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August 28, 2026

Via Electronic Filing
Ms. Anika S. Cooper
Chief of Case Administration
Office of Chief Counsel
Surface Transportation Board
Washington, D.C. 20423

Re: FD 36910

Denver Transit Operators, LLC —
Petition for Declaratory Order —
Denver Transit Dispatch Department

Denver Transit Operators, LLC Opening Statement

Dear Ms. Cooper:

Per the procedural schedule in the captioned matter under the Board's June 30, 2026, and July 30, 2026 orders, attached is the **Opening Statement of Denver Transit Operators, LLC.**

Yours,

Bradon J. Smith
Attorney for Denver Transit Operators, LLC

CC: FD 36910 Service List Counsel of Record (via emailed file share link)

Attachment

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36910

DENVER TRANSIT OPERATORS, LLC

— PETITION FOR DECLARATORY ORDER —

DENVER TRANSIT DISPATCH DEPARTMENT

DENVER TRANSIT OPERATORS, LLC OPENING STATEMENT

Per its own petition for declaratory order[1] and the Board's decisions of June 30, 2026, and July 30, 2026, regarding the procedural schedule for this matter, Denver Transit Operators, LLC ("Denver Transit") makes its opening statement.

INTRODUCTION

A rail carrier under the Interstate Commerce Act[2] is a "common carrier providing railroad transportation." 49 U.S.C. § 10102(5). The Act and its common law classically defined who a common carrier was in two ways. First, a person acts as a common carrier when it "holds itself out to the public" as providing rail transportation of goods or people. *Union Stock Yard & Transit Co. v. United States*, 308 U.S. 213, 217 (1939). Second, courts and the Agency[3] imputed common carrier

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[1] Denver Transit Operators LLC Petition for Declaratory Order ("Petition") filed February 23, 2026.

[2] Sometimes, the "Act."

[3] This brief refers to matters where the Board and Interstate Commerce Commission have acted consistently as the action of the "Agency," recognizing the Board's successorship and reliance on Commission precedent.

status to persons "rendering service to the public" as an "agent" of such a common carrier. *Id.* at 220.

The Interstate Commerce Act (sometimes, the "Act") gives the Board jurisdiction over these common carriers by rail—i.e., "rail carriers." If the Board has jurisdiction, then the rail carrier must make "employer" contributions under the federal Railroad Retirement and Unemployment Insurance acts. *See generally* 45 U.S.C. § 351(a)–(b).

Denver Transit Operators LLC's ("Denver Transit") Dispatching Department is not a rail carrier. Neither Denver Transit at large nor the Dispatching Department holds itself out as providing rail transportation, nor does either provide service to the public or do so as an agent for a rail carrier. Excepting the commuter service not in issue here, all Denver Transit does for others is give verbal authorization and appropriate signal clearance —"dispatching"—to fewer than four third-party passenger trains on any given day. Once cleared, the trains proceed under their own power and direction for 2,300 feet to reach platforms at Denver Union Station. The trains then reverse back to connection points with the BNSF Railway Company and Union Pacific Railroad Company. The rest of the time the Dispatching Department is attending to the more than 324 daily commuter trains that serve Union Station. The third-party passenger train dispatching is less than 0.1% of Denver Transit's overall dispatching activity.

Insofar as the activity itself, no matter how great or small, is subject to the Board's jurisdiction—specifically as extended beyond its historical boundaries in *Rail Term Corporation—Petition for Declaratory Order*[4]—that extension is

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[4] *Rail-Term Corporation — Petition for Declaratory Order*, FD 35582 (STB served Nov. 19, 2013) ("*Rail-Term I*") (*aff'd* by denial of petition for reconsideration in FD 35582 (STB served Dec. 30, 2014) ("*Rail-Term II*"); (*appeal dismissed sub. nom. in Rail-Term Corp. v. Surface Transp. Bd.*, Case No. 15-1033, ECF Dkt. No. 1561557 (D.C. Cir. Jul. 8, 2015) (determining the court lacked jurisdiction because Rail-Term's petition for review

inconsistent with the Act and Agency precedent. Furthermore, *Rail-Term* serves no lawful or rational regulatory purpose, and by itself excludes Denver Transit's incidental dispatch of third-party trains.

Neither this nor any other dispatching activity by itself merits federal jurisdiction. The Board should declare the Dispatching Department is not a common carrier by rail under the Interstate Commerce Act.

BACKGROUND

When the Denver metropolitan area grew at an unprecedented rate at the turn of the century, the Regional Transportation District ("RTD") was faced with how to provide effective transportation options for the burgeoning metropolis. Under the banner of "FastTracks" and with a voter-approved sales tax, the RTD sought the building, operations, and maintenance of three new commuter rail lines—the "Eagle Project"—as a critical part of the answer. The RTD already had some assets in place to support this service. Foreseeing the opportunity for a central commuter hub, it purchased about 0.2 miles of stub-ended track associated with Union Station in 2001. See n. 5 and Opening Statement Appx. A, Special Warranty Deed from The Denver Union Terminal Railway Company to the Regional Transportation District. At that time, the station and the rail assets were owned by the Denver Union Terminal Railway Company. Appx. A at 1, 9. Befitting its "union" name, the company had its origins as a terminal operator held by several predecessors of the BNSF Railway Company and the Union Pacific Railroad Company.

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addressed only the Board's reconsideration, and not the merits in the initial decision), *reh'g denied* in ECF Dkt. No. 1572866, *cert. denied* in *Rail-Term Corp. v. Surface Transportation Board*, et al. Case No. 15-977 (June 6, 2015). This brief generally refers to this case and history as "*Rail-Term*."

For the service itself, in 2010 the RTD selected the Denver Transit Partners consortium—which includes Denver Transit Operators—to undertake the design, building, maintenance, and operation of the new lines. Petition Appx. C at 1. The new commuter rail service began in 2016 with Denver Transit as the "O&M"—operations and maintenance—contractor to the concessionaire, which is ultimately responsible to the RTD. V.S. Salama Ex. A. The service operates over approximately 40 miles of commuter rail and uses Union Station as a terminal. V.S. Jimenez at 1. These lines are electrified with overhead catenary and dedicated to exclusive commuter use. *Id.* However, connection points to conventional, non-electrified track remain with dedicated tracks—Nos. 4 and 5—leading to Denver Union Station facilities. *Id.* at 2. Commuter traffic crosses over—but does not occupy—the non-electrified tracks but twice a day, at service begin and end. *Id.* This infrastructure supports more than 300 daily commuter trains that serve Union Station.

The RTD Agreement also requires Denver Transit to dispatch all "Heavy Rail Movements" at Union Station. V.S. Salama Ex. A at PDF 56. The milepost distance is about 2300 feet from the BNSF and Union Pacific connection points to the bumping post at the end of the dedicated intercity passenger platform between tracks 4 and 5. V.S. Jimenez at 3 (signal diagram milepost measurements from 8S and 34S to end of tracks 4 and 5). The BNSF and Union Pacific lines are "tail tracks" behind the respective yards of each. *Id.* at 2. BNSF and Union Pacific only enter the terminal limits for "head room" in support of yard and switch moves. *Id.* at 3. BNSF is allotted up to 500 feet, while Union Pacific has no particular allowance. V.S. Salama Ex. D (BNSF Agreement) at 6; V.S. Salama Ex. E (Union Pacific Agreement) at 9–10.

On the passenger side, Amtrak's *California Zephyr* service is two times per day—one in each direction. V.S. Jimenez at 2. Entry is permitted under Amtrak's

Agreement with the RTD. V.S. Salama Ex. B. It enters the Union Station limits at the BNSF connection point. V.S. Jimenez at 4. The American Rocky Mountaineer's *Canyon Spirit* excursion to Salt Lake City or Moab, Utah operates about 16 trains per month; like Amtrak, it enters per an agreement with the RTD. V.S. Jimenez at 4; V.S. Salama Ex. C (American Rocky Mountaineer Agreement). It enters the Union Station limits at the Union Pacific connection point. V.S. Jimenez at 4.

Denver Transit's Dispatching Department authorizes these movements with a rotating cast of 17 dispatchers that coordinate their assignments around "desks" associated with each commuter line. *Id.* at 3. These dispatchers' desks are located in a remote Operations Control Center that serves as the hub for the Eagle Project commuter lines; they are not at Union Station. *Id.* One commuter desk also handles the *Zephyr* and *Canyon Spirit. Id.* Recent observations indicate passenger train movements from the BNSF point of switch take three minutes inbound and six minutes outbound. *Id.* at 2. Measured by train miles, this is less than 0.1% of Denver Transit's dispatch activity. *Denver Transit Operators*, RRB B.C.D. 2025-34, at 19 ("*Dispatch Department II*") (Member Jayne T. dissenting); Petition for Declaratory Order, Appx. B-1 at 19; V.S. Jimenez at 5.

That is the only non-RTD rail service to Union Station; it has never been a freight station. *Denver Union Terminal Rwy. — Valuation*, 125 I.C.C. 498 (1927) ("On date of valuation the carrier owned and operated a *passenger station* with tracks, train sheds and other terminal facilities for handling *passenger traffic* in the city of Denver Colo.") (emphasis supplied).

The 4600-foot roundtrip journeys the *Zephyr* and *Canyon Spirit* make fewer than six times a day in fewer than 10 minutes raised the present question. Do these movements make the Dispatching Department a "rail carrier" such that it is

subject to the Retirement and Unemployment Insurance schemes Congress legislated for common carrier employees?

Denver Transit asked the Railroad Retirement Board ("RRB") for the answer; it filed a request for a Board Coverage Decision on August 19, 2013. Meanwhile, it offered all of its employees, including the Dispatching Department, an Internal Revenue Code "401(k)" plan with an employer match and entered into a collective bargaining agreement with the dispatchers. V.S. Salama at 3. In 2014, the RRB determined that, on the whole, Denver Transit's commuter train operations did not merit coverage. *Denver Transit Non-Dispatchers* at 3. But it deferred deciding whether the time the Dispatch Department spent authorizing Amtrak train movements—less than 0.1% of dispatching activity—between the BNSF yard and Union Station might merit coverage. *See id.* at 3–4.

The deferral was because the RRB was awaiting final appellate disposition of another Board Coverage Decision involving dispatchers, *Rail-Term*. Petition Appx. B at 1. *Denver Transit Operators,* B.C.D. 2020-23 (*"Dispatch Department I"*) ("The Board had previously held . . . DTO was not a covered employer . . ." but "[a]t the time of the Board's decision, a separate coverage decision [B.C.D. 11-14, *Rail-Term*] . . . was pending in Federal court."). See also Petition Appx. D, Karl T. Blank October 5, 2015 letter to Denver Transit Operators, C-15-5894 at 2 (telling Denver Transit that *Rail-Term* would "most certainly" impact the Board's decision). Specifically, the United States Court of Appeals for the District of Columbia Circuit was reviewing the RRB's finding that the Rail-Term Corporation was a covered employer because it was a "rail carrier" under the Interstate Commerce Act. See 45 U.S.C. § 351(b) (incorporating STB jurisdiction as dispositive of employer status under the Retirement and Unemployment Insurance acts). The D.C. Circuit ultimately referred that question to the Board. *Rail-Term I* at 1.

Rail-Term presented the case of a third-party dispatch vendor not otherwise affiliated with a particular railroad. From its office in Vermont, the Rail-Term Corporation offered its customer railroads turnkey, contracted, remote, dispatching of freight train movements for the customers' own roads. *Id.* at 4. That was all it did. As the Board observed at that time, Rail-Term Corporation itself did not "possess track, trains, conductors, signalmen, engineers or maintenance of way employees." *Id.* Likewise, Rail-Term Corporation did not "directly offer to transport freight by rail for the public." *Id.*

The Board found that Rail-Term Corporation's third-party dispatch services to railroads for their own traffic on their own lines made the third-party-contractor-dispatchers to be carriers under the Act. *Id.* The Board determined that though Rail-Term Corporation did not (1) hold itself out to offer transportation and (2) did not physically receive or effect rail movements themselves, its dispatching was an "essential" component of "common carrier freight service." *Id.* at 8. The decision cited precedent that arose from contractors assisting rail carriers with the physical movement of goods and said that the Rail Term Corporation's remote, virtual, dispatching services, which were not held out to the public, and which did not involve the physical movement of goods, "are no different than the services at issue in the cases." *Id.* at 9. It did not matter the nature or type of service offered so long as it was "essential" to railroad operations. *Id.* at 2.

This was a new standard under the Act for whether one was a common carrier. Previously the question was not whether a service was important. *Hi Tech Trans, LLC — Petition for Declaratory Order*, FD 34192 (STB served Aug. 14, 2003) ("*Hi Tech Trans*") at 6. Rather, before, the Agency had asked what the contractor actually "did" and if the public had a right to demand that service as one "held out" by a rail carrier. *Town of Milford, Mass. — Petition for Declaratory Order*, FD 34444 (STB served Aug. 12, 2004), 3 ("*Town of Milford*").

The new standard's potential for over-inclusiveness was immediately evident, most obviously with potential coverage for commuter rail operations. Seeking to "harmonize" its holding with prior decisions under *State of Maine, Rail-Term* clarified that a public agency's dispatching would not be within the Board's jurisdiction where it was not coupled with the agency's own common carrier service or ability to supervise another's common carrier service on its lines. *Rail-Term* at 12. Using commuter operations—like the RTD's—as a specific example, the Board said that when dispatching was only an adjunct to commuter operations, this "simply incidental" service would not make the agency a rail carrier *Id.* at 12.

More exceptions—this time formal ones—were also necessary because the Board also recognized that Rail-Term could not actually deliver common carrier rail service. It thus encouraged Rail-Term to petition for an exemption from regulation under the Act. *Id.* at 13.

Rail-Term ran its (rather long) course in 2016. But Denver Transit still had another eight years to wait until the RRB's final disposition of how *Rail-Term* applied to it. Notwithstanding the Board's clarification that dispatching for commuter operations was "simply incidental" service, and would not make an agency a rail carrier, the RRB concluded that the Dispatching Department's activities were sufficient to make the Dispatching Department a "rail carrier" under the Act and thus subject to the Board's jurisdiction. *And that* meant that the Dispatching Department was a covered employer under the Railroad Retirement and Unemployment Insurance acts. 45 U.S.C. § 351(b). Petition Appx. B at 2–3.

In petitioning for review—and recognizing the procedural similarity and issues common to *Rail-Term*[5]—Denver Transit moved for referral of the rail carrier jurisdictional

[5] *See Alameda Belt Line — Operation Exemption — Board of Harbor Commissioners of the Port of Los Angeles et al.*, FD 36787 (STB served Jul. 22, 2024, 1 at n. 2 ("Should it choose

question to the Board. The D.C. Circuit granted an abeyance to permit this action on January 23, 2026, Denver Transit petitioned for a declaratory order on February 23, 2026, and this Opening Statement ensues.

ARGUMENT

The Interstate Commerce Act, the Agency's precedent and history in interpreting it, and the Rail Transportation Policy Congress has charged the Board to administer define the Board's jurisdiction. Not one of these elements support making the Dispatching Department a rail carrier under the Act. That is evident in that the Act's text only extends to common carrier activities; dispatching has never been a common carrier service that the public demands; and regulating persons who dispatch as "rail carriers" serves no purpose consistent with the Rail Transportation Policy.

I. The Dispatching Department is Not a "Common Carrier" within the Meaning of the Interstate Commerce Act

A "rail carrier" subject to the Board's jurisdiction under the Interstate Commerce Act is a person providing "common carrier railroad transportation for compensation." See 49 U.S.C. § 10501(a)(1) (providing for jurisdiction over rail carriers) and 49 U.S.C. § 10102(5) (defining rail carriers). Whether someone is providing "railroad transportation" has never been the difficult part in determining the Board's jurisdiction. Congress has repeatedly defined the phrase to include nearly every aspect useful for railroads in moving goods or people, including those which by themselves have no intrinsic relationship to rail, including a warehouse,

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to do so, the Board retains the ability to revisit its precedent in *RailTerm Corp.—Petition for Declaratory Order*, FD 35582 (STB served Nov. 19, 2013), in an appropriate proceeding.").

wharf, pier, or dock, or some other "property" or "instrumentality." Compare 49 U.S.C. § 10102(9) (as quoted), with Interstate Commerce Act of 1887, Pub. L. No. 49-41, § 1 ("the term 'transportation' shall include all instrumentalities of shipment or carriage"). And the term "railroad" also has a broad definition; it is deemed to "include" any physical object used to support movement on a fixed guideway. 49 U.S.C. § 10102(6). So this part of the definition does not provide any meaningful limit on the Board's jurisdiction.

Rather, the question is always determined based on whether a particular service or offering is "*common carrier* railroad transportation" that the public can demand. *The Louisville and Jefferson County Riverport Auth. — Petition for Declaratory Order*, FD 36463 (STB served Oct. 22, 2021), 5 (emphasis in original) ("*Jefferson County*").

A. Providing Rail Transportation or Related Services Does Not Define Who is a "Rail Carrier."

One struggles to imagine anything or service that is not "integral" or "essential" to railroad operations and transportation. Consider that refueling cooling units on refrigerated car service falls within the definition of "transportation"[6] (and that the service is in connection with a "railroad").[7] Similar analogies can be drawn to maintenance of way contractors, or any number of other useful services, including signals inspection, track maintenance, railcar repair, and equipment inspection. *See Rail-Term II* at 12 n. 30 (detailing the many services that had not resulted in rail carrier findings). Were the inquiry limited to whether a service was necessary for movement by rail, trucking recyclable materials to rail

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[6] 49 U.S.C. § 10102(9) ("Transportation includes— . . . services related to that movement . . . including receipt, delivery, elevation, refrigeration, icing, ventilation, [and] storage").

[7] 49 U.S.C. § 10102(6)

yards would be "railroad transportation" subject to the Board's "rail carrier" jurisdiction. *Hi Tech Trans, LLC — Petition for Declaratory Order*, FD 34192 (STB served Aug. 14, 2003) ("*Hi Tech Trans*") at 6. This means the Act's reference to "rail transportation" is, as Congress intended, nearly limitless. *CSX Transp. Inc. v. Ga. Pub. Serv. Comm'n*, 944 F. Supp. 1573, 1581 (N.D. Ga. 1996). Nearly everything tangential to a railroad meets Congress's definition of railroad transportation.

But the Board's jurisdiction over rail transportation is not limitless; it has a qualifying phrase that provides a critical qualification, extending the Board's jurisdiction only to transportation by "rail carriers." 49 U.S.C. § 10501(a). That phrase, the Board says, marks the boundary. *Hi Tech Trans* at 6 ("By Hi Tech's reasoning, any third party or non-carrier that even remotely supports or uses rail carriers would come within the statutory meaning of transportation by rail carrier . . . In every case, jurisdiction was found . . . only when those facilities have been operated or controlled by a rail carrier. Here, Hi Tech's activities are not performed by a rail carrier"). Simply identifying whether something is "integral" or "essential" to rail carriage is no limit at all. *Compare Hi Tech*, *id.* (rejecting an "integrally related test"), with *Rail-Term I* at 8 (ratifying an "integral transportation services" standard, without consideration for *Hi Tech*).

That frames the question here. This is not whether dispatch is essential to "railroad transportation." The question is whether the Dispatching Department acts as a "rail carrier" e.g., a person providing "common carrier railroad transportation." 49 U.S.C. § 10102(5). It is only "*common carrier* railroad transportation" that defines both (1) who is a "rail carrier" and (2) makes a person subject to the Board's jurisdiction. *Jefferson County* at 5 (emphasis in original). *See also* 49 U.S.C. § 10102(5).

B. A Common Carrier is One Who "Holds Out" its Service to the Public.

Congress did not define what made one a "common carrier;" it was a settled question. The "fundamental test" for whether one is a common carrier is if it is "holding out" itself as a service the public can demand. *Santa Clara Valley Transp. Auth. — Acquisition Exemption — Union Pacific R.*, FD 34094 (STB served Nov. 16, 2001), 3 (citing *Status of Bush Universal, Inc.*, 342 I.C.C. 550, 564 (1973)). The test is the "fundamental" one because it was known at common law. *See New England Transrail, LLC — Construction, Acquisition, and Operation Exemption — in Wilmington and Woburn, Mass.*, FD 34797 (STB served July 10, 2007), 10–11 ("*New England Transrail*") (citing *Washington ex rel. Stimson Lumber Co. v. Kuykendall*, 275 U.S. 207, 211–12 (1927)).

But the fundamental "holding out" text also requires a definition because the text suggests the need for an object: "held out" to whom? Again, the answer was rooted in a common law construction: "holding out" refers to "the right of the public to use the road's facilities and to demand service of it." *Ass'n Pittsburgh & Conneaut Dock Longshoremen v. The Pittsburgh & Conneaut Dock Company et al.* 278 I.C.C.2d 280, 293-294 (1992) (quoting *The Tap Line Cases*, 234 U.S. 1, 24 (1913)) (internal quotations omitted and citation modified) ("*Conneaut Dock*"). One sees the principle: at common law, common carriers had legal, public duties because they provide a public service. And so taking these two together—the natural structure of the participial phrase, "holding out" *plus* the common law's concern for regulating a "public service"—shows that a common carrier service is one the public can lawfully demand.

That means the common carrier question has always been one of public perception, not operational competence; there must be a "public profession" of the service for it to be a service of a "common carrier." *New England Transrail* at 11.

That is most clear in that one can hold itself out as providing service without having any ability by itself to provide it. When the American Orient Express Railway solicited passengers to travel in its coaches that were coupled to Amtrak trains, it was determined to be "holding out" because the public expected American Orient Express to deliver on its promise. *See, e.g.*, *Am. Orient Exp. Rwy. — Petition for Declaratory Order*, FD 34502 (STB served Dec. 29, 2005), 4 (examining an entity's relation to the public as dispositive). But industry-service providers—providing a car float between two railroads—were not themselves holding out a public service. *See, e.g.*, *United States v. Brooklyn E. Dist. Terminal*, 249 U.S. 296, 302 (1919) (finding that a car ferry operation serving railroads without advertising its services to the public did not "hold itself out" to provide common carrier service).

There is no holding out here. The Dispatching Department offers none of its eponymous service to the public. Indeed, outside this petition one would be hard pressed to know the Dispatching Department existed. The Dispatching Department operates remotely from a control center otherwise dedicated to supervising commuter dispatch; solely as a group within Denver Transit; and solely as part of a larger group under contract to the RTD. It is a captive service provider. V.S. Salama at 2-3.

And even if "holding out" included industry marketing, the Dispatching Department doesn't do that either. The Dispatching Department authorizes movements *only* on the track it controls for the RTD and for foreign carriers for the 2,300 feet between the BNSF and Union Pacific connection points and the platform. And it does that only because the RTD's contract for the design, build, operations, and maintenance of the commuter rail services requires it and because the RTD has given certain access rights to the foreign carriers. Neither Denver Transit nor the Dispatching Department have any agreement with Amtrak, American Rocky

Mountaineer, BNSF, or Union Pacific. Denver Transit provides services to the foreign carriers as incidental to its broader service to RTD at the station. V.S. Salama at 2-3. No person—other than the RTD itself via its contract—can lawfully compel or demand the Dispatching Department to provide dispatch service. The Dispatching Department is not "holding itself out" to either the public or any person such that it is a common carrier.

C. The Dispatching Department is Not the Agent for Any Rail Carrier's Service.

The Agency can "impute" rail carrier status to the agent of a common carrier when the agent is providing an "actual rail service" that has been held out to the public. *Lone Star Steel Co. v. McGee*, 380 F.2d 640, 643 (5th Cir. 1967). That is a logical, common law-extension, of the (again) common-law "held out" "public-calling" principle—the person providing the held-out public service should be accountable to the public, even if it is doing so as an agent.

But for that public obligation to attach there must be (1) an agency relationship between a principal-common carrier and the Dispatching Department and (2) the agency relationship must require the agent to provide the "actual rail service"—that the public is demanding. Neither is present here.

1. Neither the Dispatching Department nor the RTD Act as an Agent of a Rail-Carrier Principal.

For the imputation to occur, the imputed carrier must be acting as an "agent" for a rail carrier. *See e.g., Rail-Term I* at 8–9. *See also, Terminal Allowance at Minnesota Transfer,* 268 ICC 5, 18 (1946). When the Agency has analyzed whether a person should be deemed an agent, they have assessed whether one is under the "control" of the relevant rail carrier, such that the agent's operations, rates, and services in a given instance are for the benefit of the rail carrier principal

or subject to that principal's supervision. *Jefferson County* at 7 ("Further, nothing in the record establishes that the Port of Louisville is acting as an agent for a rail carrier or that a rail carrier has exerted control over the Port of Louisville's operations."). Because Denver Transit has no agreement or legal relationship with any of the foreign carriers[8] accessing the terminal limits, the only way an agent-principal relationship could attach would be vicariously, via the RTD's relationship.

No part of the RTD's relationships with any rail carrier suggest that it acts as a rail carrier's agent: the RTD maintains "almost total control of the activities of the facility." *Town of Babylon and Pinelawn Cemetery — Petition for Declaratory Order*, FD 35057 (STB served Feb. 1, 2008), 5. Starting with Amtrak. Amtrak's agreement with the RTD boils down to two related elements: Amtrak can operate trains into Union Station, and the RTD will provide dispatch of those trains on the RTD's track. V.S. Salama Ex. B (2014 Amtrak-RTD Agreement) at 8, Section 3.2A. ("Amtrak shall have the right to operate Amtrak Trains on the Rail Lines. RTD will dispatch and control all tracks owned by RTD."). Beyond that and a few service standards, the RTD maintains "total control." Section 3.7 states:

> "In the performance of services referred to in this Agreement, RTD shall have the sole right to direct the movement of Amtrak Trains while on the Rail Lines, although Amtrak shall operate such trains in accordance with RTD's dispatcher's instructions. All personnel rendering services which involve responsibility for RTD's operating facilities or for the handling or movement of any Amtrak Train shall be subject to the direction, supervision and control of RTD, and such services

[8] In the interest of expediency and addressing similar operations, Denver Transit refers to each of American Canyon Spirit, LLC, Amtrak, BNSF, and Union Pacific as a "rail carrier." However, Amtrak is not a rail carrier subject to the Board's jurisdiction. 49 U.S.C. § 24301(c). That means there is no way the RTD-Amtrak relationship could satisfy the imputed agency criteria under the Act.

> performed by or for Amtrak shall be governed by and subject to all then current operating and safety rules, orders, procedures and standards of RTD with respect thereto."

Id. at 12.

Nor does Amtrak have any inherent rights in the Union Station property and rail lines. The RTD maintains them and retains all property interests, including the right to admit others. *Id.* at 14 §§ 4.1, 4.2. The RTD does not provide services for the principal benefit of Amtrak, nor does Amtrak exert control over how the RTD provides them. There is no agency here.

So also with *Canyon Spirit*. Those trains enter RTD property as a bare licensee and are restricted from obtaining any train servicing or supporting improvements. V.S. Salama Ex. C, Tripartite Amtrak-Am. Rocky Mountaineer–RTD License at 1, Article 1(A). The *Canyon Spirit's* rights are limited by the RTD's use, operation, needs, and requirements. *Id.* at 2, Article 1 (B). The RTD has express rights to limit its service. *Id.* at 5, Article 4 (B). And *Canyon Spirit* pays a delay charge if it occupies the platforms for too long or if the RTD incurs costs from its occupancy—in addition to an annual license fee. *Compare id.* at 3, Article 3 (A) (annual fee), *with id.* at 4, Article 4 (A)(i) (delay fee);

The freight carriers' rights are perhaps even fewer. The BNSF-RTD Agreement has a single paragraph—Section 2.1—regarding BNSF's rights in the terminal, providing that

> "From and after the DUS Permitted Start Date RTD shall (i) provide BNSF with at least 500 track feet in or near the 23rd Street Yard as shown on Exhibit A for movement by BNSF of locomotives without coordinating with RTD dispatch, and (ii) allow such access to DUS as may be reasonably accommodated, in conjunction with other uses, that will not interfere with Amtrak's operations in the performance of its intercity rail passenger service

> pursuant to applicable law on those tracks reserved for Amtrak and other carriers for access to and from DUS under such terms and conditions as are made to other non-RTD parties seeking to access DUS."

V.S. Salama Ex. D, RTD-BNSF Agreement at 6, Section 2.1(A), second paragraph.

Beyond 500 feet of head room for yard operations, BNSF's rights are entirely qualified as "may be reasonably accommodated" and cannot interfere with such other "non-RTD parties" admitted Union Station. *Id.* And to round out the freight rights survey, Union Pacific has no specific entitlement to dispatch entitlement or control. V.S. Salama Ex. E, RTD-Union Pacific Agreement at 9-10 § 17. Neither freight arrangement represents control.

Neither Amtrak, nor American Rocky Mountaineer, nor BNSF, nor Union Pacific control or dominate the RTD's services over unregulated track at Union Station. And that means neither the RTD nor Denver Transit is an agent for a rail carrier subject to the Act.

