.

11.2 Early Termination or Discontinuance.

In the event the Project, the UP Relocation Project or the Third Party Work will be terminated, or discontinued for a period of thirty (30) consecutive days or more after commencement of construction, by RTD for any reason whatsoever, RTD shall deliver thirty (30) days' prior written notice of such termination or discontinuance to UP. In the event of any such termination or discontinuance, in addition to other applicable provisions of this Agreement, RTD, at its sole cost and expense, shall take all necessary actions, including without limitation construction, to insure that UP is provided a rail route on and in the vicinity of the UP Property with the equivalent Functionality that existed as of the date of this Agreement, taking into consideration, *inter alia*, UP's existing maintenance costs and requirements, the speed of train operations and condition of the track, accessibility to customers, the type of drainage, and the type of warning devices at grade crossings. RTD shall reimburse UP for all Work Costs which have been incurred by UP as of the effective date of such termination or discontinuance.

ARTICLE XII - ADDITIONAL PROVISIONS

12.1 Notices.

Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be (i) personally delivered; (ii) delivered by a reputable overnight courier; or (iii) delivered by certified mail, return receipt requested and deposited in the U.S. Mail, postage prepaid. Telecopy notices shall be deemed valid only to the extent they are (a) actually received by the individual to whom addressed and (b) followed by delivery of actual notice in the manner described above within three (3) business days thereafter. Notices shall be deemed received at the earlier of (x) actual receipt or (y) one (1) business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (z) three (3) business days following deposit in the U.S. Mail, as evidenced by a return receipt. Notices shall be directed to the parties at their respective addresses shown below, or such other address as either party may, from time to time, specify in writing to the other in the manner described above:

To UP:

Vice President - Engineering
Union Pacific Railroad Company
1416 Dodge Street, Room 1030
Omaha, Nebraska 68179-1000
Telephone: 402-271-4345
Telecopy: 402-271-6674

with a copy to:

Union Pacific Railroad Company
Patrick R. McGill, Esq.
Senior Counsel – Real Estate
1400 Douglas Street, Mail Stop 1580
Omaha, NE 68179
Telephone: 402-544-5761
Facsimile: 402-544-0132

and:

Jacobs Chase & Kelley, LLC
Jill K. Rood, Esq.
1050 17th Street, Suite 1500
Denver, CO 80265
Telephone: 303-685-4800
Facsimile: 303-685-4869

To RTD:

Regional Transportation District
Attn: Henry J. Stopplecamp
Engineering Technical Services Manager
1560 Broadway, Suite 700
Denver, CO 80202
Telephone: 303-299-6966
Facsimile: 303-299-6964

with copies to:

Regional Transportation District
Marla Lien, General Counsel
1600 Blake Street
Denver, CO 80202-1399
Telephone: 303-299-2207
Facsimile: 303-299-2217

Kaplan Kirsch & Rockwell LLP
Stephen Kaplan, Esq.
1675 Broadway, Suite 2300
Denver, CO 80202
Telephone: 303-825-7000
Facsimile: 303-825-7005

To Escrow Agent (pursuant to Article VII of this Agreement)

[_____]

12.2 Prohibited Interests.

No officer, member or employee of RTD, no members of RTD's board of directors and no other public official or employee of the governing body of any locality included within RTD's geographic area, during his or her tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in this Agreement, any related agreement, or other agreement referenced herein, or the proceeds thereof.

12.3 No Third Party Rights.

Except as expressly set forth herein, the representations, warranties, terms and provisions of this Agreement are for the exclusive benefit of the parties hereto and no other person or entity (including without limitation any party to be affected by any Third Party Work) shall have any right or claim against either party by reason of any of these terms and provisions or be entitled to enforce any of those terms and provisions against either party.

12.4 Severability.

If any part, term or provision of this Agreement is judicially determined to be illegal or in conflict with any applicable law, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular part, term or provision held to be invalid or illegal.

12.5 Limitations Specific to RTD.

Notwithstanding anything to the contrary contained in this Agreement, due to the special status of RTD as a political subdivision of the State of Colorado, the following limitations shall apply with respect to RTD in its capacity as a party hereto, only to the extent required by law (including without limitation any amendments to the Constitution of the State of Colorado) from time to time for purposes of enforceability: (i) the damages recoverable shall exclude punitive and exemplary damages; (ii) RTD's waiver of governmental immunity and liability for indemnifying UP and other indemnitees under this Agreement with respect to claims based upon bodily injury, death and/or property damage shall be limited to the monetary levels of RTD's applicable insurance coverage requirements; and (iii) nothing in this Agreement shall be construed as a multi-year fiscal obligation. In no event shall these provisions apply to or inure to the benefit of any successor or assign of RTD. On or before each anniversary date of this Agreement, RTD shall deliver to UP (a) certificates evidencing RTD's insurance policy renewals

and (b) evidence of the annual appropriations authorized by RTD's board of directors to satisfy RTD's obligations and liabilities under this Agreement.

12.6 Federal Funding Requirements.

RTD represents and warrants that all or a portion of RTD's funding of the purchase price for this Project is financed by a loan or includes a grant or other payment from the U.S. Government, and such financing or payment requires that RTD implement the requirements set forth on Exhibit D attached to this Agreement. In reliance on the foregoing representation by RTD, UP shall comply with the requirements on Exhibit D, to the extent applicable to the UP Relocation Project Work.

12.7 Survival of Obligations in the Reimbursement Agreement.

The Reimbursement Agreement terminates effective as of the date of this Agreement. The Reimbursement Agreement provides that certain terms, conditions and covenants contained therein expressly survive the termination thereof (including without limitation RTD's obligation to reimburse UP for costs incurred thereunder). Notwithstanding anything to the contrary contained in this Agreement, the execution and delivery of this Agreement in no way affects any terms, conditions or covenants contained in the Reimbursement Agreement that expressly survive the termination thereof.

12.8 Whole Agreement.

This Agreement, including all exhibits hereto and all related agreements and agreements referenced herein, is intended as the complete integration of all understandings with respect to the subject matter hereof, between the parties, in addition to the Transfer Agreement (and documents executed in connection with the Closing of the Limon and Greeley Subdivisions/East Corridor thereunder), the Engineering Agreement, the Escrow Agreement, and all terms, conditions and covenants that expressly survive the termination of the Reimbursement Agreement. No prior or contemporaneous addition, deletion or other amendment shall have any force or effect unless embodied in writing. No subsequent novation, renewal, addition, deletion or other amendment hereto shall have any force or effect unless embodied in a written amendment or other agreement executed by the authorized representatives of the parties.

12.9 Captions and Headings.

The captions and headings set forth herein are for convenience of reference only and shall not be construed so as to define or limit the terms and provisions hereof.

12.10 Successors and Assigns.

This Agreement and the terms, covenants and conditions hereof shall be binding upon, and inure to the benefit of, the parties and their respective permitted successors and assigns. RTD's interest under this Agreement, or any right or obligation hereunder, shall not be assigned, encumbered or otherwise transferred, whether voluntarily, involuntarily, by operation of law or otherwise (and any attempt to do so shall be void).

12.11 Time of Essence; Force Majeure Event.

Time is important to both parties in the performance of this Agreement, and they have agreed that strict compliance is required as to any date set forth herein. If the final date of any period which is set forth in any term or condition of this Agreement falls upon a Saturday, Sunday or legal holiday under the laws of the United States or the state in which the UP Property is located, then, and in such event, the time of such period shall be extended to the next day that is not a Saturday, Sunday or legal holiday. Whenever performance is required by either party, such party shall use reasonable efforts to perform; provided however, that if completion of performance shall be delayed at any time by a Force Majeure Event, then the time for performance as herein specified shall be extended by the amount of the delay actually so caused.

12.12 No Personal Liability.

No officer, director, employee or agent of either party, nor any of their respective heirs, administrators, executors, personal representatives, successors or assigns, shall have any personal liability or other personal obligation with respect to any payment, performance or observance of any amount, obligation or liability to be paid, performed or observed under this Agreement or any of the representations, warranties, covenants, indemnifications or other undertakings of such party hereunder, if any, and each party agrees it shall not seek to obtain a judgment at law or equity against any officer, director, employee or agent of the other party, or against any of their respective heirs, administrators, executors, personal representatives, successors or assigns.

12.13 Survivability.

The parties agree that their respective rights, duties and obligations existing under (i) any Contractor's Right of Entry Agreements entered into pursuant to Section 3.3 above, (ii) Sections 2.1, 2.3, 3.2, 3.6, 3.7, 4.2, 4.3, 4.4, 5.2, 5.3, 8.2, 8.3, 8.4, Articles VI, VII, IX, X, XI, and XII hereof, and (iii) any other provision that by its terms imposes an obligation on RTD or UP that is continuing in nature shall survive the termination of this Agreement, regardless of whether such termination is effected through mutual agreement or default or breach of this Agreement. Moreover, the parties agree that all terms and provisions of this Agreement that have not been fully completed and performed as of the Closing under Addendum C of the Transfer Agreement shall survive such Closing until the full and complete performance thereof is accomplished.

12.14 Remedies Non-exclusive.

In the event that either RTD or UP fails to perform or comply with any of its obligations or the terms contained in this Agreement, the non-defaulting party shall give the defaulting party written notice specifying such default and the defaulting party shall have the opportunity to cure such default within thirty (30) days after receipt of such notice. Failure of the non-defaulting party to provide notice of such default shall not constitute a waiver of such default. In the event that the defaulting party fails to timely cure such default, the non-defaulting party shall have all rights and remedies available at law or in equity, including without limitation the right to require RTD to restore the UP Property to its original condition, which remedies shall be non-exclusive unless specified otherwise in this Agreement. RTD and UP, for themselves and their successors and assigns, hereby waive the remedies of consequential and punitive damages against the other

party. Moreover, the indemnities and remedies contained in this Agreement shall be in addition to (and not in limitation of), and without prejudice to or limitation of any indemnity provisions or legal remedies in the Contractor's Right of Entry Agreements, the Transfer Agreement (or any document executed in connection with the Closing of Addendum C thereunder), the Engineering Agreement, the Escrow Agreement, or any other remedies at law or in equity.

12.15 No Other Construction on UP Property; No Right to Operate by RTD.

Notwithstanding anything to the contrary contained in this Agreement, in no event: (i) shall either party or Contractor perform any pre-construction or construction work of any nature whatsoever on the UP Property except in accordance with the terms of this Agreement, nor (ii) shall RTD have any rights to operate on or over the UP Property (including without limitation passenger rail operations) during the term of this Agreement.

12.16 Separate Counterparts.

This Agreement may be executed in one (1) or more counterparts, each of which, when so executed, shall be deemed to be an original. Such counterparts shall together constitute and be one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

By: _____
Name: _____
Title: _____

APPROVED AS TO LEGAL FORM FOR THE REGIONAL TRANSPORTATION DISTRICT:

By: _____
Legal Counsel

REGIONAL TRANSPORTATION DISTRICT,
a political subdivision of the State of Colorado

By: _____
Name: _____
Title: General Manager

EXHIBIT A

(Attached to and made a part of
Relocation and Construction Agreement –
Limon and Greeley Subdivisions/East Corridor)

Construction Segments

(see attached)

EXHIBIT B

(Attached to and made a part of
Relocation and Construction Agreement –
Limon and Greeley Subdivisions/East Corridor)

designs

(see attached)

I. designs

The cover sheets (dated and initialed by both RTD and UP) for the following design sets are attached hereto, and by such attachment, the entire design sets are incorporated herein by reference:

A. UP Relocation Project

B. UP Related Project Work

EXHIBIT C

(Attached to and made a part of
Relocation and Construction Agreement –
Limon and Greeley Subdivisions/East Corridor)

Form of Utility Company Notification Letter

(see attached)

[Date]

[Name of Licensee] (Licensee)
[Address of Licensee]

RE: **[Reference License Agreement]**

Dear Sir or Madam:

This letter is written on behalf of Union Pacific Railroad Company (Licensor) regarding the above-referenced License Agreement (the License). Licensor and the Regional Transportation District (RTD) are jointly engaged in a significant construction project that will affect the License and the related utility (the Utility). The project will extend from approximately Denver Union Station to 40th Ave and Peña Boulevard. It will involve relocating a portion of Licensor's Limon and Greeley Subdivisions, adding a second mainline to Licensor's trackage on Licensor's property in that area, installing a new signal system for Licensor in that area, reconstructing sections of Licensor's yards, and RTD's constructing a commuter rail track on property now owned by Licensor but which property will be conveyed to RTD after the completion of Licensor's relocation project.

You may be required to relocate, modify, protect in place or otherwise alter the configuration of the Utility. RTD is authorized on behalf of Licensor to take all actions necessary to effect and coordinate the necessary relocations, modifications, protection in place or other alterations of the Utility, including initial review of plans and transmittal of the same to Licensor for its approval, scheduling of work, coordination of flagging with Licensor and Licensee and/or their work crews, and enforcement of the notice, flagging and cost requirements set forth in the License.

If the Utility is relocated a revision to the License will be issued to reflect the same. You will be notified by RTD if all or part of the License is assigned to RTD. **For all purposes related to the relocation and/or modification of the Utility, your contact is _____at 303-229_____.**

Thank you for your assistance in this matter.

Sincerely,

Tony K. Love
Assistant Vice President, Real Estate
Union Pacific Railroad Company

Richard Clarke
Assistant General Manager for Capital Projects
Regional Transportation District
1560 Broadway 7th Floor
Denver, CO 80202

EXHIBIT D

(Attached to and made a part of
Relocation and Construction Agreement –
Limon and Greeley Subdivisions/East Corridor)

Federal Funding Requirements

(see attached)

FEDERAL FUNDING REQUIREMENTS

UP shall comply with the requirements of the Federal Transit Administration's ("FTA") "Buy America" program, the Davis-Bacon Act and federal Uniform Administrative procedures as set forth below. UP shall include the provisions or certifications shown below in italics in all of its bid or proposal solicitations, subject to the requirements set forth in this Exhibit D.

A. FTA "Buy America" Requirements pursuant to 49 U.S.C. § 5323; 49 C.F.R. Part 661 and FTA guidance documents:

When UP purchases steel, iron, rail or other manufactured products (such as new track work, signals, or infrastructure) exceeding $100,000 in value (as such limit is set forth at 49 C.F.R. § 18.36(d) and as may be amended), UP must comply with FTA's "Buy America" requirements at 49 U.S.C. § 5323(j)(1), as follows:

1. General Requirements

a. Steel and iron: All steel and iron manufacturing processes must take place in the U.S, as set forth at 49 C.F.R. §§ 661.5(a), (b), and (c). These requirements apply to all construction materials made primarily of steel or iron and used in infrastructure projects such as transit or maintenance facilities, rail lines, and bridges. The requirements do not apply to steel or iron used as components or subcomponents of other manufactured products.

b. Manufactured products: Pursuant to 49 C.F.R. § 661.5(d), the product itself must be manufactured in the U.S. with 100 percent U.S. components. Foreign-manufactured subcomponents are allowed.

c. Construction contracts: Except for the iron and steel used in a construction contract, FTA treats the procurement of a construction project as the procurement of a "manufactured product" subject to 49 C.F.R. § 661.5(d), as specified in FTA's Best Practices Procurement Manual ("BPPM"), Sec. 4.3.3.2.2.

2. Waivers – Upon UP's written request, RTD will apply to FTA's Regional Administrator for a waiver in connection with a specific item or material. Under 49 U.S.C. § 5323(j)(2): 49 C.F.R. § 661.7, FTA may grant a waiver to the Buy America requirements on a case-by-case basis in any of the following three circumstances based on the waiver applicant's demonstration that it satisfies the criteria for a waiver. UP must provide RTD with sufficient documentation to demonstrate the necessity of the requested waiver according to the criteria below:

a. Waiver is in the public interest: This waiver requires a determination by the FTA Administrator that to require compliance is "inconsistent with the public interest."

b. Materials are not available from the U.S.: This waiver requires a determination by the FTA Regional Administrator that the materials for which a waiver is requested are not produced in the U.S. in sufficient and reasonably available quantities and of a satisfactory quality. If no responsive and responsible bid is received offering an item produced in the U.S., it will be presumed the conditions exist to grant this non-availability waiver. In the

case of a sole source procurement, the waiver will be granted only if the waiver applicant provides sufficient information which indicates that the item to be procured is only available from a single source or that the item to be procured is not produced in sufficient and reasonably available quantities of a satisfactory quality in the U.S.

c. Cost of the domestic product is more than 25 percent higher than that of the foreign product: This waiver requires a determination by the FTA Regional Administrator that including a domestic item or domestic material will increase the cost of the contract between the grantee and its supplier of that item or material by more than 25 percent. This waiver cannot be applied to components or subcomponents of a manufactured item other than rolling stock.

3. Notice to Bidders and Bidder Certification Requirements

a. UP must include notice in conformance with 49 C.F.R. § 661.13 to all prospective suppliers, bidders, vendors and other proposers of FTA's Buy America requirements at the time of the bid or proposal solicitation, as part of the solicitation document, in substantial conformance with the following:

> *Buy America Provision. This solicitation and the resulting contract are subject to the Buy America requirements of 49 U.S.C. Section 5323(j) and the Federal Transit Administration's implementing regulations found at 49 C.F.R. Part 661. These regulations require, as a matter of responsiveness, that the bidder or offeror submit with its offer a completed certification in accordance with Part 661.6 or Part 661.12, as appropriate. These certifications are set forth in this solicitation at [identify where the certifications are].*

b. Under 49 C.F.R. § 661.13(b), **UP must require each bidder or offeror to certify as to its respective bid's or offer's compliance with Buy America requirements, including certification of non-compliance, if applicable**. UP must require certification as a condition of a responsive bid or proposal. If a bidder or offeror certifies that it will comply, then it will not be eligible for a waiver if it later finds itself unable to comply, subject to any relief it may be permitted to seek pursuant to 49 C.F.R. Part 661. The bidder or offeror must submit with the bid or offer a completed Buy America certificate in one of two forms provided below, either:

(i) certifying that the bidder will comply with the Buy America requirements:

Certificate of Compliance with 49 U.S.C. § 5323(j)(1)

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. § 5323(j)(1), and the applicable regulations in 49 CFR Part 661.

Date _____

Signature _____

Company _____

Name _____

Title _____

OR

(ii) certifying that the bidder cannot comply, but may qualify for an exception under the waiver provisions:

Certificate of Non-Compliance with 49 U.S.C. § 5323(j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. § 5323(j), but it may qualify for an exception to the requirements pursuant to 49 U.S.C. § 5323(j)(2), as amended and the applicable regulations in 49 C.F.R. § 661.7.

Date _____

Signature _____

Company _____

Name _____

Title _____

B. Davis-Bacon Act and Copeland Anti-Kickback Act Requirements - 40 U.S.C. §§ 3141 et seq.; 18 U.S.C. § 74; 49 U.S.C. § 5333; and FTA guidance documents:

UP must require all construction contracts and subcontracts valued at over $2.000 that "at least partly are financed by a loan or grant from the Federal Government," to comply with the employee-protection requirements of the Davis-Bacon Act and Copeland Anti-Kickback Act, as set forth at 40 U.S.C. §§ 3142(a), 3145(a); 49 U.S.C. § 5333; 29 C.F.R. §§ 5.2(h), 5.5(a) and 49 C.F.R. § 18.36(i)(5). Pursuant to 29 C.F.R. § 5.5(a), "construction," for purposes of the Acts, includes "actual construction, alteration and/or repair, including painting and decorating."

1. UP must include in all solicitations the then-current prevailing Davis-Bacon wage rates, as determined by the U.S. Department of Labor. The prevailing wages applicable to the Counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso, Jefferson,

Larimer, Mesa, Pueblo and Weld in Colorado are updated periodically and are available on the U.S. Department of Labor's website at http://www.wdol.gov/wdol/scafiles/davisbacon/co.html.

2. FTA violation reporting requirements. UP must require every suspected or reported violation of the Davis Bacon Act or its implementing regulations that is required to be reported to FTA.

3. Required contract provisions. UP must include contract provisions in all contracts subject to Davis-Bacon in accordance with 29 C.F.R. § 5.5(a). All contracts must also include a listing of the current prevailing Davis-Bacon wage rates. Provisions published by FTA for use in contracts supported by full funding grant agreements are as follows:

1. Minimum wages:

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 C.F.R. Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto **[ATTACH PREVAILING DAVIS-BACON WAGE RATES AS ISSUED BY U.S. DEPARTMENT OF LABOR]** *and made a part hereof, regardless of any contractual relationship which may be alleged to exist between [Contractor] and such laborers and mechanics.*

Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) (as per 29 C.F.R. § 5.5(a) and FTA guidance) *of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 C.F.R. § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii)* (as per 29 C.F.R. § 5.5(a) and FTA guidance) *of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by [Contractor] and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.*

(ii) (A) Any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. [Contractor] may request

[Railroad] to approve such additional classification and wage rate and fringe benefits therefor only upon [Contractor's] written request and submission of documentation demonstrating the following criteria have been met:

(1) Except with respect to helpers as defined as 29 C.F.R. § 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 C.F.R. § 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If [Contractor] and the laborers and mechanics to be employed in the classification (if known), or their representatives, and [Railroad] agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by [Railroad] to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise [Railroad] or will notify [Railroad] within the 30-day period that additional time is necessary.

(C) In the event [Contractor], the laborers or mechanics to be employed in the classification or their representatives, and [Railroad] do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), [Railroad] shall refer the questions, including the views of all interested parties and the recommendation of [Railroad], to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise [Railroad] or will notify [Railroad] within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) (as per 29 C.F.R. § 5.5(a) and FTA guidance) *of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.*

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, [Contractor] shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If [Contractor] does not make payments to a trustee or other third person, [Contractor] may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of [Contractor], that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require [Contractor] to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v) (A) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. [Contractor] may request [Railroad] to approve such additional classification and wage rate and fringe benefits therefor only upon [Contractor's] written request and submission of documentation demonstrating the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If [Contractor] and the laborers and mechanics to be employed in the classification (if known), or their representatives, and [Railroad] agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by [Railroad] to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise [Railroad] or will notify [Railroad] within the 30-day period that additional time is necessary.

(C) In the event [Contractor], the laborers or mechanics to be employed in the classification or their representatives, and [Railroad] do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), [Railroad] shall refer the questions, including the views of all interested parties and the recommendation of [Railroad], to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise [Railroad] or will notify [Railroad] within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) (as per 29 C.F.R. § 5.5(a) and FTA guidance) *of this section, shall be paid to all workers performing work in the*

classification under this contract from the first day on which work is performed in the classification.

2. Withholding: *[Railroad] shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from [Contractor] under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by [Contractor] or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, [Railroad] may, after written notice to [Contractor], sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.*

3. Payrolls and basic records:

(i) Payrolls and basic records relating thereto shall be maintained by [Contractor] during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 C.F.R. § 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, [Contractor] shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii) (A) [Contractor] shall submit weekly for each week in which any contract work is performed a copy of all payrolls to [Railroad] for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under Section 5.5(a)(3)(i) of Regulations, 29 C.F.R. Part 5 (subject to any applicable exceptions in the Regulations). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Website at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its

successor site. The [Contractor] is responsible for the submission of copies of payrolls by any and all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by [Contractor] or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following.

(1) That the payroll for the payroll period contains the information required to be maintained under Section 5.5(a)(3)(i) of Regulations, 29 C.F.R. Part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 C.F.R. Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) (as per 29 C.F.R. § 5.5(a) and FTA guidance) *of this section.*

(D) The falsification of any of the above certifications may subject [Contractor] or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) (as per 29 C.F.R. § 5.5(a) and FTA guidance) *of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If [Contractor] or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to [Contractor], sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 C.F.R. § 5.12.*

4. <u>Apprentices and trainees</u>:

(i) <u>Apprentices</u> - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S.

Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to [Contractor] as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in [Contractor's] or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, or authorized representative determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, [Contractor] will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 C.F.R. § 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage

rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, [Contractor] will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 C.F.R. Part 30.

5. Compliance with Copeland Act requirements: The contractor shall comply with the requirements of 29 C.F.R. Part 3, which are incorporated by reference in this contract.

6. Subcontracts: The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 C.F.R. §§ 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 C.F.R. § 5.5.

7. Contract termination; debarment: A breach of the contract clauses in 29 C.F.R. § 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 C.F.R. § 5.12.

8. Compliance with Davis-Bacon and Related Act requirements: All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 C.F.R. Parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards: Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 C.F.R. Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between [Contractor] (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility:

(i) By entering into this contract, [Contractor] certifies that neither it (nor he or she) nor any person or firm who has an interest in [Contractor's] firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 C.F.R. § 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 C.F.R. § 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. § 1001.

C. Federal Uniform Administrative Requirements – 49 C.F.R. § 18.36

UP must retain, and must require its contractors to retain, all books, documents and papers, and records directly relating to the work being supported by federal grant monies, as required under 49 C.F.R. § 18.36(i)(10), through [NOT LESS THAN THREE YEARS FOLLOWING FINAL PAYMENT BY RTD UNDER GRANT]. UP must maintain such records in such a manner that they are accessible during normal business hours for the purpose of making audits, examination, excerpts and transcriptions by RTD, FTA, the Comptroller General of the United States or any of their duly authorized representatives.

UP must include in all construction contracts for procurement under a federal grant a clause substantially in the form of the following:

> *All books, documents, papers and records directly relating to this contract shall be made available during normal business hours upon [Railroad's] request for audit, examination, excerpt or transcription. All records relating to this contract must be retained through [NOT LESS THAN THREE YEARS FOLLOWING FINAL PAYMENT BY RTD UNDER GRANT].*

6

Exhibit 6

Form of
Operations Agreement
Limon and Greeley Subdivisions / East Corridor

[attached hereto]

FASTRACKS PROJECT

OPERATIONS AGREEMENT
LIMON AND GREELEY SUBDIVISIONS/EAST CORRIDOR

Between

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

and

REGIONAL TRANSPORTATION DISTRICT,
a political subdivision of the State of Colorado

as of _____, 20__

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OPERATIONS AGREEMENT –
LIMON AND GREELEY SUBDIVISIONS/EAST CORRIDOR

THIS OPERATIONS AGREEMENT – LIMON AND GREELEY SUBDIVISIONS/ EAST CORRIDOR ("Agreement") is dated effective _____, 20__ (the "Effective Date"), by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("UP") and REGIONAL TRANSPORTATION DISTRICT, a political subdivision of the State of Colorado ("RTD") (each, a "Party" and collectively, the "Parties").

RECITALS

A. In connection with RTD's FasTracks Passenger Rail network pursuant to the FasTracks plan adopted by the RTD Board of Directors on April 22, 2004 (the "Project"), RTD has acquired a portion of UP's Limon and Greeley Subdivisions in the County of Adams and the City and County of Denver, Colorado, for RTD's East Corridor.

B. The Parties will each operate separate portions of the Lines (defined below) that are generally parallel to and contiguous with one another, and wish to set forth in this Agreement certain terms and conditions for those operations. UPRR also has the continuing right to approve plans and to inspect construction of the Project improvements on the East Corridor pursuant to the Engineering Agreement (defined below).

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, RTD and UP hereby agree as follows:

ARTICLE 1 – DEFINITIONS

1.1 Definitions.

The following capitalized terms shall have the following meanings:

"Agreement" shall mean this Operations Agreement – Limon and Greeley Subdivisions/East Corridor, dated as of the Effective Date, by and between UP and RTD.

"Assignment" shall have the meaning set forth in Section 12.9.1 below.

"Commuter Rail Service" shall mean the operation of passenger rail trains by or for RTD, and related activities and operations over any portion or all of the East Corridor, which activities include without limitation commissioning and testing passenger rail trains.

"Completion Date" shall mean the date stated in a written notice delivered by RTD to UP, on which RTD has substantially completed its initial Project construction and intends to begin Commuter Rail Service.

"Concession Agreement" shall mean an agreement between RTD and its Concessionaire setting forth the terms and conditions of Concessionaire's performance of Commuter Rail Service, including all construction and maintenance related thereto.

"Concessionaire" shall mean any party engaged by RTD from time to time pursuant to a Concession Agreement.

"Consent Request" shall have the meaning set forth in Section 12.9.2 below.

"Construction Commencement Date" shall mean that date stated in a written notice delivered by RTD to UP, which date shall be no earlier than ninety (90) days after the date that UP receives such notice, as the date upon which RTD intends to commence initial Project construction on the East Corridor.

"Customary Additives" shall mean elements of cost added to billings that generally are calculated as a percentage of direct labor costs and are intended to compensate for, without limitation, paid holidays, vacation and personal leave days, health and welfare benefits, payroll taxes and administrative and supervisory expenses that include direct and general overhead, inclusive of a customary one percent (1%) additive for special administrative costs related to billing preparation, and are subject to periodic changes depending upon industry practices.

"Deed" shall mean, collectively, those two (2) Quitclaim Deeds from UP as Grantor to RTD as Grantee, dated of even date herewith and recorded, as applicable, in the Office of the Clerk and Recorder of either Adams County or Denver County, Colorado.

"East Corridor" shall mean that portion of the Lines known as RTD's East Corridor, including all Trackage and other improvements thereon, that is owned, operated and/or controlled by RTD at any time from and after the date of this Agreement (whether acquired from UP or from third parties).

"Effective Date" shall mean _____, 20__.

"Emergency Plans" shall have the meaning set forth in Section 6.2.1 below.

"Engineering Agreement" shall mean the Agreement Regarding Engineering Design for Limon and Greeley Subdivisions/East Corridor Modifications, between the Parties, dated March 13, 2009, as amended and/or restated from time to time.

"Environmental Law(s)" shall mean any and all applicable laws, statutes, regulations, enforceable requirements, orders, decrees, agreements, judgments or injunctions validly issued, promulgated or entered by any court or governmental agency with jurisdiction, relating to the environment, to preservation or reclamation of natural resources, or to the management, release or threatened release of contaminants, including, without limitation, the Hazardous Substances Transportation Act (49 U.S.C. § 1802 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 et seq.), as amended by the Superfund Amendments and Reauthorization Act of 1986, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 et seq.) and the Hazardous and Solid Waste Amendments of 1984, the Water Pollution Control Act (33

U.S.C. § 1251 et seq.), as amended by the Clean Air Act Amendments of 1977, the Clean Air Act of 1970 (42 U.S.C. § 7401 et seq.), as amended by the Clean Air Act Amendments of 1990, the Safe Drinking Water Act (42 U.S.C. § 300f et seq.), the Toxic Substances Control Act of 1976 (15 U.S.C. § 2601 et seq.), any similar or implementing state law, and all amendments thereto and regulations or rules promulgated thereunder.

"Equipment" shall mean trains, locomotives, freight cars, intermodal units, passenger cars, cabooses, vehicles and other machinery in the possession, account, custody or control of a Party to this Agreement and capable of being operated on railroad tracks or capable of being operated on right of way for purposes of maintenance, repair or renewal of such railroad tracks.

"Flyovers" shall mean RTD's Bridges and Overpasses and the Flyover Easement Properties associated therewith, as described in the three (3) Flyover Easement Agreements between the Parties and dated of even date herewith, with respect to flyovers near 41st Street, near Utah Junction, and west of Sheridan Boulevard.

"Force Majeure Event" shall mean any occurrence beyond a Party's reasonable control and/or beyond the reasonable control of its vendors and contractors, including without limitation a riot, insurrection, act of terrorism or war, strikes or lockouts, derailments, wrecks, freight embargoes, inability to procure critical materials, fire, earthquake, flood, cloudburst, tornado or other phenomena of nature beyond the power of a party to foresee, accidents, or other unforeseeable circumstances (such as encountering historical artifacts or burial grounds). A rain, windstorm or other natural phenomenon of normal intensity, based on U.S. Weather Bureau reports for a particular locality and for the particular season of the year during which the subject work is being prosecuted, shall not be deemed a Force Majeure Event.

"Foul" or "Fouling" shall mean (i) the existence, movement, placement of material, equipment and/or personnel on any track, or within twenty-five (25) feet of any track, or near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track, or (ii) any other activity which in the reasonable opinion of either Party may interfere with such Party's operations or UP Easements, without regard to which Party owns the land on which such material, equipment and/or personnel is located.

"FRA" shall mean the Federal Railroad Administration or any successor federal agency.

"Functionality" shall mean, as determined by UP in its reasonable discretion, that level of freight rail service equivalent to the level of freight rail service provided by UP within the immediate vicinity of the Limon and Greeley Subdivisions as of the date of this Agreement, with respect to safety and to UP's current levels of time efficiency and cost effectiveness in providing such service.

"Future Easements" shall have the meaning set forth in Section 2.1 below.

"Impacting Party" has the meaning set forth in Article 3 below.

"Lines" shall mean both the UP Property and the East Corridor, generally located (i) east to west on UP's Limon Subdivision between UP's MP 638 and MP 628.5, and (ii) north to south

on UP's Greeley Subdivision between UP's MP 2.2 and MP 0, as both areas are generally shown on Exhibit A attached hereto. The "Lines" shall exclude the Flyovers, which are governed by the Flyover Easement Agreements.

"Loss" or "Losses" shall mean all losses, damages, claims, demands, costs (including without limitation, Customary Additives), liabilities, judgments and civil penalties, fees and expenses of any nature arising out of or in connection with the death of or injury to persons or damage to or destruction of property (including repair and replacement expenses) and/or natural resources. "Loss" or "Losses" also shall include without limitation (i) investigation costs, cleanup costs, and remediation costs attributable to spills, emissions, discharges or other releases of hazardous materials; (ii) reduced revenues of UP, reduced fare box revenues of RTD, and other economic losses of the Parties to the extent the Party claiming such losses can demonstrate that either damage to or destruction of property, or disruption of freight or passenger rail service, was the proximate cause of such losses; (iii) costs and expenses incurred in connection with the investigation, adjustment and defense of any claim, suit, appeal or arbitration pertaining to a Loss, including reasonable attorneys' and expert witness fees; and (iv) salaries or wages and associated benefits of, and out-of-pocket expenses incurred by or with respect to, employees of either Party engaged directly in such investigation, adjustment and defense and a reasonable amount of allocated salaries and wages of employees providing support services to such employees so engaged directly in such work.

"MP" shall refer to any of UP's mileposts on the Limon and Greeley Subdivisions.

"Party" shall mean UP or RTD, as applicable, and "Parties" shall mean collectively UP and RTD.

"Project" shall have the meaning set forth in Recital A.

"PTC" shall have the meaning set forth in Section 2.4 below.

"Qualified Proposed Assignee" shall have the meaning set forth in Section 12.9.5 below.

"Right of Entry Agreement" shall have the meaning set forth in Section 4.2.2 below.

"RTD" shall mean Regional Transportation District, a political subdivision of the State of Colorado.

"RTD Property" shall have the meaning set forth in Recital A, and shall exclude the Flyovers.

"STB" shall mean the Surface Transportation Board or any successor federal agency.

"Trackage" shall mean the existing and/or future railroad tracks and railroad-related equipment, facilities and transportation systems and utilities located on the Lines or appurtenant thereto, and all improvements, fixtures and structures located on the Lines, and all changes and/or additions thereto.

"Train" or "Trains" shall consist of one or more locomotive units with or without maintenance equipment, freight or passenger cars attached thereto in the possession, account, custody or control of a Party hereto, or one or more self-propelled passenger cars in the possession, account, custody or control of RTD.

"Transfer Agreement" means that certain Property Transfer and Railroad Relocation Agreement by and between UP and RTD dated effective August 4, 2010.

"UP" shall mean Union Pacific Railroad Company, a Delaware corporation.

"UP Affiliate(s)" shall mean any person or entity that (i) holds beneficially, directly or indirectly, fifty percent (50%) or more of the outstanding capital stock, shares or equity interests of UP, or (ii) controls, is controlled by, or is a rail carrier under common control with UP. As used in this definition, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of UP, whether through ownership of voting securities, by contract or otherwise.

"UP Easements" shall mean those easements reserved in the Deed by UP, its successors and assigns (including, without limitation, lessees, sublessees, easement owners and licensees of UP).

"UP Indemnitees" shall mean UP, UP Affiliates and the officers, directors and employees of any of them.

"UP Invoices" shall have the meaning set forth in Section 5.2 below.

"UP Property" shall mean that portion of the Lines known as UP's Limon and Greeley Subdivisions, including all Trackage and other improvements thereon, that is owned by UP at any time from and after the date of this Agreement.

ARTICLE 2 - USE OF LINES

2.1 Other Agreements; Future Easements; Maintenance of Certain Improvements.

2.1.1 Each Party's use of the Lines shall be subject to the terms and conditions of this Agreement, the Engineering Agreement, the Deed and, as applicable, the Future Easements.

2.1.2 After UP's approval of RTD's initial Project designs at the ninety-five percent (95%) design completion level in accordance with the Engineering Agreement, the Parties will consider whether new license or easement agreements (and/or amendment(s) to this Agreement) may be needed for certain portions of the Lines (collectively, any such licenses or easements that are granted will be referred to as the "Future Easements"). The Parties acknowledge that UP's approval of such Project designs does not constitute a grant of any Future Easement(s) and that Future Easements may only be granted pursuant to this Agreement. Such Future Easements may be requested by either Party for purposes of access, access roadways, drainage, drainage facilities, utilities and/or maintenance of Trackage on the Lines. Future Easements granted to RTD shall be subject to the payment of consideration therefor, unless the

Future Easement is solely for drainage swales or subsurface drainage facilities that provide drainage for both the UP Property and the East Corridor and for RTD access to maintain such areas (with no related surface structures). All UP requests for Future Easements necessitated by RTD's Project plans shall be granted by RTD on terms reasonably acceptable to UP, at no cost to UP. UP shall have no obligation to grant any Future Easements but shall review all RTD requests for Future Easements in UP's sole discretion.

2.1.3 RTD acknowledges that, due to the proximity of its Commuter Rail Service to the UP Property, UP will require that substantial safety and other corridor protection improvements be included in the Project designs, such as crash walls and fencing. The Parties hereby agree that all such safety and other corridor protection improvements approved by UP shall be constructed, operated and maintained solely by RTD, to UP's standards and in accordance with UP's protocols (including, without limitation, graffiti removal and weed control), at RTD's sole cost and expense - whether located on the East Corridor or on the UP Property - and that any applicable Future Easements shall reaffirm RTD's obligations for such performance and payment.

2.1.4 The Parties also contemplate that, due to the proximity of the East Corridor to the UP Property, certain drainage facilities may be included in the Project designs to handle the drainage on and from the Lines. The Parties hereby agree that all such drainage facilities approved by UP shall be constructed, operated and maintained solely by RTD, to UP's standards and in accordance with UP's protocols (including, without limitation, graffiti removal and weed control), at RTD's sole cost and expense - whether located on the East Corridor or on the UP Property - and that any applicable Future Easements shall reaffirm RTD's obligations for such performance and payment.

2.2 Dispatching.

At all times during the term of this Agreement, each Party shall have exclusive control over and responsibility for dispatching its portion of the Lines.

2.3 Maintenance.

Except for RTD's sole maintenance responsibilities described in Sections 2.1.3 and 2.1.4 above and/or described in any Future Easements, at all times during the term of this Agreement each Party shall have exclusive control over and responsibility for maintaining its portion of the Lines.

2.4 Positive Train Control.

The Parties agree that if positive train control ("PTC") is required by law to be used by either Party's Trains operating on the Lines:

(a) UP shall select the PTC system to be used by both Parties (which system will be compatible with both BNSF Railway and Amtrak systems), based on the design standards acceptable to UP in its sole and absolute discretion; and

(b) the Costs related to the installation and maintenance of the PTC systems shall be

allocated as follows: (i) RTD shall pay all Costs for the PTC system on its East Corridor, and RTD shall pay for or reimburse all UP Costs that arise out of and/or would not have been incurred but for RTD's ownership of, or passenger rail operations on, the East Corridor. Without limiting the generality of the foregoing, in the event that UP would have been required under federal law, due solely to its freight rail operations, to install PTC on its Limon Subdivision or Greeley Subdivision, then RTD shall be responsible only for any incremental Costs incurred by UP due to RTD's East Corridor.

ARTICLE 3 - CLEARING TRACKAGE

If, by any reason of mechanical failure, wreck or for any other cause, the Trains or Equipment of either Party (the "Impacting Party") (i) Foul the Trackage of the other Party, or (ii) cause the Trains or Equipment of the other Party to become stalled, disabled or otherwise unable to proceed, then the Impacting Party shall within a reasonable time be responsible for furnishing motive power or such other assistance as may be necessary to haul, help, push or move such Trains or Equipment and clear the other Party's Trackage. If the Impacting Party does not clear its Trains or Equipment from the other Party's Trackage within a reasonable time (which shall be interpreted to include a timeframe that is adequate in light of the scheduled uses of the Trackage), the other Party may clear such Trains or Equipment from its Trackage.

ARTICLE 4 - RIGHTS OF ENTRY

4.1 Construction of Project.

RTD will design and construct its Project improvements subject to the terms of this Agreement, the Engineering Agreement and any Future Easements (and, as applicable, the Flyover Easement Agreements).

4.2 Rights of Entry.

4.2.1 A Party shall notify the joint working group (described in Section 4.3 below) at least sixty (60) days prior to commencing any activity or work that could result in Fouling the Trackage of the other Party or that could encroach upon the portion of the Lines owned or controlled by the other Party. Notwithstanding the foregoing, in the event of any occurrence governed by Article 3 above, or with respect to notifying the other Party about an unsafe condition that could result in Fouling, the sixty (60) day period shall not apply.

4.2.2 A right of entry agreement using the permitting Party's then-standard form of such agreement (a "Right of Entry Agreement") may be requested at any time following notification to the joint working group, and such request must be accompanied by all relevant drawings, specifications and information required by the permitting Party. The permitting Party will review such request within a reasonable time, and approval is subject to the permitting Party's sole discretion. Neither Party nor its contractors, subcontractors or agents shall commence any activity or work that could result in Fouling the Trackage of the other Party or that could encroach upon the portion of the Lines owned or controlled by the other Party unless and until the Party and such contractor(s), subcontractor(s) and agent(s) have each executed the Right of Entry Agreements.

4.2.3 Notwithstanding the terms of any such Right of Entry Agreements: UP shall not be required to pay the administrative fee or any flagging fees or other costs or fees provided for in a Right of Entry Agreement. As applicable, each Party will inform its contractors, subcontractors and agents of the need to execute a Right of Entry Agreement. Both Parties affirm that they will not seek to amend any of the terms or conditions of a Right of Entry Agreement entered into by the other Party or its contractors, subcontractors or agents after the date on which such Party has commenced work thereunder; provided that the permitting Party reserves the right to cause the other Party and its contractors, subcontractors and agents to enter into an amended or modified Right of Entry Agreement after commencement of work if such amendments or modifications are required by law or are otherwise being made by the permitting Party to its standard form of right of entry agreement.

4.3 Joint Working Group.

UP and RTD shall work together in good faith in order to coordinate their respective construction, maintenance, repair, Trackage clearance and other activities along the Lines that may impact the other. UP and RTD shall establish a joint working group for coordinating such activities. Each Party shall designate a representative for such joint working group and the representatives shall establish a schedule for joint meetings and bring such other individuals to such meetings as they deem appropriate to expedite the processes. In the event of a mechanical failure or wreck requiring Trackage to be cleared, the Impacting Party shall immediately notify the joint working group.

The initial designated members of the joint working group are:

For RTD:

Assistant General Manager for Capital Projects
1560 Broadway Seventh Floor
Denver CO 80202
Attention: Rick Clarke

with a copy to:

General Counsel
1600 Blake Street
Denver, CO 80202
Attention: Marla Lien

For UP:

General Local - Superintendent Denver Service Unit
12400 West 52nd Avenue
Denver, CO 80221

with a copy to:

Union Pacific Railroad Company
Senior Counsel – Real Estate
1400 Douglas Street
Mail Stop 1580
Omaha, NE 68179

ARTICLE 5 – DENVER UNION TERMINAL RIGHTS

Nothing contained in this Agreement shall be deemed to modify, restrict or amend in any way the rights and obligations of RTD and UP pursuant to the Assignment of Rights and Release of Liability Under Operating Agreement, among The Denver Union Terminal Railway Company, Trillium Corporation, CKR Realty Limited Liability Company. Union Pacific Railroad Company, David R. Syre and Kay E. Syre and Regional Transportation District, dated August 13, 2001 (UP Folder No. 2559-44) and recorded in the Denver County Clerk and Recorder's Office on August 14, 2001 at Reception No. 2001135966. In the event that UP desires to seek additional usage or storage rights at Denver Union Terminal, RTD hereby agrees to reasonably cooperate with UP in seeking such rights, and not to directly or indirectly oppose UP's efforts in such regard.

ARTICLE 6 – OPERATING AUTHORITY; OPERATIONS SAFETY; ENVIRONMENTAL NOTIFICATION

6.1 Operating Authority.

RTD represents to UP that, as of the Effective Date, RTD has sought confirmation from STB that RTD's acquisition of the East Corridor is not subject to the regulatory authority of the STB and that RTD does not by virtue of such acquisition acquire any right or obligation to provide common carrier freight transportation on the Lines, and that such determination by the STB is pending. In no event shall RTD grant any right to seek operating authority on all or any portion of the East Corridor at any time to any freight carrier other than UP.

6.2 Operations Safety.

Prior to operating any Train in connection with Commuter Rail Service (whether or not containing passengers) on the East Corridor, RTD shall prepare or cause to be prepared the following operations safety documents with respect to the East Corridor:

6.2.1 RTD's Passenger Train Emergency Preparedness Plan and Passenger Train Service Interruption and Emergency Response Plan, developed by RTD or its Concessionaire and coordinated with UP and provided to UP upon request, which shall, among other things, (i) meet the requirements of the FRA (49 C.F.R. Part 239) and all other laws, rules and regulations then applicable to its Commuter Rail Service; (ii) include preparations for and responses to derailments; fatalities at at-grade crossings; passenger or employee fatality, serious illness or injury requiring admission to a hospital; earthquake; train evacuation; and security threats such as bomb threats; (iii) include accommodation assistance of disabled persons during

emergencies; (iv) require the Concessionaire and UP to assist in the coordination of emergency preparedness with local fire, police and other public agencies, and to offer assistance in training the personnel of such agencies for emergency preparedness; and, (v) include a Weather Emergency Plan which shall be designed to re-establish Commuter Rail Service during and after a weather event causing a disruption of such service as soon as practical for safe and prudent operation, including programs for resumption of normal service, prompt dissemination of correct information to riders regarding schedules and the condition of service, emergency deployment of manpower and equipment, and an emergency budget, specifying maximum labor positions and estimated expenses, which shall take effect when the Weather Emergency Plan is in effect ("Emergency Plans").

6.2.2 RTD's Operations Safety Manual, developed by RTD or its Concessionaire, which will be provided to UP, which manual shall include:

(a) safety guidelines for the safe performance of Commuter Rail Service and the prevention of accidents, injuries and illnesses in providing such service, including procedures for maintenance and inspection of vehicles and equipment as required to maintain safe operations; and

(b) a written safety manual covering all aspects of the Commuter Rail Service, which shall be distributed to all persons responsible for the provision of Commuter Rail Service.

6.2.3 Such operations safety documents shall be prepared to coordinate with UP's existing plans and procedures and in coordination with UP.

6.3 Environmental Notification.

Each Party shall give the other immediate notice, if to UP, to RMCC at 1-888-877-7267 and if to RTD to its Assistant General Manager for Safety at 303-299-4038, and to the joint working group, in the event such Party has actual knowledge of any of the following events related to the Lines that could impact the other Party's portion of the Lines: (i) a release of hazardous substances, petroleum, pollutants or other contaminants in any quantity, location or circumstance that triggers requirements to remediate, or to notify or report such release to any governmental agency, pursuant to any Environmental Laws, (ii) any other type of violation of Environmental Laws, or (iii) an inspection or inquiry by governmental authorities charged with enforcing Environmental Laws. Each Party also shall give the other Party notice of all material measures undertaken by it to investigate, remediate, respond to or otherwise cure any such violation. If UP is required to investigate, remediate, respond to or otherwise cure any such violation to a higher standard than would otherwise be applicable to UP with respect to its use of the UP Property, due to RTD's use or ownership of the East Corridor, then RTD shall reimburse UP for the incremental costs, fees and expenses related to meeting such higher standard.

ARTICLE 7 - INSURANCE

7.1 RTD's Insurance Coverage – During Construction.

In addition to the provisions set forth in the Transfer Agreement and Section 7.3, RTD, at its sole cost and expense, shall procure and maintain, for the period beginning on the

Construction Commencement Date and continuing through the Completion Date, the following insurance coverages:

7.1.1 Liability insurance: Commercial general liability (CGL) with a limit of not less than $200,000,000 each occurrence and an aggregate limit of not less than $200,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 or ISO claims made form CG 00 02 12 04 (or substitute forms providing equivalent coverage). If RTD utilizes a claims-made form to meet this requirement RTD warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Agreement. RTD also agrees to purchase an extended reporting period if the retroactive date is advanced or if the policy is canceled or not renewed and not replaced by another claims-made policy with the same (or an earlier) retroactive date during the term of this Agreement. The policy must also contain the following endorsement, which must be stated on the certificate of insurance: "Contractual Liability Railroads" ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site, and the policy must be endorsed to provide coverage for UP's personal property (including but not limited to foreign rolling stock) that may, for any reason, be in RTD's care, custody or control.

7.1.2 Automobile insurance: Business automobile coverage written on ISO form CA 00 01 03 06 (or substitute form providing equivalent liability coverage) with a limit not less $200,000,000 for each accident. Such insurance shall cover liability arising out of any automobile (including owned, hired, and non-owned automobiles). The policy must contain the following endorsements, which must be stated on the certificate of insurance: Coverage For Certain Operations In Connection With Railroads" ISO form CA 20 70 10 01 (or substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site, and Motor Carrier Act Endorsement - hazardous materials clean up (MCS-90) if required by law.

7.1.3 Workers' Compensation and Employers' Liability insurance: Coverage must include but not be limited to: RTD's statutory liability under the workers' compensation laws of the state of Colorado, Employers' Liability (Part B) with limits of at least $500,000 each accident, $500,000 employee for disease and $500,000 policy limit for disease. If RTD is self-insured, evidence of state approval and excess workers' compensation coverage must be provided. Coverage must include liability arising out of the U.S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

7.1.4 Railroad Protective Liability insurance: RTD must maintain "Railroad Protective Liability" insurance written on ISO occurrence form CG 00 35 12 04 (or substitute form providing equivalent coverage) on behalf of UP as Named Insured, with a limit of not less than $25,000,000 per occurrence and an aggregate of $25,000,000. A Binder of Insurance stating the policy is in place must be submitted to UP before work may be commenced and until the original policy is received by UP.

7.1.5 Pollution Liability insurance: Legal liability applicable to bodily injury; property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims; all in connection with any Loss

arising from the insured operations, with limits of at least $5,000,000 per occurrence and an aggregate limit of $10,000,000.

7.2 RTD's Insurance Coverage – Post-Completion Date.

In addition to the provisions set forth in the Transfer Agreement and Section 7.3. below, RTD, at its sole cost and expense, shall procure and maintain, for the period beginning on the Completion Date and continuing until termination of this Agreement, the following insurance coverages:

7.2.1 Liability insurance: Commercial general liability (CGL) with a limit of not less than $400,000,000 each occurrence and an aggregate limit of not less than $400,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 or ISO claims made form CG 00 02 12 04 (or substitute forms providing equivalent coverage). RTD also agrees to purchase an extended reporting period if the retroactive date is advanced or if the policy is canceled or not renewed and not replaced by another claims-made policy with the same (or an earlier) retroactive date during the term of this Agreement. The policy must also contain the following endorsement, which must be stated on the certificate of insurance: "Contractual Liability Railroads" ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site, and the policy must be endorsed to provide coverage for UP's personal property (including but not limited to foreign rolling stock) that may, for any reason, be in RTD's care, custody or control.

7.2.2 Automobile insurance: Business automobile coverage written on ISO form CA 00 01 03 06 (or substitute form providing equivalent liability coverage) with a limit not less $400,000,000 for each accident. Such insurance shall cover liability arising out of any automobile (including owned, hired, and non-owned automobiles). The policy must contain the following endorsements, which must be stated on the certificate of insurance: Coverage For Certain Operations In Connection With Railroads" ISO form CA 20 70 10 01 (or substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site, and Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

7.2.3 Workers' Compensation and Employers' Liability insurance: Coverage must include but not be limited to: RTD's statutory liability under the workers' compensation laws of the state of Colorado, Employers' Liability (Part B) with limits of at least $500,000 each accident, $500,000 employee for disease. If RTD is self-insured, evidence of state approval and excess workers' compensation coverage must be provided. Coverage must include liability arising out of the U.S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

7.2.4 Pollution Liability insurance: Legal liability applicable to bodily injury; property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims; all in connection with any Loss arising from the insured operations, with limits of at least $5,000,000 per occurrence and an aggregate limit of $10,000,000.

7.3 RTD's Insurance Coverage – During the Term of this Agreement.

The following applies to all insurance coverages required to be obtained by RTD pursuant to this Article 7:

7.3.1 Umbrella or Excess insurance: If RTD utilizes umbrella or excess policies to comply with limits of coverage required, these policies must "follow form" and afford no less coverage than the primary policy.

7.3.2 All policy(ies) required above (except worker's compensation and employer's liability) must include UP as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to UP as Additional Insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for UP's negligence whether sole or partial, active or passive.

7.3.3 Any punitive damages exclusion must be deleted (and the deletion indicated on the certificate of insurance), unless (i) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this Agreement, or (ii) RTD would not be liable for such damages pursuant to C.R.S. § 24-10-114, as such statute may be amended.

7.3.4 Prior to commencing any work on the Lines, RTD shall furnish UP with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.

7.3.5 All insurance policies must be written by a reputable insurance company acceptable to UP or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state of Colorado.

7.3.6 RTD hereby waives all rights against UP, UP Affiliates, and their respective agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the workers' compensation and employer's liability or commercial umbrella or excess liability insurance obtained by RTD required by this Agreement (which must be stated on the certificate of insurance).

7.3.7 Subject to Section 12.10 below, the fact that insurance is obtained will not be deemed to release or diminish the liability under the indemnity provisions of this Agreement, and damages recoverable by UP will not be limited by the amount of the required insurance coverage.

7.3.8 In addition to providing coverage for RTD's covenants, liabilities and indemnities under this Agreement, all RTD insurance policies must also provide coverage for RTD's covenants, liabilities and indemnities under the Engineering Agreement.

7.4 Self-Funding.

7.4.1 RTD may elect to self-fund the first $10,000,000 of the coverage limits required hereunder, provided all coverages and named insureds are as set forth in this Article 7.

If RTD so elects, it shall secure and maintain an unconditional and irrevocable standby Letter of Credit addressed to UP equal to the then current self-funded portion of the requirement. The issuer of the Letter of Credit shall be a bank with a long term senior debt rating of not less than "A(2)" by Moody's Investment Service or "A" by Standard & Poor's. In the event RTD fails to meet its obligation with respect to claims within the self-funded retention under any insurance policy provided in this Article 7, UP shall have the right, upon ten (10) days notice to RTD, to draw upon the Letter of Credit to satisfy such claims and seek interest from RTD in the amount of ten percent (10%) per annum retrospective to the date of any payment by UP.

7.5 Adjustments.

Within thirty (30) days after any amendment, expiration or repeal, or judicial invalidation or confirmation of the validity of the statutory cap on liability set forth at 49 U.S.C. § 28103, and no more than once on each three (3) year anniversary of the date of this Agreement, RTD and UP shall consider the Losses paid under the insurance and self-funded retentions described in this Article 7, along with any other relevant information, and shall determine whether there are reasonable grounds to adjust the limits of insurance required by this Article 7 or the amount of or maximum for the self-funded retentions. Any disputes with respect to whether there are grounds for such adjustments shall be subject to arbitration in accordance with Article 9. In addition, once every five (5) years UP shall have the right to adjust insurance limits, and insurance coverages required by this Agreement consistent with inflation and current insurance and risk management practice.

7.6 Review.

UP shall have the right to review and approve commercial insurance policies obtained by RTD for compliance with the obligations set forth in this Article 7; provided that such approval shall not constitute a waiver of any non-compliance with this Article 7.

ARTICLE 8 - LIABILITY AND INDEMNIFICATIONS

8.1 Indemnifications.

RTD agrees to defend and indemnify UP Indemnitees against all claims, suits and demands for Losses arising out of injury or death sustained by any person and/or damage to property with respect to the Lines, when (a) such Loss would not have occurred but for the operation and maintenance of Commuter Rail Service or the construction and/or presence of RTD's infrastructure on the Lines, or (b) such Loss arose out of an incident occurring on the East Corridor. UP agrees to defend and indemnify RTD and its related entities and the officers, directors and employees of any of them, against all claims, suits and demands for Losses arising out of injury or death sustained by any person and/or damage to property with respect to the Lines, when (a) such Loss did not arise out of and would have occurred regardless of the operation and maintenance of Commuter Rail Service or the construction and/or presence of RTD's infrastructure on the Lines, and (b) such Loss arose out of an incident occurring on the UP Property.

8.2 Allocation of Responsibilities.

8.2.1 Without limiting the generality of Section 8.1, any and all Losses arising out of (a) personal injury (including bodily injury and death) to, or property damage suffered by, RTD's passengers, invitees, employees, agents, officers, directors, trustees or any person other than UP operating RTD's Trains or Equipment on the Lines; (b) property damage suffered by RTD; and/or (c) personal injury or property damage suffered by any other persons on the East Corridor (including trespassers); whether or not any such Losses are subject to the cap on liability established in 49 U.S.C. §28103, shall be the responsibility of and borne by RTD. In addition, any and all Losses arising out of (i) personal injury (including bodily injury and death) to, or property damage suffered by, UP's invitees, employees, agents, customers, officers, directors, trustees or any person operating UP's Trains or Equipment on the Lines, or any other persons (including trespassers); (ii) property damage suffered by UP or UP's freight rail customers; and/or (iii) the direct or indirect release, discharge or spillage of Hazardous Materials; whether or not any such Losses are subject to the cap on liability established in 49 USC §28103, shall be the responsibility of and borne by RTD if such Losses would not have arisen but for the operation and maintenance of Commuter Rail Service or the construction and/or presence of RTD's infrastructure on the Lines or if they arose out of an incident occurring on the East Corridor.

8.2.2 In any case where a Party is required under the provisions of this Article 8 to bear the responsibility for a Loss, it shall have the responsibility for cleanup, including all associated costs, of the incident or accident that resulted in such Loss. In the event the Party responsible for the cleanup fails to clean up the incident or accident within a reasonable time, the other Party may clean up the incident or accident and obtain from the responsible Party reimbursement of all costs and expenses arising from the cleanup, including interest at the rate of eight percent (8%) per annum imposed beginning on the day funds are first advanced for such cleanup provided.