2. Dispatching is not "Actual Rail Service" to the public.

Even if the Dispatching Department was a rail carrier's agent, it does "not *ipso facto* become a common carrier." *Terminal Allowance at Minnesota Transfer,* 268 I.C.C. 5, 18 (1946) ("*Minn. Transfer*"). Rather, the Agency then asks, "what it [the agent] does." *Status of Allegheny & South Side Railway Co.*, 277 I.C.C. 119, 120 (1950) *("Allegheny & South Side").* It asks because the "agency" imputation only occurs where the agent is acting to provide the "held-out" service that the public is "contracting" for. *Town of Milford* at 3 (finding no common carrier status for a transloader that offered no service to the public-at-large, either itself or under the auspices of a rail carrier.). Meaning, the law asks whether the agent is providing a *service to the public* that is part of the public's expectation for common carriage. Or,

as the Supreme Court has said, the service must be a "public calling." *Union Stock Yard*, 308 U.S. at 220. Or, as the agency describes it, a "public profession." *New England Transrail* at 11. And so, the Agency's test has always had an existentialist, fact-specific foundation: asking what a person "does" and if its activities are one the public demands. *Allegheny & South Side* at 120 (1950).

The emphasis on actual, public-facing, physical service is evident in the foundational case, *Union Stock Yard & Transit Co.* at 220. There the Supreme Court determined that because the subject stock yard physically offered its stock yard to receive and load livestock for rail transportation, the eponymous stock yard had engaged in a "public calling" that made it a common carrier, even though it offered no actual transportation. Likewise, stevedoring—unloading ships at piers so commodities can continue in rail transit—confers common carrier status in light of the physical custody, nexus to actual transportation, and the right of the public to demand rail carrier service in connection with water service—and the concomitant transfer of goods between the modes. 49 U.S.C. § 10501(a)(1)(B); *Conneaut Dock* at 290–93.

To that end, freight terminal railroad companies were held to be carriers because they took possession of the goods to be delivered from the connecting carrier and acted as an agent in affecting delivery; the end goal of the public obligation is for goods to be delivered. *See e.g.*, *Allegheny & South Side* at 120-122 (finding a small switching operation possessing, moving, and delivering final cars for its principals' accounts was a common carrier). The test was the same for non-terminal stations. *Valero Refining Co. — Petition for Declaratory Order*, FD 36036 (STB served Sep. 20, 2016), 4 ("The Board's jurisdiction extends to rail-related activities that take place at transloading (or, as here, off-loading) facilities if the activities are performed by a rail carrier, the rail carrier holds out its own service through a third

party that acts as the rail carrier's agent, or the rail carrier exerts control over the third party's operations (citing *Lone Star Steel Company v. McGee*, 380 F.2d 640, 643 (5th Cir. 1967))).

The necessity of public contact by the agent to impute common-carrier status is also shown in what entities *have not been* determined to be rail carriers. For example, passive recipients of terminal traffic that direct, but do not take custody of people or goods in rail consists, are not common carriers. Addressing the "*Status of Tulsa Union Depot Company"* the ICC reviewed whether a terminal company that operated a depot—but operated no trains to the depot—was a common carrier under the Act. 262 I.C.C. 78 (1945). The ICC found that Tulsa Union Depot Company ("Depot Company"), though it occupied a terminal serving multiple rail carriers and provided service for them in operating that facility and its track, had no function that the public could call upon. *Id.* at 81.

The facts supporting that conclusion were that the actual serving rail carriers performed all passenger service functions, inspected and tended to their own equipment, and had independent rights to occupy the station in support of their services to the public *Id.* While dispatch is not explicitly dealt with, it might be inferred that the Depot Company did provide it, given that the Depot Company leased—that is, possessed—tracks, in which the delivering passenger carriers retained usage rights. *Id.* at 79. These delivering carriers were perceived as the common carriers for the service, as the lease specifies they are "handling passengers, mail, baggage, express, and any other traffic transported in passenger service." *Id.* Taken altogether, in light of this behind the scenes, minimal-to-no-public contact activity, the ICC concluded that "The functions of the Depot Company are not of such nature as to support a finding that it is engaged in transportation as a common carrier for hire." *Id.* at 81.

Likewise, vendors of supporting services—such as those supplying rail cars—are not common carriers given their "supporting" role that never has them undertaking physical transportation. *See e.g.*, *United States ex rel. Chi., New York & Boston Refg. Co. v. Interstate Commerce Commission*, 265 U.S. 292, 296 (1924) ("The income arises *not from operating a railway* but from the use of facilities let to the railway companies for fixed compensation.") (emphasis supplied). *See also*, *Sampson v. GATX Corp.*, 2012 Dist. Lexis. 36886 at *15 (W.D. La. 2012) (recognizing the historic case law that a virtual service—leasing rail cars to carriers—did not make car lessors common carriers).

Before *Rail-Term*, every case that imputed rail carrier status to the agent arose from an agent's physical receiving, loading, unloading, or rail transportation of goods that the rail carrier had held-out to the public. Dispatching had never been demanded by, or offered to, the public. *Rail-Term Corp. — Petition for Declaratory Order*, FD 35582 (STB served Nov. 19, 2013), 8–9. It is an industry service—like maintenance of way or railcar repair—not a "public calling."

Consider further that dispatching had been examined before *Rail-Term* but *was not* deemed to be common carrier rail service in and of itself. Only when dispatching is used to control publicly held out service does rail carrier status attach; that is the rule of *State of Maine* and its progeny, discussed below in Part III. *Bhd. of Ry. Signalmen v. Surface Transp. Bd.*, 638 F.3d 807 (D.C. Cir. 2011). *Massachusetts Department of Transportation — Acquisition Exemption — Certain Assets of CSX Transportation, Inc.*, FD 35312 (STB served May 3, 2010). Were that ever in doubt, the Board has expressly disagreed with a court ruling that dispatch alone was enough to make one a rail carrier. *Rail-Term I* at 12 n.24 (rejecting *Herzog Transit Services, Inc. v. RRB*, 624 F.3d 467 (7th Cir. 2010)).

Consistent with pre-*Rail-Term* law, the Dispatching Department provides no public service for the common carriage of goods or people itself or as an agent and should not be considered a rail carrier. Like the supporting services in *Tulsa,* the Dispatching Department operates entirely behind the scenes. The Department uses computers from a non-Union Station based, remote location, to give Amtrak or *Canyon Spirit* permissive authority that the personnel operating their trains may move the consists they operate on their own volition to the platform that Denver Transit does not own or lease. Once there, again like *Tulsa*, Amtrak or *Canyon Spirit* personnel greet the train and provide all services for the physical transportation of passengers and their baggage at Union Station.

* * *

Even without the above, the public perception and its accompanying question should remain the polestar: what does the public contract for in demanding common carriage?

When a passenger enlists Amtrak or *Canyon Spirit* to provide an "actual rail service," they reasonably expect to be moved from one place to another to a station where the carrier ensures safe conduct of that passenger and her belongings. The passenger has no legally-protected expectation of any service beyond that, and likely cares not a wit about who operates the replacement buses, who owns the tracks, who cleans the equipment, or, in this case, who provides the "ministerial" permission for Amtrak or *Canyon Spirit* to travel 2300 feet.[9] Dispatch cannot be understood as a "public calling" that the RTD or Denver Transit "publicly professes" within the historical meaning of the Interstate Commerce Act.

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[9] *Am. Train Dispatchers Assoc. v. Interstate Commerce Comm'n*, 671 F.2d 580, 583 (D.C. Cir. 1982).

II. *Rail-Term* was a Novel, Unnecessary Extension of the Interstate Commerce Act at Odds with the Rail Transportation Policy and 49 U.S.C. § 10501(c)(3).

The *Rail-Term* decision acknowledged that dispatch was terra incognita for imputation of rail carrier status and Interstate Commerce Act jurisdiction. *Rail-Term* at 8 ("Although Supreme Court and related precedent thus has extended common carrier status to companies performing integral transportation services under contract to the carriers who, in turn, hold out those transportation services to the public, it has not specifically extended that principle to *dispatching* services performed by a non-affiliated third-party for the carrier."). Despite its acknowledgment there was no precedent, the decision tried to ground itself in *Am. Orient Express* and *Conneaut Dock:*[10]

> As this agency and its predecessor found in *American Orient* and *P&C,* however, a business need not in every instance operate the same as the prototypical rail carrier, publish tariffs, or engage in the full panoply of activities a common carrier might conduct, in order for the business to be considered a carrier under ICCTA.
>
> We conclude that Rail-Term should likewise be deemed a rail carrier . . .

Id. at 8. Again, those were different cases. See Part I, above.

Without any precedent, what followed was an extended policy argument about the concerns of outsourcing and near arbitrary line-drawing, crediting the RRB's concerns, but with little reference to any other legal authority. It resulted in the Board creating a new standard for who a rail carrier is under the Interstate

[10] (distinguished, respectively, above under the "holding out" analysis and "physical" transportation analysis).

Commerce Act—asking only whether a service was "essential." *Id.* at 2, 9. That test lacks a basis in precedent and offends the Rail Transportation Policy. Were that not enough, applying it to commuter operations violates the employee benefit "freeze" of 49 U.S.C. § 10501(c)(3)(B).

A. The "Essential" Test is Inconsistent with Nearly 100 Years of Precedent and has No Limiting Principle.

"Essential" is not the test that had existed before, which was the "holding out"—either directly, or as imputed to the agent that provided the "held out service." Nor is there any clear precedent or principle by which the "essential" character would be defined. Freight must move in rail cars, but leasing those cars does not make one a rail carrier. *See e.g.*, *United States ex rel. Chi., New York & Boston Refg. Co. v. Interstate Commerce Commission*, 265 U.S. 292, 296 (1924); *Sampson v. GATX Corp.*, 2012 Dist Lexis. 36886 at *15 (W.D. La. 2012). Railroads must be maintained, but maintenance of way contractors are not rail carriers. *See In re: Atlas Railroad Construction, LLC*, B.C.D. 12-30 (RRB served Aug. 16, 2012) (cited by *Rail-Term II* at 12 n. 30). Passengers need a platform to disembark, but providing that bare service does not make the terminal company a railroad. *Tulsa Union Depot Company,* 262 I.C.C. at 78. Freight must make it to a station for loading, but the trucks that haul them for rail carriage are not rail carriers. *Hi Tech Trans, LLC.* One could cover nearly every distinct, potentially-outsourced activity, and *Rail-Term* establishes no policy boundary for its reach. Or, per above, "essential" is just another name for "rail transportation." That cannot be the law because it pays no heed to the "common carrier" qualifier.

And without that qualifier, the Board's jurisdiction over rail transportation is unlimited. If the inquiry is focused only on the statutory meaning of "rail transportation" then "any third party or noncarrier that even remotely supports or

uses rail carriers would come within the statutory meaning of transportation by rail carrier." *Id.* at 6. Though the *Rail-Term* decisions—particularly the reconsideration—insisted that its "essential" test *was* a boundary (*Rail-Term II* at 13) the decision's assertion is bald. It never defined "essential," and never rooted the public policy of "imputing" rail carrier status in the prior law's emphasis on a "public" service.

B. *Rail-Term* Offends the Rail Transportation Policy as Arbitrary Regulation without Any Public Benefit.

No doubt the Board can define public policy. But it must do so on the solid ground Congress has required: the Rail Transportation Policy codified at 49 U.S.C. § 10101. Amongst other concerns, the Policy demands that the Board:

> - allow . . . competition and the demand for services to establish reasonable rates for transportation by rail [1];
> - minimize the need for Federal regulatory control over the rail transportation system [2];
> - promote a safe and efficient rail transportation system by allowing rail carriers to earn adequate revenues, as determined by the Board [3];
> - ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense [4];
> - foster sound economic conditions in transportation and ensure effective competition and coordination between rail carriers and other modes [5]; and

- reduce regulatory barriers to entry into and exit from the industry [7].

49 U.S.C. § 10101(1)–(5), (7).

Every one of these policy considerations supports overturning *Rail-Term*. Not permitting cost-saving dispatch outsourcing does not allow "competition and demand for services" to have their full impact on "reasonable rates" [1] or allow reinvestment of adequate revenues into "safe and efficient rail transportation" [3]. Permitting dispatch to be outsourced in some, but not all circumstances (described below) does not "minimize the need for Federal regulatory control"—particularly when the Board has never taken positive action to regulate dispatch as an element of common carrier service obligations [2]. Plus, regulatory power and burden without any public benefit is not a "sound" economic condition [5].

Nor does imputing common carrier status to an ancillary service and the cost burdens that accompany it promote "effective" competition with other modes to serve the public—particularly when motor carriers outsource or in many cases, do not have any dispatch functions [4]. Rather, making the Dispatching Department a rail carrier would disadvantage commuter rail cost structures. Since service began more than a decade ago, every Dispatching Department employee—like every other Denver Transit employee—has been eligible to enroll in an employer-matching defined-contribution "401(k)" program under the Internal Revenue Code. V.S. Salama at 4 and Ex. F. However, Denver Transit and the Dispatching Department have a collective bargaining agreement; Denver Transit cannot by itself discontinue the 401(k) program should it become a rail carrier under the Act. *Id.* That means extending the Act to cover the Dispatching Department will result in imposing a double obligation on Denver Transit for these personnel. This is inequitable, particularly given that for close to a decade Denver Transit has provided its

personnel retirement benefits while Denver Transit's own petition to the RRB was pending.

On the last RTP consideration ([7]), making rail dispatchers rail carriers appears to pose an unnecessary burden to both entry and exit to providing industry services. *Alameda Belt Line — Operation Exemption — Board of Harbor Comm'r*, FD 36787 (STB served Jul. 22, 2024), at 1 n.2 ("Should it choose to do so, the Board retains the ability to revisit its precedent in FD 35582 (STB served Nov. 19, 2013), in an appropriate proceeding.") (commenting after a dispatch entity filed a notice of exemption to become a rail carrier).

There are 15 policy considerations the Board must consider "in regulating the railroad industry." 49 U.S.C. § 10101. Of the six policy considerations Congress established that are relevant, *Rail-Term* supports none of them; that means that overturning *Rail-Term* supports all six. Taking history and policy together, where neither the Board nor the ICC has ever found cause to actively regulate dispatching as a common carrier service, *Rail-Term's* mandate to treat dispatchers as "rail carriers" subject to regulation under the Interstate Commerce Act is not a rational exercise of jurisdiction.

That is shown in part by *Rail-Term's* inherent contradictions: it made dispatchers rail carriers, but in the next breath indicated that the Agency should exempt them because they could not reasonably be expected to provide rail transportation. *Id.* at 13. That begs a question: if dispatchers do not provide rail transportation in any previously recognized or currently practical sense, how can they be "rail carriers" providing "common carrier rail transportation?"

The illogic was evident from the beginning, as Member Begeman's dissent in the case explained. *Rail-Term I* at 14 ("In my judgment, the Board's decision finding Rail-Term to be a rail carrier is not supported by law or logic."). Declaring

dispatchers to be rail carriers for unknown or unannounced reasons, Member Begeman said, was not an appropriate exercise of jurisdiction:

> Even though the majority has worked to squeeze Rail-Term into the rail carrier peg, the Board recognizes that Rail-Term does not fit within our regulatory scheme and suggests that it will entertain petitions to exempt Rail-Term from all or part of ICCTA's provisions. But if that is the majority's intent, to ultimately absolve Rail-Term from rail regulation because, after all, Rail-Term cannot realistically fulfill the same requirements under the law as genuine rail carriers must, what public interest is the Board serving by claiming regulatory jurisdiction on the one hand, only to suggest Rail-Term jump through hoops, including the payment of regulatory filing fees that could be thousands of dollars, to eventually get out of regulatory reach?

Id. at 17.

Put another way, why exercise jurisdiction over dispatchers, while acknowledging there was no point in regulating them? *No public interest* is served by *Rail-Term*. That means *Rail-Term* is hostile to the sound logic, the Interstate Commerce Act's historical jurisprudence, and last and principally, Congress's Rail Transportation Policy. It should be overturned.

C. Extending *Rail-Term* to Commuter Operations Violates the "Freeze" of 49 U.S.C. § 10501(c)(3)(B).

Finally, including public commuter dispatching under the Interstate Commerce Act via *Rail-Term*—whether via an extension of *Rail-Term* or in an organic determination—violates the "freeze" provisions Section 10501(c)(3)(B) provides. Under that provision of the ICC Termination Act, the Board's jurisdiction—that is, rail carrier status—extends only to those entities and contractors that actually were, or hypothetically would have been, subject to the ICC's jurisdiction immediately before that act took effect. *Commuter Rail Division of the Reg'l Transp. Auth. — Terminal Trackage Rights — Union Pacific Railroad*

Company, FD 36844 (STB served Sep. 3, 2025), 5.[11] But *Rail-Term*, by its own admission, "extended" common carrier status to dispatching for the first time. *Rail-Term I* at 8 ("Although Supreme Court and related precedent thus has extended common carrier status to companies performing integral transportation services under contract to the carriers who, in turn, hold out those transportation services to the public, *it has not specifically extended that principle to dispatching services performed by a non-affiliated third-party for the carrier*.") (emphasis supplied). And it created a new test—the "essential" test that had been unknown before 2014. So "as applied" *Rail-Term* and its "essential" progeny dispatching a "common carrier" service expands the Agency's jurisdiction beyond what it was in 1996. Thus, for this case, *Rail-Term* moved the goalposts in a way the law prohibits. If not inclined to overturn it, the Board should construe *Rail-Term* to not apply to Denver Transit in line with its jurisdictional boundaries.

III. Jurisdiction under *Rail-Term* Should Not Extend to Denver Transit.

If nothing else—aside from being a break from precedent and having no public policy purpose[12]—*Rail-Term*'s "incidental" exception for commuter dispatchers means the Dispatching Department is not a rail carrier. That is because the Board specifically said *Rail-Term* was not to infringe on the policy underlying its *State of Maine* line of cases. Recall that the *State of Maine* doctrine

[11] That Denver Transit is a contractor makes no difference; for purposes of determining it is a rail carrier, it stands in the RTD's shoes. See below at 31.

[12] This aspect of *Rail-Term* bears dwelling on. It seems remarkable that a decision is out of step with *both* a near-century of ICC decisions made *before* Congress deregulated the industry nearly 50 years ago with the Staggers Act of 1980 *and* the Rail Transportation Policy that represents Congress's current, deregulatory mandate to the Board.

allows public bodies to acquire distressed rail assets and use them for public (including commuter) purposes. To that end, the Board declined to make the rail asset-acquiring public entities rail carriers under the Interstate Commerce Act and subject them to regulation. *Rail-Term I* at 11 ("[The *State of Maine* doctrine] assists states and local communities in preserving freight rail service on lines where profitability is marginal, and it promotes the efficient use of existing freight rail corridors for commuter rail transportation, without unduly interfering with continuing common carrier freight rail operations over the transferred line.")

And so the Board opined in *Rail-Term I* that when a "*public entity* whose primary function following the transaction would be to provide commuter rail service, and who also incidentally would be providing a joint rail dispatching function over the *public entity's lines* for a freight rail carrier who retained a freight easement over the lines following the transfer . . ." that dispatching-public-commuter agency entity would not be a rail carrier. *Id.* at 12 (emphasis in original). Reason being, the Board said, was because:

> As a public entity, [the commuter agency] does not dispatch freight trains for the sake of a freight carrier, and does not operate solely as an arm of the freight rail's operations. The goal of the dispatching arrangement flowing out of the intervening *State of Maine* transaction instead is to permit the coexistence of the public carrier and freight carrier, while furthering the *State of Maine* transaction's underlying public policy goals. As such, while the Board may have discretion to impute a holding out to those public entities in these kinds of cases, it is not required to do so where the joint dispatching is simply incidental to commuter rail operations, and where asserting jurisdiction

> would undercut the two important public purposes behind the *State of Maine* doctrine.

Id.

And the Board made clear that extended to private contractors to the agencies. *Rail-Term I* discussed a case that arose in Dallas where the regional transportation authority acquired rail lines under a *State of Maine* proceeding for commuter purposes. *Id.* at 12 n.24. The authority had contracted out dispatching and operations of its line to a private contractor, and the RRB determined that the private contractor was a rail carrier. *Id.*, citing the example of *Herzog Transit Svcs. v. RRB*, 624 F.3d 467 (7th Cir. 2010). The Seventh Circuit affirmed. *Id.* But in discussing the extent of *Rail-Term*, the Board took up the *Herzog* case and said it did "not agree." *Id.* The Board disagreed because it said that *Herzog* stretched the private sector policy of *Rail-Term* to the point of breaking—where it began to burden "compelling public goals." *Id.*

Those goals would be burdened were rail carrier status imputed here. The RTD here is a de facto, non-carrier, *State of Maine* entity. The RTD acquired the Denver Union Terminal Railway assets in 2001. From 1971 until the very-recent present, the only regular service to Union Station was Amtrak's *Zephyr* and occasional, seasonal, ski trains. Both services, though, were governed by the Rail Passenger Service Act of 1970. Appx. B to this Opening Statement, 1976 Amtrak–Denver Union Terminal Agreement, 1. Under the Rail Passenger Service Act, neither Denver Union Terminal nor its constituent rail carriers offering service needed to obtain the Agency's abandonment or discontinuance authority when it transferred pre-existing passenger service to Amtrak. Pub. L. No. 91-518, § 401. So when the RTD bought the assets from Denver Union Terminal, it was buying assets on which no common carrier service was offered, meaning that there was no common carrier rail service that merited protection to trigger the *State of Maine*

inquiry. The process may have been different, but the result is the same: neither the RTD nor the Dispatching Department inherited common carrier obligations on the track.

Allowing *Canyon Spirit* to access Tracks 4/5 does not change this for at least three reasons. First, it is not clear that the *Canyon Spirit* holds out service to Union Station specifically such that the public can demand service to the station facility. Before it gained access to Union Station, *Canyon Spirit* provided passenger and train services at the Union Pacific Yard in Denver. V.S. Salama at 3. That means use of Union Station is not a held-out service, only carriage to Denver itself is. Second, even if *Canyon Spirit* is holding out carriage to Union Station, that is a "tenant-use" and is not dispositive of how the Dispatching Department should be treated; a tenant can be a carrier even if the landlord is not. *Transco Railway Products, Inc. — Acquisition and Operation Exemption — D&W Railroad LLC*, FD 35688 (STB served Mar. 4, 2013), 3 *(citing Nicholson v. ICC*, 711 F.2d 365 (D.C. Cir. 1983)). Third, *Canyon Spirit* has obtained an exemption for its operations, and so there are no common carrier issues it can raise unless the exemption is revoked. *See Am. Rocky Mountaineer, LLC — Petition for Exemption from 49 U.S.C. Subtitle IV*, FD 36468 (STB served May 28, 2021).

Were the legal criteria not enough, the facts show that the Dispatching Department meets the practical consideration for *State of Maine* status under *Rail-Term*. Like the dispatcher in *Herzog*, Denver Transit (and by extension the Dispatching Department) is contracted for commuter rail operations. The 0.1% of dispatching activity the Dispatching Department spends dispatching freight moves for "headroom"—not common carrier services—and authorizing the Amtrak or *Canyon Spirit* to travel 2,300 feet to the platform is incidental to the purpose the

Dispatching Department spends more than 99% of the rest of its time on: dispatching commuter rail trains.

CONCLUSION

Train dispatch is not a public service the public contracts for or that the law must supervise for mere happenstance or incidental reasons. And even if it did, the Board has discretion under the Rail Transportation Policy to define its jurisdiction rationally. It should find that the Dispatching Department is not a rail carrier under the Interstate Commerce Act.

Dated: August 28, 2026

Respectfully submitted,

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[13] Ms. Obata is not-yet-admitted to practice, nor does she qualify as a Board practitioner. But her contributions merit recognition.

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36910

DENVER TRANSIT OPERATORS, LLC

— PETITION FOR DECLARATORY ORDER —

DENVER TRANSIT DISPATCH DEPARTMENT

Denver Transit Operators Opening Statement

Appendix A

Denver Union Terminal Railway Company — RTD Deed for Denver Union Station and Rail Assets

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DENVER COUNTY CLERK AND RECORDER 45.00 .00 SMP
*****

After Recording Please Return To:

Les Caldwell
Jacobs Chase Frick Kleinkopf & Kelley
1050 17th Street, Suite 1500
Denver, Colorado 80265

SPECIAL WARRANTY DEED

[DUT – Terminal Parcel (Parcel 1)]

THE DENVER UNION TERMINAL RAILWAY COMPANY, a Colorado corporation ("Grantor"), whose street address is Union Station, Suite 223, 1701 Wynkoop Street, Denver, Colorado 80202 for the consideration of Ten Dollars ($10.00), and other good and valuable consideration, in hand paid, hereby sells and conveys to REGIONAL TRANSPORTATION DISTRICT, a political subdivision of the State of Colorado ("Grantee"), whose street address is 1600 Blake Street, Denver, Colorado 80202-1399, Attention: General Counsel, the real property in the City and County of Denver and State of Colorado that is described on **Exhibit A** and depicted on **Exhibit A-1** as Parcel 1 attached hereto and made a part hereof (the "Property"), together with all buildings thereon, all railroad tracks, ties, sidings, switches and platforms attached thereto, all paving, curbing, trees, shrubs, plants and landscaping thereon, and all appurtenances to the foregoing, and warrants the title to the same against all persons claiming under Grantor, subject to the matters set forth on **Exhibit B** attached hereto and made a part hereof.

Signed this 10th the day of August, 2001.

THE DENVER UNION TERMINAL RAILWAY COMPANY, a Colorado corporation

By: _____
Name: Paula V. Kurtz
Title: President

[*Acknowledgment of Grantor on Next Page*]

{00103452.DOC 2} 90120295

(4)
45.00
DF [redacted] Exempt

STATE OF Washington)
) ss.
COUNTY OF Whatcom)

The foregoing instrument was acknowledged before me this 10th of August, 2001, by Paula V. Kurtz, as President of The Denver Union Terminal Railway Company, a Colorado corporation.

Witness my hand and official seal.

My commission expires: 6/2/02

Heather M. Mauss
Notary Public

EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1:

A TRACT OF LAND LOCATED WITHIN SECTIONS 27, 28 AND 33, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, BEING PORTIONS OF BLOCKS D, E, F, 6, 9, 10 AND 14 OF EAST DENVER AND OF BLOCKS D, 1, 2, 3 AND UNPLOTTED PORTION LYING SOUTHWESTERLY OF BLOCK 3 OF HOYT AND ROBINSON'S ADDITION TO DENVER AND OF PORTIONS OF BLOCKS 7 AND 8 GASTON'S ADDITION TO THE CITY OF DENVER, TOGETHER WITH PORTIONS OF VACATED STREETS AND ALLEYS DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF BLOCK E OF EAST DENVER; THENCE S 44°34'27" W ALONG THE SOUTHEASTERLY LINE OF SAID BLOCK E, 400.40 FEET TO THE SOUTHEAST CORNER OF SAID BLOCK E; THENCE S 44°34'56" W AND ACROSS VACATED 17TH STREET, 80.00 FEET TO THE NORTHEAST CORNER OF BLOCK 14, EAST DENVER; THENCE S 44°36'21" W ALONG THE SOUTHEASTERLY LINE OF SAID BLOCK 14, 400.80 FEET TO THE SOUTHEAST CORNER OF SAID BLOCK 14; THENCE N 45°27'01" W ALONG THE SOUTHWEST LINE OF SAID BLOCK 14, 140.98 FEET TO THE SOUTHWEST CORNER OF LOT 16, OF SAID BLOCK 14; THENCE S 44°36'06" W ACROSS VACATED 16TH STREET 80.00 FEET TO THE NORTHEAST CORNER OF LOT 1 OF BLOCK 13, EAST DENVER; THENCE N 45°26'23" W ALONG THE NORTHEAST LINE OF SAID BLOCK 13 AND THE SOUTHWESTERLY LINE OF VACATED 16TH STREET, 205.02 FEET TO THE NORTHEAST CORNER OF LOT 32 OF BLOCK 10 EAST DENVER; THENCE S 44°35'03" W ALONG THE SOUTHEASTERLY LINE OF SAID BLOCK 10, 255.06 FEET TO A POINT 145.00 FEET NORTHEASTERLY OF THE SOUTHEASTERLY CORNER OF SAID BLOCK 10, SAID POINT BEING ON THE EASTERLY LINE OF PARCEL B-1 OF THE CITY AND COUNTY OF DENVER PROJECT NO. 92-117; THENCE N 20°53'43" E ALONG SAID EASTERLY LINE OF PARCEL B-1, 278.45 FEET TO A POINT ON THE NORTHEASTERLY LINE OF SAID BLOCK 10 AND THE SOUTHWESTERLY LINE OF VACATED 16TH STREET; THENCE N 44°34'49" E ALONG THE EASTERLY LINE OF SAID PARCEL B-1, 1575.03 FEET TO THE MOST NORTHERLY CORNER OF PARCEL B-1 AND THE MOST SOUTHERLY CORNER OF THAT PARCEL DESCRIBED IN RECEPTION NUMBER 93-0091032; THENCE N 44°34'20" E ALONG THE WESTERLY LINE OF SAID PARCEL, 96.07 FEET TO A POINT OF CURVE; THENCE NORTHEASTERLY ALONG SAID WESTERLY LINE ALONG A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 19°00'29" AND A RADIUS OF 647.00 FEET AN ARC LENGTH OF 214.64 FEET; THENCE CONTINUING ALONG SAID WESTERLY LINE N 63°34'51" E, 13.72 FEET TO THE MOST NORTHERLY CORNER OF SAID PARCEL; THENCE S 45°26'48" E ALONG THE NORTHEAST LINE OF SAID PARCEL, 57.32 FEET; THENCE N 57°46'58" E, 31.63 FEET TO A POINT ON THE NORTHEASTERLY LINE OF LOT 1 BLOCK 8, GASTON'S ADDITION TO THE CITY OF DENVER; THENCE S 45°25'28" E, 8.00 FEET TO THE NORTHEAST CORNER OF SAID BLOCK 8; THENCE N 44°35'48" E ACROSS VACATED 20TH STREET, 80.00 FEET TO THE SOUTHEAST CORNER OF BLOCK 9 GASTON'S ADDITION TO THE CITY OF DENVER; THENCE S 45°24'32" E ACROSS VACATED WEWATTA STREET 80.00 FEET TO THE NORTHWESTERLY CORNER OF LOT 8 BLOCK 6 GASTON'S ADDITION TO THE CITY OF DENVER; THENCE S 45°24'13" E ALONG THE SOUTHWESTERLY LINE OF SAID LOT 8 BLOCK 8.88 FEET; THENCE S 38°16'01" W, 485.77 FEET TO A POINT ON THE SOUTHWESTERLY LINE OF BLOCK 1 HOYT AND ROBINSON'S ADDITION TO DENVER, SAID POINT BEING 62.44

Continued on next page

FEET SOUTHEASTERLY FROM THE SOUTHWEST CORNER OF SAID BLOCK 1; THENCE S 44°34'00 W ACROSS VACATED 19TH STREET, 80.00 FEET TO A POINT ON THE NORTHEAST LINE OF BLOCK D HOYT AND ROBINSON'S ADDITION TO DENVER, SAID POINT BEING 62.48 FEET SOUTHEAST OF THE NORTHWEST CORNER OF SAID BLOCK D; THENCE S 44°34'59" W ALONG A LINE MIDWAY BETWEEN THE NORTHWESTERLY LINE OF BLOCK D AND THE NORTHWESTERLY LINE OF THE ALLEY IN BLOCK D, 401.44 FEET TO A POINT ON THE SOUTHWESTERLY LINE OF LOT 11 BLOCK D EAST DENVER; THENCE S 45°26'16" E, 62.49 FEET TO THE SOUTHEAST CORNER OF SAID LOT 11; THENCE S 44°34'53" W ACROSS VACATED 18TH STREET, 80.00 FEET TO THE NORTHEAST CORNER OF LOT 1 BLOCK E EAST DENVER; THENCE S 45°26'16" E ALONG THE NORTHEASTERLY LINE OF SAID BLOCK E, 140.99 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH THE SOUTH HALF OF VACATED 18TH STREET LYING ADJACENT TO LOT 32, BLOCK D, EAST DENVER, AS VACATED IN ORDINANCE NO. 1209, SERIES OF 1996 RECORDED JANUARY 3, 1997 AT RECEPTION NO. 9700000615.

EXCEPT THAT PORTION OF SAID PARCEL 1 DESCRIBED AS FOLLOWS:

PARCEL 1A: (ICE HOUSE PARCEL)

A PORTION OF VACATED 18TH STREET AS DEFINED BY ORDINANCE 76, SERIES OF 1908 OF THE RECORDS OF THE CITY AND COUNTY OF DENVER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTH CORNER OF LOT 11, BLOCK "D" OF EAST DENVER ADDITION TO THE CITY OF DENVER; THENCE N 45°26'16" W ALONG THE SOUTHWEST LINE OF SAID LOT 11, A DISTANCE OF 62.49 FEET; THENCE N 44°34'53" E A DISTANCE OF 40.00 FEET TO THE CENTERLINE OF SAID VACATED 18TH STREET; THENCE S 45°26'16" E ALONG SAID CENTERLINE A DISTANCE OF 62.49 FEET; THENCE N 44°34'53" E A DISTANCE OF 40.00 FEET TO THE POINT OF BEGINNING, CITY AND COUNTY OF DENVER, STATE OF COLORADO.

AND EXCEPT THAT PORTION OF SAID PARCEL 1 DESCRIBED AS FOLLOWS:
PARCEL 1B:
(CONVEYANCE FOR WEWATTA STREET PARCEL) (WET-DUT-1)

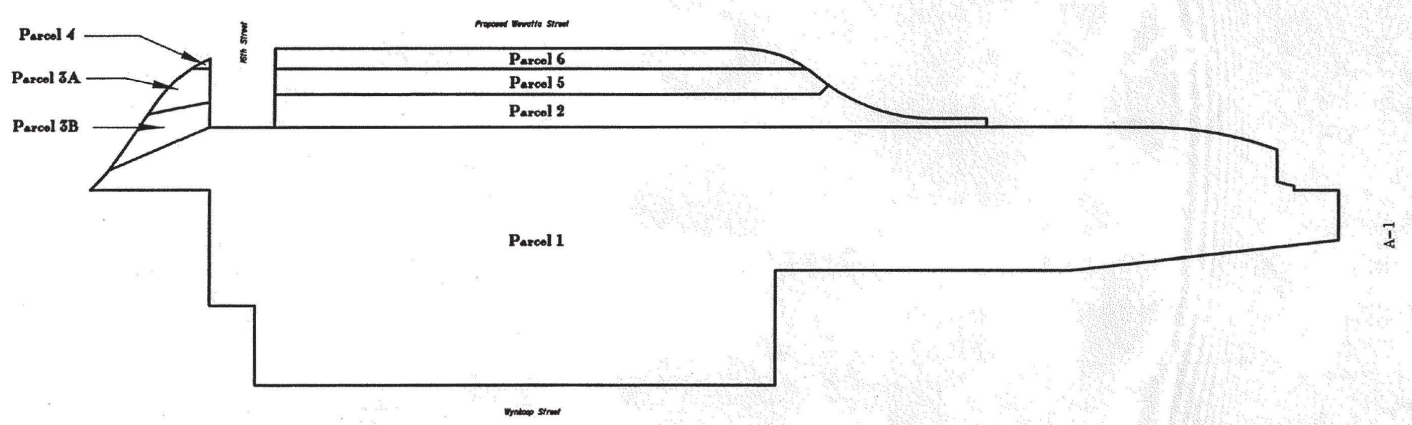
A PARCEL OF LAND SITUATED WITHIN A PORTION OF LOTS 22 THROUGH 26, BLOCK 10, EAST DENVER, A PLAT ON FILE WITH THE CITY & COUNTY OF DENVER CLERK AND RECORDER'S OFFICE IN BOOK 1 ON PAGE 1, BEING ALSO IN THE NORTHEAST QUARTER OF SECTION 33, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE MOST SOUTHERLY CORNER OF LOT 17 IN SAID BLOCK 10 OF EAST DENVER; THENCE ALONG THE SOUTHEASTERLY LINE OF SAID BLOCK 10, N 44°35'03" E A DISTANCE OF 145.00 FEET TO THE POINT OF BEGINNING,

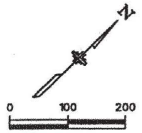
Continued on next page

SAID POINT BEING ON THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF DEDICATED WEWATTA STREET, PER CITY OF DENVER ORDINANCE 228 SERIES OF 1995; THENCE N 20°53'43" E, ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 88.21 FEET TO A POINT ON A CURVE NOT TANGENT WITH THIS COURSE; THENCE ALONG THE ARC OF SAID CURVE TO THE RIGHT, NON-TANGENT TO THE PREVIOUS COURSE, HAVING A RADIUS OF 325.00 FEET, A CENTRAL ANGLE OF 08°29'46", AN ARC LENGTH OF 48.19 FEET AND A CHORD WHICH BEARS S 02°48'46" E A DISTANCE OF 48.15 FEET TO A POINT ON THE SOUTHEASTERLY LINE OF SAID BLOCK 10; THENCE ALONG SAID SOUTHEASTERLY LINE OF BLOCK 10, S 44°35'03" W A DISTANCE OF 48.18 FEET TO THE POINT OF BEGINNING.

FROM THE POINT OF COMMENCEMENT OF THIS LEGAL DESCRIPTION THE SECTION CORNER COMMON TO SECTIONS 27, 28, 33 AND 34, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN BEARS NORTH 56 DEGREES 30 MINUTES 21 SECONDS EAST A DISTANCE OF 1,992.87 FEET.

EXHIBIT A-1





ORIGINAL SCALE 1" = 200'

NOTE:
THIS EXHIBIT DOES NOT REPRESENT A MONUMENTED LAND SURVEY. IT IS INTENDED ONLY TO DEPICT THE ATTACHED DESCRIPTION.

DUT Parcel Numbering

SECTIONS 27, 28, 33, T. 3 S.,R. 68 W. 6th P.M.

Washington
Infrastructure Services, Inc.
10822 W. Toller Drive
Littleton, CO 80127 (303) 948-4001

CALC: GDG
CADD: DDH
CHK: GDG

EXHIBIT B

TO SPECIAL WARRANTY DEED

Permitted Exceptions

1. Taxes and assessments for 2001, a lien, not yet due or payable.

2. Reservation of easements as contained in Ordinance No. 19, Series of 1950.

3. Easement Deed to the United States of America recorded January 18, 1960 in Book 8461, page 288.

4. Reservation of easements as contained in Ordinance No. 76, Series of 1940 recorded October 21, 1982 in Book 2677, page 128.

5. Terms, conditions, provisions and obligations contained in Development Agreement, recorded June 6, 1988, at Reception Number R-88-0273563.

6. Reservation of easements as contained in Ordinance No. 944, Series of 1991 recorded December 24, 1991 at Reception No. R-91-0127098.

7. Terms, conditions, provisions and obligations contained in Agreement as evidenced by Memorandum of Agreement, recorded November 19, 1991, at Reception Number R-91-0113451.

8. Terms, conditions, provisions, obligations and easements contained in Easements and Improvements Agreement, recorded January 3, 1992, at Reception Number R-92-0000817.
   NOTE: Easement Confirmation and Construction Commencement Certificate, recorded January 5, 2001, at Reception Number 2001002853.

9. Easement granted to U S West Communications Inc. recorded November 20, 1992 at Reception No. R-92-0138590.

10. Easement and right-of-way granted to Public Service Company of Colorado, by instrument recorded February 2, 1993, at Reception Number R-93-0013237.

11. Easement and right-of-way granted to Public Service Company of Colorado, by instrument recorded October 28, 1996, at Reception Number 9600148888.

12. Terms, conditions, provisions, obligations and easements contained in Reciprocal Easement Agreement by and between The Denver Union Terminal Railway Company and Thermo Ice House L.L.C. and Ice House Lofts, LLC, recorded June 27, 1997, at Reception Number 9700083110.

13. Easements by prescription or similar rights, if any, of utilities companies or other persons other than The Denver Union Terminal Railway Company, for the use of underground utilities located on the Property, including, without limitation, underground water, storm sewer, sanitary sewer, gas, electric and telecommunications lines and facilities, but only to the extent such facilities (i) are in existence as of the effective date hereof, (ii) are not located on the Property pursuant to a valid and effective easement or other instrument of record as of the effective date hereof, and (iii) are not shown on the survey prepared by MK Centennial dated March 21, 2001, last revised June 21, 2001 under Project No. 1569.09.

14. Terms, conditions, provisions and obligations contained in Grant of Easements, recorded April 7, 1993, at Reception Number R-93-0043079.
    NOTE: Easement Confirmation and Construction Commencement Certificate recorded January 5, 2001 at Reception No. 2001002853.

15. Water rights, claims or title to water.

16. The following matters as disclosed on the survey prepared by MK Centennial dated March 21, 2001, last revised June 21, 2001 under Project No. 1569.09.

    a. Encroachment of covered waste fuel tank upon property adjoining on the Northwest of he Property.

    b. Encroachment of asphalt, landscaping, parking spaces and signs upon property adjoining on the East of the Property.

    c. Possible easement for underground transmission lines crossing the Northerly portion of the Property.

    d. Possible easement for sanitary sewer lines crossing the Northerly portion of the Property.

    e. Possible easement for 16" water line crossing the Northerly portion of the Property.

    f. Possible easement for 16" STM line crossing the Northerly portion of the Property.

    g. Possible easements as evidenced by inlets located throughout the Property.

    h. Possible easements as evidenced by water stations throughout the Property.

    i. Possible easements as evidenced by track drains throughout the Property.

    j. Possible easements as evidenced by manholes located throughout the Property.

17. Terms, conditions and provisions of Paragraph 8, ("Union Pacific's Rights") of that certain Assignment of Rights and Termination of Liabilities Under Operating Agreement dated of even date herewith and recorded contemporaneously herewith in the records of the Clerk and Recorder of the City and County of Denver.

18. Rights of the National Railroad Passenger Corporation d/b/a Amtrak, if any, for the continued use of portions of the Property.

19. Rights of Union Station Transport Development Company, if any, for the continued use of portions of the Property.

20. Terms and Provisions of Trackage Usage Agreement dated of even date herewith and recorded contemporaneously herewith in the records of the Clerk and Recorder of the City and County of Denver .

2001135958 2001/08/14 16:13:26 1/ 5 BSD
DENVER COUNTY CLERK AND RECORDER 25.00 .00 SMP
*****

5

After Recording Please Return To:
Les Caldwell
Jacobs Chase Frick Kleinkopf & Kelley
1050 17th Street, Suite 1500
Denver, Colorado 80265

BARGAIN AND SALE DEED

[DUT – Parcels 2, 3a, 3b and 4]

THE DENVER UNION TERMINAL RAILWAY COMPANY, a Colorado corporation ("Grantor"), whose street address is Union Station, Suite 223, 1701 Wynkoop Street, Denver, Colorado 80202, for the consideration of Ten Dollars ($10.00) and other good and valuable consideration, in hand paid, hereby sells and conveys to REGIONAL TRANSPORTATION DISTRICT, a political subdivision of the State of Colorado ("Grantee"), whose street address is 1600 Blake Street, Denver, Colorado 80202-1399, Attention: General Counsel, the real property in the City and County of Denver and State of Colorado that is described on **Exhibit A** and depicted on **Exhibit A-1** as Parcels 2, 3a, 3b and 4 attached hereto and made a part hereof.

Signed this 10th day of August, 2001.

THE DENVER UNION TERMINAL RAILWAY COMPANY, a Colorado corporation

By: _____
Name: Paula V. Kurtz
Title: President

STATE OF Washington)
) ss.
COUNTY OF Whatcom)

The foregoing instrument was acknowledged before me this 10th of August, 2001, by Paula V. Kurtz, as President of The Denver Union Terminal Railway Company, a Colorado corporation.

Witness my hand and official seal.

My commission expires: 6/2/02

HEATHER M. HARRIS NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES 6-2-02

_____
Notary Public

(5)
$25.00

{00103453.DOC 2}

90120295

EXHIBIT A

LEGAL DESCRIPTION

PARCEL 2:

A PARCEL OF LAND SITUATED WITHIN EAST DENVER AND HOYT & ROBINSON'S ADDITION TO DENVER PLATS IN THE NORTHEAST QUARTER OF SECTION 33 AND SOUTHEAST QUARTER OF SECTION 28 RESPECTIVELY, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST WESTERLY CORNER OF LOT 16, BLOCK 9 OF EAST DENVER, A PLAT ON FILE IN THE CITY AND COUNTY OF DENVER CLERK AND RECORDER'S OFFICE. THENCE ALONG THE SOUTHWESTERLY LINE OF SAID BLOCK 9, SOUTH 45° 27' 03" EAST A DISTANCE OF 154.64 FEET. THENCE AT A RIGHT ANGLE TO THE PREVIOUS COURSE, NORTH 44° 32' 57" EAST A DISTANCE OF 35.00 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 45° 27' 03" WEST A DISTANCE OF 58.07 FEET;

THENCE NORTH 44° 34'56" EAST A DISTANCE OF 963.87 FEET;

THENCE NORTH 00° 24'20" WEST A DISTANCE OF 22.70 FEET TO A POINT ON CURVE;

THENCE ALONG THE ARC OF SAID CURVE TO THE LEFT, NON-TANGENT TO THE PREVIOUS COURSE, HAVING A RADIUS OF 325.00 FEET, A CENTRAL ANGLE OF 34° 58' 26", AN ARC LENGTH OF 198.38 FEET AND A CHORD WHICH BEARS NORTH 62° 02' 42" EAST A DISTANCE OF 195.32 FEET;

THENCE NORTH 44° 33'29" EAST A DISTANCE OF 93.64 FEET;

THENCE SOUTH 45° 25'11" EAST A DISTANCE OF 15.50 FEET;

THENCE SOUTH 44° 34' 49" WEST A DISTANCE OF 1,259.84 FEET TO THE POINT OF BEGINNING.

CITY AND COUNTY OF DENVER, STATE OF COLORADO.

PARCEL 3A:

A PARCEL OF LAND SITUATED WITHIN LOTS 1 THROUGH 5 AND A PORTION OF THE VACATED ALLEY, BLOCK 10, EAST DENVER, A PLAT WHICH IS ON FILE WITH THE CITY & COUNTY OF DENVER CLERK & RECORDERS OFFICE IN BOOK 1 ON PAGE 1, DATED MAY 29, 1865, IN THE NORTHEAST QUARTER OF SECTION 33, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, BEING MORE

Continued on next page

PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST NORTHERLY CORNER OF SAID LOT 1; THENCE ALONG THE NORTHEASTERLY LINE OF SAID LOT 1, SOUTH 45° 27' 03" EAST A DISTANCE OF 50.99 FEET TO THE POINT OF BEGINNING;

THENCE, CONTINUING ALONG SAID NORTHEASTERLY LINE, SOUTH 45° 27' 03" EAST, A DISTANCE OF 58.99 FEET;

THENCE SOUTH 33° 16'24" WEST A DISTANCE OF 76.50 FEET TO THE SOUTHEASTERLY LINE OF LOT 3 IN SAID BLOCK 10;

THENCE SOUTH 32° 32' 16" WEST, A DISTANCE OF 31.94 FEET TO THE NORTHEASTERLY RIGHT OF WAY LINE OF PROPOSED WEWATTA STREET;

THENCE ALONG SAID PROPOSED WEWATTA STREET RIGHT OF WAY THE FOLLOWING TWO (2) COURSES:

1. THENCE NORTH 11° 21' 12" WEST, A DISTANCE OF 26.69 FEET TO A POINT OF CURVATURE;

2. THENCE ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A RADIUS OF 215.00 FEET, AN ARC LENGTH OF 83.64 FEET, A CENTRAL ANGLE OF 22° 17' 20", AND A CHORD WHICH BEARS NORTH 00° 12' 32" WEST, A DISTANCE OF 83.11 FEET, TO THE NORTHWESTERLY RIGHT OF WAY LINE OF WEWATTA STREET, PER ORD. 288, OF SERIES 1995;

THENCE NORTH 44° 35' 32" EAST, ALONG SAID NORTHWESTERLY RIGHT OF WAY LINE, A DISTANCE OF 32.28 FEET TO THE POINT OF BEGINNING.

CITY AND COUNTY OF DENVER, STATE OF COLORADO.

PARCEL 3B:

A PARCEL OF LAND SITUATED WITHIN EAST DENVER, A PLAT WHICH IS ON FILE WITH THE CITY & COUNTY OF DENVER CLERK & RECORDERS OFFICE, IN THE NORTHEAST QUARTER OF SECTION 33, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST NORTHERLY CORNER OF LOT 1, BLOCK 10 OF EAST DENVER;

Continued on next page

THENCE ALONG THE NORTHEASTERLY LINE OF SAID LOT 1, SOUTH 45° 27' 03" EAST A DISTANCE OF 109.98 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID NORTHEASTERLY LINE OF BLOCK 10 SOUTH 45° 27' 03" EAST A DISTANCE OF 44.10 FEET;

THENCE SOUTH 20° 53' 43" WEST A DISTANCE OF 190.24 FEET TO A POINT OF CURVATURE;

THENCE ALONG THE ARC OF SAID CURVE TO THE LEFT, NON-TANGENT TO THE PREVIOUS COURSE, HAVING A RADIUS OF 325.00 FEET, A CENTRAL ANGLE OF 04° 17' 33", AN ARC LENGTH OF 24.35 FEET AND A CHORD WHICH BEARS NORTH 09° 12' 26" WEST A DISTANCE OF 24.34 FEET;

THENCE NORTH 11° 21' 12" WEST A DISTANCE OF 95.63 FEET;

THENCE NORTH 32° 32' 16" EAST A DISTANCE OF 31.94 FEET;

THENCE NORTH 33° 16' 24" EAST A DISTANCE OF 76.50 FEET TO THE POINT OF BEGINNING.

CITY AND COUNTY OF DENVER, STATE OF COLORADO.

PARCEL 4:

A PARCEL OF LAND SITUATED WITHIN LOTS 1 AND 2, BLOCK 10, EAST DENVER, A PLAT WHICH IS ON FILE WITH THE CITY & COUNTY OF DENVER CLERK & RECORDERS OFFICE, IN THE NORTHEAST QUARTER OF SECTION 33, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST NORTHERLY CORNER OF SAID LOT 1; THENCE ALONG THE NORTHEASTERLY LINE OF SAID LOT 1, SOUTH 45° 27' 03" EAST A DISTANCE OF 33.29 FEET TO THE POINT OF BEGINNING, SAID POINT BEING A POINT ON A CURVE;

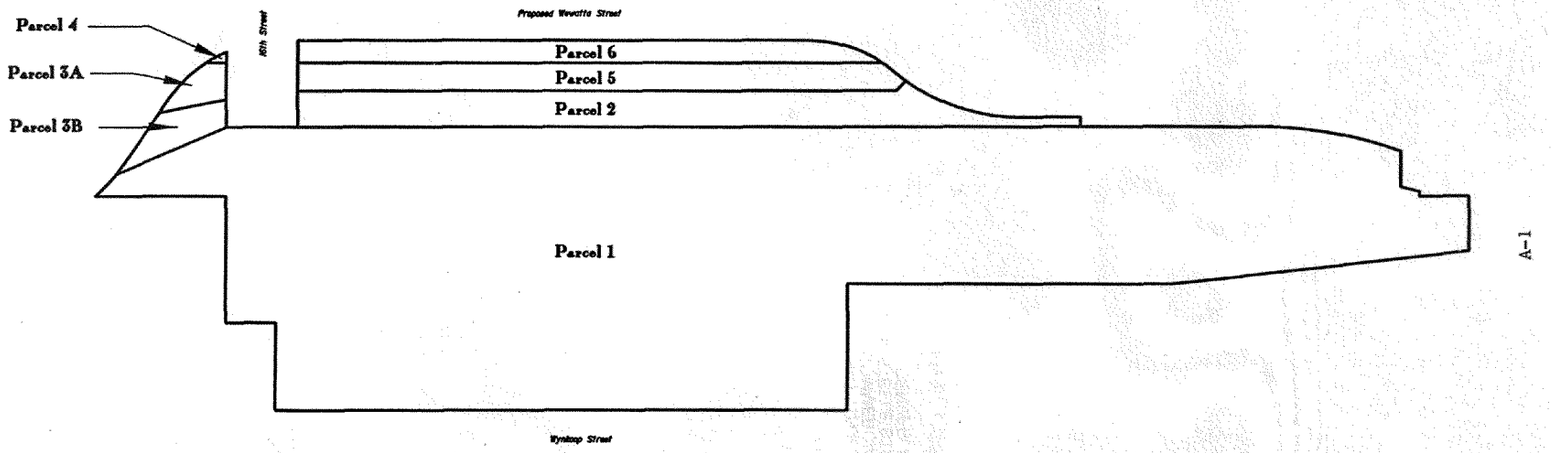
THENCE ALONG THE ARC OF SAID CURVE TO THE LEFT, NOT TANGENT TO THE PREVIOUS COURSE AND HAVING A RADIUS OF 215.00 FEET, A CENTRAL ANGLE OF 09° 49' 11", AN ARC LENGTH OF 36.85 FEET AND A CHORD WHICH BEARS SOUTH 15° 50' 43" WEST, A CHORD DISTANCE OF 36.80 FEET TO THE NORTHWESTERLY RIGHT-OF-WAY LINE OF EXISTING WEWATTA STREET, PER ORD. 288, SERIES OF 1995;

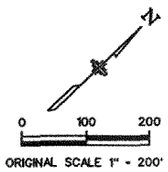
THENCE NORTH 44° 35' 32" EAST, ALONG SAID NORTHWESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 32.28 FEET TO SAID NORTHEASTERLY LINE OF LOT 1;

THENCE ALONG SAID NORTHEASTERLY LINE NORTH 45° 27' 03" WEST, A DISTANCE OF 17.70 FEET TO THE POINT OF BEGINNING.

CITY AND COUNTY OF DENVER, STATE OF COLORADO.

EXHIBIT A-1





ORIGINAL SCALE 1" = 200'

NOTE:
THIS EXHIBIT DOES NOT REPRESENT A MONUMENTED LAND SURVEY. IT IS INTENDED ONLY TO DEPICT THE ATTACHED DESCRIPTION.

DUT Parcel Numbering

SECTIONS 27, 28, 33, T. 3 S.,R. 68 W. 6th P.M.

Washington
Infrastructure Services, Inc.
10822 W. Toller Drive
Littleton, CO. 80127 (303) 948-4001

CALC: GDG
CADD: DDH
CHK: GDG

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36910

DENVER TRANSIT OPERATORS, LLC

— PETITION FOR DECLARATORY ORDER —

DENVER TRANSIT DISPATCH DEPARTMENT

Denver Transit Operators Opening Statement

Appendix B

1974 Amtrak - Denver Union Terminal Agreement

TERMINAL AGREEMENT

THIS AGREEMENT, made this 28th day of July, 1976, by and between NATIONAL RAILROAD PASSENGER CORPORATION, a corporation organized under the Rail Passenger Service Act of 1970 and the laws of the District of Columbia (herein called "NRPC"), and DENVER UNION TERMINAL RAILWAY COMPANY, a corporation organized under the laws of the State of Colorado (herein called "DUT");

WHEREAS, NRPC operates railroad passenger trains into and through Denver, Colorado, pursuant to the Rail Passenger Service Act of 1970, Section 402 of which (45 U.S.C. §562) provides that NRPC may contract with railroads for the use of railroad facilities and for the providing of transportation services; and

WHEREAS, DUT owns and operates a terminal railroad in the Greater Denver area, consisting of Union Station, located in Denver, Colorado, and related tracks and other terminal railroad facilities; and

WHEREAS, NRPC desires to operate its passenger trains over DUT'S tracks to tracks owned by all connecting carriers and into Union Station, and in connection therewith NRPC has requested that DUT:

(A) Lease to NRPC portions of the Union Station and certain tracks and other facilities incident

thereto, necessary for its passenger, mail and express operations;

B. Grant to NRPC certain operating rights in common with DUT, its proprietors and others admitted to the use thereof, over other portions of the DUT facilities; and

C. Perform various services for NRPC in connection with its operations; and

WHEREAS, DUT is willing, under the terms and conditions herein set out, to lease such portions of Union Station and certain tracks and facilities incident thereto to NRPC; to grant NRPC the requested operating rights; and to perform various services for NRPC.

NOW, THEREFORE, in consideration of the mutual covenants of the parties herein contained, and on the terms and conditions hereafter set out, the parties agree as follows:

(1) Lease of Premises and Grant of Operating Rights. During the term of this Agreement, DUT leases to NRPC a portion of Union Station and other facilities incident thereto, which are shown colored red on Exhibit A attached hereto and by this reference made a part hereof (the areas so described being herein called the "Premises"), for the purpose of all lawful NRPC operations. Said Premises are hereby being leased to NRPC for use in common with DUT and others using the Union Station from time to time.

Also, during the term of this Agreement, DUT gives and grants to NRPC the right and privilege of running and operating its passenger trains into the Union Station, and also the right of running and operating its passenger trains, for the purpose of all lawful NRPC operations, over and upon the railroad tracks of DUT, and of using and enjoying such tracks for the purposes of said operations, all such rights and privileges being herein called the "Operating Rights". The portions of DUT tracks over which NRPC is granted Operating Rights are shown colored green on said Exhibit A. NRPC's exercise of the Operating Rights shall be in common with all other railroads to which similar rights have heretofore or may hereafter be granted by DUT.

(2) Emergency Use.

Notwithstanding anything in Section 1 herein, NRPC, DUT and others to whom DUT has granted a right to use its tracks and facilities may, in the event of an emergency, use any serviceable tracks, platforms and facilities owned by DUT, subject to DUT's direction and control, which shall be exercised in such a manner so as to preserve for NRPC the fullest use of the Premises, and the fullest exercise of the Operating Rights, as is practicable considering the nature and extent of the emergency.

(3) Utilities.

DUT shall provide heat, light, water, electricity, sewer and other necessary utilities required by

NRPC in connection with its use of the Premises, to the extent that such utility services are presently available to the Premises. If NRPC desires to relocate utilities or to obtain additional utility services, or to utilize separately metered utilities, DUT shall cooperate fully, including the grant of right of access over DUT's facilities to the supplier of utility services upon appropriate terms, provided such access shall not unreasonably interfere with the use of DUT's facilities by DUT, and provided further that the cost of such relocation or the cost of obtaining such additional utility services shall be paid by NRPC, and that DUT shall have no obligation in respect to the providing or the continuing rendition of any such additional utility service obtained by NRPC.

The temperature in the Premises shall be maintained at a reasonable level at all times except such times as factors outside the control of DUT make this impossible. DUT shall also provide air conditioning in the office space included in the Premises to the extent presently provided, which office space shall be maintained at a reasonably cool temperature.

For providing the services described in this section, NRPC shall pay DUT a sum based upon 60 percent of the net billable cost to DUT of such services on a monthly basis; for these purposes, "net billable cost to DUT" shall be the amount actually billed to DUT from each supplier with

respect to terminal operations less the amounts chargeable for such services to others or contributed by others under agreements with DUT including other railroads, tenants, and users. This formula shall be subject to audit and adjustment by NRPC and/or DUT from time to time to establish the fairness and accuracy thereof.