8.2.3 Should UP be forced to suspend freight rail service due to construction or maintenance by RTD, except as may be otherwise agreed to in writing by RTD and UP prior to the start of such work, RTD shall be responsible for all of UP's resulting Losses, as well as UP's lost revenues and increased expenses of any kind or character (both direct and third party expenses).

8.2.4 Neither Party shall (a) seek to nullify, void or set aside the allocation of Losses set forth in this Article 8 by alleging that the other Party has engaged in misconduct or negligence; (b) bring a claim alleging that the other Party has engaged in negligence; or (c) seek to nullify, void or set aside the allocation of Losses set forth in this Article 8 by invoking the doctrine of sovereign immunity, or by alleging that execution of this Agreement by a Party was not within the scope of that Party's authority; or (d) seek to nullify, void or set aside the allocation of Losses set forth in this Article 8 by alleging that any provisions of this Agreement are inconsistent with the provisions of the Colorado Constitution or any other provision of Colorado law; or (e) challenge the enforceability of the Loss allocation provisions set forth in this Article 8. The Parties acknowledge that the provisions of 49 U.S.C. §28103 may preempt the application of certain Colorado laws otherwise applicable to this Article 8.

8.3 Interpretation and Scope of Indemnification.

8.3.1 This Article 8 shall be deemed to be an allocation of financial responsibility for claims pursuant to 49 U.S.C. §28103 (b). For purposes of this Article 8, UP will be deemed to be a rail carrier and RTD will be deemed to be a commuter authority or operator pursuant to 49 U.S.C. §28103 (e)(1), and any claim for a Loss hereunder shall be deemed to be a claim under 49 U.S.C. §28103 (e)(1). Moreover, the indemnities and remedies contained in this Article 8 shall be in addition to (and not in limitation of), and without prejudice to or limitation of any other indemnity provisions or legal remedies in this Agreement or any other remedies at law or in equity.

8.3.2 In any case where a Party is required under the provisions of this Article 8 to bear the responsibility for a Loss, it shall pay, satisfy and discharge such Loss and all judgments that may be rendered by reason thereof and all costs, charges and expenses incident thereto (including all incidental expenses incurred by the indemnified party), and such Party shall forever indemnify, defend and hold harmless the other Party and its directors, officers, agents, employers, shareholders, parent corporation and affiliated companies from, against and with respect to any and all such Loss(es).

8.4 Procedure.

8.4.1 If any claim or demand shall be asserted by any person against an indemnified party under this Section 8.4, the indemnified party shall, within thirty (30) days after notice of such claim or demand, cause written notice thereof to be given to the indemnifying Party, provided that failure to notify the indemnifying Party shall not relieve the indemnifying Party from any liability which it may have to the indemnified party under this Section 8.4, except to the extent that the rights of the indemnifying Party are in fact prejudiced by such failure. If any such claim or demand shall be brought against the indemnified party and it shall have given notice thereof to the indemnifying Party, the indemnifying Party shall have the right, at its own expense, to control (including the selection of counsel reasonably satisfactory to the indemnified party) or to participate in the defense of, negotiate or settle, any such claim or demand, and the Parties agree to cooperate fully with each other in connection with any such defense, negotiation or settlement. In any event, the indemnified party shall not make any settlement of any claims which might give rise to liability on the part of the indemnifying Party under this Section 8.4 without the prior written consent of the indemnifying Party, which consent shall not be unreasonably withheld, conditioned or delayed.

8.4.2 Subject to the provisions of Section 8.4.1, on each occasion that the indemnified party shall be entitled to indemnification or reimbursement under this Section 8.4, the indemnifying Party shall, at each such time, promptly pay the amount of such indemnification or reimbursement. If the indemnified party shall be entitled to indemnification under this Section 8.4 and the indemnifying Party shall not elect to control any legal proceeding in connection therewith, the indemnifying Party shall pay to the indemnified party an amount equal to the indemnified party's reasonable legal fees and other costs and expenses arising as a result of such proceeding.

8.4.3 Any claims for indemnification must be made in the course of the proceeding in which the Parties are joined. A dispute between the Parties as to the right to indemnification or the amount to which a Party is entitled pursuant to such right with respect to any matter may be submitted to arbitration pursuant to Article 9; provided however, that if either Party or both Parties are named as defendants, third party defendants, cross-claim defendants or are otherwise named as parties to a lawsuit or other legal proceeding initiated by a third party, and such proceeding involves or relates to such indemnification rights, then the Parties shall pursue the resolution of such indemnification issues in that proceeding instead of through the arbitration procedures set forth in Article 9 unless and until (a) any claims relating to indemnification are dismissed from such proceeding or (b) such proceeding is stayed pending a resolution of all claims relating to indemnification.

8.4.4 Not for Benefit of Third Parties.

The provisions of this Article 8 are not intended to confer any right, benefit, or cause of action upon any third party, and are intended solely to deal with the allocation of liability, if any, as between the Parties to this Agreement.

8.5 Tenants and Operators.

Any new tenant or operator on the Lines shall agree to be bound by the provisions of this Article 8 unless otherwise agreed by UP and RTD.

ARTICLE 9 – DISPUTE RESOLUTION AND ARBITRATION

9.1 Submission.

Both RTD and UP shall make reasonable efforts to settle disputes (excepting only those disputes requiring a determination of governmental powers or based upon formation of this Agreement) arising out of their respective rights or obligations under this Agreement, through prompt and diligent negotiations. Upon the written request of either Party, RTD's Manager for Passenger Rail Operations and UP's Project Representative shall participate in such negotiations. If at any time such a dispute shall arise between the Parties in connection with this Agreement that the Parties cannot resolve within thirty (30) days, such dispute shall be submitted to and settled by binding arbitration. The Parties acknowledge that such arbitration may involve the joinder of one or more necessary party(ies) to resolve the disputed matters. Arbitration shall occur in Denver, Colorado, or in another location mutually agreed to by the Parties. Unless otherwise agreed by the Parties, arbitration between the Parties pursuant to this Section 9.1 shall be governed by the rules and procedures set forth in this Article 9.

9.2 Selection of Arbitrator.

If the Parties to the dispute are able to agree upon a single competent and disinterested arbitrator within fifteen (15) days after written notice by one Party of its desire for arbitration to the other Party, then the question or controversy shall be submitted to and settled by that single arbitrator. Otherwise, any Party (the "Notifying Party") may notify the other Party (the "Noticed Party") in writing of its request for arbitration and nomination of one competent and disinterested arbitrator. Within fifteen (15) days after receipt of such notice, the Noticed Party shall appoint a

competent and disinterested arbitrator and notify the Notifying Party in writing of such appointment. Should the Noticed Party fail within fifteen (15) days after receipt of such notice to name its arbitrator, said arbitrator may be appointed by the Chief Judge (or acting Chief Judge) of the United States District Court for the District of Colorado upon application of either Party after ten (10) days' written notice to the other Party. The two arbitrators so chosen shall select one additional competent and disinterested arbitrator to complete the board within fifteen (15) days. If the arbitrators so chosen fail to agree upon an additional arbitrator, the additional arbitrator shall, upon application of either Party, be appointed by such judge in the manner heretofore stated, provided that in such case the appointed arbitrator shall have experience in passenger and freight railroad track operations.

9.3 Hearing.

Upon selection of the arbitrator(s), said arbitrator(s) shall, with reasonable diligence and subject to the rights of the Parties under Section 9.6, determine the questions as disclosed in said notice of arbitration, give both Parties reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, take such evidence as the arbitrator(s) shall deem reasonable or as either Party may submit with witnesses required to be sworn, and hear arguments of counsel or others. If an arbitrator declines or fails to act, the Party (or Parties in the case of a single arbitrator) by whom the arbitrator was chosen or said judge shall appoint another to act in the arbitrator's place.

9.4 Decision.

After considering all evidence, testimony and arguments, such single arbitrator or the majority of said board of arbitrators shall promptly (and in no event more than thirty (30) days after the arbitration hearing) state such decision or award and the reasoning for such decision or award in writing which shall be final, binding, and conclusive on all parties to the arbitration when delivered to them. The award rendered by the arbitrator(s) shall be binding on the Parties and may be entered as a judgment in any court having jurisdiction thereof and enforced as between the Parties without further evidentiary proceeding, the same as entered as a judgment in any court having jurisdiction thereof and enforced as between the Parties without further evidentiary proceeding, the same as entered by the court at the conclusion of a judicial proceeding in which no appeal was taken. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under the Agreement shall continue in the manner and form existing prior to the rise of such question. After delivery of such first decision or award, each Party shall forthwith comply with said first decision or award immediately after receiving it.

9.5 Costs.

Each party to the arbitration shall pay all compensation, costs, and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits and counsel. The compensation, cost, and expenses of the single arbitrator in the board of arbitrators shall be paid in equal shares by all parties to the arbitration.

9.6 Discovery.

The parties to arbitration may obtain discovery and offer evidence as directed by the arbitrators but in accordance with the Federal Rules of Civil Procedure Rules 26-37, and Federal Rules of Evidence, as each may be amended from time to time.

ARTICLE 10 – LABOR PROTECTION

With regard to Future Easements granted to RTD, RTD covenants for itself, its successors and assigns, to indemnify and exonerate UP against the cost of (and be responsible for) obligations, liability, or claims due to provisions of UP's labor agreements, including labor protective conditions of such agreements, or of labor protective conditions imposed by regulatory agencies or applicable laws. RTD's obligation to indemnify and exonerate shall arise when employees or positions are adversely affected as a result of changes, future contracting out or other removal or termination of work previously, now or hereafter performed by UP's employees to the extent that such change, termination or contracting out is the result of an action taken by RTD, or with the consent of RTD.

ARTICLE 11 - TERMINATION

This Agreement shall terminate upon either Party's complete abandonment of all forms of rail service on its entire portion of the Lines, which abandonment shall under no circumstances be presumed but shall occur only after written notice from the abandoning Party to the other, delivered after the abandoning Party has obtained and complied with all applicable final regulatory approvals.

ARTICLE 12 - ADDITIONAL PROVISIONS

12.1 Notices.

Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be (a) personally delivered; (b) delivered by a reputable overnight courier; or (c) delivered by certified mail, return receipt requested and deposited in the U.S. Mail, postage prepaid. Telecopy notices shall be deemed valid only to the extent they are (i) actually received by the individual to whom addressed and (ii) followed by delivery of actual notice in the manner described above within three (3) business days thereafter. Notices shall be deemed received at the earlier of actual receipt or (y) one (1) business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (z) three (3) business days following deposit in the U.S. Mail, as evidenced by a return receipt. Notices shall be directed to the Parties at their respective addresses shown below, or such other address as either party may, from time to time, specify in writing to the other in the manner described above:

To UP:

Vice President - Engineering
Union Pacific Railroad Company
1416 Dodge Street, Room 1030
Omaha, Nebraska 68179-1000
Telephone: 402-271-4345
Telecopy: 402-271-6674

with copies to:

Union Pacific Railroad Company
Patrick R. McGill, Esq.
Senior Counsel – Real Estate
1400 Douglás Street, Mail Stop 1580
Omaha, NE 68179
Telephone: 402-544-5761
Facsimile: 402-544-0132

Jacobs Chase & Kelley, LLC
Jill K. Rood, Esq.
1050 17th Street, Suite 1500
Denver, CO 80265
Telephone: 303-685-4800
Facsimile: 303-685-4869

To RTD:

Regional Transportation District
Assistant General Manager for Capital Projects
1560 16th Street
Denver, CO 80202
Telephone: 303-299-2300
Facsimile: 303-299-2363

with copies to:

Regional Transportation District
Marla Lien, General Counsel
1600 Blake Street
Denver, CO 80202-1399
Telephone: 303-299-2207
Facsimile: 303-299-2217

Kaplan Kirsch & Rockwell LLP
Stephen Kaplan, Esq.
1675 Broadway, Suite 2300
Denver, CO 80202
Telephone: 303-825-7000
Facsimile: 303-825-7005

12.2 Prohibited Interests.

No officer, member or employee of RTD, no members of RTD's governing body and no other public official or employee of the governing body of any locality included within RTD's geographic area, during his or her tenure or for one (1) year thereafter, shall have any interest,

direct or indirect, in this Agreement, any related agreement, or other agreement referenced herein, or the proceeds thereof.

12.3 No Third Party Rights.

Except as expressly set forth herein, the representations, warranties, terms and provisions of this Agreement are for the exclusive benefit of the Parties or their respective successors or assigns, and no other person or entity shall have any right or claim against either Party by reason of any of these terms and provisions or be entitled to enforce any of those terms and provisions against either Party.

12.4 Time of Essence; Force Majeure Event.

Time is important to both Parties in the performance of this Agreement, and they have agreed that strict compliance is required as to any date set forth herein. If the final date of any period which is set forth in any term or condition of this Agreement falls upon a Saturday, Sunday or legal holiday under the laws of the United States or the state in which the Property is located, then, and in such event, the time of such period shall be extended to the next day which is not a Saturday, Sunday or legal holiday. Whenever performance is required by either Party, such Party shall use reasonable efforts to perform; provided however, that if completion of performance shall be delayed at any time by a Force Majeure Event, then the time for performance as herein specified shall be extended by the amount of the delay actually so caused.

12.5 No Personal Liability.

No officer, director, employee or agent of either party, nor any of their respective heirs, administrators, executors, personal representatives, successors or assigns, shall have any personal liability or other personal obligation with respect to any payment, performance or observance of any amount, obligation or liability to be paid, performed or observed under this Agreement or any of the representations, warranties, covenants, indemnifications or other undertakings of such Party hereunder, if any, and each Party agrees it shall not seek to obtain a judgment at law or equity against any officer, director, employee or agent of the other Party, or against any of their respective heirs, administrators, executors, personal representatives, successors or assigns.

12.6 Severability.

If any part, term or provision of this Agreement is judicially determined to be illegal or in conflict with any applicable law, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular part, term or provision held to be invalid or illegal.

12.7 Whole Agreement.

This Agreement, including all exhibits and schedules hereto, the Engineering Agreement, and the Transfer Agreement (and documents executed in connection with the closing of the Limon and Greeley Subdivisions/East Corridor thereunder) are intended as the complete integration of all understandings with respect to the subject matter hereof between the Parties. No prior or contemporaneous addition, deletion or other amendment shall have any force or

effect unless embodied in writing. No subsequent novation, renewal, addition, deletion or other amendment hereto shall have any force or effect unless embodied in a written amendment or other agreement executed by the authorized representatives of the Parties.

12.8 Captions and Headings.

The captions and headings set forth herein are for convenience of reference only and shall not be construed so as to define or limit the terms and provisions hereof.

12.9 Successors and Assigns.

12.9.1 Assignment. This Agreement and the terms, covenants and conditions hereof shall be binding upon, and inure to the benefit of, the Parties and, except as expressly limited herein, their respective permitted successors and assigns. The qualifications and reputation of RTD are material inducements to UP in entering into this Agreement. Therefore, RTD may not assign, in whole or in part, any of its rights or delegate any of its duties under this Agreement (an "Assignment"), to any third party without the prior written consent of UP, which consent may be withheld in UP's sole discretion. Without limiting the generality of the foregoing, no third party shall be eligible to become an assignee until and unless it has been qualified as a Qualified Proposed Assignee pursuant to Section 12.9.2 hereof. Any Assignment, in whole or in part, or attempted Assignment, in whole or in part, by RTD whether voluntary, by operation of law or otherwise, in violation of this Section 12.9, shall be absolutely void.

12.9.2 RTD shall make its request for UP's consent to an Assignment in writing (for each proposed Assignment, a "Consent Request") and shall include with such request the proposed form of agreement that RTD intends to use to formalize such Assignment and shall include an update of the qualifying information required to be delivered pursuant to this Section 12.9.2. The assignment and assumption agreement shall, among other things (i) specify the rights and obligations of RTD that will be assigned, with reference to this Agreement and any other document(s) that are the subject of such Assignment, (ii) expressly provide that the assignee shall assume and be bound by the terms and conditions of this Agreement and any other document(s) that are the subject of such Assignment, (iii) expressly provide that RTD shall remain primarily liable to UP for such assigned rights and delegated duties, and (iv) expressly provide that the provisions described in Section 12.10 below shall not inure to the benefit of such assignee.

12.9.3 Within thirty (30) days after the later of (i) UP's receipt of a Consent Request or (ii) UP's receipt of the update of the qualifying information described in Section 12.9.2, UP shall respond to RTD in writing setting forth (a) UP's consent to such Assignment, (b) UP's refusal to consent to such Assignment or (c) UP's conditional consent to such Assignment setting forth the conditions that RTD or such proposed assignee shall satisfy prior to obtaining UP's consent (which conditions may include revisions to the assignment and assumption agreement). Should UP fail to provide RTD with a written response to any Consent Request within such thirty (30) day period, UP shall have been deemed to have refused consent to such Assignment.

12.9.4 Notwithstanding anything to the contrary contained herein or in any assignment and assumption agreement, (a) no Assignment shall release RTD from any of RTD's rights or obligations under this Agreement or any documents subject to the Assignment, and (b) RTD shall remain primarily liable to UP for all such assigned rights or delegated duties. RTD shall, no later than ten (10) days after the effective date thereof, provide UP with a fully executed copy of each assignment and assumption agreement.

12.9.5 Qualified Proposed Assignees.

Whenever RTD desires to make an Assignment, RTD shall seek UP's prior written approval of the proposed assignee as a "Qualified Proposed Assignee." All requests for UP's approval under this Section 12.9.5 shall be in writing, shall state that RTD intends to assign all or a portion of its rights and obligations under this Agreement to such proposed assignee, shall describe the scope of the rights and obligations that RTD intends to assign, and shall specify in detail the following qualifying information:

(a) legal name and address of the proposed assignee and the names, addresses and telephone numbers of the persons that own or have control of the proposed assignee;

(b) information regarding the proposed assignee's prior business experience that may be relevant to UP;

(c) bank and other credit references, business reputation references, financial statements and such other information as UP may reasonably require to assess the proposed assignee's business and financial responsibility and standing;

(d) any other background information on such proposed assignee obtained by RTD in connection with the Project; and

(e) any other follow-up information regarding such proposed assignee as RTD may deem to be material or as may be requested by UP in its reasonable discretion.

Within thirty (30) days after the later of (i) UP's receipt of RTD's request for approval of any proposed assignee or (ii) UP's receipt of the necessary qualifying information regarding such proposed assignee, UP shall provide RTD with written notice of UP's approval or disapproval of such proposed assignee as a Qualified Proposed Assignee. UP's failure to respond within such thirty (30) day period shall be deemed to be a disapproval by UP of the proposed assignee. Notwithstanding anything to the contrary contained in this Section 12.9.5, an approval by UP of a Qualified Proposed Assignee hereunder shall not be deemed to be a consent to an Assignment under Section 12.9.1.

12.10 Limitations Specific to RTD.

Notwithstanding anything to the contrary contained in this Agreement, due to the special status of RTD as a political subdivision of the State of Colorado, the following limitations shall apply with respect to RTD in its capacity as a Party hereto, only to the extent required by law (including without limitation any amendments to the Constitution of the State of Colorado) from

time to time for purposes of enforceability: (a) the damages recoverable hereunder shall exclude punitive and exemplary damages; (b) RTD's waiver of governmental immunity and liability for indemnifying UP Indemnitees under this Agreement with respect to claims based upon bodily injury, death and/or property damage shall be limited to the monetary levels of RTD's applicable insurance coverage requirements; and (c) nothing in this Agreement shall be construed as a multi-year fiscal obligation. In no event shall these limitations apply to or inure to the benefit of any successor or assign of RTD. On or before each anniversary date of this Agreement, RTD shall deliver to UP (i) certificates evidencing RTD's insurance policy renewals and (ii) evidence of the annual appropriations authorized by RTD's board of directors to satisfy RTD's obligations and liabilities under this Agreement.

12.11 RTD's Review of UP's Records.

So much of the books, accounts and records of UP as is related to any construction costs reimbursable to UP by RTD hereunder shall, during business hours, be open to inspection by the authorized representatives and agents of RTD, and to any representative of the Federal Transit Administration or any other federal agency with oversight responsibility for RTD's Passenger Rail System. All accounting records and other supporting papers shall be maintained for a minimum of three (3) years from the date of the completion of RTD's Project on the East Corridor.

12.12 Survivability.

The Parties agree that their respective rights, duties and obligations existing under any provision which by its terms imposes an obligation on RTD or UP that is continuing in nature shall survive the termination of this Agreement, regardless of whether such termination is effected through mutual agreement or default or breach of this Agreement.

12.13 Remedies Non-exclusive.

In the event that either RTD or UP fails to perform or comply with any of its obligations or the terms contained in this Agreement, the non-defaulting party shall have all rights and remedies available at law or in equity, which remedies shall be non-exclusive unless specified otherwise in this Agreement. RTD and UP, for themselves and their successors and assigns, hereby waive the remedies of consequential and punitive or exemplary damages against the other party. Moreover, the indemnities and remedies contained in this Agreement shall be in addition to (and not in limitation of), and without prejudice to or limitation of any indemnity provisions or legal remedies in the Engineering Agreement, the Transfer Agreement (or any document executed in connection with the closing thereunder) or any other remedies at law or in equity.

12.14 Separate Counterparts.

This Agreement may be executed in one (1) or more counterparts, each of which, when so executed, shall be deemed to be an original. Such counterparts shall together constitute and be one and the same instrument.

EXECUTED by UP and RTD as of the Effective Date.

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

By: _____
Name: _____
Title: _____

APPROVED AS TO LEGAL FORM FOR THE REGIONAL TRANSPORTATION DISTRICT:

By: _____
Legal Counsel

REGIONAL TRANSPORTATION DISTRICT,
a political subdivision of the State of Colorado

By: _____
Name: _____
Title: General Manager

Exhibit A

(Attached to and made a part of the
Operations Agreement – Limon and Greeley Subdivisions/East Corridor
between Union Pacific Railroad Company
and Regional Transportation District)

Description of the Lines

(see attached)

7

Exhibit 7

Form of
Operations Agreement
Moffat Tunnel Subdivision / Gold Line

[attached hereto]

FASTRACKS PROJECT

OPERATIONS AGREEMENT
MOFFAT TUNNEL SUBDIVISION / GOLD LINE

Between

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

and

REGIONAL TRANSPORTATION DISTRICT,
a political subdivision of the State of Colorado

as of _____, 2010

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OPERATIONS AGREEMENT –
MOFFAT TUNNEL SUBDIVISION/GOLD LINE

THIS OPERATIONS AGREEMENT – MOFFAT TUNNEL SUBDIVISION/GOLD LINE ("Agreement") is dated effective _____, 2010 (the "Effective Date"), by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("UP") and REGIONAL TRANSPORTATION DISTRICT, a political subdivision of the State of Colorado ("RTD") (each, a "Party" and collectively, the "Parties").

RECITALS

A. In connection with RTD's FasTracks Passenger Rail network pursuant to the FasTracks plan adopted by the RTD Board of Directors on April 22, 2004 (the "Project"), RTD has acquired a portion of UP's Moffat Tunnel Subdivision in the Counties of Adams and Jefferson, Colorado, for RTD's Gold Line.

B. The Parties will each operate separate portions of the Lines (defined below) that are generally parallel to and contiguous with one another, and wish to set forth in this Agreement certain terms and conditions for those operations. UPRR also has the continuing right to approve plans and to inspect construction of the Project improvements on the Gold Line pursuant to the Engineering Agreement (defined below). In addition, the Parties wish to set forth certain obligations of RTD with respect to the signal interface system that affects several locations along UP's Moffat Tunnel Subdivision.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, RTD and UP hereby agree as follows:

ARTICLE 1 – DEFINITIONS

1.1 Definitions.

The following capitalized terms shall have the following meanings:

"Agreement" shall mean this Operations Agreement – Moffat Tunnel Subdivision/Gold Line, dated as of the Effective Date, by and between UP and RTD.

"Assignment" shall have the meaning set forth in Section 12.9.1 below.

"Commuter Rail Service" shall mean the operation of passenger rail trains by or for RTD, and related activities and operations over any portion or all of the Gold Line.

"Completion Date" shall mean the date stated in a written notice delivered by RTD to UP, on which RTD has substantially completed its initial Project construction and intends to begin Commuter Rail Service.

"Concession Agreement" shall mean an agreement between RTD and its Concessionaire setting forth the terms and conditions of Concessionaire's performance of Commuter Rail Service, including all construction and maintenance related thereto.

"Concessionaire" shall mean any party engaged by RTD from time to time pursuant to a Concession Agreement.

"Consent Request" shall have the meaning set forth in Section 12.9.2 below.

"Construction Commencement Date" shall mean that date stated in a written notice delivered by RTD to UP, which date shall be no earlier than ninety (90) days after the date that UP receives such notice, as the date upon which RTD intends to commence initial Project construction on the Gold Line.

"Customary Additives" shall mean elements of cost added to billings that generally are calculated as a percentage of direct labor costs and are intended to compensate for, without limitation, paid holidays, vacation and personal leave days, health and welfare benefits, payroll taxes and administrative and supervisory expenses that include direct and general overhead, inclusive of a customary one percent (1%) additive for special administrative costs related to billing preparation, and are subject to periodic changes depending upon industry practices.

"Deed" shall mean, collectively, those two (2) Quitclaim Deeds from UP as Grantor to RTD as Grantee, dated of even date herewith and recorded, as applicable, in the Office of the Clerk and Recorder of either Adams County or Jefferson County, Colorado.

"Effective Date" shall mean _____, 2010.

"Emergency Plans" shall have the meaning set forth in Section 6.2.1 below.

"Engineering Agreement" shall mean the Agreement Regarding Engineering Design for Moffat Tunnel Subdivision/Gold Line Modifications, between the Parties, dated March 13, 2009, as amended and/or restated from time to time.

"Environmental Law(s)" shall mean any and all applicable laws, statutes, regulations, enforceable requirements, orders, decrees, agreements, judgments or injunctions validly issued, promulgated or entered by any court or governmental agency with jurisdiction, relating to the environment, to preservation or reclamation of natural resources, or to the management, release or threatened release of contaminants, including, without limitation, the Hazardous Substances Transportation Act (49 U.S.C. § 1802 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 et seq.), as amended by the Superfund Amendments and Reauthorization Act of 1986, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 et seq.) and the Hazardous and Solid Waste Amendments of 1984, the Water Pollution Control Act (33 U.S.C. § 1251 et seq.), as amended by the Clean Air Act Amendments of 1977, the Clean Air

Act of 1970 (42 U.S.C. § 7401 et seq.), as amended by the Clean Air Act Amendments of 1990, the Safe Drinking Water Act (42 U.S.C. § 300f et seq.), the Toxic Substances Control Act of 1976 (15 U.S.C. § 2601 et seq.), any similar or implementing state law, and all amendments thereto and regulations or rules promulgated thereunder.

"Equipment" shall mean trains, locomotives, freight cars, intermodal units, passenger cars, cabooses, vehicles and other machinery in the possession, account, custody or control of a Party to this Agreement and capable of being operated on railroad tracks or capable of being operated on right of way for purposes of maintenance, repair or renewal of such railroad tracks.

"Flyovers" shall mean RTD's Bridges and Overpasses and the Flyover Easement Properties associated therewith, as described in the three (3) Flyover Easement Agreements between the Parties and dated of even date herewith, with respect to flyovers near 41st Street, near Utah Junction, and west of Sheridan Boulevard.

"Force Majeure Event" shall mean any occurrence beyond a Party's reasonable control and/or beyond the reasonable control of its vendors and contractors, including without limitation a riot, insurrection, act of terrorism or war, strikes or lockouts, derailments, wrecks, freight embargoes, inability to procure critical materials, fire, earthquake, flood, cloudburst, tornado or other phenomena of nature beyond the power of a party to foresee, accidents, or other unforeseeable circumstances (such as encountering historical artifacts or burial grounds). A rain, windstorm or other natural phenomenon of normal intensity, based on U.S. Weather Bureau reports for a particular locality and for the particular season of the year during which the subject work is being prosecuted, shall not be deemed a Force Majeure Event.

"Foul" or "Fouling" shall mean (i) the existence, movement, placement of material, equipment and/or personnel on any track, or within twenty-five (25) feet of any track, or near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track, or (ii) any other activity which in the reasonable opinion of either Party may interfere with such Party's operations or UP Easements, without regard to which Party owns the land on which such material, equipment and/or personnel is located.

"FRA" shall mean the Federal Railroad Administration or any successor federal agency.

"Functionality" shall mean, as determined by UP in its reasonable discretion, that level of freight rail service equivalent to the level of freight rail service provided by UP within the immediate vicinity of the Moffat Tunnel Subdivision as of the date of this Agreement, with respect to safety and to UP's current levels of time efficiency and cost effectiveness in providing such service.

"Future Easements" shall have the meaning set forth in Section 2.1 below.

"Gold Line" shall mean that portion of the Lines known as RTD's Gold Line, including all Trackage and other improvements thereon, that is owned, operated and/or controlled by RTD at any time from and after the date of this Agreement (whether acquired from UP or from third parties).

"Impacting Party" has the meaning set forth in Article 3 below.

"Lines" shall mean both the UP Property and the Gold Line, generally located (i) east to west between UP's MP 4.4 and MP 6.5, and (ii) near UP's MP 3.4 at Utah Junction where the UP Property and the Gold Line have boundary lines lying within one hundred (100) feet of each other, as both areas are generally shown on Exhibit A attached hereto. The "Lines" shall exclude the Flyovers, which are governed by the Flyover Easement Agreements.