The payments to be made by NRPC under this section, of a percentage of the net billable monthly cost to DUT of utility services provided by DUT and of the entire cost of additional utility services which may hereafter be obtained by NRPC, are in addition to the compensation to be paid by NRPC pursuant to Section 8 hereof.

(4) Maintenance, Repairs, and Security.

(a) DUT shall maintain the Premises in at least as good condition as on the effective date of this Agreement and shall provide reasonable security for the Premises. Said maintenance shall include but not be limited to repairs and servicing as is consistent with reasonable maintenance practices, including the removal of snow, ice or other obstructions from the sidewalks and other areas in the parking lot only. Said security shall include the maintenance of one security guard who will be on duty in the area of the waiting room from 9:00 P.M. to 6:00 A.M. seven days a week. NRPC shall provide all routine janitorial services including the removal of snow, ice or other obstructions from the train and baggage platforms and all sidewalks in front of the Union Station and Baggage Office.

(b) DUT shall provide all general supervision, time-keeping, general record-keeping and billing services against NRPC required of DUT under this Agreement.

(c) DUT shall provide all materials, labor and equipment and related services utilized to perform DUT's obligation under subsections (a) and (b) of this Section 4, and shall provide at it own cost all labor and equipment for light running repairs to mechanized equipment on the Premises as of the date of this Agreement but not to exceed $50.00 per incident per equipment, but DUT shall not be required to provide for any other major repairs, complete overhauls or replacement of said equipment in excess of $200.00 per month.

(d) If it becomes necessary for DUT to employ personnel, in addition to those employed at the date of this Agreement, at the request of NRPC or solely to enable DUT to perform its obligations to NRPC under this Agreement, NRPC will be responsible for any severance or wage protection costs arising from the employment of such additional personnel and accruing from the date such employment shall have had the authorization of NRPC. If any such additional employee after first performing services exclusively for the benefit of NRPC should thereafter perform services for the common benefit of NRPC and DUT, or for the exclusive benefit of DUT, severance or wage protection costs in respect to his employment shall be prorated between NRPC and DUT based on his entire tenure with DUT from the date of said employee's hiring at the request of NRPC.

(5) Signaling, Traffic Control and Telephone Service.

DUT shall provide all necessary signaling and interlocking traffic control services required for the operation of NRPC trains to, from or through the Premises.

(6) Taxes.

DUT shall pay all taxes and assessments, general, special or otherwise, which may be charged, assessed, imposed or payable upon the Premises. NRPC shall pay all such taxes and assessments which may be charged, assessed, imposed or payable upon any property of NRPC located upon or installed in the Premises.

(7) Extent of DUT's Services.

DUT shall not be obligated to perform any services in respect to NRPC's occupancy of the Premises and its exercise of the Operating Rights other than those hereinabove specifically set forth.

(8) Compensation.

NRPC shall pay DUT, as rent for the occupancy of the Premises and the exercise of the Operating Rights, and for the services described in Sections 4 through 6 herein, the sum of $178,683.48 per annum, payable in equal monthly installments of $14,890.29 on the first day of each month during the term hereof, beginning the first day of the month following effective date of contract. Such rental payments shall be in addition to any payments to be made by NRPC for the cost of utilities under Section 3 hereof, or for the cost of improvements and additional maintenance

under Section 11 hereof. Factors used in arriving at the above rental figures include a proportionate allocation of taxes based on the 1972 mill levy, and the 1975 cost to DUT of materials, wages (including payroll taxes), and fringe benefits as shown on Exhibit B attached hereto. The per annum and monthly rental payments to be made under this section shall therefore be reviewed and adjusted (a) annually in January of each year, commencing with the year 1977, to reflect changes in the assessed valuation of the property of which the Premises are a part or in the mill levy for general property taxes of the previous year; and (b) semi-annually in January and July of each year, commencing with the month of July, 1976, to reflect actual changes in the current cost to DUT of materials, wages, payroll taxes, and fringe benefits, which costs may reflect an increase or decrease in the services cost as herein shown on Exhibit B. Such increases or decreases, as the case may be, in the rental figure, shall become effective as of the first day of the month in which the adjustments are made.

After the execution and delivery of this Agreement, NRPC shall pay DUT for the period July 1, 1973, to the first of the month following agreement date of contract, as full compensation for use of the Premises and Operating Rights and the provision of utilities and services by DUT, an amount to be determined and agreed upon between DUT and NRPC, which amount shall be reduced by the amount paid by NRPC during this period as interim compensation.

(9) Effective Date, Term and Termination.

The term of this Agreement shall commence as of July 1, 1973, and shall continue in effect thereafter to and

including June 30, 1978, unless terminated or extended in the following manner:

(a) NRPC shall have the right to terminate this Agreement, at any time, on one hundred eighty (180) days prior written notice to DUT if NRPC has firm plans and if, on the date of termination, NRPC has proper authority to relocate to other terminal facilities in the Denver Metropolitan Area, or to discontinue intercity rail passenger service to Denver. In the event of a termination of this Agreement pursuant to this subparagraph (a), NRPC shall waive any further right to utilize the passenger terminal facilities of DUT in the Denver Metropolitan Area.

(b) DUT shall have the right to terminate this Agreement, at any time, on one hundred eighty (180)days prior written notice to NRPC, if DUT has firm plans and if, on the date of termination, DUT has proper authority to abandon, demolish or substantially alter the Union Station as part of a plan of redevelopment of all or part of DUT's property in Denver, which plan required the removal of NRPC from the Union Station.

(c) In the event DUT gives notice to terminate this Agreement under subparagraph (b) hereinabove or Section 16 of this Agreement, NRPC shall have the right to acquire during the period covered by this Agreement or any extension thereto, other property owned by DUT and not required for its other railroad operations for use by NRPC as a location for a passenger service terminal facility. Such property shall be provided by

DUT at a price or for a rent which shall be no greater than the fair market value. At the request of NRPC, DUT shall continue to furnish NRPC, for a period terminating no later than June 30, 1983, or the termination date of this lease or any extension thereof, whichever is the latest, the Operating Rights and terminal services provided for in this Agreement. Such rights and services shall be provided upon terms at least as favorable to NRPC as are provided for herein. Any dispute between the parties as to such terms or as to the fair market value of property to be conveyed to NRPC shall be subject to the arbitration provisions of Section 21 hereof.

(d) NRPC shall have the right to renew this Agreement for an additional five (5) year term by giving DUT written notice of its intention to renew on or before December 31, 1977, but such right to renew shall be subject to the agreement of the parties as to the compensation to be paid by NRPC for and during the additional five-year term. All other terms and conditions of this Agreement shall remain in effect as herein set forth. If the parties cannot agree as to compensation, then upon the written request of either party, the question of what amount would constitute a fair and reasonable compensation shall be submitted to arbitration in accordance with the arbitration provisions of Section 21 hereof.

(10). Conditions and Return of Premises.

NRPC has inspected the Premises and the tracks over which NRPC has been granted Operating Rights and hereby accepts them in their condition as of the effective date of this Agreement.

Upon the expiration of the term, or any extension thereof, or upon any other termination, of this Agreement, NRPC shall peaceably quit the Premises and discontinue use of the Operating Rights and shall deliver the Premises to DUT in like condition as received (except for improvements made by NRPC during the term of this Agreement pursuant to Section 11 hereof), less ordinary wear and tear, failing in which DUT shall have the right to make restoration to such like condition at the expense of NRPC, which expense NRPC agrees to pay to Terminal Company upon receipt of itemized bids therefor.

(11) Improvements.

(a) NRPC shall have the right, at its own expense, to build structures, interior partitioning and doors and to post signs and other advertisements in the Premises, provided NRPC obtains the written consent of DUT, which shall not be unreasonably withheld. Any nonseverable improvements shall at the end of the term or any renewal term of this Agreement become the property of DUT. All other improvements, fixtures, and equipment may, at the option of NRPC, be removed. NRPC may mortgage or otherwise encumber or permit to be encumbered during the term of this Agreement any severable improvements placed by NRPC on the Premises.

(b) NRPC shall reimburse DUT for the costs of any improvements, the costs of maintenance thereof, and the additional costs of any maintenance of those improvements or the Premises generally above DUT's heretofore usual standards which DUT may agree to make or perform at the written request of NRPC.

(c) NRPC shall take all steps necessary to prevent the attachment of mechanic's or materialmen's liens arising out of

any construction or repair work done by or for the benefit of NRPC on or about the Premises, and to obtain the prompt release of any such liens which might attach.

(12) Force Majeure.

The obligations of the parties hereunder shall, except as provided in Sections 16 and 17 herein, be subject to force majeure (which shall include strikes, riots, floods, accidents, Acts of God, governmental action, including compliance with any valid law or regulation, and other causes or circumstances beyond the control of the party claiming such force majeure as an excuse for nonperformance) but only as long as, and to the extent that, such force majeure shall prevent performance of such obligations. If by reason of force majeure DUT should be unable to perform any of its obligations hereunder or NRPC should be unable to exercise the Operating Rights, NRPC shall, for the period of such inability, be entitled to an equitable abatement of the rent.

(13) Concessions.

DUT has the right to all revenues from those concession contracts now in effect and located within the NRPC Leased Premises, however, NRPC has the right to assignment, control and the granting of any renewal or extension of the above said contracts after said current contract term expires. In addition, NRPC shall have the right to build or install and operate, or License others to build or install and operate within the Premises, any new commercial facilities, and extensions or renewals thereof which, in the judgment of NRPC, are necessary to provide for the health, safety, comfort or convenience of passengers, or which

provide amusement or nourishment for those members of the public utilizing the Union Station. DUT shall have no obligation or responsibility in respect to the Licensing of any such commercial facilities or the contracting for such.

(14) Operations.

DUT shall afford passenger trains the preferences required by the Rail Passenger Service Act of 1970, as amended, and by applicable regulations of the Interstate Commerce Commission and shall recognize the primary importance of passenger service schedule adherence in affording necessary preferences, if any, among passenger trains utilizing the Premises and Operating Rights. In conducting its operations in the Premises and in exercising the Operating Rights NRPC shall not otherwise unreasonably obstruct or interfere with the access to and use of DUT's facilities by any other railroad, including DUT, having the right to use the same, and NRPC shall not obstruct or interfere with the execution or enforcement of all reasonable and lawful rules and regulations that are now or may hereafter be established by DUT governing the use and enjoyment of DUT facilities, all of which rules and regulations shall be complied with by NRPC.

No restrictions on speed, consists or any other restriction on the manner of use by NRPC of DUT's tracks or facilities may be imposed by DUT, except in accordance with law and federal safety standards. DUT shall rectify with reasonable dispatch any conditions

which require NRPC trains to operate at any unreasonably slow speed or which otherwise unreasonably interfere with the operation of NRPC's trains within the Premises or over DUT tracks pursuant to the Operating Rights, or which require NRPC trains or passengers to use tracks, platforms or facilities other than those specified in Exhibit A as being for the use of NRPC.

Present interlocking rules and speed limits will remain in effect.

(15) Laws and Regulations.

NRPC and DUT, at the sole cost and expense of each, shall comply with and obey all applicable laws, ordinances, rules, regulations and requirements of all federal, state, municipal, or other governmental authorities now existing or hereinafter created, so far as the same may affect the Premises and Operating Rights and NRPC's operations thereover.

(16) Casualty Loss.

In the event the Premises shall be destroyed, or so damaged by fire, explosion, windstorm, or other casualty as to be untenantable, DUT may restore said Premises within a reasonable time after such destruction or damage, or may

terminate this Agreement as of the date of the destruction or damage, in either event by giving NRPC written notice within thirty (30) days after the date of destruction or damage, and the rent shall abate on a per diem basis during any period of restoration. In the event said Premises shall be damaged as aforesaid but are not thereby rendered untenantable, DUT shall restore said Premises with reasonable dispatch, and while such damages are being repaired NRPC shall be entitled to an equitable abatement of said rent. DUT's election or obligation to restore the Premises under this section shall in no event include the repair, restoration or replacement of any items of furnishings, fixtures, or equipment installed in the Premises which are the property of NRPC.

(17) Condemnation.

If the whole or any substantial part of the Premises shall be taken or condemned by competent authority and, as a result, NRPC shall be required to relocate from the Premises, and if the parties are unable to agree as to the leasing to NRPC of alternate property and facilities which may then still be owned by DUT, then this Agreement shall terminate upon the date on which possession of all or part of the Premises is required by law to be surrendered. In the event of a taking of part of the Premises which does not unreasonably interfere with NRPC's operations and use of

the Premises NRPC shall be entitled to a just and equitable reduction in the rent.

NRPC shall be entitled to a fair and just allocation of any award of damages or compensation made as a result of any taking, temporary or otherwise, of the Premises, but only to the extent that its actual damages from the taking, including damage to its improvements and additions (whether considered severable or nonseverable), relocation costs, and loss of business are either separately stated in the damage award, or are included in the measure of damages upon which the award is based. In no event shall NRPC have any claim for the value of an unexpired term of this Agreement.

(18) Liability.

(a) NRPC agrees to indemnify and save harmless DUT irrespective of any negligence or fault of DUT, its employees, agents, or servants, or howsoever the same shall occur or be caused, from any and all liability for injuries to or death of any employee, agent, or servant of NRPC, and for loss of and damage to, or destruction of the property of any such person; but it is expressly understood and agreed that neither officers, agents, servants, or employees of DUT, nor officers, agents, servants, or employees of any other railroad who are on or about the Premises of DUT for the purpose of conducting activities by or for the account of NRPC pursuant to an agreement between NRPC and such other railroad, shall be regarded as employees of NRPC for the purposes of this subparagraph (a).

(b) NRPC agrees to indemnify and save harmless DUT, irrespective of any negligence or fault of DUT, its employees,

agents, or servants, or howsoever the same shall occur or be caused, from any and all liability for injuries to or death of any person or passenger who has purchased an NRPC-approved ticket for any train operated by or for the account of NRPC, and for injuries to or death of any other person who may be getting on or alighting from such train for the purpose of accompanying or meeting a passenger, and for loss of, damage to, or destruction of the property of any such person or passenger.

(c) NRPC agrees to indemnify and save harmless DUT irrespective of any negligence or fault of DUT, its employees, agents, or servants, or howsoever the same shall occur or be caused, from any and all liability for, loss of, damage to or destruction of any locomotive, passenger car or any other property or equipment owned by, leased to, used by or otherwise in the control, custody or possession of NRPC.

(d) NRPC agrees to indemnify and save harmless DUT irrespective of any negligence or fault of DUT, its employees, agents and servants or howsoever the same shall occur or be caused, and notwithstanding the provisions of subparagraph 18(f) hereof, from any and all liability for injury to or death of any person and for loss of, damage to, or destruction of any property, other than property specified in subparagraph 18(e) hereof, if such injury, death, loss, damage, or destruction arises from or is proximately caused as a result of a collision of a vehicle or a person with an NRPC train at the intersection of a street or road, whether public or private, and the tracks of DUT.

(e) DUT agrees to indemnify and save harmless NRPC, irrespective of any negligence or fault of NRPC, its agents,

employees or servant or howsoever the same s. ll occur or be caused, from any and all liability for injury to or death of any employee or employees of DUT and for loss of, damage to or destruction of any property or equipment owned by, leased to, used by, or otherwise in the control, custody, or possession of DUT or its employees, other than property described in subparagraph 18(c) hereof, which arises from activities conducted by or for the account of NRPC pursuant to this Agreement.

(f) DUT agrees to indemnify and save harmless NRPC, irrespective of any negligence or fault of NRPC, its employees, agents or servants, or howsoever the same shall occur or be caused, from any and all liability for injury to or death of any person or persons (other than those persons, employees or passengers described in subparagraph 18(a), (b), and (d)hereof) and from any and all liability for loss, damage or destruction to any property (other than property described in subparagraphs (a), (b), (c), and (d) hereof) which arises from activities conducted by and for the account of NRPC pursuant to this Agreement.

(g) In case suit shall at any time be brought against either NRPC or DUT asserting a liability against which the other agrees to indemnify and save harmless the party sued, the indemnifying party shall, at its own cost and expense and without any cost or expense whatever to the party sued, defend such suit and indemnify and save harmless the party sued against all costs and expenses thereof and promptly pay or cause to be paid any final judgment recovered against the party sued; provided, however, that the party sued shall promptly upon the bringing of any such suit against it give notice to the indemnifying party and thereafter provide all such information as may

from time to time be requested. Each party shall furnish to the other all such information relating to claims made for injuries, deaths, losses, damage or destruction of the type covered by this paragraph 18 as such other party may from time to time request.

(h) The provisions of this paragraph 18 shall be deemed amended or modified by any final decision of the National Arbitration Panel with respect to identical language of Section 7.2, as amended, of the NRPC Agreement of April 1971 between NRPC and various railroads.

(19) Labor Agreements and Replacement of Employees.

NRPC may, for cause and on reasonable notice to DUT, require that any employee of DUT performing services for NRPC under Section 4 or 5 of this Agreement be replaced in the performance of such services. NRPC shall pay DUT the cost of any claims against DUT which necessarily result from such replacement.

Notwithstanding the provisions of any other section of this Agreement, DUT shall not be obligated to violate the terms of any then current labor agreements between it and any labor organization representing its employees.

NRPC agrees that if the execution of this Agreement, or the performance of services hereunder by or for DUT, or any NRPC function or activity in providing passenger terminal services and facilities, causes DUT to violate after the date of the execution of this agreement, the terms of or to incur costs other than labor protection costs in connection with any then current labor agreement between DUT and any labor organization

representing any of its employees, NRPC shall reimburse DUT for all costs resulting therefrom provided that the applicable provisions of any such labor agreement are not substantially different from National or Regional labor agreements between other railroads and the same labor organization and further provided that DUT notifies NRPC, in writing, promptly after it has received any claim which purports to relate to such violation for which DUT would seek reimbursement from NRPC and permit NRPC to intervene in the defense of such a claim.

(20) Audits.

Any payment by NRPC hereunder shall be subject to audit by NRPC or its designee, at NRPC's expense. The scope of such audit shall be both financial and operational.

DUT shall maintain supporting accounting and operating records and any other related data which may be required for the audit hereunder which shall be available to NRPC during regular business hours of DUT's General Office.

(21) Interpretation - Arbitration.

The section headings herein are for convenience only, and shall not affect the construction hereof. Nothing expressed or implied herein shall give or be construed to give any person, firm or corporation other than NRPC or DUT any legal or equitable right, remedy or claim under or in respect of this Agreement, nor shall anything expressed or implied herein constitute or be construed to constitute a waiver by NRPC or DUT of any legal or equitable right, remedy or claim under or in

respect of any agreement which either may have with other persons, firms, or corporations. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing signed by NRPC and DUT, unless a provision hereof expressly permits either of said parties to effect termination, amendments, supplementation, waiver or modification hereunder, in which event such action shall be taken in accordance with the terms of such provision.

If at any time a question shall arise touching the construction of this Agreement or concerning the business or manner of transacting the business to be carried on under its provisions or the observance or performance of any of its covenants, upon which question the parties cannot agree, then, upon request of either DUT or NRPC, the matter shall be submitted and decided by three arbitrators, one to be appointed by DUT, one by NRPC and a third by the two so appointed. Each party shall appoint its arbitrator within thirty (30) days of the date of written notice of the demand for arbitration. If the two arbitrators thus chosen shall be unable to agree upon the third arbitrator such arbitrator shall be appointed upon application of either party by any Judge of the District Court of the United States for the district which shall then include the said Premises, but such application shall not be made until the applying party shall have given twenty (20) days' notice in writing to the other party of its intention so to do. The arbitrators, as soon as possible after their selection, shall meet to hear and decide

the question submitted to them and shall give to each of the parties hereto reasonable notice of the time and place of such meeting. The hearings of the Board of Arbitrators shall be conducted in a lawful manner. The written decision of the arbitrators, signed by a majority of them, shall determine the matter, and such determination shall be final and conclusive upon the parties hereto. The fees and expenses of arbitration shall be borne as the parties may agree prior to the arbitration, or, in case of disagreement, shall be apportioned by the Board of Arbitrators fairly and equitably.

(22). Assumption of Functions.

NRPC shall be entitled upon ninety (90) days prior written notice to DUT, to assume, and DUT shall be entitled, upon six (6) months prior written notice to NRPC (provided that no such notice by DUT may be given before June 30, 1978), to require NRPC to assume: (i) the maintenance, security and janitorial services performed by DUT within the premises, as described in subparagraph 4(a) herein, and (ii) any one or more of the categories of additional services described in Paragraph 4 and Exhibit B hereto; provided, however, that DUT provides NRPC with adequate facilities and related services to enable NRPC to perform such assumed services, whether or not now a part of the premises or the facilities, at no increase in the basic rent. The functions or services to be assumed do not include the services provided under paragraph 4(b), nor any services dealing with physical train control referred to in Exhibit B.

Upon the date of the assumption specified in any such notice regarding the assumption of the maintenance, security, and janitorial services described in subparagraph 4(a) or the additional services described in Paragraph 4 and Exhibit B herein,

Exhibit B hereto shall be adjusted to reflect such assumption, and NRPC shall be entitled thereafter to a reduction in the basic rent in an amount equal to, the cost of materials and service or the average monthly expense for wages and fringe benefits, as defined in Paragraph 8(b) herein, incurred by DUT in performing such services for the three (3) calendar months preceding the month in which the date of assumption occurs, such reduction to be effected on the date of assumption.

From and after the date of assumption specified in any notice assuming or requiring assumption of one or more categories of the services described in Paragraph 4 and Exhibit B hereto, DUT shall no longer perform or bill NRPC for services in the category or categories so assumed by NRPC.

NRPC agrees, if it exercises its right to assume the performance of any services pursuant to this Paragraph 22, that it shall employ for the performance of such services persons then employed by DUT, to be selected by NRPC, who are in the appropriate labor category to perform the direct labor required for the performance of such services. NRPC may, with DUT's consent, also employ any DUT supervisory personnel whom NRPC may require in connection with any such assumption of services. NRPC shall not be required to employ any DUT employee who, in the judgment of NRPC, is in excess of the number of employees reasonably necessary to perform the services assumed by NRPC, or is not reasonably qualified to perform such services.

(23) Severability.

If any part of this Agreement is determined to be invalid, illegal or unenforceable, such determination shall

not affect the validity, legality or enforceability of any other part of this Agreement, and the remaining parts of this Agreement shall be enforced as if such invalid, illegal or unenforceable part were not contained herein.

(24) Notices.

Any request, demand, authorization, direction, notice, consent, waiver or other document provided for or permitted by this Agreement to be made upon, given, or furnished to, or filed with one party by the other, shall be in writing and shall be delivered by hand or by deposit in the mails of the United States Postal Service, postage prepaid, if to NRPC in an envelope addressed as follows:

National Railroad Passenger Corporation
955 L'Enfant Plaza North, S. W.
Washington, D. C. 20024

Attention: Director of Real Estate

and if to DUT in an envelope addressed as follows:

Denver Union Terminal Railway Company
Union Station
Denver, Colorado 80202

Attention: President

Each party may change the address at which it shall receive notification hereunder by notifying the other of such change.

(25) Successors and Assigns.

All the covenants and obligations of the parties hereunder shall bind their successors and assigns whether or not expressly assumed by such successors and assigns.

IN WITNESS WHEREOF, DUT and NRPC have caused this Agreement to be duly executed in ~~two~~ (2) counterparts, each of which shall be considered to be an original, by their respective officers thereunto duly authorized.

Attest:

DENVER UNION TERMINAL RAILWAY COMPANY

By _____
President

Attest:

NATIONAL RAILROAD PASSENGER CORPORATION

By _____
President

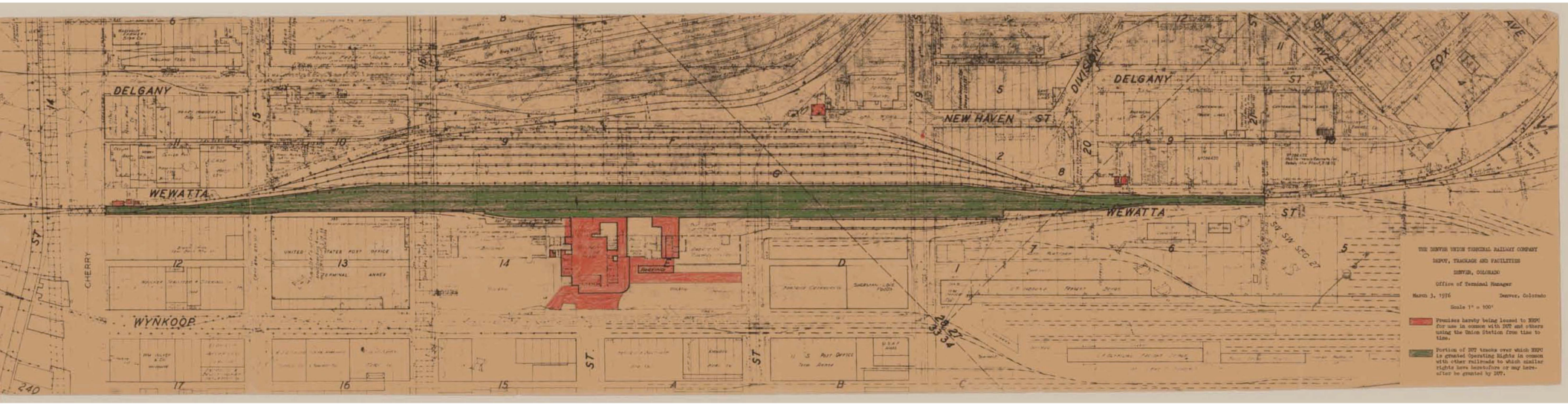

DELGANY
WEWATTA
NEW HAVEN ST.
DIKSON
DELGANY
ST
FOX
AVE
WEWATTA
ST
CHERRY
ST.
WYNKOOP
UNITED STATES POST OFFICE
TERMINAL ANNEX
U. S. Post Office
Main Office
ST.
ST.
THE DENVER UNION TERMINAL RAILWAY COMPANY
DEPOT, TRACKAGE AND FACILITIES
DENVER, COLORADO
Office of Terminal Manager
March 3, 1916
Denver, Colorado
Scale 1" = 100'
Premises hereby being leased to DSPC for use in common with DRT and others using the Union Station from time to time.
Portion of DRT tracks over which DSPC is granted Operating Rights in common with other railroads to which similar rights have heretofore or may hereafter be granted by DRT.

EXHIBIT B

Facilities Rental	$5,082.00
Ad Valorem Taxes	1,247.00
Services Cost:	
Watchmen	998.00
Plumber/Carpenter	748.00
Signalman	103.00
Train Director	1,250.00
Superintendent of Maintenance	866.00
Terminal Treasurer, Secretary and Clerk	950.00
Bookkeeping, Payroll & Auditing	1,250.00
Fuel	150.00
Incinerator Service	35.00
Switching	691.00
Insurance	128.00
Janitorial Supplies	80.00
Maintenance of Tracks, Building and Supplies	1,312.29
	$14,890.29

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36910

DENVER TRANSIT OPERATORS, LLC

— PETITION FOR DECLARATORY ORDER —

DENVER TRANSIT DISPATCH DEPARTMENT

Verified Statement of Sasha Jimenez

My name is Sasha Jimenez. I am the Operations Control Center ("OCC") Manager for Denver Transit Operators ("DTO"). I oversee and manage the dispatch functions for DTO's commuter rail operations for the Denver area Regional Transportation District's A, B, and G Lines, formerly known as the "Eagle P3" Project. I began working on the Eagle P3 project by providing administrative support to one of the Denver Transit Partners Design-Build consortium members, construction contractor Balfour Beatty. For the last 10 and a half years, I have worked for the Operations and Maintenance member of the consortium, Denver Transit Operators LLC, again starting in administrative support. Four and a half years ago, I became a dispatcher, and I was promoted to supervisor about 1 year later.