"Loss" or "Losses" shall mean all losses, damages, claims, demands, costs (including without limitation, Customary Additives), liabilities, judgments and civil penalties, fees and expenses of any nature arising out of or in connection with the death of or injury to persons or damage to or destruction of property (including repair and replacement expenses) and/or natural resources. "Loss" or "Losses" also shall include without limitation (i) investigation costs, cleanup costs, and remediation costs attributable to spills, emissions, discharges or other releases of hazardous materials; (ii) reduced revenues of UP, reduced fare box revenues of RTD, and other economic losses of the Parties to the extent the Party claiming such losses can demonstrate that either damage to or destruction of property, or disruption of freight or passenger rail service, was the proximate cause of such losses; (iii) costs and expenses incurred in connection with the investigation, adjustment and defense of any claim, suit, appeal or arbitration pertaining to a Loss, including reasonable attorneys' and expert witness fees; and (iv) salaries or wages and associated benefits of, and out-of-pocket expenses incurred by or with respect to, employees of either Party engaged directly in such investigation, adjustment and defense and a reasonable amount of allocated salaries and wages of employees providing support services to such employees so engaged directly in such work.

"MP" shall refer to any of UP's mileposts on the Moffat Tunnel Subdivision.

"Party" shall mean UP or RTD, as applicable, and "Parties" shall mean collectively UP and RTD.

"Project" shall have the meaning set forth in Recital A.

"PTC" shall have the meaning set forth in Section 2.4 below.

"Qualified Proposed Assignee" shall have the meaning set forth in Section 12.9.5 below.

"Right of Entry Agreement" shall have the meaning set forth in Section 4.2.2 below.

"RTD" shall mean Regional Transportation District, a political subdivision of the State of Colorado.

"RTD Property" shall have the meaning set forth in Recital A, and shall exclude the Flyovers.

"STB" shall mean the Surface Transportation Board or any successor federal agency.

"Trackage" shall mean the existing and/or future railroad tracks and railroad-related equipment, facilities and transportation systems and utilities located on the Lines or appurtenant

thereto, and all improvements, fixtures and structures located on the Lines, and all changes and/or additions thereto.

"Train" or "Trains" shall consist of one or more locomotive units with or without maintenance equipment, freight or passenger cars attached thereto in the possession, account, custody or control of a Party hereto, or one or more self-propelled passenger cars in the possession, account, custody or control of RTD.

"Transfer Agreement" means that certain Property Transfer and Railroad Relocation Agreement by and between UP and RTD dated effective _____, 2010.

"UP" shall mean Union Pacific Railroad Company, a Delaware corporation.

"UP Affiliate(s)" shall mean any person or entity that (i) holds beneficially, directly or indirectly, fifty percent (50%) or more of the outstanding capital stock, shares or equity interests of UP, or (ii) controls, is controlled by, or is a rail carrier under common control with UP. As used in this definition, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of UP, whether through ownership of voting securities, by contract or otherwise.

"UP Easements" shall mean those easements reserved in the Deed by UP, its successors and assigns (including, without limitation, lessees, sublessees, easement owners and licensees of UP).

"UP Indemnitees" shall mean UP, UP Affiliates and the officers, directors and employees of any of them.

"UP Invoices" shall have the meaning set forth in Section 5.2 below.

"UP Property" shall mean that portion of the Lines known as UP's Moffat Tunnel Subdivision, including all Trackage and other improvements thereon, that is owned by UP at any time from and after the date of this Agreement.

ARTICLE 2 - USE OF LINES

2.1 Other Agreements; Future Easements; Maintenance of Certain Improvements.

2.1.1 Each Party's use of the Lines shall be subject to the terms and conditions of this Agreement, the Engineering Agreement, the Deed and, as applicable, the Future Easements.

2.1.2 After UP's approval of RTD's initial Project designs at the ninety-five percent (95%) design completion level in accordance with the Engineering Agreement, the Parties will consider whether new license or easement agreements (and/or amendment(s) to this Agreement) may be needed for certain portions of the Lines (collectively, any such licenses or easements that are granted will be referred to as the "Future Easements"). The Parties acknowledge that UP's approval of such Project designs does not constitute a grant of any Future Easement(s) and that Future Easements may only be granted pursuant to this Agreement. Such

Future Easements may be requested by either Party for purposes of access, access roadways, drainage, drainage facilities, utilities and/or maintenance of Trackage on the Lines. Future Easements granted to RTD shall be subject to the payment of consideration therefor, unless the Future Easement is solely for drainage swales or subsurface drainage facilities that provide drainage for both the UP Property and the Gold Line and for RTD access to maintain such areas (with no related surface structures). All UP requests for Future Easements necessitated by RTD's Project plans shall be granted by RTD on terms reasonably acceptable to UP, at no cost to UP. UP shall have no obligation to grant any Future Easements but shall review all RTD requests for Future Easements in UP's sole discretion. **[RTD: RTD must pay for general access rights; but UP will not charge for the presence of approved drainage swales or subsurface drainage facilities or for RTD's right to maintain such areas.]**

2.1.3 RTD acknowledges that, due to the proximity of its Commuter Rail Service to the UP Property, UP will require that substantial safety and other corridor protection improvements be included in the Project designs, such as crash walls and fencing. The Parties hereby agree that all such safety and other corridor protection improvements approved by UP shall be constructed, operated and maintained solely by RTD, to UP's standards and in accordance with UP's protocols (including, without limitation, graffiti removal and weed control), at RTD's sole cost and expense - whether located on the Gold Line or on the UP Property - and that any applicable Future Easements shall reaffirm RTD's obligations for such performance and payment.

2.1.4 The Parties also contemplate that, due to the proximity of the Gold Line to the UP Property, certain drainage facilities may be included in the Project designs to handle the drainage on and from the Lines. The Parties hereby agree that all such drainage facilities approved by UP shall be constructed, operated and maintained solely by RTD, to UP's standards and in accordance with UP's protocols (including, without limitation, graffiti removal and weed control), at RTD's sole cost and expense - whether located on the Gold Line or on the UP Property - and that any applicable Future Easements shall reaffirm RTD's obligations for such performance and payment.

2.2 Dispatching.

At all times during the term of this Agreement, each Party shall have exclusive control over and responsibility for dispatching its portion of the Lines.

2.3 Maintenance.

Except for RTD's sole maintenance responsibilities described in Sections 2.1.3 and 2.1.4 above and/or described in any Future Easements, at all times during the term of this Agreement each Party shall have exclusive control over and responsibility for maintaining its portion of the Lines.

2.4 Positive Train Control.

The Parties agree that if positive train control ("PTC") is required by law to be used by either Party's Trains operating on the Lines, (a) UP shall select the PTC system to be used by **[(on condition that any such PTC system shall enable RTD to have PTC that is compatible**

with the BNSF Railway PTC system)] both Parties, based on the design standards acceptable to UP in its sole and absolute discretion, and (b) except as otherwise provided in this Section 2.4, RTD shall be responsible for all costs related to the installation and maintenance of the PTC systems, except for any PTC equipment that will be installed on UP's Trains. Notwithstanding the foregoing, UP shall be responsible for the initial payment of costs related to the installation and maintenance of any PTC systems that may be required for the Lines under federal law prior to the Construction Commencement Date that do not arise out of and would have occurred regardless of RTD's ownership of or activities relating to the Lines, on condition that if RTD's presence or activities on the Lines at any time after the Construction Commencement Date requires installation by UP of PTC, RTD shall reimburse UP for the depreciated value of the PTC system (calculated using straight-line depreciation) based on the remaining useful life of such PTC system as of the Construction Commencement Date. UP's PTC implementation costs shall be evidenced by an invoice delivered to RTD within six (6) months after the Construction Commencement Date and RTD shall reimburse UP therefor on the earlier of: (i) the date three (3) months after receipt of such invoice, or (ii) the Completion Date. **[RTD: BNSF compatibility insert is being reviewed by UP.]**

ARTICLE 3 - CLEARING TRACKAGE

If, by any reason of mechanical failure, wreck or for any other cause, the Trains or Equipment of either Party (the "Impacting Party") (i) Foul the Trackage of the other Party, or (ii) cause the Trains or Equipment of the other Party to become stalled, disabled or otherwise unable to proceed, then the Impacting Party shall within a reasonable time be responsible for furnishing motive power or such other assistance as may be necessary to haul, help, push or move such Trains or Equipment and clear the other Party's Trackage. If the Impacting Party does not clear its Trains or Equipment from the other Party's Trackage within a reasonable time (which shall be interpreted to include a timeframe that is adequate in light of the scheduled uses of the Trackage), the other Party may clear such Trains or Equipment from its Trackage.

ARTICLE 4 - RIGHTS OF ENTRY

4.1 Construction of Project.

RTD will design and construct its Project improvements subject to the terms of this Agreement, the Engineering Agreement and any Future Easements (and, as applicable, the Flyover Easement Agreements).

4.2 Rights of Entry.

4.2.1 A Party shall notify the joint working group (described in Section 4.3 below) at least sixty (60) days prior to commencing any activity or work that could result in Fouling the Trackage of the other Party or that could encroach upon the portion of the Lines owned or controlled by the other Party. Notwithstanding the foregoing, in the event of any occurrence governed by Article 3 above, or with respect to notifying the other Party about an unsafe condition that could result in Fouling, the sixty (60) day period shall not apply.

4.2.2 A right of entry agreement using the permitting Party's then-standard form of such agreement (a "Right of Entry Agreement") may be requested at any time following

notification to the joint working group, and such request must be accompanied by all relevant drawings, specifications and information required by the permitting Party. The permitting Party will review such request within a reasonable time, and approval is subject to the permitting Party's sole discretion. Neither Party nor its contractors, subcontractors or agents shall commence any activity or work that could result in Fouling the Trackage of the other Party or that could encroach upon the portion of the Lines owned or controlled by the other Party unless and until the Party and such contractor(s), subcontractor(s) and agent(s) have each executed the Right of Entry Agreements.

4.2.3 Notwithstanding the terms of any such Right of Entry Agreements: UP shall not be required to pay the administrative fee or any flagging fees or other costs or fees provided for in a Right of Entry Agreement. As applicable, each Party will inform its contractors, subcontractors and agents of the need to execute a Right of Entry Agreement. Both Parties affirm that they will not seek to amend any of the terms or conditions of a Right of Entry Agreement entered into by the other Party or its contractors, subcontractors or agents after the date on which such Party has commenced work thereunder; provided that the permitting Party reserves the right to cause the other Party and its contractors, subcontractors and agents to enter into an amended or modified Right of Entry Agreement after commencement of work if such amendments or modifications are required by law or are otherwise being made by the permitting Party to its standard form of right of entry agreement.

4.3 Joint Working Group.

UP and RTD shall work together in good faith in order to coordinate their respective construction, maintenance, repair, Trackage clearance and other activities along the Lines that may impact the other. UP and RTD shall establish a joint working group for coordinating such activities. Each Party shall designate a representative for such joint working group and the representatives shall establish a schedule for joint meetings and bring such other individuals to such meetings as they deem appropriate to expedite the processes. In the event of a mechanical failure or wreck requiring Trackage to be cleared, the Impacting Party shall immediately notify the joint working group.

The initial designated members of the joint working group are:

For RTD:

Assistant General Manager for Capital Projects
1560 Broadway Seventh Floor
Denver CO 80202
Attention: Rick Clarke

with a copy to:

General Counsel
1600 Blake Street
Denver, CO 80202
Attention: Marla Lien

For UP:

General Superintendent - Denver Service Unit
1400 West 52nd Avenue
Denver, CO 80221

with a copy to:

Union Pacific Railroad Company
Senior Counsel – Real Estate
1400 Douglas Street
Mail Stop 1580
Omaha, NE 68179

ARTICLE 5 – SIGNAL INTERFACE COSTS

5.1 RTD's Reimbursement Obligation.

All of UP's costs, fees and expenses, including Customary Additives (whether such work is performed by UP or its contractors, subcontractors, suppliers and/or agents) related to designing, constructing, operating and maintaining the interface between UP's signal system and RTD's signal system shall be reimbursed by RTD to UP in accordance with Section 5.2 below.

5.2 Reimbursement Procedure.

RTD shall pay UP for one hundred percent (100%) of the signal interface costs, as follows:

(a) UP shall send RTD invoices ("UP Invoices") not more frequently than monthly describing the amount to be paid by RTD to UP for all signal interface costs, together with such backup documentation as RTD may reasonably request to verify the requested payment amounts. Payment from RTD shall be due within thirty (30) days of receipt of a UP Invoice. RTD acknowledges that the UP Invoices and backup documentation will be in electronic format utilizing UP's Contract Administration System.

(b) Any amounts owing that remain unpaid forty-five (45) days after RTD receives a UP Invoice, plus all fees, charges and damages that accrue due to RTD's failure to make payment within thirty (30) days after receipt of a UP Invoice, shall accrue interest at one percent (1%) per month.

ARTICLE 6 – OPERATING AUTHORITY; OPERATIONS SAFETY; ENVIRONMENTAL NOTIFICATION

6.1 Operating Authority.

RTD represents to UP that, as of the Effective Date, RTD has sought confirmation from STB that RTD's acquisition of the Gold Line is not subject to the regulatory authority of the STB and that RTD does not by virtue of such acquisition acquire any right or obligation to provide common carrier freight transportation on the Lines, and that such determination by the STB is pending. In no event shall RTD grant any right to seek operating authority on all or any portion of the Gold Line at any time to any freight carrier other than UP.

6.2 Operations Safety.

Prior to operating any Train in connection with Commuter Rail Service (whether or not containing passengers) on the Gold Line, RTD shall prepare or cause to be prepared the following operations safety documents with respect to the Gold Line:

6.2.1 RTD's Passenger Train Emergency Preparedness Plan and Passenger Train Service Interruption and Emergency Response Plan, developed by RTD or its Concessionaire and coordinated with UP and provided to UP upon request, which shall, among other things, (i) meet the requirements of the FRA (49 C.F.R. Part 239) and all other laws, rules and regulations then applicable to its Commuter Rail Service; (ii) include preparations for and responses to derailments; fatalities at at-grade crossings; passenger or employee fatality, serious illness or injury requiring admission to a hospital; earthquake; train evacuation; and security threats such as bomb threats; (iii) include accommodation assistance of disabled persons during emergencies; (iv) require the Concessionaire and UP to assist in the coordination of emergency preparedness with local fire, police and other public agencies, and to offer assistance in training the personnel of such agencies for emergency preparedness; and, (v) include a Weather Emergency Plan which shall be designed to re-establish Commuter Rail Service during and after a weather event causing a disruption of such service as soon as practical for safe and prudent operation, including programs for resumption of normal service, prompt dissemination of correct information to riders regarding schedules and the condition of service, emergency deployment of manpower and equipment, and an emergency budget, specifying maximum labor positions and estimated expenses, which shall take effect when the Weather Emergency Plan is in effect ("Emergency Plans").

6.2.2 RTD's Operations Safety Manual, developed by RTD or its Concessionaire, which will be provided to UP, which manual shall include:

(a) safety guidelines for the safe performance of Commuter Rail Service and the prevention of accidents, injuries and illnesses in providing such service, including procedures for maintenance and inspection of vehicles and equipment as required to maintain safe operations; and

(b) a written safety manual covering all aspects of the Commuter Rail Service, which shall be distributed to all persons responsible for the provision of Commuter Rail Service.

6.2.3 Such operations safety documents shall be prepared to coordinate with UP's existing plans and procedures and in coordination with UP.

6.3 Environmental Notification.

Each Party shall give the other immediate notice, if to UP, to RMCC at 1-888-877-7267 and if to RTD to its Assistant General Manager for Safety at 303-299-4038, and to the joint working group, in the event such Party has actual knowledge of any of the following events related to the Lines that could impact the other Party's portion of the Lines: (i) a release of hazardous substances in violation of Environmental Laws, (ii) any other type of violation of Environmental Laws, or (iii) an inspection or inquiry by governmental authorities charged with enforcing Environmental Laws. Each Party also shall give the other Party notice of all material measures undertaken by it to investigate, remediate, respond to or otherwise cure any such violation. If UP is required to investigate, remediate, respond to or otherwise cure any such violation to a higher standard than would otherwise be applicable to UP with respect to its use of the UP Property, due to RTD's use or ownership of the Gold Line, then RTD shall reimburse UP for the incremental costs, fees and expenses related to meeting such higher standard (using the same process outlined in Section 5.2 above for signal interface cost reimbursements).

ARTICLE 7 - INSURANCE

7.1 RTD's Insurance Coverage – During Construction.

In addition to the provisions set forth in the Transfer Agreement and Section 7.4, RTD, at its sole cost and expense, shall procure and maintain, for the period beginning on the Construction Commencement Date and continuing through the Completion Date, the following insurance coverages:

7.1.1 Liability insurance: Commercial general liability (CGL) with a limit of not less than $200,000,000 each occurrence and an aggregate limit of not less than $200,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 or ISO claims made form CG 00 02 12 04 (or substitute forms providing equivalent coverage). If RTD utilizes a claims-made form to meet this requirement RTD warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Agreement. RTD also agrees to purchase an extended reporting period if the retroactive date is advanced or if the policy is canceled or not renewed and not replaced by another claims-made policy with the same (or an earlier) retroactive date during the term of this Agreement. The policy must also contain the following endorsement, which must be stated on the certificate of insurance: "Contractual Liability Railroads" ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site, and the policy must be endorsed to provide coverage for UP's personal property (including but not limited to foreign rolling stock) that may, for any reason, be in RTD's care, custody or control.

7.1.2 Automobile insurance: Business automobile coverage written on ISO form CA 00 01 03 06 (or substitute form providing equivalent liability coverage) with a limit not less $200,000,000 for each accident. Such insurance shall cover liability arising out of any automobile (including owned, hired, and non-owned automobiles). The policy must contain the

following endorsements, which must be stated on the certificate of insurance: Coverage For Certain Operations In Connection With Railroads" ISO form CA 20 70 10 01 (or substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site, and Motor Carrier Act Endorsement - hazardous materials clean up (MCS-90) if required by law.

7.1.3 Workers' Compensation and Employers' Liability insurance: Coverage must include but not be limited to: RTD's statutory liability under the workers' compensation laws of the state of Colorado, Employers' Liability (Part B) with limits of at least $500,000 each accident, $500,000 employee for disease and $500,000 policy limit for disease. If RTD is self-insured, evidence of state approval and excess workers' compensation coverage must be provided. Coverage must include liability arising out of the U.S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

7.1.4 Railroad Protective Liability insurance: RTD must maintain "Railroad Protective Liability" insurance written on ISO occurrence form CG 00 35 12 04 (or substitute form providing equivalent coverage) on behalf of UP as Named Insured, with a limit of not less than $25,000,000 per occurrence and an aggregate of $25,000,000. A Binder of Insurance stating the policy is in place must be submitted to UP before work may be commenced and until the original policy is received by UP.

7.1.5 Pollution Liability insurance: Legal liability applicable to bodily injury; property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims; all in connection with any Loss arising from the insured operations, with limits of at least $5,000,000 per occurrence and an aggregate limit of $10,000,000.

7.2 RTD's Insurance Coverage – Post-Completion Date.

In addition to the provisions set forth in the Transfer Agreement and Section 7.4, below, RTD, at its sole cost and expense, shall procure and maintain, for the period beginning on the Completion Date and continuing until termination of this Agreement, the following insurance coverages:

7.2.1 Liability insurance: Commercial general liability (CGL) with a limit of not less than $400,000,000 each occurrence and an aggregate limit of not less than $400,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 or ISO claims made form CG 00 02 12 04 (or substitute forms providing equivalent coverage). RTD also agrees to purchase an extended reporting period if the retroactive date is advanced or if the policy is canceled or not renewed and not replaced by another claims-made policy with the same (or an earlier) retroactive date during the term of this Agreement. The policy must also contain the following endorsement, which must be stated on the certificate of insurance: "Contractual Liability Railroads" ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site, and the policy must be endorsed to provide coverage for UP's personal property (including but not limited to foreign rolling stock) that may, for any reason, be in RTD's care, custody or control.

7.2.2 Automobile insurance: Business automobile coverage written on ISO form CA 00 01 03 06 (or substitute form providing equivalent liability coverage) with a limit not less $400,000,000 for each accident. Such insurance shall cover liability arising out of any automobile (including owned, hired, and non-owned automobiles). The policy must contain the following endorsements, which must be stated on the certificate of insurance: Coverage For Certain Operations In Connection With Railroads" ISO form CA 20 70 10 01 (or substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site, and Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

7.2.3 Workers' Compensation and Employers' Liability insurance: Coverage must include but not be limited to: RTD's statutory liability under the workers' compensation laws of the state of Colorado. Employers' Liability (Part B) with limits of at least $500,000 each accident, $500,000 employee for disease. If RTD is self-insured, evidence of state approval and excess workers' compensation coverage must be provided. Coverage must include liability arising out of the U.S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

7.2.4 Pollution Liability insurance: Legal liability applicable to bodily injury; property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims: all in connection with any Loss arising from the insured operations, with limits of at least $5,000,000 per occurrence and an aggregate limit of $10,000,000.

7.3 RTD's Insurance Coverage – During the Term of this Agreement.

The following applies to all insurance coverages required to be obtained by RTD pursuant to this Article 7:

7.3.1 Umbrella or Excess insurance: If RTD utilizes umbrella or excess policies to comply with limits of coverage required, these policies must "follow form" and afford no less coverage than the primary policy.

7.3.2 All policy(ies) required above (except worker's compensation and employer's liability) must include UP as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to UP as Additional Insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for UP's negligence whether sole or partial, active or passive.

7.3.3 Any punitive damages exclusion must be deleted (and the deletion indicated on the certificate of insurance), unless (i) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this Agreement, or (ii) RTD would not be liable for such damages pursuant to C.R.S. § 24-10-114, as such statute may be amended.

7.3.4 Prior to commencing any work on the Lines, RTD shall furnish UP with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.

7.3.5 All insurance policies must be written by a reputable insurance company acceptable to UP or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state of Colorado.

7.3.6 RTD hereby waives all rights against UP, UP Affiliates, and their respective agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the workers' compensation and employer's liability or commercial umbrella or excess liability insurance obtained by RTD required by this Agreement (which must be stated on the certificate of insurance).

7.3.7 Subject to Section 12.10 below, the fact that insurance is obtained will not be deemed to release or diminish the liability under the indemnity provisions of this Agreement, and damages recoverable by UP will not be limited by the amount of the required insurance coverage.

7.3.8 In addition to providing coverage for RTD's covenants, liabilities and indemnities under this Agreement, all RTD insurance policies must also provide coverage for RTD's covenants, liabilities and indemnities under the Engineering Agreement.

7.4 Self-Funding.

7.4.1 RTD may elect to self-fund the first $10,000,000 of the coverage limits required hereunder, provided all coverages and named insureds are as set forth in this Article 7. If RTD so elects, it shall secure and maintain an unconditional and irrevocable standby Letter of Credit addressed to UP equal to the then current self-funded portion of the requirement. The issuer of the Letter of Credit shall be a bank with a long term senior debt rating of not less than "A(2)" by Moody's Investment Service or "A" by Standard & Poor's. In the event RTD fails to meet its obligation with respect to claims within the self-funded retention under any insurance policy provided in this Article 7, UP shall have the right, upon ten (10) days notice to RTD, to draw upon the Letter of Credit to satisfy such claims and seek interest from RTD in the amount of ten percent (10%) per annum retrospective to the date of any payment by UP.

7.5 Adjustments.

Within thirty (30) days after any amendment, expiration or repeal, or judicial invalidation or confirmation of the validity of the statutory cap on liability set forth at 49 U.S.C. § 28103, and no more than once on each three (3) year anniversary of the date of this Agreement, RTD and UP shall consider the Losses paid under the insurance and self-funded retentions described in this Article 7, along with any other relevant information, and shall determine whether there are reasonable grounds to adjust the limits of insurance required by this Article 7 or the amount of or maximum for the self-funded retentions. Any disputes with respect to whether there are grounds for such adjustments shall be subject to arbitration in accordance with Article 9. In addition, once every five (5) years UP shall have the right to adjust insurance limits, and insurance

coverages required by this Agreement consistent with inflation and current insurance and risk management practice.

7.6 Review.

UP shall have the right to review and approve commercial insurance policies obtained by RTD for compliance with the obligations set forth in this Article 7; provided that such approval shall not constitute a waiver of any non-compliance with this Article 7.

ARTICLE 8 - LIABILITY AND INDEMNIFICATIONS

8.1 Indemnifications.

RTD agrees to defend and indemnify UP Indemnitees against all claims. suits and demands for Losses arising out of injury or death sustained by any person and/or damage to property with respect to the Lines, when (a) such Loss would not have occurred but for the operation and maintenance of Commuter Rail Service or the construction and/or presence of RTD's infrastructure on the Lines, or (b) such Loss arose out of an incident occurring on the Gold Line. UP agrees to defend and indemnify RTD and its related entities and the officers, directors and employees of any of them, against all claims, suits and demands for Losses arising out of injury or death sustained by any person and/or damage to property with respect to the Lines, when (a) such Loss did not arise out of and would have occurred regardless of the operation and maintenance of Commuter Rail Service or the construction and/or presence of RTD's infrastructure on the Lines, and (b) such Loss arose out of an incident occurring on the UP Property.

8.2 Allocation of Responsibilities.

8.2.1 Without limiting the generality of Section 8.1, any and all Losses arising out of (a) personal injury (including bodily injury and death) to, or property damage suffered by, RTD's passengers, invitees, employees, agents, officers, directors, trustees or any person other than UP operating RTD's Trains or Equipment on the Lines; (b) property damage suffered by RTD; and/or (c) personal injury or property damage suffered by any other persons on the Gold Line (including trespassers); whether or not any such Losses are subject to the cap on liability established in 49 U.S.C. §28103, shall be the responsibility of and borne by RTD. In addition, any and all Losses arising out of (i) personal injury (including bodily injury and death) to, or property damage suffered by, UP's invitees, employees, agents, customers, officers, directors, trustees or any person operating UP's Trains or Equipment on the Lines, or any other persons (including trespassers); (ii) property damage suffered by UP or UP's freight rail customers; and/or (iii) the direct or indirect release, discharge or spillage of Hazardous Materials; whether or not any such Losses are subject to the cap on liability established in 49 USC §28103, shall be the responsibility of and borne by RTD if such Losses would not have arisen but for the operation and maintenance of Commuter Rail Service or the construction and/or presence of RTD's infrastructure on the Lines or if they arose out of an incident occurring on the Gold Line.

8.2.2 In any case where a Party is required under the provisions of this Article 8 to bear the responsibility for a Loss, it shall have the responsibility for cleanup, including all associated costs, of the incident or accident that resulted in such Loss. In the event

the Party responsible for the cleanup fails to clean up the incident or accident within a reasonable time, the other Party may clean up the incident or accident and obtain from the responsible Party reimbursement of all costs and expenses arising from the cleanup, including interest at the rate of eight percent (8%) per annum imposed beginning on the day funds are first advanced for such cleanup provided.

8.2.3 Should UP be forced to suspend freight rail service due to construction or maintenance by RTD, except as may be otherwise agreed to in writing by RTD and UP prior to the start of such work, RTD shall be responsible for all of UP's resulting Losses, as well as UP's lost revenues and increased expenses of any kind or character (both direct and third party expenses).

8.2.4 Neither Party shall (a) seek to nullify, void or set aside the allocation of Losses set forth in this Article 8 by alleging that the other Party has engaged in misconduct or negligence; (b) bring a claim alleging that the other Party has engaged in negligence; or (c) seek to nullify, void or set aside the allocation of Losses set forth in this Article 8 by invoking the doctrine of sovereign immunity, or by alleging that execution of this Agreement by a Party was not within the scope of that Party's authority; or (d) seek to nullify, void or set aside the allocation of Losses set forth in this Article 8 by alleging that any provisions of this Agreement are inconsistent with the provisions of the Colorado Constitution or any other provision of Colorado law; or (e) challenge the enforceability of the Loss allocation provisions set forth in this Article 8. The Parties acknowledge that the provisions of 49 U.S.C. §28103 may preempt the application of certain Colorado laws otherwise applicable to this Article 8.

8.3 Interpretation and Scope of Indemnification.

8.3.1 This Article 8 shall be deemed to be an allocation of financial responsibility for claims pursuant to 49 U.S.C. §28103 (b). For purposes of this Article 8, UP will be deemed to be a rail carrier and RTD will be deemed to be a commuter authority or operator pursuant to 49 U.S.C. §28103 (e)(1), and any claim for a Loss hereunder shall be deemed to be a claim under 49 U.S.C. §28103 (c)(1). Moreover, the indemnities and remedies contained in this Article 8 shall be in addition to (and not in limitation of), and without prejudice to or limitation of any other indemnity provisions or legal remedies in this Agreement or any other remedies at law or in equity.

8.3.2 In any case where a Party is required under the provisions of this Article 8 to bear the responsibility for a Loss, it shall pay, satisfy and discharge such Loss and all judgments that may be rendered by reason thereof and all costs, charges and expenses incident thereto (including all incidental expenses incurred by the indemnified party), and such Party shall forever indemnify, defend and hold harmless the other Party and its directors, officers, agents, employers, shareholders, parent corporation and affiliated companies from, against and with respect to any and all such Loss(es).

8.4 Procedure.

8.4.1 If any claim or demand shall be asserted by any person against an indemnified party under this Section 8.4, the indemnified party shall, within thirty (30) days after

notice of such claim or demand, cause written notice thereof to be given to the indemnifying Party, provided that failure to notify the indemnifying Party shall not relieve the indemnifying Party from any liability which it may have to the indemnified party under this Section 8.4, except to the extent that the rights of the indemnifying Party are in fact prejudiced by such failure. If any such claim or demand shall be brought against the indemnified party and it shall have given notice thereof to the indemnifying Party, the indemnifying Party shall have the right, at its own expense, to control (including the selection of counsel reasonably satisfactory to the indemnified party) or to participate in the defense of, negotiate or settle, any such claim or demand, and the Parties agree to cooperate fully with each other in connection with any such defense, negotiation or settlement. In any event, the indemnified party shall not make any settlement of any claims which might give rise to liability on the part of the indemnifying Party under this Section 8.4 without the prior written consent of the indemnifying Party, which consent shall not be unreasonably withheld, conditioned or delayed.

8.4.2 Subject to the provisions of Section 8.4.1, on each occasion that the indemnified party shall be entitled to indemnification or reimbursement under this Section 8.4, the indemnifying Party shall, at each such time, promptly pay the amount of such indemnification or reimbursement. If the indemnified party shall be entitled to indemnification under this Section 8.4 and the indemnifying Party shall not elect to control any legal proceeding in connection therewith, the indemnifying Party shall pay to the indemnified party an amount equal to the indemnified party's reasonable legal fees and other costs and expenses arising as a result of such proceeding.

8.4.3 Any claims for indemnification must be made in the course of the proceeding in which the Parties are joined. A dispute between the Parties as to the right to indemnification or the amount to which a Party is entitled pursuant to such right with respect to any matter may be submitted to arbitration pursuant to Article 9; provided however, that if either Party or both Parties are named as defendants, third party defendants, cross-claim defendants or are otherwise named as parties to a lawsuit or other legal proceeding initiated by a third party, and such proceeding involves or relates to such indemnification rights, then the Parties shall pursue the resolution of such indemnification issues in that proceeding instead of through the arbitration procedures set forth in Article 9 unless and until (a) any claims relating to indemnification are dismissed from such proceeding or (b) such proceeding is stayed pending a resolution of all claims relating to indemnification.

8.4.4 Not for Benefit of Third Parties.

The provisions of this Article 8 are not intended to confer any right, benefit, or cause of action upon any third party, and are intended solely to deal with the allocation of liability, if any, as between the Parties to this Agreement.

8.5 Tenants and Operators.

Any new tenant or operator on the Lines shall agree to be bound by the provisions of this Article 8 unless otherwise agreed by UP and RTD.

ARTICLE 9 – DISPUTE RESOLUTION AND ARBITRATION

9.1 Submission.

Both RTD and UP shall make reasonable efforts to settle disputes (excepting only those disputes requiring a determination of governmental powers or based upon formation of this Agreement) arising out of their respective rights or obligations under this Agreement, through prompt and diligent negotiations. Upon the written request of either Party, RTD's Manager for Passenger Rail Operations and UP's Project Representative shall participate in such negotiations. If at any time such a dispute shall arise between the Parties in connection with this Agreement that the Parties cannot resolve within thirty (30) days, such dispute shall be submitted to and settled by binding arbitration. The Parties acknowledge that such arbitration may involve the joinder of one or more necessary party(ies) to resolve the disputed matters. Arbitration shall occur in Denver, Colorado, or in another location mutually agreed to by the Parties. Unless otherwise agreed by the Parties, arbitration between the Parties pursuant to this Section 9.1 shall be governed by the rules and procedures set forth in this Article 9.

9.2 Selection of Arbitrator.

If the Parties to the dispute are able to agree upon a single competent and disinterested arbitrator within fifteen (15) days after written notice by one Party of its desire for arbitration to the other Party, then the question or controversy shall be submitted to and settled by that single arbitrator. Otherwise, any Party (the "Notifying Party") may notify the other Party (the "Noticed Party") in writing of its request for arbitration and nomination of one competent and disinterested arbitrator. Within fifteen (15) days after receipt of such notice, the Noticed Party shall appoint a competent and disinterested arbitrator and notify the Notifying Party in writing of such appointment. Should the Noticed Party fail within fifteen (15) days after receipt of such notice to name its arbitrator, said arbitrator may be appointed by the Chief Judge (or acting Chief Judge) of the United States District Court for the District of Colorado upon application of either Party after ten (10) days' written notice to the other Party. The two arbitrators so chosen shall select one additional competent and disinterested arbitrator to complete the board within fifteen (15) days. If the arbitrators so chosen fail to agree upon an additional arbitrator, the additional arbitrator shall, upon application of either Party, be appointed by such judge in the manner heretofore stated, provided that in such case the appointed arbitrator shall have experience in passenger and freight railroad track operations.

9.3 Hearing.

Upon selection of the arbitrator(s), said arbitrator(s) shall, with reasonable diligence and subject to the rights of the Parties under Section 9.6, determine the questions as disclosed in said notice of arbitration, give both Parties reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, take such evidence as the arbitrator(s) shall deem reasonable or as either Party may submit with witnesses required to be sworn, and hear arguments of counsel or others. If an arbitrator declines or fails to act, the Party (or Parties in the case of a single arbitrator) by whom the arbitrator was chosen or said judge shall appoint another to act in the arbitrator's place.

9.4 Decision.

After considering all evidence, testimony and arguments, such single arbitrator or the majority of said board of arbitrators shall promptly (and in no event more than thirty (30) days after the arbitration hearing) state such decision or award and the reasoning for such decision or award in writing which shall be final, binding, and conclusive on all parties to the arbitration when delivered to them. The award rendered by the arbitrator(s) shall be binding on the Parties and may be entered as a judgment in any court having jurisdiction thereof and enforced as between the Parties without further evidentiary proceeding, the same as entered as a judgment in any court having jurisdiction thereof and enforced as between the Parties without further evidentiary proceeding, the same as entered by the court at the conclusion of a judicial proceeding in which no appeal was taken. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under the Agreement shall continue in the manner and form existing prior to the rise of such question. After delivery of such first decision or award, each Party shall forthwith comply with said first decision or award immediately after receiving it.

9.5 Costs.

Each party to the arbitration shall pay all compensation, costs, and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits and counsel. The compensation, cost, and expenses of the single arbitrator in the board of arbitrators shall be paid in equal shares by all parties to the arbitration.

9.6 Discovery.

The parties to arbitration may obtain discovery and offer evidence as directed by the arbitrators but in accordance with the Federal Rules of Civil Procedure Rules 26-37, and Federal Rules of Evidence, as each may be amended from time to time.

ARTICLE 10 – LABOR PROTECTION

RTD covenants for itself, its successors and assigns, to indemnify and exonerate UP against the cost of (and be responsible for) obligations, liability, or claims due to provisions of UP's labor agreements, including labor protective conditions of such agreements, or of labor protective conditions imposed by regulatory agencies or applicable laws. RTD's obligation to indemnify and exonerate shall arise when employees or positions are adversely affected as a result of changes, future contracting out or other removal or termination of work previously, now or hereafter performed by UP's employees to the extent that such change, termination or contracting out is the result of an action taken by RTD, or with the consent of RTD.

ARTICLE 11 - TERMINATION

This Agreement shall terminate upon either Party's complete abandonment of all forms of rail service on its entire portion of the Lines, which abandonment shall under no circumstances be presumed but shall occur only after written notice from the abandoning Party to the other, delivered after the abandoning Party has obtained and complied with all applicable final regulatory approvals.

ARTICLE 12 - ADDITIONAL PROVISIONS

12.1 Notices.

Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be (a) personally delivered; (b) delivered by a reputable overnight courier; or (c) delivered by certified mail, return receipt requested and deposited in the U.S. Mail, postage prepaid. Telecopy notices shall be deemed valid only to the extent they are (i) actually received by the individual to whom addressed and (ii) followed by delivery of actual notice in the manner described above within three (3) business days thereafter. Notices shall be deemed received at the earlier of actual receipt or (y) one (1) business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (z) three (3) business days following deposit in the U.S. Mail, as evidenced by a return receipt. Notices shall be directed to the Parties at their respective addresses shown below, or such other address as either party may, from time to time, specify in writing to the other in the manner described above:

To UP:

Vice President - Engineering
Union Pacific Railroad Company
1416 Dodge Street, Room 1030
Omaha, Nebraska 68179-1000
Telephone: 402-271-4345
Telecopy: 402-271-6674

with copies to:

Union Pacific Railroad Company
Patrick R. McGill, Esq.
Senior Counsel – Real Estate
1400 Douglas Street, Mail Stop 1580
Omaha, NE 68179
Telephone: 402-544-5761
Facsimile: 402-544-0132

Jacobs Chase & Kelley, LLC
Jill K. Rood, Esq.
1050 17th Street, Suite 1500
Denver, CO 80265
Telephone: 303-685-4800
Facsimile: 303-685-4869

To RTD:

Regional Transportation District
Assistant General Manager for Capital Projects
1560 16th Street
Denver, CO 80202
Telephone: 303-299-2300
Facsimile: 303-299-2363

with copies to:

Regional Transportation District
Marla Lien, General Counsel
1600 Blake Street
Denver, CO 80202-1399
Telephone: 303-299-2207
Facsimile: 303-299-2217

Kaplan Kirsch & Rockwell LLP
Stephen Kaplan, Esq.
1675 Broadway, Suite 2300
Denver, CO 80202
Telephone: 303-825-7000
Facsimile: 303-825-7005

12.2 Prohibited Interests.

No officer, member or employee of RTD, no members of RTD's governing body and no other public official or employee of the governing body of any locality included within RTD's geographic area, during his or her tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in this Agreement, any related agreement, or other agreement referenced herein, or the proceeds thereof.

12.3 No Third Party Rights.

Except as expressly set forth herein, the representations, warranties, terms and provisions of this Agreement are for the exclusive benefit of the Parties or their respective successors or assigns, and no other person or entity shall have any right or claim against either Party by reason of any of these terms and provisions or be entitled to enforce any of those terms and provisions against either Party.

12.4 Time of Essence; Force Majeure Event.

Time is important to both Parties in the performance of this Agreement, and they have agreed that strict compliance is required as to any date set forth herein. If the final date of any period which is set forth in any term or condition of this Agreement falls upon a Saturday, Sunday or legal holiday under the laws of the United States or the state in which the Property is located, then, and in such event, the time of such period shall be extended to the next day which

is not a Saturday, Sunday or legal holiday. Whenever performance is required by either Party, such Party shall use reasonable efforts to perform; provided however, that if completion of performance shall be delayed at any time by a Force Majeure Event, then the time for performance as herein specified shall be extended by the amount of the delay actually so caused.

12.5 No Personal Liability.

No officer, director, employee or agent of either party, nor any of their respective heirs, administrators, executors, personal representatives, successors or assigns, shall have any personal liability or other personal obligation with respect to any payment, performance or observance of any amount, obligation or liability to be paid, performed or observed under this Agreement or any of the representations, warranties, covenants, indemnifications or other undertakings of such Party hereunder, if any, and each Party agrees it shall not seek to obtain a judgment at law or equity against any officer, director, employee or agent of the other Party, or against any of their respective heirs, administrators, executors, personal representatives, successors or assigns.

12.6 Severability.

If any part, term or provision of this Agreement is judicially determined to be illegal or in conflict with any applicable law, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular part, term or provision held to be invalid or illegal.

12.7 Whole Agreement.

This Agreement, including all exhibits and schedules hereto, the Engineering Agreement, and the Transfer Agreement (and documents executed in connection with the closing of the Moffat Tunnel Subdivision/Gold Line thereunder) are intended as the complete integration of all understandings with respect to the subject matter hereof between the Parties. No prior or contemporaneous addition, deletion or other amendment shall have any force or effect unless embodied in writing. No subsequent novation, renewal, addition, deletion or other amendment hereto shall have any force or effect unless embodied in a written amendment or other agreement executed by the authorized representatives of the Parties.

12.8 Captions and Headings.

The captions and headings set forth herein are for convenience of reference only and shall not be construed so as to define or limit the terms and provisions hereof.

12.9 Successors and Assigns.

12.9.1 Assignment. This Agreement and the terms, covenants and conditions hereof shall be binding upon, and inure to the benefit of, the Parties and, except as expressly limited herein, their respective permitted successors and assigns. The qualifications and reputation of RTD are material inducements to UP in entering into this Agreement. Therefore, RTD may not assign, in whole or in part, any of its rights or delegate any of its duties under this Agreement (an "Assignment"), to any third party without the prior written consent of UP, which consent may be withheld in UP's sole discretion. Without limiting the generality of the

foregoing, no third party shall be eligible to become an assignee until and unless it has been qualified as a Qualified Proposed Assignee pursuant to Section 12.9.2 hereof. Any Assignment, in whole or in part, or attempted Assignment, in whole or in part, by RTD whether voluntary, by operation of law or otherwise, in violation of this Section 12.9. shall be absolutely void.

12.9.2 RTD shall make its request for UP's consent to an Assignment in writing (for each proposed Assignment, a "Consent Request") and shall include with such request the proposed form of agreement that RTD intends to use to formalize such Assignment and shall include an update of the qualifying information required to be delivered pursuant to this Section 12.9.2. The assignment and assumption agreement shall, among other things (i) specify the rights and obligations of RTD that will be assigned, with reference to this Agreement and any other document(s) that are the subject of such Assignment, (ii) expressly provide that the assignee shall assume and be bound by the terms and conditions of this Agreement and any other document(s) that are the subject of such Assignment, (iii) expressly provide that RTD shall remain primarily liable to UP for such assigned rights and delegated duties, and (iv) expressly provide that the provisions described in Section 12.10 below shall not inure to the benefit of such assignee.

12.9.3 Within thirty (30) days after the later of (i) UP's receipt of a Consent Request or (ii) UP's receipt of the update of the qualifying information described in Section 12.9.2. UP shall respond to RTD in writing setting forth (a) UP's consent to such Assignment, (b) UP's refusal to consent to such Assignment or (c) UP's conditional consent to such Assignment setting forth the conditions that RTD or such proposed assignee shall satisfy prior to obtaining UP's consent (which conditions may include revisions to the assignment and assumption agreement). Should UP fail to provide RTD with a written response to any Consent Request within such thirty (30) day period, UP shall have been deemed to have refused consent to such Assignment.

12.9.4 Notwithstanding anything to the contrary contained herein or in any assignment and assumption agreement, (a) no Assignment shall release RTD from any of RTD's rights or obligations under this Agreement or any documents subject to the Assignment, and (b) RTD shall remain primarily liable to UP for all such assigned rights or delegated duties. RTD shall, no later than ten (10) days after the effective date thereof, provide UP with a fully executed copy of each assignment and assumption agreement.

12.9.5 Qualified Proposed Assignees.

Whenever RTD desires to make an Assignment, RTD shall seek UP's prior written approval of the proposed assignee as a "Qualified Proposed Assignee." All requests for UP's approval under this Section 12.9.5 shall be in writing, shall state that RTD intends to assign all or a portion of its rights and obligations under this Agreement to such proposed assignee, shall describe the scope of the rights and obligations that RTD intends to assign, and shall specify in detail the following qualifying information:

(a) legal name and address of the proposed assignee and the names, addresses and telephone numbers of the persons that own or have control of the proposed assignee;

(b) information regarding the proposed assignee's prior business experience that may be relevant to UP;

(c) bank and other credit references, business reputation references, financial statements and such other information as UP may reasonably require to assess the proposed assignee's business and financial responsibility and standing;

(d) any other background information on such proposed assignee obtained by RTD in connection with the Project; and

(e) any other follow-up information regarding such proposed assignee as RTD may deem to be material or as may be requested by UP in its reasonable discretion.

Within thirty (30) days after the later of (i) UP's receipt of RTD's request for approval of any proposed assignee or (ii) UP's receipt of the necessary qualifying information regarding such proposed assignee, UP shall provide RTD with written notice of UP's approval or disapproval of such proposed assignee as a Qualified Proposed Assignee. UP's failure to respond within such thirty (30) day period shall be deemed to be a disapproval by UP of the proposed assignee. Notwithstanding anything to the contrary contained in this Section 12.9.5, an approval by UP of a Qualified Proposed Assignee hereunder shall not be deemed to be a consent to an Assignment under Section 12.9.1.

12.10 Limitations Specific to RTD.

Notwithstanding anything to the contrary contained in this Agreement, due to the special status of RTD as a political subdivision of the State of Colorado, the following limitations shall apply with respect to RTD in its capacity as a Party hereto, only to the extent required by law (including without limitation any amendments to the Constitution of the State of Colorado) from time to time for purposes of enforceability: (a) the damages recoverable hereunder shall exclude punitive and exemplary damages; (b) RTD's waiver of governmental immunity and liability for indemnifying UP Indemnitees under this Agreement with respect to claims based upon bodily injury, death and/or property damage shall be limited to the monetary levels of RTD's applicable insurance coverage requirements; and (c) nothing in this Agreement shall be construed as a multi-year fiscal obligation. In no event shall these limitations apply to or inure to the benefit of any successor or assign of RTD. On or before each anniversary date of this Agreement, RTD shall deliver to UP (i) certificates evidencing RTD's insurance policy renewals and (ii) evidence of the annual appropriations authorized by RTD's board of directors to satisfy RTD's obligations and liabilities under this Agreement.

12.11 RTD's Review of UP's Records.

So much of the books, accounts and records of UP as is related to any construction costs reimbursable to UP by RTD hereunder shall, during business hours, be open to inspection by the authorized representatives and agents of RTD, and to any representative of the Federal Transit Administration or any other federal agency with oversight responsibility for RTD's Passenger Rail System. All accounting records and other supporting papers shall be maintained for a minimum of three (3) years from the date of the completion of RTD's Project on the Gold Line.

12.12 Survivability.

The Parties agree that their respective rights, duties and obligations existing under any provision which by its terms imposes an obligation on RTD or UP that is continuing in nature shall survive the termination of this Agreement, regardless of whether such termination is effected through mutual agreement or default or breach of this Agreement.

12.13 Remedies Non-exclusive.

In the event that either RTD or UP fails to perform or comply with any of its obligations or the terms contained in this Agreement, the non-defaulting party shall have all rights and remedies available at law or in equity, which remedies shall be non-exclusive unless specified otherwise in this Agreement. RTD and UP, for themselves and their successors and assigns, hereby waive the remedies of consequential and punitive or exemplary damages against the other party. Moreover, the indemnities and remedies contained in this Agreement shall be in addition to (and not in limitation of), and without prejudice to or limitation of any indemnity provisions or legal remedies in the Engineering Agreement, the Transfer Agreement (or any document executed in connection with the closing thereunder) or any other remedies at law or in equity.

12.14 Separate Counterparts.

This Agreement may be executed in one (1) or more counterparts, each of which, when so executed, shall be deemed to be an original. Such counterparts shall together constitute and be one and the same instrument.

EXECUTED by UP and RTD as of the Effective Date.

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

By: _____
Name: _____
Title: _____

APPROVED AS TO LEGAL FORM FOR THE REGIONAL TRANSPORTATION DISTRICT:

By: _____
Legal Counsel

REGIONAL TRANSPORTATION DISTRICT,
a political subdivision of the State of Colorado

By: _____
Name: _____
Title: General Manager

Exhibit A

(Attached to and made a part of the
Operations Agreement – Moffat Tunnel Subdivision/Gold Line
between Union Pacific Railroad Company
and Regional Transportation District)

Description of the Lines

(see attached)

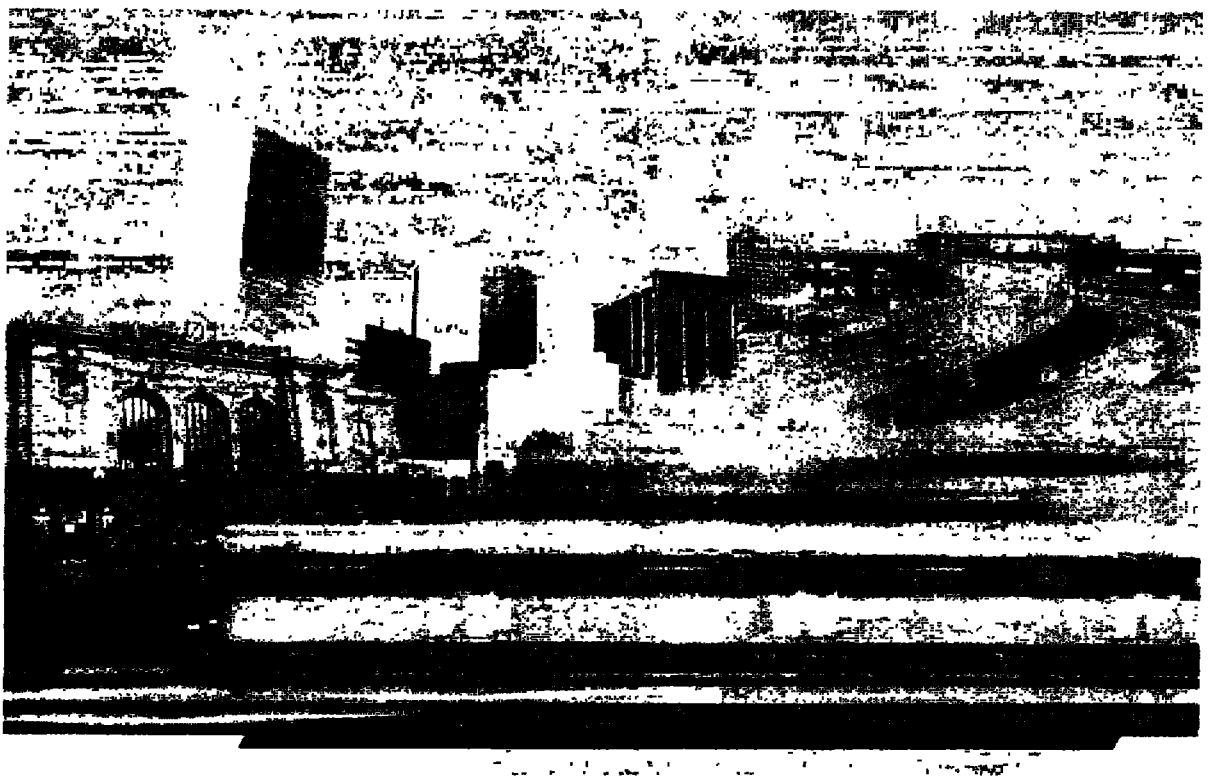
8

Exhibit 8-A

East Corridor
FTA Record of Decision and Section 106 Memorandum of Understanding among FTA, RTD and Colorado State Historic Preservation Officer

[attached hereto]

FASTRACKS



EAST CORRIDOR

RECORD OF DECISION

NOVEMBER 2009

RECORD OF DECISION

East Corridor Project

Denver, Aurora, Adams County, Colorado

November 2009

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Appendices

Appendix A – Summary of Impacts and Mitigations for the Preferred Alternative
Appendix B – 106 Memorandum of Agreement between FTA, RTD, and SHPO

Acronym List

A	
B	
BMP	Best management practices
BRT	Bus rapid transit
BTU	British thermal unit
C	
CCD	City and County of Denver
CDOT	Colorado Department of Transportation
CDOW	Colorado Division of Wildlife
CFR	Code of Federal Regulations
CO	Carbon monoxide
CRMF	Commuter rail maintenance facility
D	
dBA	Decibel (A-weighted scale)
DEIS	Draft Environmental Impact Statement
DIA	Denver International Airport
DMU	Diesel multiple unit
DRCOG	Denver Regional Council of Governments
DUS	Denver Union Station
E	
EIS	Environmental Impact Statement
EMU	Electric multiple unit
F	
FAA	Federal Aviation Administration
FEIS	Final Environmental Impact Statement
FHWA	Federal Highway Administration
FTA	Federal Transit Administration
G	
H	
I	
J	
K	
L	
LOS	Level of service
LRT	Light rail transit
LUST	Leaking underground storage tanks
M	
MSAT	Mobile source air toxics
N	
NEPA	National Environmental Policy Act
NO_X	Nitrogen oxides
NPL	National Priorities List
O	
P	
PM_{10}	Particulate matter having a diameter less than or equal to 10 micrometers
Q	
R	
RCRA	Resource Conservation and Recovery Act
ROD	Record of Decision
ROW	Right of way
RTD	Regional Transportation District
RTP	Regional Transportation Plan
S	
SEA	Supplemental environmental assessment
SHPO	State Historic Preservation Office
T	
TDM	Transportation demand management
TOD	Transit-oriented development
TOFC	Trailer-on-flat-car
TSM	Transportation system management

U	
UDFCD	Urban Drainage and Flood Control District
Uniform Act	Uniform Relocation Act Amendments of 1987
UPRR	Union Pacific Railroad
U.S.	United States
USACE	United States Army Corps of Engineers
USC	United States Code
USFS	U.S. Fish and Wildlife Service
V	
VMT	Vehicle miles traveled
VOC	Volatile organic compounds
W	
X	
Y	
Z	

1.0

The Federal Transit Administration (FTA), pursuant to Title 23 CFR 771 and 774 and 40 CFR Parts 1500–1508, has determined that the requirements of the National Environmental Policy Act (NEPA) have been met for the East Corridor project proposed by the Regional Transportation District (RTD). This FTA decision applies to the Preferred Alternative, which is described and evaluated in the East Corridor Final Environmental Impact Statement (FEIS), prepared by RTD and FTA and signed on September 4, 2009.

FTA has considered the information contained in the public record, including the East Corridor Draft Environmental Impact Statement (DEIS), the FEIS, regulatory and resource agency coordination, public hearing and public meeting comments, and agency review comments on the environmental documents. This Record of Decision (ROD) summarizes FTA's decisions regarding compliance with relevant environmental requirements, describes the mitigation measures to be included in the project, summarizes public outreach and agency coordination efforts, responds to substantive comments, and presents the Section 4(f) determination for the project.

The Preferred Alternative consists of an electric multiple unit (EMU) commuter rail train and track system between Denver Union Station (DUS) and Denver International Airport (DIA), located 23 miles northeast of downtown Denver. The alignment follows the Union Pacific Railroad (UPRR) corridor between DUS and Airport Boulevard and then heads north and east to DIA. The East Corridor Preferred Alternative alignment will operate on a double-track system using a combination of UPRR right of way (ROW), private property, and shared City and County of Denver (CCD) and City of Aurora (Aurora) ROW. The new track will not be shared with existing or planned freight rail operations. East Corridor vehicles will use the shared alignment north of DUS to the Commuter Rail Maintenance Facility (CRMF) with the FasTracks' Gold Line, North Metro, and Northwest commuter rail corridors.

Because it is a required supporting component of the Preferred Alternative, the CRMF is also included in this project. A Supplemental Environmental Assessment (SEA) to support the Gold Line and East Corridor DEIS documents was prepared for the CRMF and is incorporated herein by reference (FTA, 2009). Content and comments from that document are incorporated into this ROD.

Neither the FEIS nor this ROD constitutes an FTA commitment to provide financial assistance for the construction of the project. In this instance, RTD is seeking funding under FTA's Major Capital Investments ("New Starts") program. FTA will decide whether to commit New Starts funds to the project in accordance with applicable Federal law including, but not limited to, the New Starts evaluation procedures codified at 49 U.S.C. Section 5309.

1.1

The environmental record for the East Corridor project includes the East Corridor DEIS (2009), the CRMF SEA (2009), and the East Corridor FEIS (2009), comments received on these documents and responses to those comments. The FEIS included a review of the purpose and need for the project, goals, and objectives, consideration of alternatives, environmental impacts, and measures to minimize harm.

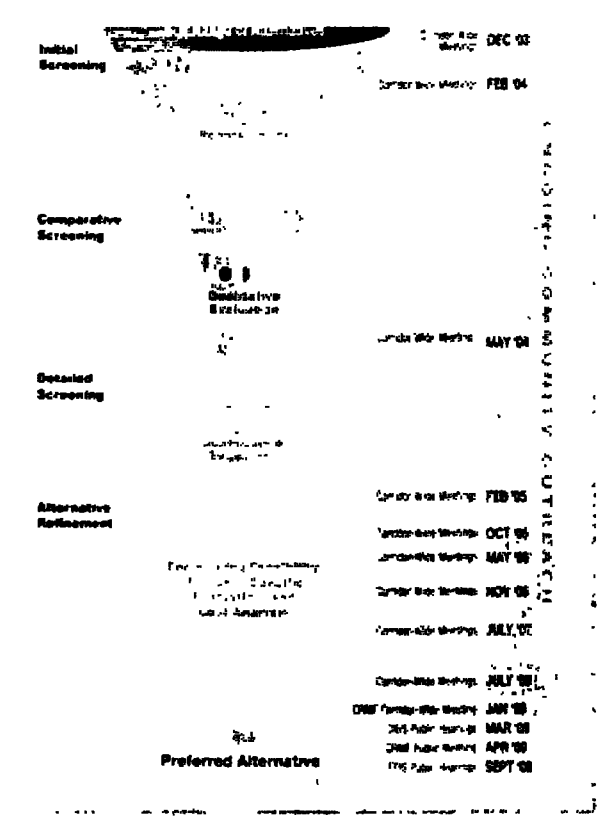
2.0

Planning studies conducted for the Denver metropolitan area have shown that population and employment is anticipated to increase approximately 54 percent by the year 2030 (according to the 2030 Regional Transportation Plan [RTP]). Automobile and bus travel times are anticipated to increase by approximately 35 percent in the same period. In response to this anticipated growth and to improve mobility options throughout the Denver metropolitan area, the region has explored several transportation mode solutions including bus, rail, and HOV lanes to help relieve expected congestion, address air quality issues, and offer additional transportation options to citizens within the region.