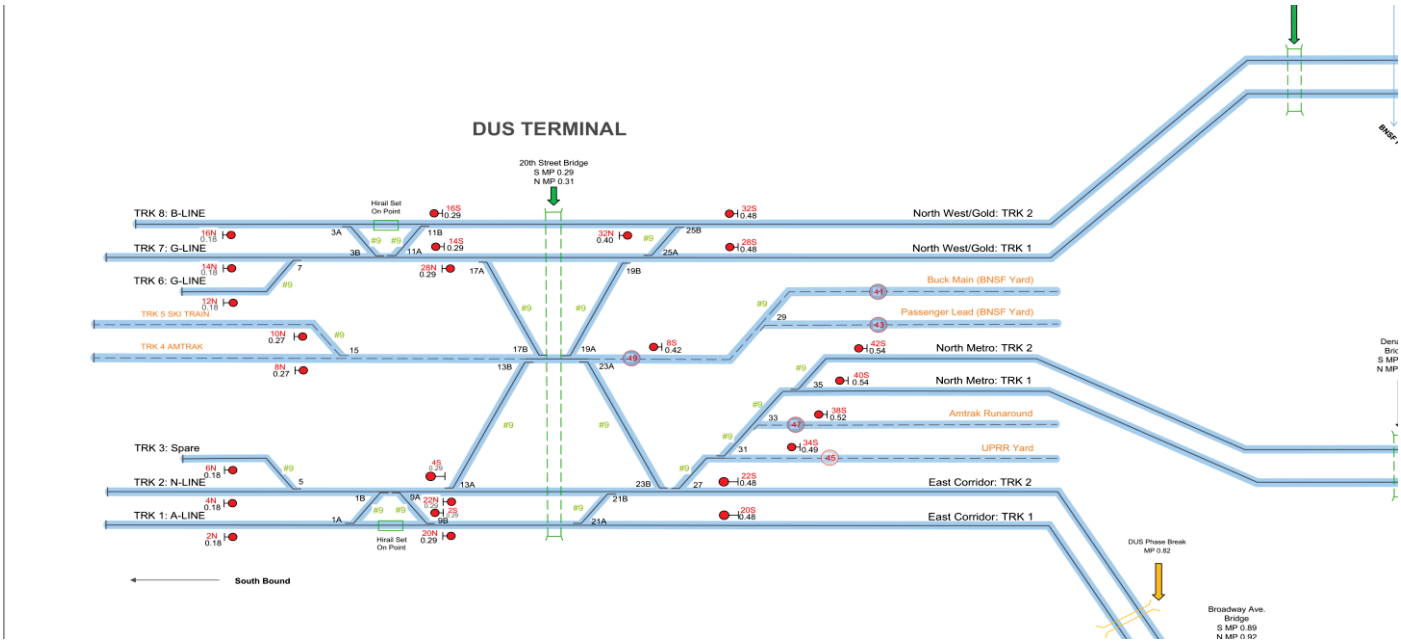
The A, B, and G lines were major projects under RTD's "FasTracks" program. They provide 40 route miles of commuter rail service and use Denver Union Station ("DUS") as a downtown terminal. The commuter rail lines use overhead catenary

electrification and are dedicated to commuter use. More than 317 commuter trains per day serve DUS.

Two tracks within the Union Station limits, tracks 4 and 5, do not have catenary and are dedicated to Amtrak's *California Zephyr,* and, as of April 2026, the American Rocky Mountaineer's *Canyon Spirit* excursion service. RTD commuter trains cross, but do not occupy, the non-electrified tracks twice each day, at the beginning and end of service. Likewise, the *Spirit* and the *Zephyr* cross, but do not use, the commuter tracks.

BNSF Railway Company ("BNSF") and Union Pacific Railroad Company ("Union Pacific") own the connecting tracks to the station leads. The *Zephyr* approaches on BNSF and the *Canyon Spirit* approaches on the Union Pacific. To reach the Union Station limits, each proceeds through the respective freight carriers' yards (where they function essentially as tail tracks) before stopping for signal clearance and DTO's dispatch authorization. Once the signals and switches are lined up, they proceed, cross two switches, and are routed into either Track 4 or 5 and the dedicated platform. From the terminal limits to the bumping post is about 2,300 feet, as indicated on the mile markers on the below excerpt from a track diagram:

[DIAGRAM FOLLOWS ON NEXT PAGE]



Excerpt from RTD Commuter Rail System: Eagle P3 System Straight-Line Diagram (Rev. 14, Dec. 13, 2023) - DUS Terminal

Denver Transit employs 17 dispatchers for the OCC to supervise train movements on this infrastructure. The OCC is a remote facility—not at DUS—that supervises all of the A, B and G movements. The dispatchers rotate among desks dedicated to each commuter line and associated movements (not pictured above); one desk covers Union Station and the lead tracks to BNSF and Union Pacific for the *California Zephyr* and *Canyon Spirit*. It is a conventional dispatch system: trains radio in for movement authority, and that authority is communicated verbally and via code-line wired signals.

BNSF and Union Pacific enter the terminal limits only for headroom used in yard and switching moves. Their use is irregular, unscheduled, and generally does not last beyond 30 seconds to a minute. BNSF may require entry 2-3 times a day; Union Pacific's use is less than that.

Amtrak runs two *California Zephyr* trains through DUS each day; one in each direction. Less frequently, about every other day, the American Rocky Mountaineer operates *Canyon Spirit* trains between Denver and Salt Lake City or Moab, Utah.

The westbound *California Zephyr* (No. 5) arrives on average each day at 7:50 a.m. Its average departure time is about 8:40 a.m. Eastbound Train 6 averages an arrival time of about 6:50 p.m. with a departure time of about 7:05 p.m. Recent observations show that an Amtrak movement from the BNSF point of switch takes about 3 minutes inbound and about 6 minutes outbound. The *Canyon Spirit* moves off of the Union Pacific have similar transit and dwell time; I recently observed that it took 5 minutes for the *Canyon Spirit* to reach the platform from its Union Pacific connection point. It has a more irregular arrival/departure time, but also generally dwells 30-45 minutes.

Set in a broader context, we dispatch more than 1,800,000 train miles per year—more than 5,000 each day. The *Canyon Spirit* (seasonal, since beginning in April) and *Zephyr* movements equate to fewer than 750 train miles annually, or a little more than 2 miles per day. For the daily *Zephyr*, converting 2,300 feet to 0.44 miles, multiplied by 4 times per day (two trains, in and out), multiplied by 365 = 642 train miles. For the more occasional *Canyon Spirit*, converting 2,300 feet to 0.44 miles, multiplied by 16 monthly departures or arrivals (Denver is the terminal) multiplied by 12 months = 85 train miles. Compared to the commuter rail

operations, the *Zephyr* and the *Canyon Spirit* are less than 0.1% of overall dispatch activity measured by train miles.

And that is the only contact Denver Transit has with these trains. The Amtrak or American Rocky Mountaineer train crews operate the trains without a pilot. Upon reaching the platform Amtrak and American Rocky Mountaineer, each carrier respectively provides all station services to their own passengers in space leased or licensed from the RTD.

VERIFICATION

I, Sasha Jimenez, Operations Control Center Manager for Denver Transit Operators, verify under penalty of perjury that the above is true and correct to the best of my knowledge and belief.

Sasha Jimenez Digitally signed by Sasha Jimenez
DN: C=US, E="sasha.jimenez@hotmail.com ", O=DTO, OU=OCC, CN=Sasha Jimenez
Reason: I am approving this document
Date: 2026.08.28 09:26:27-06'00'

Sasha Jimenez

Dated: August 28 , 2026

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36910

DENVER TRANSIT OPERATORS, LLC

— PETITION FOR DECLARATORY ORDER —

DENVER TRANSIT DISPATCH DEPARTMENT

Verified Statement of Dina Salama

My name is Dina Salama. I am the Chief Financial Officer for Denver Transit Operators. I have served in this role since Denver Transit began operating commuter rail service to the Regional Transportation District in 2016. In this role, I am familiar with the financial structures and terms under which the RTD's commuter rail lines at Denver Union Station are operated.

I reference the following documents in making this statement, which I am familiar with from my work and are attached here:

Exhibit A: the RTD-Denver Transit Partners–Denver Transit Operators Agreement;

Exhibit B: the 2014 Amtrak–RTD Agreement;

Exhibit C: the 2026 Tri-Partite Amtrak–American Rocky Mountaineer–RTD Agreement;

Exhibit D: the RTD–BNSF Agreement text incorporated into Exhibit A;

Exhibit E: the RTD–Union Pacific Agreement text incorporated into Exhibit A; and

Exhibit F: 2017-Present Brotherhood of Railway Signalmen–Denver Transit Operators Collective Bargaining Agreements.

Each of these comes into play in understanding what Denver Transit Operators does at Union Station and why it does it.

Denver Transit Operators operates 3 commuter rail lines (now known as "A," "B," and "G") (the "Lines") serving Union Station under its agreement with a larger consortium, Denver Transit Partners. RTD selected Denver Transit Partners as the "concessionaire" for the design, build, operations and maintenance of these lines and to provide financing for these activities. These arrangements are typically known as "public-private partnerships" or "P3s." The RTD selected Denver Transit Partners under its "Eagle P3" program. The RTD's contribution to the financing included part of its "FasTracks" initiative supported by a local sales tax.

Denver Transit Operators and Denver Transit Partners are both parties to a single operations and maintenance agreement with the RTD for a 29-year term, terminating in 2044. (See Exhibit A, as described above, the "O&M Agreement").[1]

In its planning for the Lines, the RTD sought to leverage Union Station as a transit hub that the selected concessionaire would build and operate the Lines into. Union Station had not been used for commuter rail service in recent decades but

[1] The somewhat unconventional term is due to the time the design-build phase took.

had consistently had Amtrak service (regular and seasonal ski trains) and always had connection points to the interstate rail network. The current connection points are freight railroads BNSF Railway Company and Union Pacific Railroad. Accordingly, to support the Eagle P3 Project, the RTD needed to enter into certain agreements with Amtrak, the BNSF Railway Company, and Union Pacific regarding train service (for Amtrak) and land use and planning (for each railroad).

The draft texts of those agreements are incorporated into the Denver Transit Operators–Denver Transit Partners–RTD operations and maintenance agreement; Denver Transit Operators is bound to observe them. (Exhibit A at 33 "Railroad Agreements"). Beginning April 2026, RTD has also permitted the American Rocky Mountaineer Company to operate its *Canyon Spirit* service to Denver Union Station. (See Exhibit C described below); I understand it had previously operated to a Union Pacific yard. In sum, Denver Transit Operators is obligated to dispatch the foreign railroads insofar as the RTD has promised that service, which occurred in the broader context of its commuter rail planning.

When Denver Transit Operators began its operations in 2016, we were still awaiting a Railroad Retirement Board decision from our 2013 request for a Board Coverage Decision. So as part of our labor negotiations with the bargaining unit, we offered them the standard "401(k)" package we offered to all Denver Transit Operators employees, including those that the Railroad Retirement Board had determined in 2014 were not "covered." See Exhibit F-1 at 7, Art. 10 and Exhibit F-2 at 8, Art. 10. The program includes an employer-contribution match.

For its services to the RTD, Denver Transit Operators is paid a monthly fee that covers the Heavy Rail Dispatch movements. Exhibit A at 56, Section 3.18 (requiring dispatch) and at 73–75, Section 5.2 (fee arrangements). However, the current fee does not account for any Railroad Retirement Board contributions.

VERIFICATION

I, Dina Salama, Chief Financial Officer for Denver Transit Operators, verify under penalty of perjury that the above is true and correct to the best of my knowledge and belief.

_____

Dina Salama

Dated: August 28, 2026

Execution Version

V.S. Salama
Exhibit A

OPERATION AND MAINTENANCE AGREEMENT

FOR THE

REGIONAL TRANSPORTATION DISTRICT
FASTRACKS RAIL PROJECT

BETWEEN

DENVER TRANSIT PARTNERS, LLC,
AS CONCESSIONAIRE

AND

DENVER TRANSIT OPERATORS, LLC,
AS OPERATOR

DATED AS OF JULY 9, 2010

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THIS OPERATION AND MAINTENANCE AGREEMENT FOR THE REGIONAL TRANSPORTATION DISTRICT FASTRACKS RAIL PROJECT, dated as of July 9, 2010, is made by and between Denver Transit Partners, LLC, a Delaware limited liability company, as Concessionaire, and Denver Transit Operators, LLC, a Delaware limited liability company, as Operator.

W I T N E S S E T H:

WHEREAS, Concessionaire and RTD entered into the Concession Agreement (as defined below), which sets out general requirements for the Eagle Project (as defined below) and this Agreement; and

WHEREAS, in order to fulfill certain of Concessionaire's obligations under the Concession Agreement, Operator desires to provide and Concessionaire desires to obtain the operation and maintenance and related services for the Eagle Project, all of which shall be provided on a fixed-price basis and in accordance with the terms and conditions herein specified.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE 1

DEFINITIONS

1.1 Definitions.

As used in this Agreement, the following terms shall have the meanings indicated (such meanings as necessary to be equally applicable to both the singular and plural forms of the terms defined):

"Actual DUS Access Date" means the date on which RTD provides Concessionaire with Vacant Possession of the DUS Rail Segment Site in accordance with the terms of the Concession Agreement.

"Additional Land" has the meaning set forth in Section 3.3.1 hereof.

"Affected Party" has the meaning set forth in Section 12.1 hereof.

"Affiliate" of any Person means any entity which directly, or indirectly through one or more intermediaries, Controls, is Controlled by or is under common Control with that Person.

"Agreement" means this Operation and Maintenance Agreement for the Project, dated as of July 9, 2010, between Concessionaire and Operator, all written amendments, modifications and supplements hereto, and all Exhibits attached hereto, all of which by this reference are incorporated herein and made a part hereof.

"Agreement Date" means the date on which this Agreement is executed and delivered by the Parties.

"Applicable Requirements" means the requirements of any Law made or of any Permit issued by any Relevant Authority in each case to the extent that the same are applicable to Operator, the Services, or the Project, including the Specified Requirements.

"Archaeological Remains" means antiquities, fossils, coins, articles of value, precious minerals, cultural artifacts, human burial sites and human remains and other similar remains of archaeological interest discovered on any part of the Sites.

"Asset Register" has the meaning set forth in Section 29.10(a) of the Concession Agreement.

"Automatic Passenger Counters" has the meaning given to it in the Design, Construction and Rolling Stock Requirements.

"Availability Ratio" means the "Availability Ratio (AR_{mn})" as determined in accordance with Part D (*Availability Ratio*) of Attachment 11 (*Service Payments*) to the Concession Agreement.

"Avoidable Costs" has the meaning set forth in Section 12.3 hereof.

"Business Day" means any day that is not a Saturday, Sunday or other day on which commercial banks in Denver, Colorado are authorized or required by law to remain closed.

"Car" means a car forming part of the Rolling Stock.

"Casualty Event" has the meaning set forth in Section 3.26.1 hereof.

"Change in Law" means the introduction or repeal (in whole or in part) of or amendment, alteration or modification to or change in interpretation of (in each case including, to the extent applicable, by retroactive effect), any Law or standards, practices or guidelines issued or published by any Relevant Authority that are either binding on Concessionaire or if non-binding on Concessionaire are both typically complied with in the operation and maintenance and/or railroad industries and are necessary in order to comply with Good Industry Practice, that occurs on or after April 14, 2010; *provided* that the coming into effect or repeal (in whole or in part) of or amendment, alteration or modification to or change in interpretation of any Law or standards, practices or guidelines issued or published by any Relevant Authority that have been enacted and published as of April 14, 2010 but have not come into effect by such date, shall not constitute a Change in Law.

"Change in Law Change" means a Change in Law that constitutes a Discriminatory Change in Law or has a Change in Law Effect.

"Change in Law Effect" means a Change in Law that (i) will result in an increase in costs of performing the Concessionaire's obligations under the Concession Agreement (as such obligations have been passed through to Operator hereunder) with respect to Concessionaire-

operated Components during the Operating Period; and/or (ii) will have an adverse effect on the financial position of Concessionaire as established in the financial model immediately prior to the occurrence of such Change in Law, taking into account each of the factors set out in Section 38.8(b)(i) and Section 38.8(b)(ii)(A) through (C) of the Concession Agreement.

"Claims" means any claims, demands, actions, proceedings or liabilities.

"Colorado Basic Standards" means Regulation No. 41, "The Basic Standards for Ground Water," issued by the Colorado Department of Public Health and Environment Water Quality Control Commission.

"Commissioning" means the systematic verification, as required in the System Testing and Commissioning Plan to be prepared as described in Section 3.3.2 hereof, that each component or system in question is physically complete, checked, calibrated and safe for initial operation. To "commission the Project" means to provide Commissioning thereof.

"Commuter Rail Maintenance Facility" or "CRMF" means the commuter rail maintenance facility to be situated on the CRMF Site as described in the Design, Construction and Rolling Stock Requirements.

"Commuter Rail Network" means the Commuter Rail Projects, the CRMF, the Existing Facilities and, following the Actual DUS Access Date, the DUS Rail Segment and, if the Phase 2 Effective Date fails to occur on or before the Phase 2 Condition Precedent Satisfaction Date, DUS to CRMF, including in each case, subject to Section 11 (*Land*) of the Concession Agreement, the Sites.

"Commuter Rail Projects" means the East Corridor Project and, following the Phase 2 Work Commencement Date, the Gold Line Project and the Northwest Rail Electrified Segment Project.

"Commuter Rail Services" means the East Corridor Service and, from the Phase 2 Work Commencement Date, the Gold Line Service and the Northwest Rail Electrified Segment Service.

"Concession Agreement" means the Concession and Lease Agreement, dated as of July 9, 2010, entered into by and between Concessionaire and RTD, and all attachments and schedules thereto, as supplemented or further amended from time to time.

"Concession Equipment" means all equipment and software used in or forming part of the Concessionaire-operated Components, including:

(a) all equipment and software set out in the asset registers in accordance with the Concession Agreement;

(b) all equipment (including test equipment) and tools used in the operation and maintenance of the Concessionaire-operated Components;

(c) all cables, expendable parts, spare parts and materials; and

(d) all Contract Data produced in connection with the design, construction, operation and/or maintenance of the Concessionaire-operated Components.

"Concession Expiry Date" means December 31, 2056.

"Concessionaire" means Denver Transit Partners, LLC, a Delaware limited liability company, and its successors and permitted assigns as concessionaire hereunder.

"Concessionaire-Caused Event" means a delay, breach or failure by Concessionaire in the performance of its obligations under this Agreement, or any interference with the Services by a Concessionaire Contractor, or any agent or representative of any thereof (or anyone other than Operator or any Subcontractor acting at the direction thereof), in each case that is not permitted under or excused by this Agreement or the other Contract Documents, and in each case only if the performance of the Services by Operator is actually delayed or disrupted as a result of such delay, failure or interference or if the cost to Operator to perform the Services is increased as a result of such delay, breach, failure or interference. Delays, breaches or failures by Concessionaire that are attributable to the failure of Operator (or any Subcontractor) to perform its obligations in accordance with this Agreement shall, to the extent they are so attributable, not constitute Concessionaire-Caused Events. For the avoidance of doubt, no Relief Event or RTD-caused delay resulting in an RTD Proposed Change shall be deemed to constitute a Concessionaire-Caused Event.

"Concessionaire Contractors" means contractors engaged by Concessionaire or its designees at the Sites, including the Design-Build Contractor, but excluding Operator and its Subcontractors.

"Concessionaire Event of Default" has the meaning set forth in Section 16.6.1 hereof.

"Concessionaire Financing" means the arrangements made or to be made by Concessionaire for the provision of financing to support Concessionaire's performance of its obligations in respect of the Eagle Project, including its obligations under the Concession Agreement and the other Project Agreements.

"Concessionaire Indemnified Parties" has the meaning set forth in Section 14.1.2 hereof.

"Concessionaire-operated Components" means the Commuter Rail Network and the Rolling Stock.

"Concessionaire-operated Expansion" has the meaning set forth in Section 13.3.1 hereof.

"Concessionaire Proposed Change" has the meaning set forth in Section 13.2.1 hereof.

"Concessionaire-Reserved Services" has the meaning set forth in Section 3.1.2.

"Concessionaire Termination Event" has the meaning set forth in Section 41.1(a) of the Concession Agreement.

"Concessionaire's Approval" means the right of Concessionaire to review and approve the items set forth on Exhibit B attached hereto or inspect and approve an aspect of the Work or another matter specified in this Agreement (which approval by Concessionaire may be contingent upon its receipt of RTD's approval to the extent required under the Concession Agreement or as otherwise designated on Exhibit B).

"Concessionaire's Field Representative" has the meaning set forth in Section 6.1 hereof.

"Concessionaire's Project Manager" has the meaning set forth in Section 6.1 hereof.

"Concessionaire's Proposal" means the Concessionaire's Proposal delivered by Concessionaire in response to the Request for Proposals No. 18FH012 issued by RTD on September 30, 2009 (as subsequently amended by addenda thereto) and attached to the Concession Agreement as Attachment 19.

"Concessionaire's Review" means the right of Concessionaire to review the items set forth on Exhibit B attached hereto or inspect an aspect of the Services or another matter specified in this Agreement (which review or inspection may include review or inspection by RTD to the extent required under the Concession Agreement or as otherwise designated on Exhibit B).

"Contract Data" means all of the O&M Submittals and other Work Products to be prepared by the Operator pursuant to this Agreement and submitted to RTD and any Project Third Party, as the case may be, in accordance with the Contract Data Requirements List.

"Contract Data Requirements List" means the requirements for the submission of the Contract Data and provisions relating to procedures and time periods for the review and agreement of Contract Data by RTD and the Project Third Parties set out in Attachment 6 (*Contract Data Requirements*) to the Concession Agreement, as modified from time to time between Concessionaire and RTD in accordance with the Concession Agreement.

"Contract Documents" means, collectively, this Agreement, the Concession Agreement, the Third Party Agreements, all O&M Submittals, including, but not limited to, the Operating Plan, the Management and Administration Plan, the Hazardous and Contaminated Substance Health and Safety Plan, the Voluntary Clean-Up Application and Materials Management Plan, the Quality Management Plan, the Project Management Plan, the Sustainability Plan, the Safety and Security Management Plan and the Traffic Management Plan, and other requirements, plans and procedures that are to be prepared and/or complied with by Concessionaire under the O&M Specifications.

"Contract Year" means:

(a) for the first Contract Year, the period from the date of the Concession Agreement to the last day of the calendar year in which the Concession Agreement was signed;

(b) for each Contract Year other than the first and last Contract Year, each period of 12 calendar months commencing on January 1; and

(c) for the last Contract Year, the period from January 1 in the year in which the End Date occurs to the End Date.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise, and "Controlling" and "Controlled by" have meanings correlative thereto.

"CPI" means CPI-U, US City Average, All Items Not Seasonally Adjusted, as reported by the Bureau of Labor Statistics of the United States Department of Labor.

"Credit Event" means that neither Fluor Corporation nor Balfour Beatty, plc has a long-term credit rating equal to or better than the Minimum Rating from at least one of the Rating Agencies.

"CRMF Site" means the land, spaces and surfaces as described in Part D (*CRMF Site*) of Attachment 2 (*Description of Sites and Schedules of Site Availability*) of the Concession Agreement, as modified or supplemented.

"C.R.S." means the Colorado Revised Statutes, as the same may be amended, supplemented or otherwise modified from time to time.

"Damages" means Losses and/or Claims. Use of the defined term "Damages" shall not be construed to permit the recovery of consequential loss or damage where such recovery would otherwise be precluded by the terms of Article 10 hereof.

"DBE Goals" has the meaning given to it in Part B (Disadvantaged and Small Business Enterprises Programs) of the Specified Requirements.

"Debt Service Amount" has the meaning set forth in Section 16.2.2(iii) hereof.

"Design, Construction and Rolling Stock Requirements" means the technical requirements set forth in Attachment 7 to the Concession Agreement, as the same may be revised in accordance with the Concession Agreement and Sections 13.2, 13.3 and 13.6 hereof.

"Design-Build Contract" means the contract between Concessionaire and Contractor for the overall performance of the design and construction of the Project, including supply of the Rolling Stock.

"Design-Build Contractor" means Denver Transit Systems, LLC, as Contractor under the Design-Build Contract.

"Design/Build Period" means the period commencing on the earlier of the Early Work Effective Date and the Phase I Effective Date and ending on the date immediately preceding the last Final Completion Date to occur.

"Design-Build Subcontract" means the contract between Design-Build Contractor and the Design-Build Subcontractor for the performance of the design and construction of the Project, excluding supply of the Rolling Stock.

"Design-Build Subcontractor" means Denver Transit Constructors, LLC, a Delaware limited liability company, or any permitted replacement thereof or successor thereto.

"Designated Credit Agreement" has the meaning set forth in the Concession Agreement.

"Direct Agreement" has the meaning set forth in Section 18.1 hereof.

"Discriminatory Change in Law" means:

(a) a Change in Law, the terms of which apply to:

(i) the Eagle Project and either (A) do not apply to other similar private sector surface transportation infrastructure projects in the United States of America or (B) are not of general application;

(ii) Concessionaire or Operator and do not apply to other Persons; and/or

(iii) private sector commuter rail operators in the State of Colorado and do not apply to other Persons;

(b) a determination by the RRB or the STB that any employee of Concessionaire or Operator (other than any Dispatchers) constitutes an "employee" for purposes of either the Railroad Retirement Tax Act, 45 U.S.C. §231 et seq. or the Railroad Unemployment Insurance Act, 45 U.S.C. §351 et seq. (including (i) each such Law as it may be amended, modified or supplemented from time to time, (ii) all regulations and rules pertaining to or promulgated pursuant to each such Law, (iii)the successor to each Law resulting from recodification or similar reorganizing of Laws and (iv) all future Laws pertaining to the same or similar subject matter); *provided* that Concessionaire has complied with Section 2.4.7 (Establishment of the Dispatcher Unit) of the O&M Specifications; and

(c) any amendments, alterations, modifications, additions or replacements to or of the Railroad Safety Improvement Act of 2008 with respect to the provisions set forth at 49 USC 20157 and in regulations promulgated thereunder in Positive Train Control Systems, 75 Fed. Reg. 2598 (Jan. 15, 2010) (to be codified at 49 C.F.R. Parts 229, 234, 235 and 236), compliance with which results in additional costs with respect to the implementation of positive train control systems.

"Dispatcher" has the meaning given to it in Attachment 10 (*O&M Specifications*) to the Concession Agreement.

"Dispute Resolution Procedures" means the procedures for the resolution of disputes set forth in Article 21 hereof.

"District" has the meaning given to such term in the Concession Agreement.

"DUS Infrastructure" has the meaning given to it in Attachment 3 (*The DUS Infrastructure*) of the Concession Agreement.

"DUS Infrastructure Agreement" means the Design-Build Agreement dated April 30, 2009 between the Denver Union Station Project Authority and the DUS Infrastructure Contractor for the design and/or construction of the DUS Infrastructure.

"DUS Infrastructure Contractor" means Kiewit Western Co., a Delaware corporation.

"DUS Rail Segment" means the heavy and commuter rail segment of Denver Union Station comprising the DUS Rail Segment Site, the DUS Infrastructure and the DUS Systems.

"DUS Rail Segment Site" means the land, spaces and surfaces on which the DUS Infrastructure is to be constructed, as described in Section 2 and identified in Annex 1 to Attachment 3 (*The DUS Infrastructure*) of the Concession Agreement.

"DUS Systems" means the communications systems, signaling system and traction electrification system (and all Concession Equipment forming part thereof) to be installed as part of the DUS Rail Segment in accordance with the Design-Build Contract.

"DUS to CRMF" means the commuter rail line between the DUS Rail Segment and the CRMF, as described in the Scope Document.

"DUSPA" means the Denver Union Station Project Authority, a Colorado non-profit corporation.

"Eagle Project" means the full project being provided by Concessionaire to RTD under the Concession Agreement, including: (i) the design and construction of the Commuter Rail Projects and the Commuter Rail Maintenance Facility, (ii) the procurement and installation of the DUS Systems, (iii) the procurement of the Rolling Stock, (iv) the operation of the Commuter Rail Services and the operation and maintenance of the Commuter Rail Network and the Rolling Stock and (v) from the Actual DUS Access Date, the dispatch of all Heavy Rail Movements.

"East Corridor" means the commuter rail line between the DUS Rail Segment and Denver International Airport, as described in the Concessionaire's Proposal.

"East Corridor Facilities" means the stations and Park-n-Ride facilities on the East Corridor, as described in the Concessionaire's Proposal.

"East Corridor Project" means the East Corridor Facilities, the Concession Equipment forming part of the East Corridor and the other Services to be designed, constructed, operated and maintained on the East Corridor Site as part of the East Corridor in accordance with the Project Requirements and otherwise pursuant to this Agreement.

"East Corridor Service" means the commuter rail service to be provided by the Concessionaire in accordance with the requirements of the Concession Agreement on the East Corridor.

"East Corridor Site" means the land, spaces and surfaces as described in Part A (East Corridor Site) of Attachment 2 (*Description of Sites and Schedules of Site Availability*) of the Concession Agreement, as modified or supplemented.

"Encumbrance" means any mortgage or deed of trust, lien, pledge, hypothecation, assignment, deposit arrangement, security interest, charge, preference, easement or encumbrance or any other agreement or arrangement having substantially the same economic effect.

"End Date" means the Concession Expiry Date or, if earlier, the date on which the Concession Agreement is terminated in accordance with its terms.

"Endangered Species" means any animal or plant wildlife listed as endangered under and subject to an endangered species Law.

"Environment" means the physical conditions which exist within the area which will be affected by a proposed project, including land, air (including that within the Concessionaire-operated Components or buildings or natural or man-made structures), water (including territorial, coastal and inland waters and ground water and drain and sewer water), minerals, flora, fauna, noise, and objects of historic or aesthetic significance, and "Environmental" has a meaning correlative thereto.

"Environmental Conditions" means the presence, on, in or under any Site, of Hazardous Material (or environmental media contaminated with Hazardous Material) and/or the presence on, in or under any adjacent off-Site of Hazardous Materials (or environmental media contaminated with Hazardous Material) that shall have migrated to or from the Site or from such adjacent off-Site area, as the case may be, at concentration levels:

(a) at which a Relevant Authority requires investigation, removal, remedial action or off-site disposal or management of such Hazardous Material as a hazardous or solid waste;

(b) which exceed Colorado Basic Standards for groundwater or residential risk-based soil or indoor air screening levels or screening levels protective of groundwater established or adopted by the Colorado Department of Public Health and Environment, the Colorado Department of Labor and Employment Division of Oil and Public Safety, or the United States Environmental Protection Agency, or exceed naturally-occurring or background concentrations, if such levels are greater than such standards or residential risk-based screening levels or screening levels protective of groundwater; or

(c) which would require additional personnel protective equipment, medical monitoring, off-site disposal or training in excess of two hours to comply with Applicable Requirements governing the management, remediation, or disposal of such Hazardous Material.

"Environmental Condition Bid Report" means a report with respect to any Environmental Condition requiring Environmental Clean-up Work in which the following is set out in a reasonable level of detail:

(a) the Environmental Condition to which the report relates, including the quantity of materials that require Environmental Clean-up Work;

(b) the exact nature of the Environmental Clean-up Work to be performed in the form of a remedial plan that has been prepared in accordance with Good Industry Practice; and

(c) the time period within which such Environmental Clean-up Work must be completed.

"Environmental Condition Clean-up Report" means a report with respect to any Environmental Condition requiring Environmental Clean-up Work in which the following is set out in a reasonable level of detail:

(a) the Environmental Condition to which the report relates, including the quantity of materials that require Environmental Clean-up Work;

(b) the estimated not to exceed costs that the Operator reasonably expects to incur (the labor, material and equipment elements of which have been estimated on the basis set out in the RTD Pricing Conditions, but without any additional margin or markup by the Operator), and all necessary supporting calculations and information including detailed particulars of additional sums to be paid to Subcontractors and professional advisers:

(c) the completion date for such Environmental Clean-up Work;

(d) any additional Permits required to be obtained; and

(e) the identity of the Subcontractor(s) which the Operator intends to engage for the purpose of implementing such Environmental Clean-up Work.

"Environmental Laws" means any Law regulating or imposing liability or standards of conduct concerning or relating to the regulation, use or protection of human health, the Environment or Hazardous Materials, including by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 USC Section 9601 *et seq*.), the Resource Conservation and Recovery Act (42 USC 6901 *et seq*.), the Federal Clean Water Act (33 USC Section 1351 *et seq*.), the Occupational Safety and Health Act (29 USC Section 651 *et seq*.), each as currently in force or as hereinafter amended.

"Environmental Requirements" means, collectively, the following:

(a) all Project Requirements of an Environmental nature, including Environmental Laws;

(b) all the requirements and provisions of the RODs, other than the requirements and provisions specifically identified as obligations to be retained by RTD in, for the East Corridor, the "East Corridor EIS Mitigation Responsibilities Matrix ROD" in Part A of Attachment 18 (*Concessionaire's Records of Decision Obligations*) to

the Concession Agreement, for the Gold Line, the "Gold Line EIS Mitigation Responsibilities Matrix ROD" in Part B of Attachment 18 (*Concessionaire's Records of Decision Obligations to the Concession Agreement*) and for the Northwest Rail Electrified Segment, the "Mitigation Requirements for Northwest Rail Electrified Segment" in Part C of Attachment 18 (*Concessionaire's Records of Decision Obligations*) to the Concession Agreement;

(c) the requirements and provisions of the 404 Permits, other than the requirement to purchase any wetland mitigation credits which RTD shall pay for and obtain in accordance with the Concession Agreement;

(d) the requirements and provisions of any other Permits relating to the Environment;

(e) the requirements and provisions of the mitigation measures in the NWES Environmental Evaluation;

(f) the requirements and provisions of the Voluntary Clean-Up Application and Materials Management Plans; and

(g) any permission, declaration, instruction or consent of an Environmental nature issued by any Relevant Authority relating to the Eagle Project (or any part thereof).

If any of the requirements and provisions set out in clause (a) of the definition "Environmental Requirements" conflict with any of the requirements and provisions set out in clause (b), (c), (d), (e), (f) or (g) of the definition, the requirements and provisions set out in clause (b), (c), (d), (e), (f) or (g) of the definition shall take precedence. If any of the requirements and provisions set out in clause (b), (c), (d), (e), (f) or (g) of the definition conflict with one another, the most stringent requirement or provision shall take precedence.

"Environmental Reports" means:

(a) the East Corridor Phase I Environmental Site Assessment dated March 2007;

(b) the Final Modified Phase I Environmental Site Assessment for Gold Line FEIS RTD FasTracks Program dated May 29, 2008;

(c) the Summary of Phase I Environmental Site Assessments: RTD FasTracks Gold Line, Denver, Colorado, dated January 2010;

(d) the Summary of Phase I Environmental Site Assessments: RTD FasTracks Commuter Rail Maintenance Facility, Denver, Colorado, dated January 6, 2010;

(e) the East Corridor Phase II Environmental Site Assessment dated September 2009, as supplemented by the addendum thereto dated November 2009;

(f) the Phase II Environmental Site Assessment, UPRR Right-of-Way Acquisition East Corridor, Denver and Adams Counties, Colorado, dated March 2009;

(g) the Summary of Phase II Environmental Site Assessments: RTD FasTracks Gold Line Corridor dated March 2010;

(h) the CRMF Phase II Environmental Site Assessment dated December 2009;

(i) the Supplemental Summary of Recognized Environmental Conditions, East Corridor Commuter Rail Transit Alignment, Denver and Adams Counties, Colorado, dated December 18, 2009;

(j) the Supplemental Summary of Recognized Environmental Conditions, FasTracks Gold Line Station Locations, dated January 27, 2010; and

(k) the Supplemental Summary of Recognized Environmental Conditions, CRMF, dated January 11, 2010.

"Existing Facilities" means all fixtures, facilities and infrastructure existing on the CRMF Site, the East Corridor Site and, following the Phase 2 Effective Date, the Gold Line Site and the Northwest Rail Electrified Segment Site on the date RTD provides Vacant Possession to the Concessionaire pursuant to Section 11.1 (*Availability of Sites*) of the Concession Agreement, which fixtures, facilities and infrastructure have been retained and incorporated into the Commuter Rail Network in accordance with the Concession Agreement.

"Fare System Equipment" means the automated fare system equipment for the Commuter Rail Projects described further in Section 11 of Part B (*Infrastructure Requirements*) of the Design, Construction and Rolling Stock Requirements.

"Final Completion" means, with respect to each Commuter Rail Project and associated Commuter Rail Service, "Final Completion" thereof under the Concession Agreement.

"Final Completion Date" means, in respect of each Commuter Rail Project and associated Commuter Rail Service, the date on which "Final Completion" of such Commuter Rail Project and associated Commuter Rail Service occurs under the Concession Agreement.

"Final Completion Deadline Date" means the date that is fifteen (15) months after the final Revenue Service Commencement Date, as such date may be extended in accordance with the terms hereof.

"Final Project Design" means the 100% complete design of all elements of the Commuter Rail Projects, the CRMF, the Rolling Stock and the DUS Systems prepared pursuant to the Design-Build Contract.

"Final Threat and Vulnerability Analysis" has the meaning given to it in Section 8.6 of Attachment 9 (*Project and Construction Management*) to the Concession Agreement.

"Financial Closing" means the date of closing and initial funding of the construction financing for the Eagle Project, defined as the "Financial Close" under the Concession Agreement.

"Financing Parties" means the Persons, including financial insurers, financial institutions, and bondholders which are from time to time parties to, or otherwise have rights under or pursuant to, any of the Designated Credit Agreements and/or who provide a financing facility or facilities (including any hedging arrangements, any financial insurance policies, lease financing, or tax benefit monetization financing) to Concessionaire in accordance with such Designated Credit Agreements, and any trustee or agent acting on their behalf.

"FM Termination Amount" has the meaning set forth in Part C (*Compensation Payable Following Extensive Force Majeure Event*) of Attachment 13 (*Compensation Following Termination*) of the Concession Agreement.

"Force Majeure Event" means any of the following events or circumstances or any combination of such events or circumstances:

(a) act of war (whether declared or undeclared), invasion, armed conflict, or act of foreign enemy, in each case involving, imminently threatened within or directly affecting the United States of America, *provided* that where only threatened, the actions taken by Operator or Concessionaire, as the case may be, must be reasonable in view of and proportionate to the threat;

(b) the occurrence of force majeure under any Third Party Agreement or action (including a Change in Law) taken by any Project Third Party (or their respective agents or contractors) or any other Relevant Authority, including the Transportation Security Administration, the United States Department of Homeland Security, FRA, FTA or Federal Aviation Administration (or any successor entity of the foregoing agencies) in response to a threat to, or event affecting, the public health, safety, security or the Environment, in each case, the effect of which is to suspend, delay or disrupt the performance by Operator or Concessionaire, as the case may be, of any of its obligations under this Agreement;

(c) revolution, riot, insurrection, civil commotion, sabotage or terrorism, provided that where only threatened, the actions taken by Operator or Concessionaire, as the case may be, must be reasonable in view of and proportionate to the threat;

(d) strikes or industrial action unless they are solely restricted to employees of Operator or its Subcontractors or Concessionaire or its subcontractors, as the case may be;

(e) nuclear explosion, radioactive or chemical contamination or ionizing radiation or electro-magnetic pulse, biological contamination of any Site, unless the source or cause of the explosion, contamination, radiation, pulse or hazardous material is brought to or near such Site by Operator or any Subcontractor or any of their employees, servants, agents or consultants, or Concessionaire or any of its employees, servants, agent or consultants, as the case may be;

(f) fire, explosion, sonic boom, storm, flood, earthquakes, landslide or severe weather, but only where it causes material and unavoidable damage to all or any

material part of any Site or the Concessionaire-operated Components or otherwise causes the Concessionaire-operated Components to be unusable or substantially unusable;

(g) any failure, shortage, or outage of power supplied by the Power Network;

(h) a legally imposed quarantine, against which the Affected Party could not reasonably have been expected to take precautions, and which prevents or delays the performance by the Affected Party of its obligations under this Agreement;

(i) embargo or trade sanctions having an adverse effect on the performance of this Agreement;

(j) any other event outside the reasonable control of the Affected Party, and which was not reasonably foreseeable by the Affected Party as at the date of this Agreement, where such event materially and unavoidably prevents or delays the Affected Party from performing any of its obligations under this Agreement; *provided* that (A) the term "reasonably foreseeable" means any event or circumstance or category of events or circumstances specifically described in this Agreement or which the Affected Party knew, or should have known, may occur, and which is of a type that the Affected Party, acting in accordance with Good Industry Practice and this Agreement, would have taken steps to avoid or protect itself and the Services against; and (B) an event shall not qualify as a Force Majeure Event under this paragraph (j) where:

(A) such event is a Force Majeure Event under paragraphs (a) to (i) above; or

(B) such event is an event of the same type as an event which is classified as a Relief Event.

"Forecast Renewal Work Schedule" means a schedule, prepared by Operator, providing an annual update of the original Renewal Work Budget and Schedule, showing elements of Renewal Work projected by Operator to be performed and completed during the next five years and Operator's best estimate of the cost thereof in then-current dollars, taking into account the then-current condition of the Concessionaire-operated Components, the remaining Term, the requirements of this Agreement, and the handover and reinstatement requirements under the Concession Agreement.

"FRA" means the Federal Railroad Administration, an agency of the United States Department of Transportation.

"FTA" means the Federal Transit Administration, an agency of the United States Department of Transportation.

"GAAP" means the Generally Accepted Accounting Principles approved and adopted by the American Institute of Certified Public Accountants.

"Geological Obstructions" means the geological make-up of any Site or the location and/or size of any natural foundations, infrastructures, or manmade obstructions on any Site which disrupt the progress of the Services.

"Geotechnical Reports" means:

(a) the East Corridor EIS Basic Engineering Soils and Foundations, Volume 1 of 2, dated March 2007;

(b) the East Corridor EIS Basic Engineering Soils and Foundations, Volume 2 of 2, dated March 2007;

(c) the Gold Line Corridor – Denver, CO, Existing Condition Geology and Mineral Resources, dated October 2007;

(d) the RTD ROW Plan of Proposed FasTracks Gold Line Corridor, dated November 2008; and

(e) the Geotechnical Memorandum for Basic Engineering for the Proposed Fox North Commuter Rail Maintenance Facility Site, 48th Avenue and Fox Street, Denver, Colorado, RockSol Project Number RS-202.02, dated April 2, 2009.

"Gold Line" means the commuter rail line between Pecos Junction and Ward Road station in Wheat Ridge, Colorado, as described in the Concessionaire's Proposal.

"Gold Line Facilities" means the stations and Park-n-Ride facilities on the Gold Line and at the 41st and Fox Street and Pecos Street Stations, as described in the Concessionaire's Proposal.

"Gold Line Project" means the Gold Line Facilities, the Concession Equipment forming part of the Gold Line and the other Services to be designed, constructed, operated and maintained as part of the Gold Line in accordance with the Project Requirements and otherwise pursuant to this Agreement.

"Gold Line Service" means the commuter rail service to be provided by the Concessionaire in accordance with the requirements of the Concession Agreement on the Gold Line and DUS to Pecos Junction.

"Gold Line Site" means the land, spaces and surfaces as described in Part B (*Gold Line Site*) of Attachment 2 (*Description of Sites and Schedules of Site Availability*) to the Concession Agreement, as modified or supplemented in accordance with Section 11.3(h) of the Concession Agreement.

"Good Industry Practice" means the exercise of that degree of skill, diligence, prudence, foresight and operating practice which would reasonably and ordinarily be expected from a skilled and experienced operator seeking in good faith to comply with its contractual obligations, complying with all Applicable Requirements and engaged in the same type of undertaking as Concessionaire, Operator and/or the Subcontractors, as the case may be, and under the same or

similar circumstances and conditions, and using information reasonably available at the relevant time.

"Gross Negligence" means any act or omission of a Person where (i) such Person knows, or has reason to know, that its conduct may create an unreasonable risk of harm to another Person, and (ii) its conduct evidences a reckless disregard of the probable consequences of its actions or omissions, but which falls short of being so reckless as to be equivalent to a willful and intentional wrongdoing (and the correlative term "Grossly Negligent" shall mean acting in a why that constitutes Gross Negligence).

"Guarantors" means, collectively, Fluor Corporation, a Delaware corporation, Balfour Beatty, LLC, a Delaware limited liability company, and Balfour Beatty plc, a public limited company organized under the laws of England.

"Handover Amount" has the meaning set forth in Attachment 14 (*Handover and Reinstatement Work Procedures*) to the Concession Agreement.

"Handover Security" has the meaning set forth in Attachment 14 (*Handover and Reinstatement Work Procedures*) to the Concession Agreement.

"Handover and Reinstatement Work Procedures" means the procedures to be carried out relating to the handover of the Concessionaire-operated Components on or prior to the End Date as set out in Attachment 14 (*Handover and Reinstatement Work Procedures*) to the Concession Agreement.

"Handover and Reinstatement Work Requirements" has the meaning set forth in Section 17.1 hereof.

"Hazardous Material(s)" means any and all substances, chemicals, wastes, or other materials now or from time to time hereafter:

(a) defined as hazardous substances or hazardous wastes pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 *et seq*.) ("*CERCLA*"), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq*.) ("*RCRA*"), and/or the Colorado Hazardous Waste Act Sections 25-15-101 *et seq*., Colorado Revised Statutes and the Colorado Hazardous Waste Regulations, 6 C.C.R. 1007-3;

(b) characterized as hazardous or toxic materials, substances, chemicals, pollutants, contaminants or wastes that are regulated, subject to permitting or warning requirements, or for which removal, remediation or disposal is required or regulated, under any and all Laws for the protection of the environment, human health and safety, including without limitation CERCLA, RCRA, the Hazardous Materials Transportation Act (49 U.S.C. § 1801, *et seq*.), the Federal Water Pollution Control Act (33 U.S.C. § 1251, *et seq*.), the Clean Air Act (42 U.S.C. § 7401 *et seq*.) and/or the Colorado Hazardous Waste Act (§ 25-15-311 *et seq*., Colorado Revised Statutes); the Colorado Solid Waste Act (§ 30-20-100.5 *et seq*., C.R.S); the Colorado Water Quality Control Act (§ 25-8-101 *et seq*., Colorado

Revised Statutes), Colorado Air Pollution Prevention and Control Act (§ 25-7-101 *et seq*., Colorado Revised Statutes), Title 8 Article 20.5, Colorado Revised Statutes and any federal, state or local regulations and associated guidance promulgated thereunder; or

(c) otherwise posing a present or potential risk to human health, welfare or the environment,

including, without limitation, asbestos, flammable, explosive, corrosive or radioactive materials, gasoline, oil, motor oil, waste oil, petroleum (including without limitation, crude oil or any component thereof), and petroleum-based products, paints and solvents; lead, cyanide, DDT and other pesticides, and polychlorinated biphenyls.

"Hazardous Materials Removal Process" means the procedures and guidelines to be followed by Operator when carrying out any work relating to the removal, remediation and clean-up of Environmental Conditions as set out in the Voluntary Clean-Up Application and Materials Management Plan.

"Health, Safety and Security Requirements" means all Laws, rules, regulations, standards, practices and provisions of any Relevant Authority from time to time relating to health, safety and/or security applicable to the Services and all requirements and provisions of a safety-related nature set out in any Permit or in this Agreement or the Concession Agreement, including:

(a) Section 8 (Safety Management) of Attachment 9 (*Project and Construction Management*) to the Concession Agreement; and

(b) the Safety and Security Management Plan, the System Safety Program Plan, the Hazardous and Contaminated Substances Health and Safety Plan, the System Security Plan and the Safety and Security Certification Plan (in each case, once approved by Concessionaire and RTD).

"Heavy Rail Movements" means all movements of the Rolling Stock and any rolling stock owned by any Heavy Rail Operator on the DUS Rail Segment and, if RTD issues an RTD Proposed Change pursuant to Section 36.3(a)(iii) of the Concession Agreement and such RTD Proposed Change is implemented pursuant to Sections 13.3 and 13.4 hereof, any portion of the Commuter Rail Network.

"Heavy Rail Operators" means the National Railroad Passenger Corporation (Amtrak), Burlington Northern Santa Fe Corporation (and its Affiliates) and Union Pacific Corporation (and its Affiliates) and any other operator of rolling stock licensed by RTD from time to time to operate on the Commuter Rail Network.

"Holding Company" means, in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary.

"Incurred Costs" means costs and expenses estimated or calculated in accordance with the RTD Pricing Conditions, and without double counting, which are incurred, estimated or calculated, as the case may be, in connection with an Incurred Cost Event.

"Incurred Cost Event" means (a) any Relief Event, Force Majeure Event or Discriminatory Change in Law as a result of which Incurred Costs are incurred by Operator and are due under this Agreement or (b) any other event in relation to which Operator's costs are estimated or calculated by reference to the RTD Pricing Conditions in accordance with the terms of this Agreement.

"Indemnified Party" means a Concessionaire Indemnified Party or a Operator Indemnified Party, as the context may require.

"Indemnifying Party" means a Party having the obligation to indemnify an Indemnified Party hereunder.

"Independent Engineer" means the independent engineer appointed by RTD and Concessionaire in accordance with the Concession Agreement, as replaced or succeeded from time to time.

"Inflation Index" means, as applicable, (i) CPI, (ii) the Labor Index, or (iii) the Materials Index.

"Information" means all information relating to the other Party which is supplied by or on behalf of the other Party (whether before or after the date of this Agreement), either in writing, orally or in any other form, directly or indirectly from or pursuant to discussions with the other Party or which is obtained through observations made by the receiving Party and such term includes all Work Products, analyses, compilations, studies and other documents whether prepared by or on behalf of a Party which contain or otherwise reflect or are derived from such information.

"Intellectual Property Rights" means patents, patent applications, inventions, trade marks, trade names, service marks, copyrights (including, but not limited to the copyrights relating to any constructional, technical and/or design plans, including the Final Design Submittals, relating to the Concessionaire-operated Components and/or any plans of a similar nature relating to the Concessionaire-operated Components and Final Project Design), topography rights, rights to extract information from a database, database rights, rights in drawings, design rights, trade secrets, proprietary information, know-how and rights of confidence, and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of them which may subsist anywhere in the world, whether or not any of them are registered and including applications for registration of any of them.

"Interface Agreement" means an interface agreement to be entered into among Operator, the Design-Build Contractor and Concessionaire with respect to the coordination of their respective obligations in connection with the Eagle Project.

"Inter-Governmental Agreements" means any agreement entered into between RTD and a Relevant Authority in relation to the Eagle Project, including (a) the agreement attached as

Annex 2.4 to Attachment 21 (*Inter-Governmental Agreements*) of the Concession Agreement and (b) the other agreements to be entered into between RTD and a Relevant Authority copies of which are attached in draft form in Annexes 1, 2, 3 and 4 to Attachment 21 (*Inter-Governmental Agreements*) to the Concession Agreement.

"Key Third Parties" has the meaning set forth in Section 3.1.3 of this Agreement.

"Labor Index" means the Employment Cost Index for wages and salaries, Seasonally Adjusted, Civilian Workers, All Workers as reported by the Bureau of Labor Statistics of the United States Department of Labor.

"Late Payment Rate" means: (1) subject to clause (3) below, in respect of amounts payable by Concessionaire to Operator hereunder for which no corresponding payment is due from RTD under the Concession Agreement, a rate per annum equal to the sum of (x) the rate shown on Reuters Screen LIBOR01 Page (or comparable replacement page) as the composite offered rate for London interbank deposits for a period of three (3) months, as shown under the heading "USD" as of 11:00 a.m. London time on the date the determination is being made, as such rate may change from time to time, plus (y) 200 basis points; or (2) in respect of amounts for which a corresponding payment is due to or from RTD under the Concession Agreement, the rate per annum required under the Concession Agreement; or (3) in respect of amounts payable by Concessionaire to Operator for which Operator is obligated to make a corresponding payment to a Subcontractor, the rate per annum mandated by applicable Law if the same may not lawfully be modified by agreement of the parties to a contract.

"Law" means any federal, state, local and municipal laws, rules and regulations, orders, codes, directives, permits, approvals, decisions, decrees, ordinances or by-laws having the force of law and any common or civil law, whether adopted or enacted prior to or after the date of this Agreement including binding court and judicial decisions having the force of law, and includes any amendment, extension or re-enactment of any of the same in force from time to time and all other instruments, orders and regulations made pursuant to statute, including those made by any Relevant Authority.

"Lease Period" means the period commencing on the Phase 1 Effective Date and ending on the End Date; *provided* that in the case of Rolling Stock, the Lease Period will end on the later of (i) the End Date and (ii) the Rolling Stock Termination Date (as defined in the Concession Agreement).

"Lease Period Site Register" has the meaning set forth in Section 7.2.1 hereof.

"Lenders' Technical Advisor" or "LTA" means the independent engineer appointed by the Lenders (as defined in the Concession Agreement) and the Concessionaire as the Lenders' technical advisor under the Designated Credit Agreement.

"Limitation of Liability" means an amount equal to $67,978,884, adjusted annually during each year of the Term beginning in calendar year 2011 by the percentage change in the Inflation Index from that for the immediately preceding calendar year;.

"Losses" means any losses, damages, costs, expenses, charges, fees, fines or liabilities.

"Material Amendment" means any proposed Modification or other amendment, modification, variation or waiver which will, or may reasonably be expected to have, an adverse effect on the ability of Concessionaire to perform its respective obligations under, or result in Concessionaire breaching any provision of, this Agreement or under the Concession Agreement.

"Material O&M Subcontractor" means each of the Subcontractors specified in Exhibit C attached hereto as a Material O&M Subcontractor.

"Materials Index" means the Materials & Supplies Index of the Rail Cost Adjustment Factor as published by the Association of American Railroads.

"Minimum Rating" means, with respect to a Guarantor, a "BBB" rating assigned by Standard & Poor's Rating Services, a "Baa2" rating assigned by Moody's Investors Service, Inc. or a "BBB" rating assigned by Fitch Ratings, Inc.

"Modification" has the meaning set forth in Section 13.1 hereof.

"Northwest Rail Electrified Segment" means the commuter rail line comprised of the line between the DUS Rail Segment and South Westminster Station, from which the Gold Line diverges at Pecos Junction, as described in the Concessionaire's Proposal.

"Northwest Rail Electrified Segment Facilities" means the stations and Park-n-Ride facilities at South Westminster Station, as described in the Concessionaire's Proposal.

"Northwest Rail Electrified Segment Project" means the Northwest Rail Electrified Segment Facilities, the Concession Equipment forming part of the Northwest Rail Electrified Segment and the other Services to be designed, constructed, operated and maintained as part of the Northwest Rail Electrified Segment in accordance with the Project Requirements and otherwise pursuant to this Agreement.

"Northwest Rail Electrified Segment Service" means the commuter rail service to be provided by the Concessionaire in accordance with the requirements of the Concession Agreement on the Northwest Rail Electrified Segment.

"Northwest Rail Electrified Segment Site" means the land, spaces and surfaces as described in Part C (*Northwest Rail Electrified Segment Site*) of Attachment 2 (*Description of Sites and Schedules of Site Availability*) to the Concession Agreement, as modified or supplemented in accordance with Section 11.3(h) of the Concession Agreement.

"NWES Environmental Evaluation" means the Northwest Rail Corridor Draft Environmental Evaluation dated February 2010 developed by RTD in connection with the environmental evaluation conducted by RTD pursuant to the National Environmental Policy Act, as amended, with respect to the Northwest Rail Electrified Segment.

"Operating Period" means the period from (and including) the date specified in the first Operations Notice to Proceed to be delivered to Operator, or such later date as RTD may require pursuant to Section 29.1 of the Concession Agreement, to (and including) the End Date.

"Operating Plan" has the meaning given to such term in Section 2.4(a) of Attachment 10 (*O&M Specifications)* to the Concession Agreement.

"Operations Notice to Proceed" has the meaning set forth in Section 3.1.1(ii).

"Operations Services" has the meaning set forth in Section 3.1.1(ii).

"Operator" means Denver Transit Operators, LLC, a Delaware limited liability company, and its permitted successors and assigns as Operator hereunder.

"Operator Breakage Costs" means:

(i) the direct, out-of-pocket costs reasonably incurred by Operator in withdrawing its equipment and personnel from the Sites, the Eagle Project and in otherwise demobilizing; and

(ii) the direct, out-of-pocket costs reasonably incurred by Operator in terminating contracts with Subcontractors.

"Operator-Caused Hazardous Materials" means the presence of Hazardous Materials in, on or under the Sites (including presence in surface water, groundwater, soils or subsurface strata) which is caused by or attributable to any acts or omissions of Operator or any Subcontractor.

"Operator Content" means all Work Products or components thereof (excluding Operator Tools and Proprietary Designs) developed by Operator or any Subcontractor in connection with the performance of their obligations under this Agreement and/or the subcontracts to which they are a party, including newly developed applications and systems technology.

"Operator Event of Default" means any of the events set forth in Section 16.4.1 hereof.

"Operator Final Completion Requirements" has the meaning set forth in Section 3.3.3 hereof.

"Operator Indemnified Parties" has the meaning set forth in Section 14.1.3 hereof.

"Operator Key Personnel" means the key personnel of Operator identified in Figure E 1 in Section E of Volume 2 of the Technical Proposal contained in the Concessionaire's Proposal.

"Operator Termination Payments" means Operator Termination Payment 1 or Operator Termination Payment 2, as applicable.

"Operator Termination Payment 1" has the meaning set forth in Section 5.9.1 hereof.

"Operator Termination Payment 2" has the meaning set forth in Section 5.9.2 hereof.

"Operator Tools" means all business tools, methods or technology, including standardized application tools and system operating technology and software and related Intellectual Property Rights, which are in existence and owned by Operator or any Subcontractor prior to the date of the Concession Agreement and utilized by Operator or any Subcontractor in

performing their respective obligations under this Agreement and/or the subcontracts to which it is a party.

"Other RTD Project" means any rail line or other transportation facility that is constructed, operated and/or maintained by or on behalf of RTD (other than by the Concessionaire, but including any Concessionaire-operated Expansion (as defined in the Concession Agreement)).

"Other RTD Project Procurement Material" means any design brief, specification, information memorandum, request for qualification, request for proposal or other documentation issued or otherwise made available by RTD in connection with the tender or procurement of any Other RTD Project.

"Owner Relocated Utilities" means those Utilities located on the Sites that are identified in the Utility Matrix as those Utilities that are to be Relocated by the Utility Owners.

"O&M Letter of Credit" has the meaning set forth in Section 5.14.1 hereof.

"O&M Security" means the O&M Letter of Credit or the Replacement O&M Security, as applicable.

"O&M Specifications" means the specifications and provisions set out in Attachment 10 (*O&M Specifications*) to the Concession Agreement.

"O&M Standards" has the meaning set forth in Section 3.29.2 hereof.

"O&M Submittals" means the manuals, programs and plans referred to in this Agreement to be prepared, adopted, complied with and/or implemented by Operator setting out policies, instructions and procedures for the operation, inspection and maintenance of the Concessionaire-operated Components during the Operating Period, including the Quality Management Plan, the Safety and Security Management Plan, the System Safety Program Plan (with respect to the Operating Period), the System Security Plan (with respect to the Operating Period), the Rolling Stock, Facility and Infrastructure Maintenance Plan, the Rolling Stock Fleet Management Plan and the other manuals, programs and plans prepared by the Concessionaire in accordance with the this Agreement and the O&M Specifications.

"Party" or "Parties" means, respectively, a party or both parties to this Agreement.

"Passengers" means members of the public lawfully present on or using any part of the Concessionaire-operated Components.

"Permit" means all approvals, permits, permissions, consents, licenses, certificates (including sales tax exemption certificates) and authorizations (whether statutory or otherwise) which are required from time to time in connection with the Eagle Project to be issued by RTD, any Relevant Authority, any Utility Owner or any Project Third Parties.