In November 2004, voters in metropolitan Denver's RTD approved the FasTracks initiative, which is intended to expand and improve public transit service to metropolitan Denver communities over a 12-year period. The FasTracks comprehensive plan calls for the construction and operation of rail lines as well as improved bus service and park-n-Rides (pnR) throughout the region. The East Corridor Final Environmental Impact Statement (FEIS) addresses the project in the eastern area of the Denver metropolitan region that is part of the RTD FasTracks Plan. The FEIS examined a range of alternatives, their respective environmental consequences, and mitigation measures to provide improved mobility in the East Corridor study area.

3.0

The East Corridor EIS evaluated numerous alternatives and other iterations of those alternatives to meet the purpose and need for the corridor. Alternatives were developed and evaluated to address the travel markets in the East Corridor project area, to minimize environmental impacts, and in response to the input from the agency and public involvement process. As a result of this screening and evaluation process, the Preferred Alternative was determined to be the environmentally preferred alternative. Avoidance and minimization measures taken to reduce the impacts of the Preferred Alternative have served to further reduce the environmental consequences associated with its construction and operation.



More than 100 transportation elements were evaluated during the screening process. A four-level screening process was used to reduce the range of alternatives considered for the selection of the Preferred Alternative. Alternatives were evaluated with increasing levels of detailed analysis at each screening level: initial screening, comparative screening, detailed screening, and alternative refinement.

As the alternatives progressed through the screening levels, the number of alternatives

evaluated decreased while being subjected to an increasing level of detailed analysis, including engineering, environmental, and community impact criteria. Using the alternative elements remaining after the initial and comparative screening, eight alternatives were developed for detailed screening. These alternatives followed various alignments between DUS and DIA and assumed both on-street and separate ROW operations. These alignments were a combination of the alignment and technology elements remaining after comparative screening that provided the best overall system operations. The corridor-wide transit alternatives evaluated in detailed screening included BRT, LRT, and commuter rail along various routes from DUS to DIA. The FEIS fully evaluated the Preferred Alternative compared to the No Action Alternative.

3.1

The No Action Alternative was also evaluated in the DEIS and FEIS and included several roadway and transit projects from the Denver Regional Council of Government's (DRCOG) *Fiscally Constrained 2030 Regional Transportation Plan (RTP).* The No Action Alternative roadway network in the region (including roadways within the East Corridor project area) was assumed to be the roadway projects included in the DRCOG 2030 RTP as well as the connection of Smith Road through the Stapleton Redevelopment, which is not part of the DRCOG RTP, but is expected to be constructed by private stakeholders before 2030.

The transit network for the No Action Alternative included all FasTracks corridors except the East Corridor. Bus service improvements for the No Action Alternative are intended to keep pace with population and employment growth, consistent with trends in the East Corridor project area, and are based on the assumption that the Stapleton and 40th/Airport park-n-Rides remain in the same locations as today and are not expanded.

3.2

A Transportation System Management (TSM) Alternative was developed to represent the "best that can be done" without implementing a major capital investment such as rail transit. The TSM Alternative was included for financial and mobility comparisons in the FEIS (in Chapter 4, Transportation Systems, and in Chapter 5, Financial Analysis and Evaluation of Alternatives). The TSM Alternative was not carried forward as a stand-alone alternative or evaluated environmentally in the DEIS or FEIS because it did not meet the project purpose and need. The TSM Alternative has been approved by FTA as the Baseline Alternative for New Starts evaluation purposes.

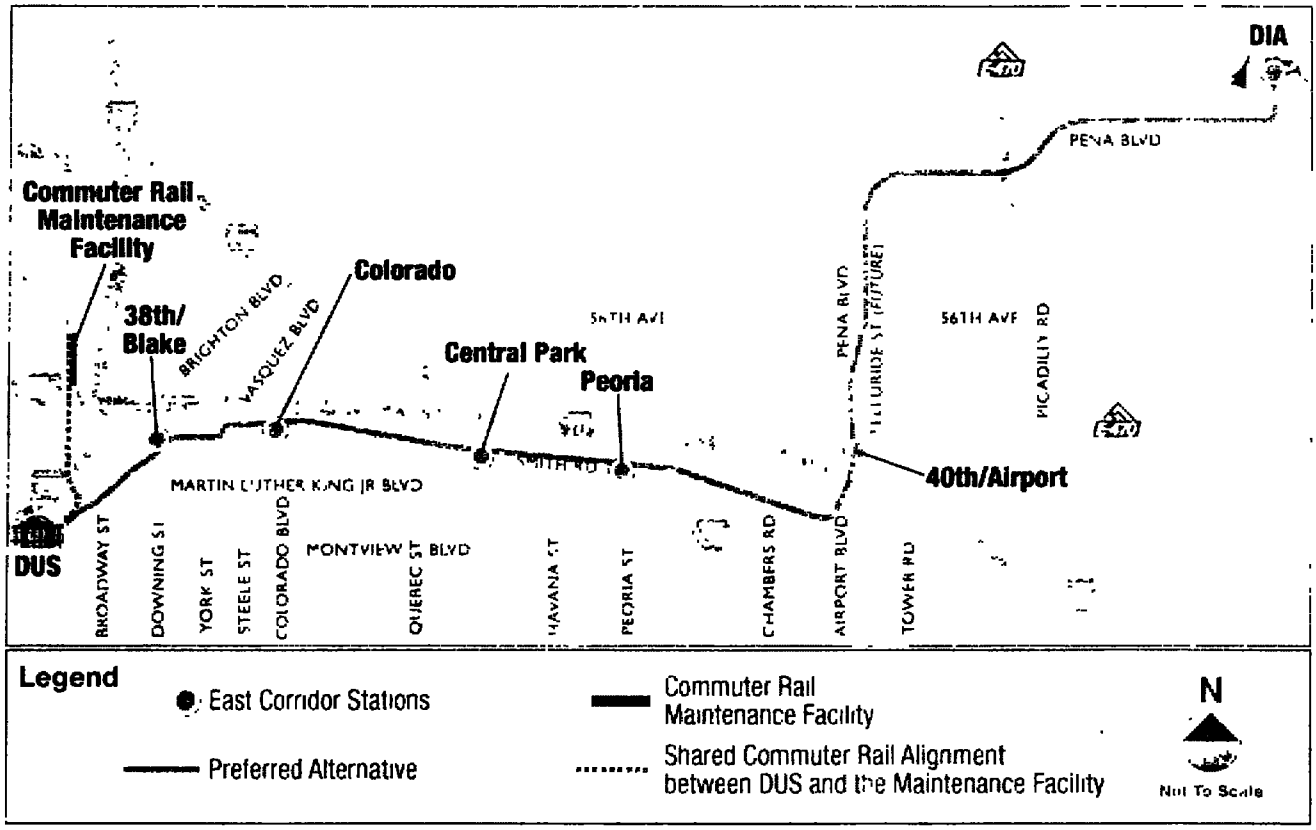
3.3

The Preferred Alternative is comprised of double-tracked EMU commuter rail between DUS and DIA. The East Corridor Preferred Alternative alignment, stations, and CRMF are shown in Figure 1.

3.3.1

The alignment follows the UPRR corridor between DUS and Airport Boulevard. This portion of the alignment uses a combination of UPRR ROW, private property, and shared CCD and Aurora ROW. At Airport Boulevard near Smith Road, the alignment heads north and then east to DIA within the Peña Transportation Corridor. The Preferred Alternative also includes a connection to the CRMF on a shared alignment with the Gold Line and Northwest Corridor.

1



3.3.2

In addition to DUS and DIA, five stations are included in the Preferred Alternative. Approximately 3,500 parking spaces will be provided on opening day, with capacity for an additional 4,400 spaces by the horizon year (2030).

It is anticipated that the East Corridor ridership will increase significantly between opening day and 2030. The drive access demand to East Corridor station areas, and the associated number of parking spaces and environmental analysis, is based on estimates from a travel demand model. Should the drive access demand, and associated requirements for parking, be higher

than the estimates used for the East Corridor FEIS and this ROD, appropriate environmental approvals will be obtained, and additional parking constructed at that time.

Station sites were identified based on ridership. In addition, station requirements were developed for parking, bus bays, and other infrastructure based on the technical analysis that was part of alternative refinement. Table 1 lists the characteristics of each of the proposed stations.

- 38th/Blake (formerly called 40th/40th)
- Colorado
- Central Park
- Peoria
- 40th/Airport

Potential stations at 64th/Peña and 72nd/Himalaya or Dunkirk are not part of the Preferred Alternative. If implemented in the future, these stations would require additional environmental analysis and approvals. RTD will continue to coordinate with developers and local agencies on these potential stations.

1

Station	Description	Approximate Size (acres)[1]	Parking Spaces		
			Opening Day 2016	Spaces Added by 2030	Total Parking Spaces by 2030
38th/Blake	Located both northwest and southeast of UPRR corridor.	5	200	300	500
Colorado[2]	Located west of Colorado Boulevard, south UPRR. Parking structure to be built south of station by 2030.	3	200	1,600	1,800
Central Park	Located southwest of proposed Central Park Boulevard and Smith Road, and south of the proposed alignment.	21	1,500	0	1,500
Peoria	Located southwest quadrant of Peoria Street and Smith Road and south of the proposed alignment. Additional surface and parking structure to be built by 2030.	30	550	1,350	1,900
40th/Airport	Located southeast of Peña Boulevard and 40th Avenue at existing RTD park-n-Ride. Parking structure to be built by 2030.	15	1,079	1,121	2,200
		Total	**3 52**	**3 1**	**00**

[1] *Improvements to the roadway network required by the station location are included in the station ROW.*
[2] *The Colorado station park-n-Ride facility and the associated ROW acquisitions will be phased as necessary between opening day and 2030. The numbers in the table are for 2030*
Note: Only the 38th/Blake station includes a pedestrian structure.

3.3.3 o te ail aintenance acility

The EMU vehicles for all the FasTracks commuter rail projects, including the East Corridor, will be serviced at a central CRMF, located immediately north of 48th Avenue on what is referred to as the Fox North site The CRMF will include a maintenance shop, EMU rail storage yard, DMU rail storage yard, employee facilities, administrative offices, employee parking facilities, a maintenance-of-way building, and a lay-down yard. The facility will service the following fleets:

- Gold Line: 12 to 22 EMUs
- Northwest Rail: 22 DMUs
- East Corridor: 30 EMUs
- North Metro Corridor: 22 DMUs or EMUs

Train movements will occur throughout the day, with 229 movements scheduled between 7 a.m. and 10 p.m. and 87 movements between 10 p.m. and 7 a.m. The CRMF environmental analysis (based on these 229 movements) includes the maximum number of vehicles above (i.e. 22 for the Gold Line project). Train movements within the CRMF will occur at night. The operation of the CRMF will be ongoing 24 hours per day, 7 days per week. Maintenance activities need to occur during times when trains are not in revenue service. Night movements to and from the CRMF shop will be conducted in the same manner as daytime movements.

3.3.4 T ac elocation

In some sections along the UPRR corridor, mainline freight track will be relocated to accommodate both the commuter rail and freight rail in the available ROW or with minimal additional property requirements. The mainline freight track will be relocated (shifted slightly to the north) between the trailer-on-flat-car (TOFC) yard and Dahlia Street. UPRR storage tracks will be reconstructed at various locations between Colorado Boulevard and Sable Boulevard.

3.3.5 T action o e

The Preferred Alternative will use substations to supply electricity for train operations. The power for the system will be provided by the local electrical grid. An autotransformer substation will be east of the Quebec Street and Smith Road intersection. Two paralleling substations will be located along the Peña Boulevard portion of the commuter rail alignment; one north of 40th Avenue and one east of Tower Road. Another autotransformer substation will be located near West 43rd Avenue and Inca Street which is required for all commuter rail corridors using the CRMF.

3.3.6 ail Ope ations lan

The Preferred Alternative operating plan will operate four trains per hour in each direction between DUS and DIA throughout most of the day. During late-evening periods, train service will be reduced to two trains per hour in each direction. The Preferred Alternative would operate between 3:00 a.m. and 1:00 a.m. Trains would operate 365 days a year on a weekday or weekend/holiday schedule. Table 2 shows the Preferred Alternative operating plan hours of operation and proposed operation schedules.

Table 2
e e ed Alte nati e o te ail Ope ations

Day	Se ice Span	Se lce e ency
Weekdays	3:00 a.m. to 1:00 a.m.	Peak periods 15 minutes Midday: 15 minutes Evening: 15 minutes Late/Early: 30 minutes
Weekends/Holidays	3 00 a.m. to 1:00 a.m	Midday. 15 minutes Late/Early: 30 minutes

Source: East Corridor Transit Operations Plan (2008).

The operations plan will be optimized as the design progresses such that the project minimizes operational costs while maximizing ridership. Possible changes could result in the use of 4-car trains sooner after opening day than currently projected, but are not anticipated to change frequencies or consist sizes for the horizon year.

3.3.7 ade ossings

When the train crosses a roadway, it can cross either at the same level as the roadway (at grade) or above or below the roadway (grade separated). The Preferred Alternative will be grade separated at the following crossings:

- 20th Street
- Park Avenue West
- Broadway
- 38th Street
- Colorado Boulevard
- Quebec Street
- Proposed Central Park Boulevard
- I-225
- UPRR mainline
- Airport Boulevard
- East 31st Avenue
- East 32nd Place
- I-70
- 56th Avenue
- E-470
- Peña Boulevard
- Tibet Street (private DIA access)
- Airport exit road
- Airport entrance road
- The airport commercial vehicle service turnaround road

All other roadway crossings will be at grade.

4.0 T AT O AS S TO A

The Regional Transportation District will design and incorporate into the project all mitigation measures included in the FEIS for the Preferred Alternative and those measures identified during final design. FTA will require in any future funding agreement on the project and as a condition of any future grant or Letter of No Prejudice for the project, that all committed mitigation be implemented in accordance with the FEIS and ROD. FTA will require that RTD periodically submit written reports on its progress in implementing the mitigation commitments. FTA will monitor this progress through quarterly review of final engineering and design, land acquisition for the project, and construction of the project.

5.0 O O T T TO O T

The East Corridor FEIS development followed an extensive public and agency involvement process since the project began in July 2003 as the I-70 East Corridor EIS. Public opportunities for input have included 22 corridor-wide meetings, 37 working group meetings, 12 neighborhood meetings, 8 topic-specific neighborhood meetings, and 4 public hearings for the DEIS and the FEIS. A project website was maintained that was viewed more than 20,000 times, and newsletters were sent to members of the public, agencies, and others on a mailing list that contains more than 14,000 addresses. Project updates were sent to more than 700 addresses in the e-mail notification database.

FTA and RTD released the East Corridor DEIS on January 30, 2009, for a 45-day comment period ending on March 16, 2009. Public hearings for the DEIS were held on March 4 and 5, 2009. During the public comment period, 97 comments were received and were responded to in the FEIS.

An additional 154 comments were submitted on the SEA for the CRMF. Most of these comments addressed concerns regarding the potential loss of jobs at the Owens Corning Denver Roofing and Asphalt Plan located on the proposed CRMF site. These comments were mitigated through a reconfiguration of the site that offset the need to acquire the Owens Corning plant.

FTA and RTD released the East Corridor FEIS on September 4, 2009, for a 30-day review period ending on October 7, 2009. Public meetings were held on September 23 and 24, 2009. During the public comment period, 35 respondents submitted 41 comments. Comments received on the FEIS and responses to those comments are available on the project website, www.eastcorridor.com. Comments received on the FEIS are summarized below with general responses.

otential stations Requests to include the additional stations a along the Peña Boulevard alignment as part of the Preferred Alternative.

Response: RTD and FTA recognize the growth occurring in the Gateway and Green Valley Ranch communities. Additional stations between 40th/Airport and DIA were evaluated during the alternative refinement phase of the alternative screening process. These stations are not included in the Preferred Alternative because stations at 64th/Pena and at 72nd/Himalaya increased corridor ridership less than three percent and therefore did not justify the additional cost to the project. RTD and FTA will continue to coordinate with developers and local agencies regarding future potential stations.

ade Sepa ations Desire from residents to improve the existing grade separation at 38th Street and to construct a new grade separated crossing at Peoria Street.

Response: The existing underpass at 38th Street currently experiences traffic congestion and delay that are beyond the scope and budget of the East Corridor project. The East Corridor traffic analysis reported in the DEIS and the FEIS confirmed that the additional trips to and from the station do not make conditions worse on 38th Street in the Preferred Alternative than the No Action scenario. A grade separation at Peoria Street was determined infeasible due to associated property impacts and cost constraints. Additionally, the grade separation would not address existing and future traffic congestion problems in that location as they are not directly related to the implementation of the East Corridor.

3 t la e edest ian St eet idge Desire from local agency and residents to move the 38th/Blake station pedestrian bridge connection from 38th Street to 36th Street.

Response: The City and County of Denver adopted a station area plan which recommends moving the proposed 38th Street pedestrian bridge. Between the DEIS and the FEIS, the 38th/Blake station platform was shifted south to better coordinate with the potential future 36th Street bridge. RTD and FTA will continue coordination with CCD regarding the possible 36th Street location for the pedestrian bridge.

ocal s o tes Comments and questions regarding the adjustment of local bus routes to provide connections to the commuter rail stations throughout the corridor.

Response: Local bus routes will be adjusted to provide connections to the commuter rail stations on opening day throughout the corridor. Bus service will continue to be monitored and adjusted as appropriate through RTD's semiannual service changes.

oo dination it t e ban D ainage and lood ont ol Dist ict D D The UDFCD sent an FEIS comment letter noting concerns about coordination, concerns about the potential impacts to detention ponds along the Peña Corridor, and various other permitting concerns.

Response: RTD met with UDFCD after receipt of the letter to express the intent to closely coordinate with UDFCD. Mitigation measures were added to the project based on this comment letter and can be found in Section 7.3 of this ROD and in the mitigation measures in Appendix A. Additionally, RTD committed to developing a Memorandum of Understanding (MOU) with UDFCD to address coordination and permitting going forward as indicated in the response to FEIS comments on the East Corridor website at www.eastcorridor.com.

6.0 D T ATO S A D D S

6.1 S TO 10 O A

FTA has determined, in coordination with the Colorado State Historic Preservation Office (SHPO), that the Preferred Alternative will result in an adverse effect to the Denver West Side Line (5DV3512.3); the Denver Utah Pacific Railroad, Chicago Burlington Quincy Siding & Spur (Waterworks Sales Co, J.M. Warner Co, & Richardson Lumber Spur) (5AM1888 and 5DV6243); and the Allen-Rand Ditch (5JF4454.1). Since the FEIS, a Memorandum of Agreement (MOA) among FTA, RTD, and SHPO has been executed. Mitigation measures have been identified and can be found in the MOA, dated September 11, 2009, in Appendix B of this ROD.

6.2 S TO D T AT O

FTA determined that there will be a use of a portion of the ROW from two historic resources: 35th and Blake LLC and the Freedom Cab Company. FTA also concluded that segments of two linear historic resources will be permanently incorporated into the project: Derby Lateral (High Line Canal Lateral A Extension/Segment "The Doherty Ditch") and the Denver Utah Pacific Railroad, Chicago Burlington Quincy Siding and Spur.

Two recreational trails that will be impacted by the project are protected under Section 4(f); however, only the existing Sand Creek Regional Greenway trail will incur a use. FTA received concurrence from CCD and the Sand Creek Regional Partnership that the use of the trail, including the consideration of impact avoidance, minimization, and mitigation or enhancement measures, does not adversely affect the activities, features, and attributes that qualify these resources for protection under Section 4(f).

FTA determined there are no feasible and prudent avoidance alternatives to the use of the Derby Lateral (High Line Canal Lateral A Extension/Segment "The Doherty Ditch"), 35th and Blake Street LLC, Freedom Cab Company, Denver Utah Pacific Railroad, Chicago Burlington Quincy Siding and Spur, and Sand Creek Regional Greenway trail. The project includes all possible planning to minimize harm, as defined in 23 CFR 774 17 that results from the use of these resources.

6.3 O O T T A A T A S

On the basis of the determinations made in compliance with relevant provisions of federal law, FTA finds that the East Corridor project satisfies the requirements of NEPA, the Clean Air Act of 1970, and the U.S. Department of Transportation Act of 1966, as amended. The project is identified in the conforming Long Range Transportation Plan and in the conforming Transportation Improvement Program for the Denver metropolitan region.

6.4 OOD A S

The 100-year floodplains associated with Sand Creek, First Creek, Second Creek, and Third Creek will be impacted by the Preferred Alternative. With a minimal cross-sectional area, new proposed bridge piers will have a negligible impediment on the 100-year floodplains of all four streams. A new embankment across the Sand Creek floodplain overflow area, east of the old runway tunnels, will slightly modify water surface elevations. The Preferred Alternative will also impact existing and proposed detention ponds along the Peña Transportation Corridor.

A conditional letter of map revision will be submitted as part of continued design coordination. Detention and water quality treatment of surface drainage will be conducted in accordance with the Urban Drainage and Flood Control District (UDFCD) and local jurisdiction design requirements, and best management practices (BMPs). Floodplain management will be coordinated with local jurisdictions and UDFCD and a Floodplain Use Permit will be obtained.

6.5 T A DS

Based on the jurisdictional determinations issued by the U.S. Army Corps of Engineers (USACE), the Preferred Alternative will permanently and directly impact approximately 1.0942 acres of jurisdictional wetlands and 0.0035 acre of jurisdictional open waters (1.0977 acres total). This level of impact requires application for an individual Clean Water Act Section 404 permit from USACE. The public comment period for the 404 permit application was September 4th through October 11th 2009. Permit conditions have been finalized and USACE has issued a

provisional permit contingent on the 401 water quality certification. Additionally, RTD has committed to 1:1 mitigation for non-jurisdictional wetlands as noted in the mitigation table in Appendix A of this ROD. The contractor will comply with all requirements of the individual permit.

7.0 DAT S S T S

There have been refinements to the impacts and mitigations, as well as advancements in coordination since the publication of the FEIS. Additional coordination has been completed since the FEIS for Section 106 compliance, Section 4(f) concurrence, and for wetlands and are documented in Section 6.0, Determinations and Findings.

7.1 A A DO S AT A S

A Phase II Environmental Site Assessment Process, as defined by American Society of Testing and Materials (ASTM) Standard Practice for Environmental Site Assessments (ASTM Standard E 1903 [2]), was completed in October 2009 for the Preferred Alternative.

7.2 A D A S T O

In the FEIS Table 3.4-3, Summary of Property Acquisitions – Preferred Alternative Alignment, the parcel with map number 22 was erroneously listed as Parcel ID 0224301005000. The correct Parcel ID is 0224303014000. The property owners for both parcels were contacted to notify them of the corrections. The parcel listed as map number 15 which was identified as Parcel ID 02279160118000 in Table 3.4-3, Summary of Property Acquisitions – Preferred Alternative Alignment, should have been listed as 022791618000. The property owner was notified of the correction.

Parcel ID 0119300013000 will be impacted by roadway improvements. The impacted property owner was aware of the impacts through meeting discussion related to the relocation of Smith Road at Colorado Boulevard prior to publication of the FEIS, and the owner was notified of the omission.

Parcel ID 0182326104002 will be impacted by roadway improvements associated with the Peoria Station. The owner of this parcel also owns the adjacent Parcel ID 0182326104003 and was notified of the impact.
Parcel ID 0223312021000 will be impacted by roadway improvements along 40th Avenue. The owner of this parcel was notified of the omission.

7.3 T AT O AS S

Additional floodplain and drainage mitigation measures have been identified since publication of the FEIS. These measures include:

- Obtain Floodplain Use Permits for floodplain and drainage way crossings.
- Submit Conditional Letter of Map Revision for floodplains predicted to experience any rise in water surface (Sand Creek).
- Reshape and/or relocate detention ponds where embankment encroaches into regional detention ponds along the Peña Transportation Corridor.

8.0 FINDING

FTA has determined that the environmental documentation prepared for the Preferred Alternative satisfies the statutory and regulatory requirements of NEPA and fully evaluates the potential environmental impacts of the project The environmental documents represent the detailed statement required by NEPA regarding:

- The environmental impacts of the proposed project,
- Adverse environmental effects which cannot be avoided should the proposed project be implemented;
- Alternatives to the proposed project, and
- Irreversible and irretrievable commitments of resources which would be involved if the proposed project is implemented

Having carefully considered the environmental record noted above, the mitigation measures as required in Appendix A herein, and the written and oral comments offered by the public and other agencies on this record, the FTA has determined that adequate opportunity was afforded for the presentation of views by all parties with a significant economic, social, or environmental interest and consideration has been given to the preservation and enhancement of the environment and to the interest of the community in which the project is located; and all reasonable steps have been taken to minimize adverse environmental effects of the proposed project and, where adverse environmental effects remain, there exists no feasible and prudent alternative to avoid or further mitigate such effects

Terry J Rosapep 11/6/09

Terry J Rosapep
Regional Administrator, Region 8
Federal Transit Administration

Appendix B
106 Memorandum of Agreement between FTA, RTD, and SHPO

MEMORANDUM OF AGREEMENT
REGARDING THE EAST CORRIDOR COMMUTER RAIL PROJECT
IN DENVER, AURORA, AND ADAMS COUNTY, COLORADO

IMPACTS TO:

5DV840.13: Derby Lateral (High Line Canal Lateral A Extension/Segment "The Doherty Ditch")

5DV9309: 35th and Blake St. LLC

5DV9501: Freedom Cab Company

The Parties to this Memorandum of Agreement (MOA) are the Federal Transit Administration (FTA), the Colorado State Historic Preservation Officer (SHPO), and the Denver Regional Transportation District (RTD), a regional transit authority organized and existing under the laws of the State of Colorado.

WHEREAS, Section 106 of the National Historic Preservation Act, 16 USC 470 *et seq.* requires Federal Agencies to take into account the effects of their undertakings on historic properties and afford the ACHP a reasonable opportunity to comment on such undertakings; and

WHEREAS, the proposed federally assisted undertaking is the construction and operation of the East Corridor (the Project), for which the National Environmental Policy Act (NEPA) process is currently underway; and

WHEREAS, the Project consists of the construction of a two-track commuter rail line that will begin at Denver Union Station (DUS) and follow the Union Pacific railroad (UPRR) corridor north and east between DUS and Airport Boulevard. At Airport Boulevard near Smith Road, the alignment heads north and then east to terminate at Denver International Airport (DIA) for a total distance of 22.8 miles. The Project also includes a Commuter Rail Maintenance Facility (CRMF) at the Fox North site. Mitigations for impacts resulting in adverse effects to resources by the CRMF are included in the Memorandum of Agreement Regarding the Gold Line Preferred Alternative; and

WHEREAS, the FTA has determined that the construction of the Project in Denver and Aurora, Colorado, will have adverse effects on historic properties (5DV840.13, 5DV9309, and 5DV9501) which are included in or have been determined to be eligible for inclusion in the National Register of Historic Places, and has consulted with the SHPO, consulting parties, and the ACHP pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (16 USC 470f); and

WHEREAS, the SHPO is authorized to enter into this MOA in order to fulfill its role of advising and assisting Federal agencies in carrying out their Section 106 responsibilities under the following federal statutes: Section 101 and 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. § 470f, and pursuant to 36 CFR Part 800, regulations implementing Section 106 at §§ 800.2(c)(1)(i) and 800.6(b); and

WHEREAS, In accordance with 36 CFR 800.6(a)(1), FTA has notified ACHP of its adverse effect determination by providing the documentation specified in Sec. 800.11(e). on May 7, 2009. The Advisory Council on Historic Preservation did not reply with a request to participate in the consultation process, and

WHEREAS, 36 CFR 800.6(b)(iv) provides that if the agency official and the SHPO/THPO agree on how the adverse effects will be resolved, they shall execute an MOA; and

WHEREAS, RTD has participated with the FTA, and consulting parties in the consultation with the SHPO and has been invited to concur in the MOA to reflect its commitment to the measures described in this agreement;

NOW THEREFORE, FTA, SHPO, and RTD hereto agree to a resolution of the adverse effects of the undertaking to be implemented in accordance with the following stipulations:

STIPULATIONS

FTA shall ensure that the following measures are implemented:

I. MITIGATION

A. RESOURCE PROTECTION

FTA has determined in consultation with the SHPO that the construction of the Project will have an adverse affect on the 35th and Blake St. LLC and the Freedom Cab Company.

5DV9309: 35th and Blake St. LLC. The Project would cross through the northern edge of the property as it approaches the 38th/Blake station. The Project would require a potential partial acquisition of approximately 0.27 acres of the property (34 percent), resulting in an adverse effect.

5DV9501: Freedom Cab Company. Roadway improvements associated with the Project would shift the existing alignment of Smith Road south onto the north edge of the resource property. The roadway improvements would require a potential partial acquisition of approximately 0.08 acres (18 percent) from the property, resulting in an adverse effect.

The parties have developed the following mitigation measures to reduce or mitigate the identified adverse effects on the properties:

1. RTD shall incorporate special conditions into the construction documents to ensure that the affected resource is protected during construction.

B. ARCHIVAL DOCUMENTATION

FTA has determined in consultation with the SHPO that the construction of the Project will have an adverse affect on the Derby Lateral (High Line Canal Lateral A Extension/Segment "The Doherty Ditch").