"Permitted Encumbrances" means the following encumbrances: (a) any Encumbrance for taxes, assessments or governmental charges or levies not yet due and payable or any

Encumbrance for taxes, assessments or governmental charges or levies being contested in good faith and by appropriate proceedings for which adequate reserves have been established in accordance with GAAP; (b) any Encumbrance in respect of the Concessionaire-operated Components imposed by law which were incurred in the ordinary course of business and which have not arisen to secure indebtedness for borrowed money, such as carriers', materialmen's, warehousemen's and mechanics' liens, statutory and common law landlord's liens, and other similar Encumbrances arising in the ordinary course of business, and which do not in the aggregate materially detract from the value of the Concessionaire-operated Components or materially impair the use thereof by Concessionaire in performing its obligations or exercising its rights under the Concession Agreement or are being contested in good faith and by appropriate proceedings for which adequate reserves have been established in accordance with GAAP; (c) any Encumbrance created by or pursuant to the Concession Agreement, the other Project Agreements, or the Designated Credit Agreements; (d) any Encumbrance incurred or deposits made in the ordinary course of business in connection with general insurance maintained pursuant to the Concession Agreement; (e) licenses, sub-licenses, leases or subleases granted to third Persons in the ordinary course of business not interfering in any material respect with the Concessionaire's performance of its obligations or exercising its rights under the Concession Agreement; (f) Encumbrances arising from or created by RTD; (g) Encumbrances of record on the Early Work Effective Date (as defined in the Concession Agreement) (other than those arising out of the acts or omissions of the Operator or its Subcontractors, Concessionaire, or its subcontractors, except for any subcontractor who is party to a contract with RTD and whose acts or omissions arise solely in relation to the Services carried out by such Subcontractor under that contract); and (h) easements, zoning restrictions, rights of way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere in any material respect with Concessionaire's performance of its obligations or exercising its rights under the Concession Agreement.

"Person" means any individual, corporation, partnership, association, limited liability company, joint stock company, trust, unincorporated organization, business entity, joint venture, municipality, county, RTD, any other government or political subdivision or agency thereof or any other person having separate legal personality.

"Persistent Condition" means Service Task Orders that are not resolved over the period of time specified in Section 3(f) of the O&M Specifications.

"Phase 1 Conditions Precedent Satisfaction Date" means the date which is 60 days after the date of the Concession Agreement, as such date may be extended in accordance with the Concession Agreement, and in each case if such date is not a Business Day, the next succeeding Business Day.

"Phase 1 Effective Date" means the date on which all Phase 1 Conditions Precedent set out in Section 5.6 of the Concession Agreement are satisfied in accordance with the Concession Agreement.

"Phase 1 Rolling Stock" means Rolling Stock demonstrated in the Rolling Stock Fleet Management Plan by Operator to be necessary to support the service requirements for Commuter Rail Services on the East Corridor in accordance with the O&M Specifications.

"Phase 1 Work Commencement Date" means the date on which the Phase 1 Effective Date occurs.

"Phase 2 Condition Precedent Satisfaction Date" means December 31, 2011, unless otherwise extended in accordance with the Concession Agreement.

"Phase 2 Effective Date" means the date on which each condition precedent set out in Section 5.9 of the Concession Agreement is satisfied in accordance with the Concession Agreement.

"Phase 2 Notice to Proceed" means a written notice in which RTD notifies Concessionaire that RTD has received commitments of or reasonably expects to receive funding in the form of federal grants or other state and/or local funds in an amount not less than the aggregate of all Maximum Annual Phase 2 Construction Payment Amounts (as defined in the Concession Agreement), RTD states that the Phase 2 Effective Date has occurred for purposes of the Concession Agreement, and RTD specifies such date.

"Phase 2 Rolling Stock" means rolling stock demonstrated in the Rolling Stock Fleet Management Plan by Design-Build Contractor to be necessary to support the service requirements for Commuter Rail Services on the Gold Line and Northwest Rail Electrified Segment in accordance with the O&M Specifications.

"Phase 2 Work Commencement Date" means the date Concessionaire delivers to Operator a copy of the Phase 2 Notice to Proceed received from RTD at any time prior to December 31, 2011, which date is intended to be the same date as the date on which RTD delivers such notice to Concessionaire.

"Power Network" means the local electricity distribution system operated by Public Service Company of Colorado d/b/a/ Xcel Energy, Inc. or any successor thereto.

"Pre-Operations Fees" has the meaning set forth in Section 5.1 hereof.

"Pre-Operations Services" has the meaning set forth in Section 3.1.1(i) hereof.

"Project" means that portion of the Eagle Project to be operated and maintained during the Operating Period as contemplated in the Concession Agreement. The Project is described generally in the Scope of Services, and is comprised of the operation of the Commuter Rail Services and the operation and maintenance of the Concessionaire-operated Components.

"Project Agreements" means:

(a) the Concession Agreement;

(b) this Agreement;

(c) the Design-Build Contract;

(d) the Rolling Stock Supply Contract;

(e) the Design-Build Subcontract; and

(f) the Interface Agreement.

"Project Management Plan" has the meaning set forth in Attachment 9 (*Project and Construction Management*) to the Concession Agreement.

"Project Records" has the meaning set forth in Section 22.2.1 hereof.

"Project Requirements" means the Final Project Design, the Design, Construction and Rolling Stock Requirements, the O&M Specifications, the O&M Standards, the Third Party Agreements, all Permits, the Environmental Requirements and the Health, Safety and Security Requirements, all Applicable Requirements, including the RTD Permits, other requirements and obligations of Concessionaire or Operator, as the case may be, specified or referred to in this Agreement or in other Contract Documents.

"Project Third Party" means each counterparty to a Third Party Agreement.

"Proprietary Designs" means proprietary products, components, subsystems and other items which are (a) in existence and owned by Operator or any Subcontractor prior to the date of the Concession Agreement, (b) maintained as trade secrets by, or protected by patents (including patent applications filed prior to the date of this Agreement to the extent such patents are thereafter issued) or copyrights by, Operator or any Subcontractors in each case as owners thereof and (c) incorporated in the Concessionaire-operated Components or otherwise utilized or required in connection with the Project.

"Proposal Request" has the meaning set forth in Section 13.2.1 hereof.

"Qualifying Institution" means any insurance company or financial institution lawfully operating in the State of Colorado (or, with respect to the issuer of the O&M Letter of Credit, the State of New York) with a minimum credit rating of "A" from Standard & Poor's Rating Services, "A2" from Moody's Investors Service, Inc. and/or "A" from Fitch Ratings, Inc.

"Qualifying Insurer" means any insurer of recognized financial responsibility and admitted in the State of Colorado which holds a current policyholders alphabetic and financial size category rating of "A:VIII" or higher according to Best's Insurance Reports (or if not rated by Best's Insurance Reports, with a claims paying ability rating from Standard & Poor's of "A" or higher).

"Quality Management Plan" is Operator's written quality control and quality assurance program for the Services, the current draft of which is set forth in Exhibit D attached hereto (and which shall be subject to Concessionaire's Approval after Operator considers the draft to be final), including the written procedures to implement such program and detailing how Operator will provide quality assurance and quality control for the Project, obtain samples for quality

control testing, perform tests for quality control, provide inspection and exercise management control to ensure that the Services conforms to the requirements of the Contract Documents.

"Railroad Agreements" means any agreement entered into between RTD and any Heavy Rail Operator in relation to the Eagle Project, including (a) the agreements attached as Annexes 1.1, 3.1 and 3.2 to Attachment 22 (*Railroad Agreements*) to the Concession Agreement, (b) the other agreements to be entered into between RTD and any Heavy Rail Operator copies of which are attached in draft form in Annexes 1.3, 2.1, 2.2 and 2.3 to Attachment 22 (*Railroad Agreements*) to the Concession Agreement and (c) any other agreement identified in Sections 1.2, 1.3, 1.4, 1.6, 1.7, 1.8, 1.9, 1.10 or 1.11 of Attachment 22 (*Railroad Agreements*) to the Concession Agreement as to be entered into between RTD and any Heavy Rail Operator on terms consistent with the terms of the agreement or draft form of agreement referenced therein.

"Rating Agency" means any of Standard & Poor's Rating Services, Moody's Investors Service, Inc. or Fitch Ratings, Inc.

"Real Estate Rights" means all rights in or to real estate, leases, contracts, permits, easements, licenses, private rights of way, and Utility and railroad crossing rights that are needed for performance of the Services other than the Sites themselves and the Rights to Use such Sites, including ingress and egress, storage and laydown areas, drainage and construction staging areas.

"Reasonable Efforts" means all those steps in the power of the relevant Party that are capable of producing the desired result, being steps which a prudent, determined and reasonable person desiring to achieve that result would take; *provided* that, subject to its other express obligations under this Agreement, the relevant Party shall not be required to expend funds except for those necessary to meet the reasonable costs reasonably incidental or ancillary to the steps to be taken by the relevant Party (including its reasonable travel expenses, correspondence costs and general overhead expenses).

"Record Documents" has the meaning given to it in Attachment 9 (*Project and Construction Management*) to the Concession Agreement.

"Reference Data" has the meaning set forth in Section 11.5 hereof.

"Reinstatement Work" has the meaning given to it in Section 44.1(b) of the Concession Agreement.

"Relevant Authority" means the government of the United States of America, the State of Colorado, the cities and counties within or forming part of the District and any other agency, or subdivision of any of the foregoing, including any federal, state, or municipal government, and any court, agency, special district, commission or other authority exercising executive, legislative, judicial, regulatory, administrative or taxing functions of, or pertaining to, the government of the United States of America, the State of Colorado or the cities and counties within or forming part of the District.

"Relief Event" means any of the specified events or circumstances that constitutes a "Relief Event" under the Concession Agreement, but, in each case, only if and to the extent: (i) such event or circumstance (and/or its effects and consequences on Operator) does not result

from and is not contributed to by any breach by Operator of its obligations under this Agreement or any of the other Contract Documents or any negligent act or omission of Operator; (ii) such event or circumstance has arisen notwithstanding Operator's complying with its obligations under this Agreement, and in accordance with its obligations under Attachment 9 (*Project and Construction Management*) to the Concession Agreement and the O&M Specifications; and (iii) Operator uses (and causes its Subcontractors to use) Reasonable Efforts to minimize and/or mitigate the consequences of such Relief Event (both in terms of delay and cost) which measures shall include minimizing the costs of operation and maintenance (including overhead and variable costs) that are incurred during the continuance of the Relief Event.

"Relocate" and "Relocation" have, with respect to each Utility, the meaning given to them in the relevant Utility Relocation Agreement.

"Renewal Work" means any lifecycle maintenance, repair, renewal, reconstruction or replacement work of any portion or component of the Concessionaire-operated Components, as applicable, of a type which is not normally included as an annually recurring cost in commuter rail line maintenance and repair budgets.

"Renewal Work Account" has the meaning set forth in Section 5.3.2 hereof.

"Renewal Work Budget and Schedule" has the meaning set forth in Section 5.3.1 hereof.

"Renewal Work Payment" has the meaning set forth in Section 5.3.2 hereof.

"Replaced Item" has the meaning set forth in Section 3.29.5 hereof.

"Replacement Item" has the meaning set forth in Section 3.29.5 hereof.

"Replacement O&M Security" has the meaning set forth in Section 5.14.4 hereof.

"Replacement Rolling Stock" means Rolling Stock to be procured pursuant to Section 31.2 of the Concession Agreement.

"Replacement Rolling Stock Supplier" means the supplier appointed by Concessionaire to supply the Replacement Rolling Stock.

"Replacement Rolling Stock Supply Contract" means the contract for the supply of the Replacement Rolling Stock.

"Required Security Amount" means $22,659,628, adjusted annually during each year of the Term beginning in calendar year 2011 by the percentage change in the Inflation Index from that for the immediately preceding calendar year.

"Revenue Service Commencement Date" means, in respect of each Commuter Rail Project, the date on which the Revenue Service Commencement Requirements (as defined in the Concession Agreement) for such Commuter Rail Project have been satisfied under the Concession Agreement.

"Revenue Service Target Date" means:

(a) with respect to the East Corridor Service, January 29, 2016;

(b) following the Phase 2 Effective Date, with respect to the Gold Line Service, July 1, 2016; and

(c) following the Phase 2 Effective Date, with respect to the Northwest Rail Electrified Segment Service, March 31, 2016;

in each case as such Revenue Service Target Date may be extended in accordance with the terms of the Concession Agreement. The specific dates stated above are referred to herein as the "Original Revenue Service Target Dates."

"Reviewing Authorities" has the meaning set forth in Section 22.2.2 hereof.

"Rights To Use" means the rights granted to Concessionaire in respect of the Sites pursuant to Section 2 (*Lease and Concession Rights*)of the Concession Agreement, in each case subject to the restrictions of the types set forth in clauses (f) and (g) of the definition of "Vacant Possession."

"Rolling Stock" means the Phase 1 Rolling Stock, the Phase 2 Rolling Stock and the Replacement Rolling Stock, collectively.

"Rolling Stock Fleet Management Plan" has the meaning set forth in the O&M Specifications.

"Rolling Stock Replacement Date" means the date that is 30 years after the first Revenue Service Commencement Date.

"Rolling Stock Replacement Report" means the report to be prepared pursuant to Section 31.2(b) of the Concession Agreement.

"RRB" means the United States Railroad Retirement Board, an independent agency in the executive branch of the United States government.

"RTD" means the Regional Transportation District, a public body politic and corporate and political subdivision of the State of Colorado, organized and existing under the terms of the Regional Transportation District Act, C.R.S. § 32-9-101 *et seq*., as amended.

"RTD Change Report" has the meaning set forth in Section 13.3.2(vi) hereof.

"RTD Change Summary" has the meaning set forth in Section 13.3.2(ii) hereof.

"RTD Content" means all Reference Data, drawings, designs, specifications, manuals, reports, studies, surveys, models, and any other content, documents, materials, deliverables, data and products (in each case, other than software, source code and object code) provided by RTD, or by any other party on RTD's behalf in connection with the Eagle Project, in either case to

Concessionaire or Operator for incorporation in the Work Products or otherwise in connection with the Eagle Project.

"RTD Indemnitees" means RTD and RTD's directors, officers, agents, servants, consultants, contractors and employees.

"RTD Pricing Conditions" means the provisions set forth in Attachment 17 (*RTD Pricing Conditions*) to the Concession Agreement.

"RTD Proposed Change" has the meaning set forth in Section 13.3.2(i) hereof.

"RTD Relocated Utility" means any Utility located on a Sites that is identified in the Utility Matrix as a Utility that is to be Relocated by RTD on or before the date specified in the Utility Matrix.

"RTD Retained Environmental Work" means Environmental Clean-up Work that RTD elects to carry out, or elects to cause a third-party contractor to carry out, pursuant to Section 12.2(i) of the Concession Agreement.

"Safety and Security Certification Plan" has the meaning set forth in Attachment 9 (*Project and Construction Management*) to the Concession Agreement.

"Safety and Security Management Plan" has the meaning set forth in Attachment 9 (*Project and Construction Management*) to the Concession Agreement.

"SBE Goals" has the meaning given to it in Part B (*Disadvantaged and Small Business Enterprises Programs*) of the Specified Requirements.

"Scheduled Maintenance" means any repair or routine maintenance work necessary for the Concessionaire-operated Components in the ordinary course of operating the Concessionaire-operated Components, including all necessary work to keep the Concessionaire-operated Components in good and safe working order, in each case where Operator has given at least twenty-five (25) days' written notice of such work and, if relevant, temporary closure of any part of the Concessionaire-operated Components to undertake such work, to Concessionaire.

"Scope of Services" has the meaning set forth in Section 3.1.1 hereof.

"Service Payments" has the meaning set forth in Part B of Attachment 11 (*Service Payments*) to the Concession Agreement.

"Service Task Orders" or "STOs" has the meaning set forth in Section 3 of the O&M Specifications.

"Services" has the meaning set forth in Section 3.1.1 hereof.

"Sites" means, collectively, (a) the East Corridor Site and the CRMF Site, (b) the Gold Line Site and the Northwest Rail Electrified Segment Site and (c) following the Actual DUS Access Date, the DUS Rail Segment Site, and each of (a), (b) and (c), individually, a "Site".

"Source Code" means the source code forming part of the Work Products and any explanatory notes thereto necessary to enable Concessionaire to perform the Services in accordance with the terms of this Agreement.

"Specified Requirements" means the requirements set out in Exhibit P attached hereto, as such requirements are amended, modified and supplemented from time to time.

"STB" means the Surface Transportation Board, an agency of the United Sates Department of Transportation.

"Subcontract" means a contract between Operator and a Subcontractor for the performance or supply of a portion of the Services by such Subcontractor.

"Subcontractor" means a vendor, supplier, materialman, consultant or Subcontractor of any tier providing equipment, materials or services directly or indirectly to Operator in connection with the Services.

"Subsidiary" means, as to any Person, any other Person in which shares possessing more than 50% of the voting power are owned directly or indirectly through one or more subsidiaries by the first Person.

"Sustainability Plan" means the "Concessionaire's Sustainability Plan" referred to in the Design, Construction and Rolling Stock Requirements.

"System Performance Demonstration" means the procedure for the demonstration of the operation of a Commuter Rail Project to be carried out in accordance with the procedure in Section 4 (*System Performance Demonstration*) of Part D (*Verification and Demonstration*) of the Design, Construction and Rolling Stock Requirements.

"System Performance Demonstration Reports" means the progress reports required to be provided by Operator in accordance with Section 4.3 (*System Performance Demonstration Reports*) of Part D (*Verification and Demonstration*) of the Design, Construction and Rolling Stock Requirements.

"System Safety Program Plan" has the meaning set forth in Attachment 9 (*Project and Construction Management* to the Concession Agreement and the O&M Specifications.

"System Testing and Commissioning Plan" has the meaning set forth in the Design, Construction and Rolling Stock Requirements.

"TABOR Portion" has the meaning set forth in Section 1.1 of the Concession Agreement.

"Taxes" has the meaning set forth in Section 5.12 hereof.

"Technical Deviations" has the meaning set forth in Section 13.6.5 hereof.

"Technical Proposal" means the technical proposal forming part of the Concessionaire's Proposal.

"Temporary Work" means all temporary structures and installations required for the performance of the Services, including fences, roads, parking, buildings, staging and storage areas.

"Term" has the meaning set forth in Section 2.1 hereof.

"Third Party Agreements" means the Inter-Governmental Agreements, the Utility Relocation Agreements and the Railroad Agreements.

"Third Party Materials" means all materials, information, technology and methods owned by any party other than RTD, Concessionaire, the Design-Build Contractor, the Rolling Stock Supplier and any of their respective subcontractors, Operator and any of its Subcontractors, which are incorporated into the Work Products or are utilized in connection with Operator's performance of its obligations under this Agreement and the other Contract Documents, including pre-existing and newly developed standardized application tools and system operating technology not specifically commissioned for the Eagle Project.

"Traction Electrification System" has the meaning given to it in the Design, Construction and Rolling Stock Requirements.

"Traction Power" means power supplied by the traction substations to the Traction Electrification System for the Commuter Rail Network expressed in megawatt-hours.

"Traction Power Efficiency Incentive Amount" has the meaning given to such term in Section 1.1 of the Concession Agreement.

"Traction Power Reimbursement Amount" has the meaning given to such term in Section 1.1 of the Concession Agreement.

"Traction Power Service Payment Adjustment" has the meaning given to such term in Section 1.1 of the Concession Agreement.

"Traction Power Usage Report" has the meaning set forth in Section 3.12.4 hereof.

"Traffic Management Plan" means the "Traffic Management Plan" prepared pursuant to the Design-Build Contract.

"Unidentified Archaeological Remains" means any Archaeological Remains that existed on a Site prior to April 14, 2010, excluding any such Archeological Remains that were known to Design-Build Contractor on May 14, 2010 or that could reasonably have been identified by an appropriately qualified and experienced contractor or engineer exercising due care and skill and Good Industry Practice in the same or equivalent circumstances, including through review and analysis of the RODs and the NWES Environmental Evaluation and of the investigations and assumptions set forth therein.

"Unidentified Endangered Species" means any Endangered Species that is found on a Site the continual or habitual presences of which was not identified or described in the RODs and the NWES Environmental Evaluation, excluding in each case any such Endangered Species that

was known by Design-Build Contractor to exist habitually and continuously on such Site on May 14, 2010 or that could reasonably be expected to be found temporarily, continually or habitually on such Site based on the date reported in the RODs and the NWES Environmental Evaluation.

"Unidentified Environmental Condition" means any Environmental Condition that existed on a Site prior to the date on which RTD delivered Vacant Possession of such Site to the Concessionaire and that (a) was not identified or was incorrectly identified or described in the Environmental Reports or (b) manifests itself in a new location not identified or anticipated in the Environmental Reports, and in each case (a) and (b) excluding any such Environmental Condition that could reasonably have been identified or discovered (or anticipated in the case of such condition that manifested itself in a location not identified or anticipated in the Environmental Reports) by an appropriately qualified and experienced contractor or engineer exercising due care and skill and Good Industry Practice in the same or equivalent circumstances, including through review and analysis of the Environmental Reports and the investigations and assumptions on the basis of which the Environmental Reports were prepared.

"Unidentified Geological Obstruction" means any Geological Obstruction that existed prior to April 14, 2010 and that, with respect to subsurface or latent conditions at the boring holes that were identified in the Geotechnical Reports, differs in a material respect from the conditions for such holes described in the Geotechnical Reports, excluding any such Geological Obstruction that could reasonably have been identified or discovered by an appropriately qualified and experienced contractor or engineer exercising due care and skill and Good Industry Practice in the same or equivalent circumstances, including through review and analysis of the Geotechnical Reports and the investigations and assumptions on the basis of which the Geotechnical Reports were prepared.

"Unidentified Utility" means any Utility present on any Site that was not identified or was incorrectly shown, identified or described in the Utility Data, in each case excluding any Utility that:

(a) is an RTD Relocated Utility;

(b) was installed on a Site after the Concessionaire took Vacant Possession of such Site;

(c) is a "service line", which for the purposes of this definition shall mean any Utility line, the function of which is to connect the common source of supply or service to an individual customer's service; or

(d) could reasonably have been identified or discovered by an appropriately qualified and experienced contractor or engineer exercising due care and skill and Good Industry Practice in the same or equivalent circumstances, including through review and analysis of the Utility Data and the investigations and assumptions on the basis of which the Utility Data was prepared.

"Uninsurable Risk" means a risk in respect of which either:

(a) insurance is not available to persons engaged in the same or substantially the same business as Contractor in the insurance market of the United States of America from time to time; or

(b) the premium payable for insuring that risk is at such a level that the risk is not generally being insured against by persons engaged in the same or substantially the same business to Contractor in the insurance market in the United States of America from time to time;

in each case to the extent the same is determined to be an "Uninsurable Risk" under the Concession Agreement.

"Utility" means any public or private utility and facility, including any facility relating to electrical energy, telephone and telecommunications, radio, television and public transit installations and the conveyance, distribution and supply of water, sewage, heat, gas, chemicals, steam, petroleum products and all piped installations, but excluding storm water facilities, traffic signals, and any street and station lighting and fire prevention measures to be installed in connection with the Eagle Project in accordance with the requirements of the Design, Construction and Rolling Stock Requirements.

"Utility Data" has the meaning given to it in Attachment 20 (*Utilities*) of the Concession Agreement.

"Utility Drawing" has the meaning given to it in Attachment 20 (*Utilities*) of the Concession Agreement.

"Utility Matrix" has the meaning given to it in Attachment 20 (*Utilities*) of the Concession Agreement.

"Utility Owner" means the owner of any of the Utilities located in or under or crossing any Site.

"Utility Relocation Agreements" means any agreement entered into between RTD and a Utility Owner in relation to the Eagle Project, including (a) the agreements attached in Part A of Annex 1 to Attachment 20 (*Utilities*) to the Concession Agreement and (b) the other agreements to be entered into between RTD and a Utility Owner copies of which are attached in draft form in Part B of Annex 1 to Attachment 20 (*Utilities*) to the Concession Agreement.

"Vacant Possession" means, in relation to any part of any Site, access to and possession thereof or making available to Operator the right to use therein in accordance with Section 2 (*Lease and Concession Rights*) of the Concession Agreement in its then-existing state and condition, subject to:

(a) access rights of RTD and the Project Third Parties as set out in the Third Party Agreements, including with respect to Utility Work in connection with any RTD Relocated Utility;

(b) access rights of the DUS Infrastructure Contractor pursuant to the DUS Infrastructure Agreement;

(c) the rights of Relevant Authorities, Utility Owners or third parties to have access to such Site existing as of the Technical Proposal Due Date;

(d) the statutory rights or public franchise rights of Relevant Authorities and Utility Owners to have access to such Site existing as of the Technical Proposal Due Date;

(e) the rights, including rights of access, granted to RTD and its employees, agents, consultants and Operators and to other Persons under the Concession Agreement, this Agreement and the other Project Agreements;

(f) restrictions of use set forth in easement deeds and/or right of entry permits applicable to the Sites as such restrictions are specified in Part E (*Limitations*) of Attachment 2 (*Description of Sites and Schedules of Site Availability*) to the Concession Agreement; and

(g) restrictions set forth in any title commitments related to the Sites attached in Part F (*Title Commitments*) to Attachment 2 (*Description of Sites and Schedules of Site Availability*) to the Concession Agreement.

"Voluntary Clean-Up Application and Materials Management Plan" means each of:

(a`) the Voluntary Clean-Up Application and Materials Management Plan for the East Corridor as approved by the Colorado Department of Public Health and Environment, a draft copy of which is attached as Exhibit 1(A) to the Design, Construction and Rolling Stock Requirements; and

(b) the Voluntary Clean-Up Application and Materials Management Plan for the Gold Line as approved by the Colorado Department of Public Health and Environment, a draft copy of which is attached as Exhibit 1(B) to the Design, Construction and Rolling Stock Requirements.

"Warranty Period" has the meaning set forth in Section 10.2.2 of the Design-Build Contract.

"Work Order" is a written instruction from Concessionaire to Operator to proceed with a Modification in accordance with the provisions of Section 13.10 hereof, in lieu of the initial issuance of a Modification.

"Work Products" means the O&M Submittals and all other drawings, designs, specifications, manuals, reports, studies, surveys, models, software (including Source Code and object code), documents, materials, deliverables, data, inventions, whether or not patentable, and products, prepared, developed, acquired, used or intended to be used by Operator or any of the Subcontractors or suppliers in connection with the Project or which is otherwise necessary for

the purposes of operating the Concessionaire-operated Components in accordance with the requirements of this Agreement.

1.2 Interpretation.

1.2.1 the definitions of terms herein shall apply equally to the singular and plural forms of the terms defined;

1.2.2 whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms;

1.2.3 the words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation";

1.2.4 the verb "will" shall be construed to have the same meaning and effect as the verb "shall";

1.2.5 any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein);

1.2.6 other than with respect to the definitions of Change in Law and Discriminatory Change in Law herein, any reference to a Law shall be construed as a reference to (i) such Law as it may be amended, modified or supplemented from time to time, (ii) all regulations and rules pertaining to or promulgated pursuant to such Law, (iii) the successor to the Law resulting from recodification or similar reorganizing of Laws and (iv) all future Laws pertaining to the same or similar subject matter;

1.2.7 any reference herein to any Person, or to any Person in a specified capacity, shall be construed to include such Person's successors and assigns or such Person's successors in such capacity, as the case may be;

1.2.8 the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof;

1.2.9 all references herein to Articles, Sections and Exhibits shall be construed to refer to Articles and Sections of, and Exhibits to, this Agreement. The Exhibits to this Agreement are an integral part hereof. The provisions of this Agreement shall prevail over the provisions of the Exhibits to the extent of any inconsistency.

1.2.10 the headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement;

1.2.11 where Operator's performance or obligations are defined with reference to an Attachment to the Concession Agreement, then references in such Attachment to "Concessionaire" shall be deemed to be references to "Operator" for purposes of this Agreement except as otherwise set forth in this Agreement or where the context unambiguously requires another interpretation; and

1.2.12 references to this Agreement or to any other agreement or document relating to the Eagle Project include a reference to this Agreement, or, as the case may be, such other agreement or document as amended from time to time.

ARTICLE 2

TERM; APPOINTMENT OF OPERATOR

2.1 Term.

The Term of this Agreement (the "Term") shall commence on the Agreement Date and, unless terminated earlier in accordance with its terms, shall expire on the End Date.

2.2 Appointment of Operator.

Concessionaire hereby appoints Operator, and Operator hereby accepts such appointment, to provide the Services in accordance with, and subject to, the terms of this Agreement.

ARTICLE 3

OPERATOR'S RESPONSIBILITIES

3.1 Scope of Services.

3.1.1 Operator shall perform or cause to be performed any and all services required or appropriate in connection with the operations and maintenance of the Project, including all obligations set forth in this Article 3, in accordance with the provisions of this Agreement, including the O&M Specifications, and shall provide all materials, equipment, software, machinery, tools, labor, supervision, transportation, administration, training and other services and items required to perform such services (collectively, the "Services" and as more fully described in the "Scope of Services" attached hereto as Exhibit A). Certain details of the Services are described in the Contract Documents, but Operator shall perform or cause to be performed all Services necessary to operate and maintain the Project generally described in or reasonably inferable from the Contract Documents. Except as otherwise expressly provided in this Agreement, Operator shall assume and comply with all obligations and liabilities set forth in the Concession Agreement to the extent that they relate to the Services on a back-to-back basis

(other than those that Concessionaire is prohibited by the Concession Agreement from delegating to Operator), and such obligations and liabilities shall be deemed to be included as part of Operator's obligations hereunder and shall be fulfilled by Operator on behalf of Concessionaire as part of the Services. Without limiting the foregoing, Operator's responsibilities and services shall include the following:

(i) Commencing on the Phase 1 Work Commencement Date, Operator shall provide certain pre-operations services as described in Part 3 of Exhibit A (collectively, the "Pre-Operations Services").