5DV840.13: Derby Lateral (High Line Canal Lateral A Extension/Segment "The Doherty Ditch"). The Derby Lateral is recorded as eligible for the NRHP under the name High Line Canal Lateral A Extension/Segment "The Doherty Ditch". The Project would adversely affect 0.23 acres of the Derby Lateral where the mainline crosses the canal on the east side of Peña Boulevard. The canal would likely be enclosed underground through a culvert at this location, which is an adverse effect to this resource.

The parties have developed the following mitigation measures to reduce or mitigate the identified adverse effects on the properties:

1. Prior to commencing construction, RTD will conduct Colorado Historical Society, Office of Archaeology and Historic Preservation (OAHP) Level II documentation to accurately record the features of each impacted segment of the historic linear resources identified above.

2. RTD shall ensure that this historic resource is documented in accordance with the guidance for Level II documentation found in *OAHP form #1595, Historical Resource Documentation: Standards for Level I, II, III Documentation.* RTD shall consult with the SHPO to determine appropriate Level II recordation measures.

3. RTD shall ensure that all documentation activities will be performed or directly supervised by, architects, historians, photographers, and/or other professionals meeting the qualification standards for their field in the Secretary of Interior's Professional Qualifications Standards (36 CFR 61, Appendix A).

4. RTD shall provide originals of all documents resulting from the documentation to the SHPO and to a local library or archive.

C. REVIEW AND COMMENT

RTD shall afford the SHPO thirty (30) days from the date of transmittal to review and respond to any reports, plans, specifications or other documentation provided for review pursuant to this MOA.

II. DURATION

This MOA shall be null and void if its terms are not carried out within five (5) years from the date of its execution. Prior to such time, FTA may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation V below. This MOA shall be effective upon signing by all parties (FTA, SHPO, and RTD).

III. POST-REVIEW DISCOVERIES

In the event that one or more historic properties, other than those discussed in this MOA, are discovered or that unanticipated effects on historic properties are found during the implementation of this MOA, the FTA shall follow the procedure specified in 36 C.F.R. 800.13.

This stipulation specifies procedures to be followed by all RTD employees and all RTD contractors and subcontractors should any archaeological, historic, or paleontological resources be discovered during construction of the project.

A. Immediately suspend construction operations in the vicinity of the discovery if a suspected historic, archeological, or paleontological item, feature, prehistoric dwelling site or artifact of historic or archeological significance is encountered.
B. Notify the RTD Project Manager for the project verbally of the nature and exact location of the discovery.
C. The RTD Project Manager for the project immediately will contact the SHPO and will consult with a qualified historian or archeologist to advise SHPO and RTD regarding the significance and recommended disposition of the discovery. The RTD Project Manager for the Project will protect the discovered objects from damage, theft, or other harm while the procedures of this stipulation are being carried out.

IV. MONITORING AND REPORTING

Each year following the execution of this MOA until it expires or is terminated, RTD, on behalf of FTA, shall provide all parties and signatories to this MOA a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and/or objections received regarding RTD and FTA's efforts to carry out the terms of this MOA. Failure to provide such summary report may be considered noncompliance with the terms of this MOA pursuant to Stipulation V, below.

V. DISPUTE RESOLUTION

Should any signatory to this MOA, including the invited signatory, object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, FTA and SHPO shall consult and attempt to resolve the dispute. If FTA determines, within 30 days, that the dispute cannot be resolved, FTA, may:

A. Forward all documentation relevant to the dispute to ACHP in accordance with 36 CFR 800.2(b)(2). Upon receipt of adequate documentation, ACHP shall review and advise FTA on the recommended resolution of the dispute within 30 days. Any comment provided by the ACHP shall be taken into account by FTA in reaching a final decision regarding the dispute.

B. If ACHP does not provide comments regarding the dispute within 30 days after receipt of adequate documentation pursuant to 36 CFR 800.11, FTA may render a decision regarding the dispute. In reaching its decision, FTA shall take into account all comments from other signatories regarding the dispute.

C. FTA's responsibility to carry out all other actions subject to the terms of this MOA, that are not the subject of the dispute, remain unchanged. FTA shall notify the SHPO of its decision in writing before implementing that portion of the undertaking subject to dispute under this Stipulation. FTA's decision shall be final.

VI. AMENDMENTS AND NONCOMPLIANCE

If any signatory to this MOA, including the invited signatory, determines that its terms shall not or cannot be carried out or that an amendment to its terms must be made, that party shall immediately consult with the other parties to develop an amendment to this MOA pursuant to 36 CFR 800.6(c)(7) and 800.6(c)(8). The amendment shall be effective on the date a copy signed by all of the original signatories is filed with ACHP. If the signatories cannot agree to appropriate terms to amend the MOA, any signatory may terminate the MOA in accordance with Stipulation VII, below.

VII. TERMINATION

If the MOA is not amended following the consultation set out in Stipulations V and VI above, it may be terminated by any signatory. Within 30 days following the termination, the FTA shall notify the SHPO whether or not it shall initiate consultation to execute a new MOA under 36 CFR 800.6(c)(1) and proceed accordingly.

Execution of this MOA by FTA, SHPO, RTD and the other parties and submission of this MOA to ACHP pursuant to 36 CFR 800.6(b)(I)(iv) prior to FTA's approval of this undertaking, and implementation of its terms evidence that FTA has taken into account the effects of this undertaking on historic properties and afforded ACHP an opportunity to comment.

SIGNATORIES:

FEDERAL TRANSIT ADMINISTRATION, REGION VIII

By: Charmaine Knighton Date: 8/14/09
Terry J. Rosapep, Regional Administrator

COLORADO STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: 8/27/09
Edward C. Nichols, SHPO

INVITED SIGNATORIES:

REGIONAL TRANSPORTION DISTRICT

By: _____ Date: 9/11/09
Phillip A. Washington, Interim General Manager

Exhibit 8-B

Gold Line Corridor Project
FTA Record of Decision and Section 106 Memorandum of Understanding among FTA, RTD and Colorado State Historic Preservation Officer

[attached hereto]

RECORD OF DECISION

Gold Line Corridor Project

Denver, Arvada, Wheat Ridge, Adams County, Jefferson County, Colorado

November 2009

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Acronym List

Btu	British thermal unit
CMP	Construction Mitigation Plan
CO	carbon monoxide
CPTED	Crime Prevention through Environmental Design
CRMF	Commuter Rail Maintenance Facility
CWA	Clean Water Act
DEIS	Draft Environmental Impact Statement
DMU	diesel multiple unit
DRCOG	Denver Regional Council of Governments
DUS	Denver Union Station
EIS	Environmental Impact Statement
EMU	Electric Multiple Unit
FEIS	Final Environmental Impact Statement
FRA	Federal Railroad Administration
FTA	Federal Transit Administration
HASP	Health and Safety Plan
HMMP	Hazardous Materials Management Plan
LRT	light rail transit
MBTA	Migratory Bird Treaty Act
MOA	Memorandum of Agreement
MOW	maintenance-of-way
MS4	Municipal Separate Storm Sewer System
MSE	mechanically stabilized earth
NAAQS	National Ambient Air Quality Standards
NEPA	National Environmental Policy Act
NO_X	nitrogen oxide
NPDES	National Pollutant Discharge Elimination System
PM_{10}	particulate matter of 10 microns in diameter or smaller
pnR	park-n-Ride
ROD	Record of Decision

ROW	right-of-way
RTD	Regional Transportation District
RTP	Regional Transportation Plan
SAFETEA-LU	Safe, Accountable, Flexible, Efficient Transportation Act – A Legacy for Users
SEA	Supplemental Environmental Assessment
SHPO	State Historic Preservation Officer
SPCC	Spill, Prevention, Control, and Countermeasure Plan
SU&DP	sewer use and drainage permits
SWMP	Stormwater Management Plan
USACE	United States Army Corps of Engineers
VOC	volatile organic compound

Decision

The Federal Transit Administration (FTA), pursuant to 23 CFR 771 and 774 and 40 CFR Parts 1500-1508 has determined that the requirements of the National Environmental Policy Act (NEPA) have been met for the Gold Line Corridor project proposed by the Regional Transportation District (RTD). This FTA decision applies to the Preferred Alternative, which is described and evaluated in the Gold Line Corridor Final Environmental Impact Statement (FEIS) prepared by the RTD and the FTA and signed on August 21, 2009.

The FTA has considered the information contained in the public record, including the Gold Line Draft Environmental Impact Statement (DEIS), the FEIS, regulatory and resource agency coordination, public hearing and public meeting comments, and agency review comments on the environmental documents. This Record of Decision (ROD) summarizes FTA's decisions regarding compliance with relevant environmental requirements, describes the mitigation measures to be included in the project, summarizes public outreach and agency coordination efforts, responds to substantive comments, and presents the Section 4(f) determination for the project

The Preferred Alternative consists of an 11.2-mile Electric Multiple Unit (EMU) commuter rail system operating between Denver Union Station (DUS) in downtown Denver and Ward Road in Wheat Ridge with seven stations. The Gold Line Preferred Alternative alignment will operate primarily on a double-track system (with the exception of one single track segment of approximately 1.5 miles in the western end of the corridor, designed to avoid significant impacts, as described in the Preferred Alternative section below) dedicated to commuter rail with no track being shared with freight rail operations. The Preferred Alternative from DUS to the CRMF, shares the alignment with all of the FasTracks Commuter Rail corridors (East, North Metro, and Northwest Rail) for vehicle service at the CRMF. Passenger service for the Gold Line and Northwest Rail share the alignment from DUS to Pecos Street. West of Pecos Street to Ward Road, the Preferred Alternative alignment separates from the Northwest Rail project and travels on its own alignment separate from the freight railroad to Ward Road

Because it is required as a supporting component of the Preferred Alternative, the Commuter Rail Maintenance Facility (CRMF) is also included in this project. A Supplemental Environmental Assessment (SEA) to support the Gold Line and East Corridor DEIS documents was prepared for the CRMF and is incorporated herein by reference (FTA, 2009). Content and comments from that document are incorporated into this ROD.

Neither the FEIS nor this ROD constitutes an FTA commitment to provide financial assistance for the construction of the project. In this instance, RTD is seeking funding under FTA's Major Capital Investments ("New Starts") program. FTA will decide whether to commit New Starts funds to the project in accordance with applicable Federal law including, but not limited to, the New Starts evaluation procedures codified at 49 U.S.C. Section 5309.

Basis for Decision

The environmental record for the Gold Line project includes the 2008 Gold Line DEIS, the 2009 CRMF SEA, and the 2009 Gold Line FEIS, comments received on these documents and responses to those comments. The FEIS includes a review of the purpose and need for the project, goals and objectives, consideration of alternatives, environmental impacts and measures to minimize harm.

Background

Planning studies conducted for the Denver metropolitan area have shown that population and employment is anticipated to increase approximately 54 percent by the year 2030 (according to the 2030 Regional Transportation Plan [RTP]). Automobile and bus travel times are anticipated to increase by approximately 35 percent in the same period. In response to this anticipated growth and to improve mobility options throughout the Denver metropolitan area, the region has explored several transportation mode solutions including bus, rail, and HOV lanes to help relieve expected congestion, address air quality issues, and offer additional transportation options to citizens within the region.

In November 2004, voters in metropolitan Denver's RTD approved the FasTracks initiative, which is intended to expand and improve public transit service to metropolitan Denver communities over a 12-year period. The FasTracks comprehensive plan calls for the construction and operation of rail lines as well as improved bus service and park-n-Rides (pnR) throughout the region. The Gold Line Final Environmental Impact Statement (FEIS) addresses the project in the central western area of the Denver metropolitan region that is part of the RTD FasTracks Plan. The FEIS examined a range of alternatives, their respective environmental consequences, and mitigation measures to provide fixed-guideway transit service in the Gold Line study area.

Alternatives Considered

The Gold Line FEIS evaluated more than 20 alternatives and other iterations of those alternatives to meet the Purpose and Need for the corridor. Alternatives were developed and evaluated to address the travel markets in the Gold Line study area, to minimize environmental impacts, and in response to the input from the agency and public involvement process.

As a result of the alternatives analysis process during the NEPA process, a Preferred Alternative was selected. The Preferred Alternative was found to be the environmentally preferred alternative. Avoidance and minimization measures that were taken to reduce the impacts of the Preferred Alternative have served to further reduce the environmental consequences associated with its construction and operation.

During the initial phases of the NEPA process, the freight railroads (UP and BNSF) adopted policies that disallow sharing of their ROWs with technologies such as light rail transit (LRT), which do not comply with Federal Railroad Administration (FRA) standards for crash-worthiness. As a result, the LRT alternative chosen by previous planning studies had to be dropped from further consideration. Instead, heavier commuter rail technologies (both electric and diesel powered) that could operate within the freight railroad ROW were evaluated. LRT was evaluated only on alignments that either parallel the freight rail ROW or are on city streets. Streetcar technology was also evaluated because it provided an alternative to LRT that is easier to construct, and with fewer impacts, in an urban environment.

Several conceptual-level alignments for the EMU, diesel multiple unit (DMU), LRT, and streetcar were developed to determine the best routes for each technology from DUS to Ward Road.

These technologies and alignments were then evaluated through a 5-level screening process following FTA, NEPA, and SAFETEA-LU requirements.

Based on FTA's "*Procedures and Technical Methods for Transit Project Planning*", the alternatives progressed through the five screening levels; the number of alternatives decreased

while being subjected to an increasing level of detailed analysis, including engineering, environmental, and community impact criteria.

No Action Alternative

The No Action Alternative was also evaluated in the DEIS and FEIS and included several roadway and transit projects from the Denver Regional Council of Government's (DRCOG) fiscally constrained 2030 RTP. The No Action Alternative roadway network in the region (including roadways within the Gold Line study area) was assumed to be the roadway projects included in the DRCOG 2030 RTP. These included:

- Reconfiguration of the I-70/SH 58 interchange
- Reconstruction of the I-70/Kipling interchange
- Addition of new lanes on Wadsworth Boulevard between 46th Avenue and 36th Avenue.

Transit improvements include bus service changes and committed bus service enhancements that are planned to occur in the next 1 to 5 years, as well as committed bus service enhancements that will occur between 2006 and 2030. It also assumes that no additional transit facilities would be constructed in the Gold Line study area and that the Ward Road and Olde Town pnR exist in the same locations as today and would not be expanded.

Baseline Alternative

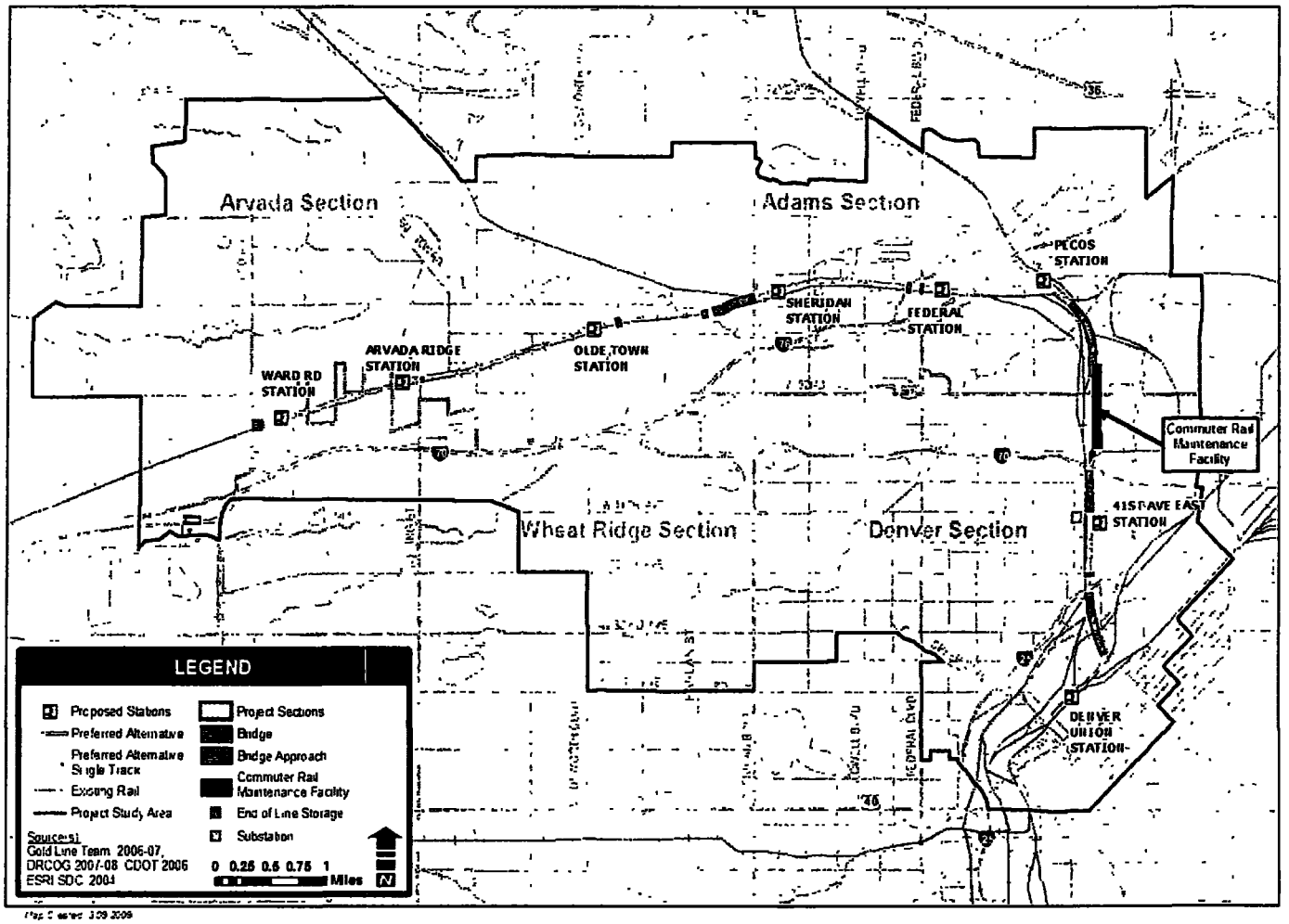
A Baseline Alternative was also developed to represent the "best that can be done" without implementing a major capital investment such as rail transit. The Baseline Alternative was included for financial and mobility comparisons in the FEIS (in Chapter 4, Transportation Systems and in Chapter 5, Evaluation of Alternatives). Because the Baseline Alternative did not meet the Purpose and Need for the project it was not evaluated for environmental impacts in the DEIS or FEIS.

Preferred Alternative

Alignment

The Preferred Alternative (EMU-BNSF/UP) will begin at DUS, share the alignment with the Northwest rail project from DUS to Pecos Street, and terminate at Ward Road in Wheat Ridge (Figure 1 below).

FIGURE 1: PREFERRED ALTERNATIVE



Beginning at DUS, the alignment will operate on a double-track system dedicated to commuter rail. The first station north of DUS is the 41st Avenue East Station located at 41st Avenue and Fox Streets in Denver.

The next station will be constructed in Adams County at Pecos Street. West of the Pecos Station, the Preferred Alternative will separate from the Northwest Rail project and travel on its own alignment for the remaining 7.7 miles to Ward Road. Between the Pecos Station and Ward Road, the following five stations will be constructed: the Federal Station in Adams County, the

Sheridan, Olde Town, and Arvada Ridge Stations in the City of Arvada, and the Ward Road Station located in the City of Wheat Ridge.

To avoid impacts in areas of constrained ROW, the alignment will have a section of single track beginning at Ralston Road and returning to double track west of Olde Town. The single-track section is approximately 1.5 miles long.

Traction Power
Electric power for the EMU trains will be provided by one substation powered from the existing local electrical grid, located immediately west of the existing Xcel Argo substation near West 43rd Avenue and Inca Street in Denver (this is required for operations of all of the commuter rail corridors traveling to the CRMF). There may also be a paralleling substation located in the Sheridan Station area.

End of Line Facilities
Two additional tracks are provided for vehicle storage at the western end of the Gold Line. Up to six trains may be stored on this track overnight to begin the morning service

Transit Stations
Seven transit stations will be constructed along the Gold Line corridor. The characteristics of those transit stations are shown in Table 1.

The Gold Line FEIS evaluated 7.5 minute headways in the peak period, therefore the impacts disclosed in the FEIS represented the maximum impacts from an environmental perspective and mitigations are proposed accordingly in the FEIS and in this ROD.

The FEIS also identified that peak headways may be reduced to 15 minutes. That reduction in peak train frequencies would decrease parking demand, and other environmental impacts, in the horizon year of 2030.

An updated, FTA approved, model was used to evaluate the effects of the 15 minute peak headways after the release of the FEIS. The model was updated to include a new regional transit survey recently completed (showing transit patron travel patterns), revised model inputs (including new land use assumptions) and overall model improvements. Because of these model changes care must be taken in directly comparing the results of the 7.5 and 15 minute peak headway scenarios.

For example, although it may seem somewhat counterintuitive, on opening day (2015) there is a demand for 50 additional parking spaces for the 15 minute peak headway scenario over the 7.5 minute peak headway scenario. However, the total overall parking demand for the horizon year of 2030 is significantly less in the 15 minute peak headway scenario than in the 7.5 minute peak headway scenario.

Approximately 2,250 to 2,300 parking spaces will be provided on opening day, with capacity for an additional 590 to 1,880 spaces by the horizon year 2030 (depending on the peak headways assumed). Total parking required for the Gold Line project (2030) would be 2,890 spaces (assuming 15 minute peak headways) up to 4,130 spaces (assuming 7.5 minute peak headways).

Table 1 below shows the parking results for both 7.5 minute peak headway and 15 minute peak headway scenarios.

TABLE 1: TRANSIT STATION CHARACTERISTICS

Stations	Description	Pedestrian Structure	Parking Spaces		
			Opening Day 2015 (7.5 minute peak headways/15 minute peak headways)	Spaces Added by 2030 (7.5 minute peak headways/15 minute peak headways)	Total Parking Spaces by 2030 (7.5 minute peak headways/15 minute peak headways)
41st Avenue East	Located on one private industrial property; a four-level parking structure is proposed in 2030	Yes	500/500	500/270	1,000/770
Pecos	Located east of Pecos Street, south of I-76 and north of the proposed alignment	Yes	300/300	225/0	525/300
Federal	Located just east of Federal Boulevard and north of the proposed alignment	No	300/280	275/90	575/370
Sheridan	Located east of Sheridan Boulevard and north of the proposed alignment	No	300/330	100/0	400/330
Olde Town	Located east of Vance Street	No	500[1]/400	100/0	600/400
Arvada Ridge	Located in the southwest quadrant of the intersection of the proposed alignment and Kipling Street	Yes	150/200	180/80	330/280
Ward Road	Located north of the proposed alignment and east of Ward Road	No	200/290	500/150	700/440
Total			2,250/2,300	1,880/590	4,130/2,890

Source: Gold Line Team, 2008/2009

[1] Includes 200 existing parking spaces at the Olde Town Arvada pnR

Commuter Rail Maintenance Facility

The EMU vehicles for all the FasTracks commuter rail projects will be serviced at a central CRMF, located immediately north of 48th Avenue on what is referred to as the Fox North Site. The CRMF will include a maintenance shop, an EMU rail storage yard, DMU rail storage yard, employee facilities, administrative offices, employee parking facilities, a maintenance-of-way (MOW) building, and a lay-down yard. The facility will service the following fleets:

- Gold Line—12 (15 minute peak headways) to 22 (7.5 minute headways) EMU's
- Northwest Rail—22 DMUs
- East Corridor—30 EMUs
- North Metro Corridor—22 DMUs or EMUs

Train movements will occur throughout the day with 229 movements scheduled for between 7 a.m. and 10 p.m. and 87 movements between 10 p.m. and 7 a.m. The CRMF environmental analysis (based on these 229 movements) includes the maximum number of vehicles as above (i.e. 22 for the Gold Line project). Train movements within the CRMF will occur at night. The operation of the CRMF will be ongoing 24 hours per day, 7 days per week. Maintenance activities need to occur during times when trains are not in revenue service. Night movements to and from the CRMF shop will be conducted in the same manner as daytime movements.

Rail Operations Plan

The Preferred Alternative will operate between 4:00 a.m. and 12:30 a.m. The trains will operate 365 days a year on either a weekday or a weekend/holiday schedule. The frequency of service for the Gold Line Preferred Alternative is summarized in Table 2 below.

TABLE 2: PREFERRED ALTERNATIVE SERVICE FREQUENCIES AND HEADWAYS

Hours of Operation	Service Frequency	Headway
Morning and Evening Peak Period Service – Weekdays (6 00 a m to 9.00 a m and 3 00 p m to 6 30 p m)	Eight/Four trains per hour	7 5 minutes/15 minutes
Off-peak service – Weekdays (9.00 a m to 3 00 p m)	Four trains per hour	15 minutes
Early morning (4 00 a.m to 6.00 a.m) and Late Evening Service (6.30 p m. to 12 30 a m.)	Two trains per hour	30 minutes
Weekend/Holidays (8 00 a.m to 6:30 p m)	Four trains per hour	15 minutes
Weekend/Holidays (4 00 a.m to 8 00 a m and 6 30 p m to 12.30 a m)	Two trains per hour	30 minutes

Source RTD, 2008/2009

The operations plan will be optimized as the design progresses such that the project minimizes operational costs while maximizing ridership. The most likely change to the operations plan for the Preferred Alternative would be the reduction of train service frequencies and headways from 8 trains per hour to 4 trains per hour and from 7.5 minutes to 15 minutes in the peak period as previously noted. Reduced train frequencies would reduce traffic, parking, and noise impacts in the horizon year of 2030. Therefore, the train frequencies of 7.5 minutes during the peak, and 15 minutes in the off peak, assumed in the FEIS and the proposed mitigation measures in the FEIS and this ROD represents the "worst case" from an environmental impact perspective.

Avoidance and Minimization of Impacts from the Preferred Alternative

The Regional Transportation District will design and incorporate into the project all mitigation measures included in the FEIS for the Preferred Alternative and those measures identified during final design. FTA will require in any future funding agreement on the project and as a condition of any future grant or Letter of No Prejudice for the project, that all committed mitigation be implemented in accordance with the FEIS and ROD. FTA will require that RTD periodically submit written reports on its progress in implementing the mitigation commitments. FTA will monitor this progress through quarterly review of final engineering and design, land acquisition for the project, and construction of the project. The measures to minimize harm are fully described in the FEIS.

Public Opportunity to Comment

Public opportunities to review the Gold Line project have included meetings and workshops for all Safe, Accountable, Flexible, and Efficient Transportation Act – A Legacy for Users (SAFETEA-LU) milestones including:

- ✓ **Scoping Meeting** – including: Purpose and Need, Range of Alternatives, Study Area, Initial Evaluation Criteria, Potential Environmental Issues, and Milestone Schedule
- ✓ **Conceptual Screening** – including: Methodologies, Screening Criteria, Alternative Descriptions, Cost-Effectiveness Measures, Potential Environmental Impacts', and Public and Agency Comments
- ✓ **Detailed Evaluation** – including: Detailed Evaluation Criteria, Descriptions of Alternatives, Cost-Effectiveness Measures, Potential Environmental Impacts, and Public and Agency Comments
- ✓ **Selection of the Preferred Alternative** –including: Cost-Effectiveness Measures, Environmental Impacts, and Public and Agency Comments
- ✓ **Preliminary Results of the DEIS** –including: Purpose and Need, Alternatives Evaluated, Environmental Consequences, Transportation Impacts, and Public and Agency Comments
- ✓ **Preferred Alternative Refinement** – including: Improvements to the Preferred Alternative including alignment and station design options
- ✓ **DEIS Hearings** —including: Open House, Presentation of DEIS Results, and Public Hearings
- ✓ **FEIS Hearings** – including: Open House, Presentation of FEIS Results, and Public Hearings

Public involvement has included 16 public workshops, 55 listening sessions on specific topics, 23 issue focus teams, and public hearings for the DEIS and the FEIS. A project website was maintained that was viewed more than 70,000 times, and more than 34,000 newsletters and scoping booklets were sent to members of the public, agencies, and others.

The RTD Board of Directors adopted the Gold Line Preferred Alternative in July of 2007. The RTD Board of Directors then approved the release of the DEIS in June of 2008 and the FEIS in July of 2009. The FTA and RTD released the Gold Line DEIS on July 18, 2008 for a 45-day comment period ending on September 1, 2008. Public hearings for the DEIS were held on August 6 and August 7, 2008. During the public comment period for the DEIS, 163 comments were received and were responded to in the FEIS. The FTA and RTD released the Gold Line FEIS on August 21, 2009 for a 30-day review period ending on September 21, 2009. Public hearings for the FEIS were held on September 9 and 17, 2009. During that timeframe, a total of 40 individuals and agencies submitted approximately 217 comments in writing or orally at the public hearing.

Comments and Responses during the NEPA Process

DEIS Comments

During the DEIS comment period from July 18, 2008 to September 2, 2008, 80 organizations and individuals submitted 163 comments on the DEIS. These comments were generally related to the design of stations, operations, bicycle and pedestrian access, costs and funding, aesthetics, environmental issues, property acquisition, praise for the public involvement process, noise and vibration impacts, and transit technology. All of these comments were addressed in Volume II of the FEIS.

CRMF SEA Comments

An additional 154 comments were submitted on the SEA for the CRMF. Most of these comments addressed concerns regarding the potential loss of jobs at the Owens Corning Denver Roofing and Asphalt Plant located on the proposed CRMF site. These comments were mitigated through a reconfiguration of the site that offset the need to acquire the Owens Corning plant.

FEIS Comments

During the comment period on the FEIS from August 21, 2009 to September 21, 2009, 217 comments were received. Of these, 12 were received verbally at the two Public Hearings, with the remaining 205 being submitted in writing.

At the Public Hearings, nine comments were from the public and three from private businesses. Eight of the comments praised the EIS process and one addressed concerns about funding. The business comments related to property acquisition.

Of the written comments received, 16 were from the public, six from regulatory agencies, and three from private businesses.

The majority of the written comments received were from the cities of Denver, Wheat Ridge, and Arvada, who posted 16, 146, and 14 comments, respectively. Adams County submitted one comment. Most of the comments from the local municipalities pertained to design elements of the project that will be addressed in final design.

All public and agency comments have been responded to individually and can be found on the project website at www.rtdgoldline.com.

The comments received on the FEIS are summarized below.

The common themes of the FEIS comments included:

- *Quiet Zones as noise mitigation.* A number of comments were submitted that were supportive of the use of quiet zones as noise mitigation as proposed for this project. Some of these comments expressed a desire to see the quiet zones implemented as soon as possible in the development of the project.
    - *Response*: RTD will pass on to the selected contractor the agency and community desire to implement the Quiet Zone as early as is feasible in the project development process. RTD will also continue to work with local

governments in the application process for the Quiet Zone and is committed to providing the grade crossing improvements necessary to qualify for the Quiet Zone as indicated in the mitigation measures for noise impacts from this project.

- *Visual and Aesthetics.* Some comments appreciated the fencing options that were developed as sensitive to the surrounding land uses. Some comments expressed a desire for changes to station area aesthetics and/or fencing types, and a desire to screen electric substations.

    - *Response*: Comments were made on the Gold Line DEIS about concerns regarding project aesthetics both related to station areas and to fencing. As a result, between the DEIS and FEIS, the Gold Line team held a series of agency and public workshops to address these issues. The results of those workshops can be found in the FEIS; pages 2-45 and 2-46 describes the station architectural style process and results and pages 2-60 to 2-62 describes the alignment fencing selection process.

      RTD has committed to fencing options, station aesthetics and screening the electric substation in the mitigation table in the FEIS and in this ROD (Appendix B in the Visual and Aesthetic mitigation section) that were the results of the public outreach efforts.

- *Alternatives Considered.* There were a few comments expressing the opinion that a diesel train would be preferable to an electric train mostly based on cost. There were two comments from the same commenter expressing the desire for a bus over a rail alternative. There were two comments (from the potentially impacted business) indicating that the 41st Avenue East Station should be moved and there were several comments supporting the 41st Avenue East Station location indicating that the station should be built as early as possible in the project development process. There was one comment expressing support for the Preferred Alternative.

    - *Response regarding diesel versus electric vehicles*: RTD did an extensive evaluation of the costs of diesel versus electric commuter rail vehicles. The results of that evaluation were; while the up- front capital costs for electric vehicles and electrification are more than diesel, the operational and life cycle costs showed a savings for electric vehicles. The Gold Line project was shown to "pay back" the original capital cost for electric vehicles in a relatively short amount of time. Additionally, diesel vehicles have greater noise impacts than electric vehicles (due to engine noise which they are accelerating) and had less public and agency support overall.

    - *Response regarding the process for selecting rail:* The Gold Line team evaluated a number of modal options in the EIS and in previous planning studies. Bus alternatives were eliminated due to the environmental impacts related to the alternative and a lack of public and agency support. Throughout the EIS process, there has been considerable support for a rail alternative and little/no support for a bus alternative.

    - *Response to the comment to move the 41st Avenue station to avoid impacts to a property owner:* The Gold Line team evaluated a number of station alternatives over the 3 year process in the 38th Avenue area. The criteria for the evaluation of these stations included: spatial and geometric considerations, expandability,

ease of access for bicycles, pedestrians, buses and vehicles, compatibility with existing and future land use plans, acquisitions required for implementation, proximity to major activity centers and minimization of environmental impacts. There were a number of station selection public meetings with opportunities to comment. The 41st/Fox station was selected with significant agency and public support.

- *Land Acquisition, Displacements and Relocation of Existing Uses.* There were three property owner comments expressing concern about the potential need for their properties to implement the project.
    - *Response to the comments about property acquisitions*: A major goal of the Gold Line environmental process was to minimize environmental impacts, including property acquisitions. This resulted in no full residential acquisitions required and 16 business acquisitions required. RTD will follow the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and the Fifth Amendment of the United States Constitution. This will include relocation assistance and the provision of just compensation for properties required to implement the Gold Line (Appendix B mitigation measures under Land Acquisition, Displacements and Relocations of Existing Uses).
- *Community Enhancements.* There were local government comments which expressed the desire for additional sidewalks, improved drainage, local roadway improvements, additional parking at stations, and the like.
    - *Response to local government requests for community enhancements*: The Gold Line team will continue to coordinate with local governments to provide the best project possible considering real financial constraints. RTD will provide the local government design comments to the bidders on the project for their consideration as well.
- *Positive statements about the EIS and public involvement process.*
    - *Response:* Comment noted.

Determinations and Findings

Section 106 Compliance
FTA has determined, in coordination with the Colorado State Historic Preservation Officer (SHPO), that the Preferred Alternative will result in an adverse effect to the Denver West Side Line *(5DV3512.3);* the Denver Utah Pacific Railroad, Chicago Burlington Quincy Siding & Spur (Waterworks Sales Co, J.M. Warner Co, & Richardson Lumber Spur) (5AM1888 and 5DV6243); and the Allen-Rand Ditch *(5JF4454.1).* Mitigation measures have been identified and are described in a Memorandum of Agreement among FTA, RTD, and SHPO dated July of 2009 (Appendix A).

Section 4(f) Determination
FTA determined through the Section 4(f) analysis that there are no feasible and prudent avoidance alternatives, as defined in 23 CFR 774.17, to the use of the Denver West Side Line *(5DV3512.3);* the Denver Utah Pacific Railroad, Chicago Burlington Quincy Siding & Spur (Waterworks Sales Co, J.M. Warner Co, & Richardson Lumber Spur) (5AM1888 and 5DV6243);

and the Allen-Rand Ditch *(5JF4454.1)*. FTA also determined that the project incorporates all possible planning to minimize harm, as defined in 23 CFR 774.17 that results from the use of those resources.

In addition, FTA has determined that the use of the Jim Baker Reservoir, including any measures to minimize harm (such as avoidance, minimization, mitigation, or enhancement measures) committed to will have a *de minimis* impact on the property. Adams County, the official with jurisdiction, concurred that the impacts to Jim Baker Reservoir meet the *de minimis* requirements. In addition, the City and County of Denver, Adams County, and the City of Arvada concurred with the proposed trail detours during construction activities as identified in the mitigation measures for Parklands, Open Space and Recreational Resources in Appendix B of this ROD.

Conformity with Air Quality Plans
On the basis of the determinations made in compliance with relevant provisions of federal law, FTA finds that the Gold Line project satisfies the requirements of NEPA, the Clean Air Act of 1970, and the U.S. Department of Transportation Act of 1966, as amended. The project is identified in the conforming Long Range Transportation Plan and in the conforming Transportation Improvement Program for the Denver metropolitan region.

Floodplains
100-year floodplains associated with the South Platte River, Clear Creek, and Ralston Creek would be affected by the implementation of the project. Bridge construction would require the placement of piers within the 100-year floodplain of all three water-courses.

Bridge span lengths were widened to avoid placement within the normal channel flow of the South Platte River at an additional cost to the project to minimize impacts to the riparian system and flood elevations. Nonetheless, two piers remain within the 100-year floodplain. Modeling of the new bridge suggests a maximum rise of 100-year flood elevation of 0.19 foot just upstream of the bridge.

The bridge spans at Clear Creek were designed to mirror the spans of the existing UPRR Bridge immediately upstream and to avoid impacts to wetlands. Modeling of the new bridge suggests a maximum rise of 100-year flood elevation of 0.58 foot, just upstream of the existing bridge.

At Ralston Creek, a new seven-span bridge with new pier locations mirroring those of the existing BNSF Railway Company Bridge would be installed resulting in a modeled rise of the 100-year elevation of 0.15 foot. Alternatives to the recommended bridge design at Ralston Creek were considered but found infeasible as the use of longer spans required an increase of the structural depth of the bridge deck, and/or raising the bridge. Raising the commuter rail bridge resulted in the need to demolish the existing Ralston Road Bridge (which passes over the commuter rail alignment) and is not cost effective. If the bridge is not raised and the deck depth is increased to accommodate longer spans, there would be insufficient clearance under the bridge for the existing pedestrian/bicycle path paralleling Ralston Creek resulting in a 4(f) impact. Additionally, the bottom cord of the bridge would be submerged by the 100-year floodwaters resulting in a greater impact to flood elevations than the proposed design.

Wetlands and Other Water Features
The Preferred Alternative will result in impacts to 0.15 acres of jurisdictional wetlands and 0.19 acres of other water features. A Nationwide Permit request has been approved by the United States Army Corps of Engineers (USACE), and the contractor will comply with all requirements of the Nationwide Permit (wetlands will be replaced per USACE and United States

Environmental Protection Agency requirements for jurisdictional wetlands). Additionally RTD has committed to 1:1 mitigation for non- jurisdictional wetlands as noted in the mitigation table in Appendix B.

Changes from the Final Environmental Impact Statement

The following changes have occurred since the FEIS was released:

- Property Acquisitions. Due to additional survey information, the property acquisitions required for the Preferred Alternative have decreased slightly.
- Pecos Station Option A from the FEIS (only required if Adams County did not complete the Pecos Grade Separation project) is no longer under consideration since Adams County is currently preparing for construction of the Pecos Grade Separation. The design of the main Pecos Station option, included in the Preferred Alternative described in the FEIS and this ROD, is consistent with the implementation of the grade separation.
- Two mitigation measures were refined due to agency and stakeholder comments.
- Peak hour headways are likely to be reduced from 7.5 minutes to 15 minutes. This potential change was disclosed in the FEIS. This change would result in a decrease in impacts previously reported.

In addition to these changes, minor corrections to typographical errors in the FEIS can be found in the response to comments on the project website.

Land Acquisition, Displacement, and Relocation of Existing Uses

Based on additional survey information received since the release of the FEIS, modifications to property acquisitions were identified. These changes slightly decrease the total acres of private property to be acquired from 128.2 acres to 127.5 acres. In addition, these changes decrease the number of partial residential impacts from 13 to eight.

Table 3 summarizes new property impacts that were identified or revised impact acreages from the survey data. New or modified impacts, noted in this ROD, will not result in any additional business relocations or any residential relocations.

TABLE 3: PROPERTY IMPACTS THAT HAVE BEEN UPDATED OR ADDED SINCE THE FEIS

Parcel ID and Property Owner	Property Type	Acres Acquired	Percent Impact	Business Relocations	Comments
Gold Line Alignment and Stations					
0227300092000 City and County of Denver Park Avenue West Maintenance Facility	Industrial	1.18	14 (Partial)	0	Impacts to parcel 0227300092000 were included in the municipal total in the FEIS, but the City and County of Denver requested that impacts to this parcel be documented individually
215300070000 Owens-Corning Fiberglas Corporation	Industrial	0 08	16 (Partial)	0	Owens Corning representatives requested that impacts be recalculated with additional survey information.
182515204006 Owens-Corning Fiberglas Corporation	Industrial	1 92	16 (Partial)	0	Owens Corning representatives requested that impacts be recalculated with additional survey information.

Parcel ID and Property Owner	Property Type	Acres Acquired	Percent Impact	Business Relocations	Comments
182510300003 Koppers Industries Inc	Industrial	0 23	5	0	Impacts were modified as a result of additional survey information
182510300004 Koppers Industries Inc	Industrial	<0 01	<1	0	Impacts were documented as a result of additional survey information
0182515205008 Mountain States Packaging	Industrial	0 01	<1 (Partial)	0	Impacts were documented as a result of additional survey information
0182509400026 Newman Polly c/o Robert Pierce	Industrial	<0.01	<1 (Partial)	0	Impacts were documented as a result of additional survey information
182509104012 EP Investment LLC	Industrial	6.61	100 (Full)	0	Impacts to 182509104012 increased as a result of revised parcel records which documented that parcel 182509104007 no longer exists
3912399003 Lykou Family LLC	Commercial	0 04	9 (Partial)	0	Impacts were documented as a result of additional survey information
Commuter Rail Maintenance Facility					
215300070000 Owens-Corning Fiberglas Corporation	Industrial	0.06	12 (Partial)	0	Owens Corning representatives requested that impacts be recalculated with additional survey information
182515204006 Owens-Corning Fiberglas Corporation	Industrial	1.19	10 (Partial)	0	Owens Corning representatives requested that impacts be recalculated with additional survey information

Source: Gold Line Team, 2009

The parcels identified in Table 4 below were documented as impacted in the FEIS, but based on additional survey information will not be permanently impacted.

TABLE 4: PROPERTY IMPACTS THAT HAVE BEEN REMOVED SINCE THE FEIS

Parcel ID and Property Owner	Property Type	Acres Acquired	Percent Impact	Business Relocations	Comments
182509400053 Broderick Investment Company	Other	1.04	2 (Partial)	0	Based on additional survey information this area is owned by Adams County Therefore the total acres of all municipal impacts will increase from 13.92 to 14 96 acres

Parcel ID and Property Owner	Property Type	Acres Acquired	Percent Impact	Business Relocations	Comments
182509104007 EP Investment LLC	Industrial	4.35	100 (Full)	0	Impacts to parcel 182509104007 are removed from the impacts and were added to parcel 182509104012 as noted in Table 3 above, based on revised parcel records for the Pecos station which indicate that parcel 182509104007 no longer exists
182508300013 Lynetta King	Commercial	0.06	4 (Partial)	0	Based on additional survey information permanent impacts to this parcel will be avoided.
3912300071 Gilbert Dunn	Industrial	0 02	3 (Partial)	0	Based on additional survey information permanent impacts to this parcel will be avoided
3912300072 Family Precision LLC	Commercial	0 08	10 (Partial)	0	Based on additional survey information permanent impacts to this parcel will be avoided.
3912300075 Lectra Products Co	Commercial	0 02	2 (Partial)	0	Based on additional survey information permanent impacts to this parcel will be avoided.
3915212014 Geoffrey Bruce	Residential	0 03	15 (Partial)	0	Based on additional survey information permanent impacts to this parcel will be avoided
3916406005 Arvada Ridge Market Place LLC	Commercial	0 11	8 (Partial)	0	Based on additional survey information permanent impacts to this parcel will be avoided
3916406013 Arvada Ridge Market Place LLC	Commercial	<0 01	<1 (Partial)	0	Based on additional survey information permanent impacts to this parcel will be avoided
3916406006 Arvada Ridge Market Place LLC	Commercial	<0.01	<1 (Partial)	0	Based on additional survey information permanent impacts to this parcel will be avoided
3916406014 Arvada Ridge Markel Place LLC	Other	0 07	9 (Partial)	0	Based on additional survey information permanent impacts to this parcel will be avoided
3917403013 Spencer Clark	Residential	0 03	11 (Partial)	0	Based on additional survey information permanent impacts to this parcel will be avoided
3917403001 Gary Gosik	Residential	0.03	8 (Partial)	0	Based on additional survey information permanent impacts to this parcel will be avoided.
3917403014 The Martin Family Trust	Residential	0 02	6 (Partial)	0	Based on additional survey information permanent impacts to this parcel will be avoided

Parcel ID and Property Owner	Property Type	Acres Acquired	Percent Impact	Business Relocations	Comments
3917403012 Ronald Yelick	Residential	0 01	3 (Partial)	0	Based on additional survey information permanent impacts to this parcel will be avoided

Source Gold Line Team, 2009

In addition, parcel 0227801017000 (Combined Fishman Properties) was documented as a partial acquisition in Table 3.3-2 and as a full acquisition in Table 3.3-3 of the FEIS. Impacts to this property will result in a full acquisition as was documented in Table 3.3-3 of the FEIS.

Refined Mitigation Measures Based on Comments

Based on comments from stakeholders, two mitigation measures were modified from the FEIS. These two changes are summarized below and are included in Appendix B.

- The provisions of Migratory Bird Treaty Act (MBTA) are applicable year-round; most migratory bird nesting activity in eastern Colorado occurs during the period between April 1 and August 31 (in the FEIS the nesting period was documented as between April 1 and August 15).
- The intersection at Ward Road and 50th Place will be signalized when a traffic signal is warranted (in the FEIS the signal was recommended if Ward Road was improved to six lanes).

Finding

FTA has determined that the environmental documentation prepared for the Preferred Alternative satisfies the statutory and regulatory requirements of NEPA and fully evaluates the potential environmental impacts of the Project The environmental documents represent the detailed statement required by NEPA regarding:

- The environmental impacts of the proposed project;
- Adverse environmental effects which cannot be avoided should the proposed project be implemented;
- Alternatives to the proposed project; and
- Irreversible and irretrievable commitments of resources, which would be involved if the, proposed project is implemented

Having carefully considered the environmental record noted above, the mitigation measures as required in Appendix B herein, and the written and oral comments offered by other agencies and the public on this record, the FTA has determined that adequate opportunity was afforded for the presentation of views by all parties with a significant economic, social or environmental interest, and consideration has been given to the preservation and enhancement of the environment and to the interest of the community in which the project is located; and all reasonable steps have been taken to minimize adverse environmental effects of the proposed project and, where adverse environmental effects remain, there exists no feasible and prudent alternative to avoid or further minimize such effects.

Terry J Rosapep

Terry J Rosapep
Regional Administrator, Region 8
Federal Transit Administration

11/2/09

Date

Appendix A

FTA, RTD, and SHPO
Section 106 Memorandum of Agreement

MEMORANDUM OF AGREEMENT REGARDING THE GOLD LINE PREFERRED ALTERNATIVE

IMPACTS TO:

5DV3512: DENVER WEST SIDE LINE – UNION PACIFIC DENVER & GULF RAILROAD (COLORADO & SOUTHERN AND CHICAGO BURLINGTON & QUINCY)

5AM1888 AND 5DV62435: DENVER UTAH PACIFIC RAILROAD, CHICAGO BURLINGTON QUINCY SIDING & SPUR (WATERWORKS SALES CO, J.M. WARNER CO, & RICHARDSON LUMBER SPUR)

5JF4454: ALLEN-RAND DITCH

The Parties to this Memorandum of Agreement (MOA) are the Federal Transit Administration (FTA). the Colorado State Historic Preservation Officer (SHPO), and the Denver Regional Transportation District (RTD), a regional transit authority organized and existing under the laws of the State of Colorado

WHEREAS, Section 106 of the National Historic Preservation Act, 16 USC 470 *et seq* requires Federal Agencies to take into account the effects of their undertakings on historic properties and afford the ACHP a reasonable opportunity to comment on such undertakings; and

WHEREAS, the proposed federally assisted undertaking is the construction and operation of the Gold Line Preferred Alternative, for which the National Environmental Policy Act (NEPA) process is currently underway; and

WHEREAS, FTA has determined that construction of the Gold Line Preferred Alternative in Denver and Arvada, Colorado, will have adverse effects on historic properties (5DV3512; 5AM1888; 5DV62435) which are included on or have been determined to be eligible for inclusion on the National Register of Historic Places, and has consulted with the SHPO and the ACHP pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (16 USC 470f), and

WHEREAS, the SHPO is authorized to enter into this MOA in order to fulfill its role of advising and assisting Federal agencies in carrying out their Section 106 responsibilities under the following federal statutes: Section 101 and 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. § 470f, and pursuant to 36 CFR Part 800, regulations implementing Section 106 at §§ 800.2(c)(1)(i) and 800.6(b), and

WHEREAS, in accordance with 36 CFR 800.6(a)(1), FTA has notified ACHP of its adverse effect determination by providing the documentation specified in Sec 800.11(e).. and ACHP has declined to participate in the consultation; and

WHEREAS, the Gold Line Preferred Alternative consists of the construction of an Electric Multiple Unit (EMU) commuter rail line that will begin near 21st and Wewatta

Streets in downtown Denver and extend along the Burlington Northern Santa Fe (BNSF) Railway Company/Union Pacific (UP) alignments The Gold Line Preferred Alternative passes through the City and County of Denver, Adams County the City of Arvada and terminates just east of Ward Road in the City of Wheat Ridge The Gold Line Preferred Alternative extends a total distance of approximately 11.2 miles; and

WHEREAS, 36 CFR 800 6(b)(iv) provides that if the agency official and the SHPO/THPO agree on how the adverse effects will be resolved they shall execute an MOA; and

WHEREAS, RTD has participated with the FTA in the consultation with the SHPO and has been invited to concur in the MOA to reflect its commitment to the measures described in this agreement,

NOW THEREFORE, FTA, SHPO, and RTD hereto agree to a resolution of the adverse effects of the undertaking to be implemented in accordance with the following stipulations

STIPULATIONS

FTA shall ensure that the following measures are implemented:

I. MITIGATION

A. ARCHIVAL DOCUMENTATION

FTA has determined in consultation with the SHPO that the construction of the Gold Line Preferred Alternative (that includes with Commuter Rail Maintenance Facility within the Gold Line study area and consultation with the SHPO and Consulting Parties) will have an adverse affect on the following resources

5DV3512. Denver West Side Line – Union Pacific Denver & Gulf Railroad (Colorado & Southern and Chicago Burlington & Quincy) - Construction of the Gold Line Preferred Alternative would impact segment 5DV3512 3 of this linear resource Construction of the 41st Avenue East station would require movement of the existing freight rail resulting in an adverse effect to the entire linear resource

5AM1888 AND 5DV62435 Denver Utah Pacific Railroad, Chicago Burlington Quincy Siding & Spur (Waterworks Sales Co, J.M. Warner Co, & Richardson Lumber Spur) - Construction of the Gold Line Preferred Alternative would directly impact segments 5AM1888 5 and 5DV6243 7 of the linear resources Construction of the Commuter Rail Maintenance Facility would require removal of a portion of the existing freight rail siding, resulting result in an adverse effect to the entire linear resources.

5JF4454 Allen-Rand Ditch - The Gold Line Preferred Alternative would impact segment 5JF4454 1 of this linear resource Construction of the commuter rail tracks would result in movement of approximately 2,500 feet of the resource approximately 10 to 15 feet north of its current location. Movement of this segment would result in an adverse effect to the entire linear resource

The parties have developed the following mitigation measures to reduce or mitigate the identified adverse effects on the properties:

1. Prior to commencing construction, RTD will conduct Colorado Historical Society, Office of Archaeology and Historic Preservation (OAHP) Level II documentation to accurately record the features of each impacted segment of the historic linear resources identified above.

2. RTD shall ensure that this historic resource is documented in accordance with the guidance for Level II documentation found in *OAHP form #1595, Historical Resource Documentation. Standards for Level I, II, III Documentation.* RTD shall consult with the SHPO to determine appropriate Level II recordation measures

3. RTD shall ensure that all documentation activities will be performed or directly supervised by, architects, historians, photographers, and/or other professionals meeting the qualification standards for their field in the Secretary of Interior's Professional Qualifications Standards (36 CFR 61 Appendix A).

4 RTD shall provide originals of all documents resulting from the documentation to the SHPO and to a local library or archive

B REVIEW AND COMMENT

RTD shall afford the SHPO thirty (30) days from the date of transmittal to review and respond to any reports, plans, specifications or other documentation provided for review pursuant to this MOA

II. DURATION

This MOA shall be null and void if its terms are not carried out within five (5) years from the date of its execution. Prior to such time, FTA may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation V below. This MOA shall be effective upon signing by all parties (FTA, ACHP, SHPO, and RTD)

III. POST-REVIEW DISCOVERIES

In the event that one or more historic properties, other than those discussed in this MOA, are discovered or that unanticipated effects on historic properties are found during the implementation of this MOA, the FTA shall follow the procedure specified in 36 C F.R. 800.13.

This stipulation specifies procedures to be followed by all RTD employees and all RTD contractors and subcontractors should and archeological, historic, or paleontological resources be discovered during construction of the project

A. Immediately suspend construction operations in the vicinity of the discovery is a suspected historic, archeological, or paleontological item, feature, prehistoric dwelling site or artifact of historic or archeological significance is encountered
B Notify the RTD Project Manager for the project verbally of the nature and exact location of the discovery.

C The RTD Project Manager for the project immediately will contact the SHPO and will consult with a qualified historian or archeologist to advise SHPO and RTD regarding the significance and recommended disposition of the discovery The RTD Project Manager for the project will protect the discovered objects from damage, theft, or other harm while the procedures of this stipulation are being carried out

IV. MONITORING AND REPORTING

Each year following the execution of this MOA until it expires or is terminated, RTD, on behalf of FTA, shall provide all parties and signatories to this MOA a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and/or objections received regarding RTD and FTA's efforts to carry out the terms of this MOA Failure to provide such summary report may be considered noncompliance with the terms of this MOA pursuant to Stipulation V below

V. DISPUTE RESOLUTION

Should any signatory to this MOA, including the invited signatory, object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, FTA and SHPO shall consult and attempt to resolve the dispute. If FTA determines, within 30 days, that the dispute cannot be resolved FTA, may

A Forward all documentation relevant to the dispute to ACHP in accordance with 36 CFR 800 2(b)(2) Upon receipt of adequate documentation ACHP shall review and advise FTA on the recommended resolution of the dispute within 30 days. Any comment provided by the ACHP shall be taken into account by FTA in reaching a final decision regarding the dispute

B If ACHP does not provide comments regarding the dispute within 30 days after receipt of adequate documentation pursuant to 36 CFR 800.11, FTA may render a decision regarding the dispute. In reaching its decision, FTA shall take into account all comments from other signatories regarding the dispute

C FTA's responsibility is to carry out all other actions subject to the terms of this MOA, that are not the subject of the dispute, remain unchanged FTA shall notify the SHPO of its decision in writing before implementing that portion of the undertaking subject to dispute under this Stipulation. FTA's decision shall be final.

VI. AMENDMENTS AND NONCOMPLIANCE

If any signatory to this MOA, including the invited signatory, determines that its terms shall not or cannot be carried out or that an amendment to its terms must be made, that party shall immediately consult with the other parties to develop an amendment to this MOA pursuant to 36 CFR 800.6(c)(7) and 800.6(c)(8) The amendment shall be effective on the date a copy signed by all of the original signatories is filed with ACHP If the signatories cannot agree to appropriate terms to amend the MOA, any signatory may terminate the MOA in accordance with Stipulation VII, below.

VII. TERMINATION

If the MOA is not amended following the consultation set out in Stipulations V and VI above, it may be terminated by any signatory. Within 30 days following the termination, the FTA shall notify the SHPO whether or not it shall initiate consultation to execute a new MOA under 36 CFR 800 6(c)(1) or request the comments of ACHP under 36 CFR 800.7(a) and proceed accordingly

Execution of this MOA by FTA, SHPO, ACHP and the other parties and submission of this MOA to ACHP pursuant to 36 CFR 800.6(b)(I)(iv) prior to FTA's approval of this undertaking, and implementation of its terms evidence that FTA has taken into account the effects of this undertaking on historic properties and afforded ACHP an opportunity to comment

SIGNATORIES:

FEDERAL TRANSIT ADMINISTRATION, REGION VIII

By: Terry J Rosapep Date: 7/27/09
Terry J. Rosapep, Regional Administrator

COLORADO STATE HISTORIC PRESERVATION OFFICER

By: W. T Date: 7/20/09
Edward C. Nichols, SHPO

INVITED SIGNATORIES:

REGIONAL TRANSPORTION DISTRICT

By: P.A. Washington, Interim GM Date: 7/31/09
for Clarence W Marsella, General Manager

9

Exhibit 9

Proposed Caption Summary

Before the
Surface Transportation Board

Finance Docket No. 35394

REGIONAL TRANSPORTATION DISTRICT
– ACQUISITION EXEMPTION –
CERTAIN ASSETS OF UNITED PACIFIC RAILROAD COMPANY
IN ADAMS, DENVER, AND JEFFERSON COUNTIES, COLORADO

CAPTION SUMMARY

The Regional Transportation District ("RTD") has filed a notice of exemption to purchase from the Union Pacific Railroad Company ("UP") the physical assets and associated rights-of-way comprising an approximately 40' wide segment of each of two lines of railroad main track currently owned and operated by UP: (a) a portion of the "Limon Subdivision" extending approximately 8.96-miles from MP 628.50 in Adams County, Colorado, to MP 637.46 in the City and County of Denver (the "East Corridor Segment"), and (b) a portion of the "Moffat Tunnel Subdivision" extending approximately 2.22 miles from MP 4.28 in the City and County of Denver to MP 6.50 in Jefferson County, Colorado (the "Gold Line Segment"). UP will retain its exclusive operating rights on the portion of the corridor it is not conveying to RTD, and will continue to provide freight rail service over the line. Because RTD is a political subdivision of the State of Colorado with legal authority only to provide mass transportation services and will not acquire either rights or obligations that implicate in any way the freight

common carrier operations that remain attached to the Golden Subdivision, and thus will not become a rail carrier providing transportation subject to the jurisdiction of the Board, RTD will shortly file a Motion to Dismiss this Notice of Exemption.

Comments must be filed with the Board and served on Charles A. Spitulnik, Kaplan Kirsch & Rockwell LLP, 1001 Connecticut Avenue, NW, Suite 800, Washington, DC 20036, (202) 955-5600.

The notice is filed under 49 C.F.R. § 1150.41. If the notice contains false or misleading information, the exemption is void *ab initio*. The filing of a petition to revoke will not automatically stay the transaction.