(ii) Commencing on the date specified in the "Operations Notice to Proceed" in substantially the same form as Exhibit F delivered by Concessionaire to Operator with respect to each Commuter Rail Project, and continuing through the End Date, Operator shall provide the related Commuter Rail Service and provide certain operations and maintenance services relating to such Commuter Rail Project and other Concessionaire-operated Components, and perform the Renewal Works, all as described in Part 1 of Exhibit A (the "Operations Services"); *provided* that Operator shall not be obligated to perform the services set forth on Part 1 of such Exhibit A if the Phase 2 Effective Date is not achieved by the Phase 2 Conditions Precedent Satisfaction Date, and Concessionaire shall have no obligation to Operator to make any payments hereunder relating to such services. Concessionaire shall promptly deliver to Operator a copy of each Revenue Service Commencement Certificate issued pursuant to the Concession Agreement. Concessionaire shall keep Operator informed of the progress of the Work under the Design-Build Contract and shall inform Operator of any likelihood of any Revenue Service Commencement Date occurring earlier or later than the relevant Original Revenue Service Target Date; provided, however, that Operator acknowledges that Concessionaire will rely upon information provided by the Design-Build Contractor with respect to the foregoing.

3.1.2 Notwithstanding the "back-to-back" nature of Operator's obligations under this Agreement as described in this Section 3.1, the procurement and commissioning of "Rolling Stock Option Cars" (as defined in the Concession Agreement) in accordance with Section 31.1 of the Concession Agreement shall be Concessionaire's sole responsibility (the "Concessionaire-Reserved Services"), and Operator shall have no authority in respect of such services or matters relating thereto. Operator shall cooperate with Concessionaire and any representative of Concessionaire in relation to Concessionaire's exercise of the Concessionaire-Reserved Services. Additionally, Operator shall comply with all reasonable requests relating thereto, including the execution of documents and the taking of such other actions reasonably required by Concessionaire or such representative in connection therewith. Operator shall be obligated to perform the Concessionaire-Reserved Services only pursuant to a Modification to the Scope of Services mutually agreed by the Parties.

3.1.3 Operator acknowledges that the performance of its obligations under this Agreement may require coordination or interfacing with RTD, the Project Third Parties, the Heavy Rail Operators, DUSPA, FTA, and other Relevant Authorities (collectively, the "Key Third Parties") from time to time, and shall keep Concessionaire fully informed regarding such coordination and interface, and accept direction from Concessionaire regarding the same if Concessionaire determines to provide such direction. As part of keeping Concessionaire fully

informed, Operator shall deliver Concessionaire copies of all written correspondence (including emails and other modes of communication) with any Key Third Party contemporaneously with its delivery to such Key Third Party, and shall promptly provide Concessionaire with a copy of all such correspondence when received from any such Key Third Party. Operator shall also keep Concessionaire informed of all meetings, inspections, tests and other interactions with any Key Third Party and ensure that Concessionaire has the opportunity to attend all such meetings, inspections, tests and other interactions. Except as otherwise expressly provided in this Agreement, Operator shall not bind or otherwise commit the Concessionaire to any obligation to RTD or any other Person without Concessionaire's prior written approval, which may be granted or withheld in its sole discretion.

3.1.4 Operator shall have the right to attend meetings between Concessionaire and RTD that Concessionaire reasonably expects could affect Operator's performance of the Services in any material respect, and Concessionaire shall provide Operator with reasonable advance notice thereof to the extent Concessionaire is able to do so

3.2 Procurement.

Operator shall procure and pay for, in Operator's name as an independent Operator and not as agent for Concessionaire, and maintain or arrange for the adequate inventory of, all materials, equipment, software, supplies, consumables, spare parts, transportation, labor, supervision and other necessary services (whether on or off the Sites), which are not expressly specified to be furnished by Concessionaire pursuant to Article 6 hereof or by the Design-Build Contractor pursuant to the Design-Build Contract, necessary to fulfill its obligations under this Agreement.

3.3 Mobilization and Testing.

3.3.1 Pre-Operations Inspection and Survey of Sites. No later than 90 days prior to the Revenue Service Commencement Date for each Commuter Rail Project, at Concessionaire's request, Operator shall participate, under Concessionaire's direction, in an inspection of the Sites to be used in the operation and maintenance of such Commuter Rail Project in order to ascertain which parts of such Sites are required for the performance by Operator of its obligations hereunder with respect to the operation and maintenance of the relevant Commuter Rail Project during the Operating Period. Operator acknowledges that if it determines that land outside the relevant Sites is required by Operator for the performance of its obligations hereunder during the Operating Period ("Additional Land"), Section 11.4 of the Concession Agreement shall apply, and Operator shall take all action necessary to facilitate Concessionaire's compliance with such section. No failure or delay by RTD to provide Vacant Possession of or the right to use Additional Land pursuant to Section 11.4 of the Concession Agreement shall constitute a Relief Event under this Agreement and Operator shall not be entitled to any compensation from Concessionaire. If RTD obtains and provides Vacant Possession with respect to any Additional Land pursuant to Section 11.4 of the Concession Agreement, Operator shall, following written demand by Concessionaire supported by details of the Losses claimed, pay to Concessionaire all Losses incurred and to be incurred by

Concessionaire and RTD or any Project Third Party in complying with Section 11.4 of the Concession Agreement.

3.3.2 Operations Start-Up. Operator shall provide start-up personnel for the Commissioning and testing of the Project as described and in accordance with Part 3 of Exhibit A hereto in support of the Design-Build Contractor's testing and start-up obligations under the Design-Build Contract. In addition, Operator shall review and make all comments and provide all feedback to the System Testing and Commissioning Plan, the Integrated Testing Program Plan, the System Performance Demonstration Plan, and all other plans, procedures, reports and related documentation ("Commissioning Documents") prepared by the Design-Build Contractor in connection with the Commissioning and start-up of the Project. Operator shall make all comments and provide all feedback on the Commissioning Documents (i) by notice in writing to Design-Build Contractor and Concessionaire and (ii) no later than five (5) Business Days' prior to the timelines and periods set out in the Design-Build Contract for the review and delivery of Concessionaire's comments to the same Commissioning Documents. Operator shall participate in and cooperate with Concessionaire, the Design-Build Contractor and RTD, as appropriate, in all Commissioning, testing, verification and start-up activities and the System Performance Demonstration with respect to each Commuter Rail Project, including, at Design-Build Contractor's reasonable request, performing discrete components of the Commissioning and testing or demonstration, all in accordance with the Commissioning Documents, and under the direction of the Design-Build Contractor.

3.3.3 Final Completion Testing. Subject only to the final sentence of this Section 3.3.3, Operator shall be fully responsible for the achievement by each Commuter Rail Project of the following requirements (collectively, the "Operator Final Completion Requirements"):

(i) the Availability Ratio on the applicable Commuter Rail Service is an average of at least 94% for a period of six consecutive calendar months commencing after the Revenue Service Commencement Date for such Commuter Rail Project, and ending prior to the Final Completion Deadline Date; and

(ii) the Availability Ratio for such Commuter Rail Service has not fallen below 80% in more than one calendar month (or, if a single, continuous event lasting no more than 30 days extends across two calendar months and directly causes the Availability Ratio in both such months to fall below 80%, two calendar months) following (and including) the calendar month in which the Revenue Service Commencement Date occurred and the last calendar month of the six calendar month period referred to in clause (i) above;

Operator shall operate and maintain each Commuter Rail Project such that it satisfies the Operator Final Completion Requirements prior to the Final Completion Deadline Date. The Parties acknowledge and agree that Operator shall be excused from any failure to cause the Operator Final Completion Requirements to be satisfied only to the extent the failure results from the Work under the Design-Build Contract not complying with the requirements of the Design-Build Contract or from any other failure of Design-Build Contractor to comply with its obligations under Design-Build Contract.

3.4 Maintenance and Repairs.

3.4.1 Operator shall at all times comply with the O&M Submittals and maintain, keep in good operating repair and condition and renew, replace and upgrade the Concessionaire-operated Components and any part thereof in accordance with the terms of this Agreement, subject to the provisions of Section 3.24.

3.4.2 As part of the Services, except as otherwise expressly provided herein, and without affecting Operator's right to seek Modifications to the extent otherwise provided under this Agreement, Operator shall perform or cause to be performed all maintenance and repairs to the Concessionaire-operated Components (including with respect to any part of the Concessionaire-operated Components which has suffered damage due to vandalism), and:

(i) in accordance with Good Industry Practice and to a standard that restores the failed or damaged item to a condition which meets the requirements of the O&M Specifications and the O&M Submittals;

(ii) in a manner that causes the minimum amount of disruption to the operation of the Concessionaire-operated Components, to Concessionaire, to RTD and to the Project Third Parties; and

so that, at the Concession Expiry Date, the Concessionaire-operated Components (including the Rolling Stock and the Concession Equipment) have the residual life specified in Section 1.2 of Attachment 14 (*Handover and Reinstatement Work Procedures*) to the Concession Agreement.

3.4.3 Operator shall plan Scheduled Maintenance so as to minimize the disruption to the operation of the Concessionaire-operated Components.

3.4.4 If at any time it appears likely to Operator that any maintenance or repair work to be carried out by Operator, whether for Scheduled Maintenance or otherwise, will necessitate an interruption to or restriction of Passenger services on the Concessionaire-operated Components such as to result in Passenger services on the Concessionaire-operated Components not being provided in accordance with the O&M Specifications for a continuous period of two hours or more, Operator shall:

(i) notify Concessionaire (as soon as is reasonably practicable in the circumstances) in advance of the carrying out of such work, of the nature of such work and the likely disruption to services;

(ii) take all steps reasonably practicable to notify Passengers at least ten (10) days in advance of any disruption (or otherwise as soon as is reasonably practicable under the circumstances) in accordance with the procedures for Passenger notification agreed by Concessionaire and Operator from time to time; and

(iii) take all steps which are reasonably practicable to minimize the adverse consequences of such work to Passengers.

3.4.5 Operator shall comply with the requirements of Attachment 9 (*Project and Construction Management*) to the Concession Agreement when carrying out any construction work to repair and/or replace any part of the Commuter Rail Network.

3.5 Emergencies.

Operator shall, at all times, including in accordance with Attachment 9 (*Project and Construction Management*) to the Concession Agreement:

3.5.1 respond as soon as possible to accidents, emergencies or other incidents and take immediate and diligent action in accordance with applicable Law and Good Industry Practice to attempt to prevent such accidents, emergencies or other incidents;

3.5.2 provide prompt notice to Concessionaire of any accidents, emergencies or other similar incidents, and thereafter provide written notice describing such accidents, emergencies or other similar incidents and detailing any action taken by Operator in response thereto and any expenditures incurred by Operator or expected to be incurred by Operator in connection with such accidents, emergencies or other similar incidents;

3.5.3 take immediate and diligent action in accordance with applicable Law and Good Industry Practice to minimize the adverse effects of any accidents, emergencies or other incidents;

3.5.4 react promptly and efficiently in the event of any incident or emergency necessitating the evacuation of any part of the Commuter Rail Network; and

3.5.5 consult with Concessionaire's Representative with respect to further actions which should be taken and thereafter, comply with any direction from Concessionaire's Representative.

3.6 Intervention by RTD.

3.6.1 Operator acknowledges and accepts that, notwithstanding any other provision of this Agreement and without prejudice to any other right or remedy of RTD under the Concession Agreement:

(i) if RTD considers that a breach by Operator of its obligations under this Agreement creates an immediate and serious threat to public health, safety, security or the Environment;

(ii) in the event of an emergency that creates an immediate need and serious threat to public health, safety, security or the Environment and Operator has not taken steps to remedy or mitigate the effects of the emergency; or

(iii) where RTD has reasonable grounds for concluding that damage to, or a threat to the safety or security on, RTD's commuter rail (excluding the Commuter Rail

Network), light rail or bus operations is likely to result from the continuation of Operator's operation and maintenance of the Concessionaire-operated Components;

then, under this Section 3.6.1 and in accordance with Section 29.6(b) of the Concession Agreement, RTD may immediately intervene in the operation and maintenance of the Concessionaire-operated Components and take such reasonable action as it considers necessary, including issuing directions to Operator, in order to prevent, mitigate or eliminate an immediate and serious risk to health, safety, security or the Environment or otherwise to ensure the safety of the Passengers. Operator acknowledges that RTD may, for this purpose, enter into any part of the Concessionaire-operated Components or the Sites, for such period as is necessary and take over all or any part of the operation and maintenance of the Concessionaire-operated Components. Concessionaire shall promptly communicate to Operator any notice received from RTD relating to the exercise of RTD's rights under Section 29.6(b) of the Concession Agreement.

3.6.2 [Reserved.]

3.6.3 Operator shall cooperate fully with any action deems appropriate to take for the purposes of Section 3.6 and shall provide all reasonable assistance to RTD for that purpose.

3.6.4 To the extent that the events giving rise to RTD's actions are attributable to any breach by Operator of its obligations under this Agreement or the other Project Agreements, Operator shall reimburse all costs incurred by Concessionaire and all costs for which Concessionaire is responsible to reimburse RTD under the Concession Agreement, in each case, arising from or in connection with RTD's action, which costs shall include the relevant administrative expenses of Concessionaire and RTD, which will include an appropriate sum in respect of general staff costs and overheads. Any interruption or impairment of the operation of the Concessionaire-operated Components caused by RTD's action referred to in Section 3.6.1 shall not constitute a Relief Event; *provided* that none of the foregoing shall limit the right of Operator to submit a claim that a Force Majeure Event has occurred with respect to the circumstances giving rise to RTD's exercise of its rights.

3.6.5 To the extent that the events giving rise to Concessionaire's or RTD's action are determined in accordance with the Dispute Resolution Procedure to be attributable to or necessitated by any breach by Concessionaire of its obligations under this Agreement or by RTD of its obligations under the Concession Agreement, Operator may claim, in the case of Concessionaire's actions, a Modification in respect of a Concessionaire-Caused Event under Section 13.9 or, in the case of RTD's actions, a Relief Event under Section 13.8.

3.7 Review and Monitoring; Remedial Action Plan.

3.7.1 Review and Monitoring. If, during the Operating Period (x) the Availability Ratio of any Commuter Rail Service is less than an average of 95% for four or more months of any rolling six-month period or (y) the Performance Deduction Percentage exceeds an average of 2.0% of the Adjustable Base Service Payment for four or more months of any rolling six-month period or (z) a Persistent Condition exists, then in each such case, Operator, at

Concessionaire's request, shall meet with Concessionaire to review Operator's operational procedures for the Project and Operator shall in good faith consider any recommendations made by Concessionaire for any changes to the operations and maintenance of the Project that Concessionaire believes would be expected to enhance reliability or improve operation of the Project. In addition, subject to any increased monitoring rights that may be exercised by the Financing Parties or RTD, Concessionaire may require Operator to provide increased monitoring of the Services as reasonably requested by Concessionaire, or may itself increase its monitoring of the Services. For the avoidance of doubt, nothing provided in this Section 3.7 shall prevent Concessionaire from terminating this Agreement pursuant to Section 16.4.

3.7.2 Remedial Plan. If, during the Operating Period (x) the Availability Ratio of any Commuter Rail Service is less than an average of 90% for four or more months of any rolling six-month period or (y) the Performance Deduction Percentage exceeds an average of 2.3% of the Adjustable Base Service Payment for four or more months of any rolling six-month period, Concessionaire may require Operator to prepare and submit a reasonable remedial plan to Concessionaire for Concessionaire's Approval within fourteen (14) Business Days of receiving notice from the Concessionaire of such requirement that details the actions that will remedy the cause of the failure in performance, the schedule for corrective actions and any mitigating actions that will be taken to minimize the impact on Passengers. Concessionaire's response shall be provided within seven (7) Business Days. Upon receipt of Concessionaire's Approval, Operator shall submit such proposed remedial plan for LTA approval. Operator shall implement and adhere to such remedial plan diligently and as necessary to rectify the deficiency (at its sole cost and expense) causing the Project to drop below the performance thresholds described in this Section 3.7.2. Concessionaire may monitor Operator's performance under such remedial plan as it deems appropriate. For the avoidance of doubt, nothing provided in this Section 3.7.2 shall prevent Concessionaire from terminating this Agreement pursuant to Section 16.4.

3.7.3 Remedial Action Plans under the O&M Specifications. Operator shall implement and comply with all of Concessionaire's obligations with respect to STOs set forth in Section 3 of the O&M Specifications, including the preparation and implementation of any Remedial Action Plan (as defined in the O&M Specifications) as and when required thereunder. Operator shall provide any Remedial Action Plan to Concessionaire for Concessionaire's approval (which shall not be unreasonably withheld or delayed) prior to submitting the same to RTD for RTD's approval. Operator shall implement and adhere to such Remedial Action Plan diligently and as necessary to remedy an STO event as described in Section 3 of the O&M Specifications, including the utilization of additional shifts, additional manpower, overtime and re-sequencing of activities, all at its sole cost and expense. Concessionaire may monitor Operator's performance under such Remedial Action Plan as it deems appropriate.

3.8 Access and Facilities.

3.8.1 Operator acknowledges that Concessionaire and its designees have the right to access and inspect the Concessionaire-operated Components and the Sites (including other locations on or off the Sites where materials are stored and facilities are located) at any time and for any reason upon reasonable notice and subject to completion of required safety training. Concessionaire shall reimburse Operator for any reasonable incremental costs and

expenses associated with flagging and other reasonable, out-of-pocket costs incurred by Operator resulting from access to the Concessionaire-operated Components and the Sites by Concessionaire or its designees to the extent Concessionaire requires such access more than once per calendar quarter. Unless Concessionaire otherwise directs, Operator shall grant to RTD, the Independent Engineer, the LTA, the Project Third Parties and any other Relevant Authority (including all relevant police departments) such access to the Concessionaire-operated Components and the Sites (including other locations on or off the Sites where materials are stored and facilities are located) as is reasonable in the circumstances for the purposes of carrying out their obligations under this Agreement, the Concession Agreement and the other Project Agreements and monitoring the performance by Operator of its obligations under the Concession Agreement and the other Project Agreements and as required by applicable Law. In addition, Operator shall grant to RTD such access to the Commuter Rail Network as RTD requires in order to operate RTD's bus and light rail services and, in accordance with Section 3.27, to procure, construct, update and maintain any Other RTD Project; *provided* that under the Concession Agreement, RTD is to use Reasonable Efforts to mitigate any material impairment, interference, disruption or other adverse impact from RTD's bus and light rail services on the operation and maintenance of the Commuter Rail Network (other than such Reasonable Efforts as would impair RTD's ability to operate such bus and light rail services).

3.8.2 During the Operating Period, upon seven (7) days' prior notice identifying Persons to whom access is to be granted under this Section 3.8 (or such shorter period as may be reasonable under the circumstances), Operator shall unless Concessionaire otherwise directs, make available to RTD, other persons acting on its behalf (including RTD's Representative) and any other Relevant Authority and maintain, the office space, facilities, storage space and parking areas specified in Section 10 of Attachment 9 (*Project and Construction Management*) to the Concession Agreement for the exercise of their rights and obligations relating to the Concessionaire-operated Components. Operator shall provide to Concessionaire and maintain for Concessionaire's benefit the office space, facilities, storage space and parking areas specified in Section 10 of Attachment 9 (*Project and Construction Management*) to the Concession Agreement for the Term.

3.9 Inspections and Audits.

3.9.1 Operator Inspections. Operator shall perform all inspection, expediting, quality surveillance and maintenance of traffic services that are required for performance of the Services on a timely basis. Operator's responsibilities under this Section 3.9 shall include, without limitation, inspecting all materials and equipment, including the Rolling Stock, both on and off the Sites that comprise or will comprise the Project or that are to be used in performance of the Services hereunder. Operator shall perform a detailed inspection of the performance of all Services at regular intervals and as is necessary to ensure that such Services is proceeding in accordance with the Contract Documents and to protect Concessionaire against defects and deficiencies in such Services. On the basis of such inspections, Operator shall keep Concessionaire informed on an ongoing basis of the performance and quality of all Services and shall provide Concessionaire with written reports of deficiencies revealed through such inspections and of measures proposed by Operator to remedy such deficiencies. In the event that the performance and quality of the Services is not proceeding in accordance with the Contract

Documents, Concessionaire shall be entitled to make recommendations to Operator for the purpose of remedying such deficiencies. Operator shall provide Concessionaire with a detailed list of inspection points. Operator shall provide Concessionaire with at least five (5) days' prior written notice of all inspections and on a monthly basis, Operator shall advise Concessionaire of inspections planned for the forthcoming month. Concessionaire (and, if requested by Concessionaire, RTD and the Independent Engineer), and each of their designated representatives, shall have the right to be present at and participate in all inspections of the Project, the Services or the Sites undertaken by Operator. No inspection performed or failed to be performed by Concessionaire, RTD or the Independent Engineer, or any recommendation from Concessionaire, RTD or the Independent Engineer in connection therewith, shall be a waiver of any of Operator's obligations hereunder or be construed as an approval or acceptance of the performance of any Services hereunder and shall not relieve Operator of independent responsibility for performance of the Services hereunder or for any acts or omissions of the Subcontractors engaged by Operator to perform the Services.

3.9.2 Other Inspections. In addition to the access and inspection rights of Concessionaire pursuant to Section 3.8.1, Operator shall permit and facilitate, and shall ensure that its Subcontractors permit and facilitate, the audit, review and inspection of the Concessionaire-operated Components, the operation and maintenance activities and any element of the Concessionaire-operated Components during the Operating Period in accordance with Section 3.27 and Section 22.2.

3.9.3 Operator's Responsibility With Respect to Results of Inspections.

(i) If the results of any inspection in accordance with Section 3.8 or Section 3.9 reveal any defect, breach and/or non-compliance as referred to therein, Operator shall, as soon as practicable (and in any event within such reasonable period as may be notified to Operator or within the time agreed by the Parties or determined pursuant to the Dispute Resolution Procedure) remedy such defect(s), breach(es) and/or non-compliance(s) to the standard as required by the terms of this Agreement and the Concession Agreement.

(ii) If Operator does not, within the agreed or determined timeframe, so remedy any such defect(s), breach(es) and/or non-compliance(s) (or such inspection takes place, or such remedial work is to be carried out, after termination or expiry of this Agreement (subject as otherwise provided in Article 17), Concessionaire and RTD shall be entitled to carry out, or arrange to be carried out, the necessary work itself at the cost and expense of Operator.

(iii) Concessionaire shall be entitled to be paid by Operator an amount equal to a deduction from the Service Payment which would otherwise have been payable to Concessionaire by RTD under the Concession Agreement, or from any amount payable upon termination of the Concession Agreement, in each case, corresponding to the costs and expenses incurred by Concessionaire in carrying out or arranging to be carried out such remedial work.

(iv) The inspection or approval of the operation and or maintenance of the Concessionaire-operated Components by Concessionaire, RTD or any other Person on its behalf will not relieve Operator in any way from any of its obligations, liabilities or responsibilities under this Agreement.

3.10 Passenger Information.

Without prejudice to Section 3.4.4, Operator shall, except in the event of an emergency, give Passengers adequate information and forewarning of any events affecting the Passengers' use of the Concessionaire-operated Components in accordance with the procedures for Passenger notification agreed by Concessionaire and Operator from time to time. Without limiting Operator's obligation to comply with such procedures, Operator may propose alternate procedures to Concessionaire, which shall become the applicable procedures upon approval of Concessionaire, which approval shall be contingent upon receipt of RTD's approval of such procedures.

3.11 Operation of Fare System Equipment; Collection and Determination of Fares.

3.11.1 Operator acknowledges that under the Concession Agreement, RTD is responsible for, and shall have all necessary rights to effect, the supply, installation, testing, operation and maintenance of the Fare System Equipment and for the collection of all fares; *provided* that, if Fare System Equipment is required to be carried by Operator personnel for the enforcement of fares in accordance with the O&M Specifications, the Parties acknowledge that RTD is to provide, maintain, repair and replace (when obsolete) such Fare System Equipment and Operator shall replace such Fare System Equipment (if lost or damaged beyond repair).

3.11.2 Operator acknowledges that RTD will determine in its sole discretion the level and structure of fares, ticketing and all other aspects of generating Fare Revenue. Operator shall accept as valid for travel on the Concessionaire-operated Components the passes and tickets specified in the Project Requirements and such additional tickets and passes as are specified by RTD from time to time.

3.11.3 Operator acknowledges that RTD shall have all rights, title and interest in all Fare Revenue collected in respect of the use of the Concessionaire-operated Components.

3.12 Electrical Energy.

3.12.1 Upon commencement of the first Revenue Service Commencement Date to occur, on behalf of Concessionaire, Operator shall (A) pay for all electrical power used in the performance of the Services and all electric power used for operations and maintenance of the Commuter Rail Network and the Rolling Stock except for costs of Traction Power, which are to be paid by RTD in accordance with Section 29.15 of the Concession Agreement; and (B) coordinate and interface with the operator of the Power Network regarding the ongoing supply of electrical power.

3.12.2 Operator acknowledges that following the Revenue Service Commencement Date for each Commuter Rail Service, RTD is obligated under the Concession Agreement to pay the supplier of Traction Power for all Traction Power used by such Commuter Rail Service. Operator shall undertake, at the request of Concessionaire and at no charge to Concessionaire or RTD, to execute all documents and to do all acts which may be reasonably

required by RTD to enable RTD to make payments to the supplier of Traction Power for Traction Power as provided in Section 29.15 of the Concession Agreement. In the event Traction Power to the Project is suspended due to the failure of RTD to pay any amounts due and owing to the Traction Power supplier, Operator shall be responsible for its Incurred Costs of energizing the Commuter Rail Network after the Traction Power is restored; *provided* that Operator is entitled to seek a Modification under Section 13.8 for the reimbursement of such Incurred Costs; *provided*, *further* that such compensation shall be paid to Operator only to the extent Concessionaire has first received corresponding compensation from RTD under the Concession Agreement.

3.12.3 For each month in which RTD is to make payments for Traction Power as provided in Section 29.15 of the Concession Agreement, Operator shall deliver to RTD, with a copy to Concessionaire, a completed report in the form attached as Annex 2 to Attachment 11 (*Service Payments*) to the Concession Agreement (a "Traction Power Usage Report") together with such other related information as Concessionaire may reasonably request, no later than five (5) Business Days after delivery of the monthly Traction Power invoice from the supplier of Traction Power.

3.12.4 Under Section 29.15(e) of the Concession Agreement, RTD is to increase or decrease, as applicable, the first Service Payment (and if necessary with respect to any deduction, subsequent Service Payments) payable to RTD following January 1 of each Contract Year by an amount equal to the Traction Power Service Payment Adjustment for the prior Contract Year. Concessionaire shall adjust the Monthly Operator's Fee on a dollar-for-dollar basis by the amount of any such increase or decrease to any Traction Power Reimbursement Amounts that may be owed by Concessionaire to RTD from time to time under the Concession Agreement, as and when such adjustment occurs to the Service Payments.

3.12.5 With respect to the last Contract Year ending on the Expiry Date, Operator shall arrange for the supplier of Traction Power to deliver the final Traction Power invoice directly to RTD following the Concession Expiry Date. Thereafter (i) any Traction Power Service Payment Adjustment that is a negative amount for the Contract Year to the End Date as calculated by RTD shall be considered an amount recoverable from or payable by the Operator under this Agreement for purposes of set-off under Section 26.18, and (ii) any Traction Power Service Payment Adjustment that is a positive amount for the Contract Year to the End Date as calculated by RTD shall be considered an amount due and payable by Concessionaire under this Agreement, subject to payment by RTD under the Concession Agreement, and shall be paid within 30 days after receipt from RTD. Operator acknowledges that RTD is entitled to deduct from the Handover Security any Traction Power Reimbursement Amounts that may be owed to RTD with respect to the final Traction Power invoice.

3.12.6 If the Concession Agreement is terminated, Operator shall arrange for the supplier of Traction Power to deliver the final Traction Power invoice directly to RTD following the termination date. Thereafter (i) any Traction Power Service Payment Adjustment that is a negative amount for the Contract Year to the End Date as calculated by RTD shall be considered an amount recoverable from or payable by the Operator under this Agreement for purposes of set-off under Section 26.18, and (ii) any Traction Power Service Payment Adjustment that is a positive amount for the Contract Year to the End Date as calculated by RTD

shall be considered an amount due and payable by Concessionaire under this Agreement to the extent Operator Termination Payments are owed to Operator hereunder, subject to payment by RTD under the Concession Agreement, and shall be paid within 30 days after receipt from RTD.

3.12.7 Any disputes with respect to the Traction Power Reimbursement Amount or any Traction Power Efficiency Incentive Amount shall be resolved in accordance with Section 13.15.

3.12.8 Nothing contained in this Section 3.12 shall limit the right of Operator to submit a claim that any interruption to the performance of the Services or operation of the Concessionaire-operated Components caused by a failure of the power supply constitutes a Force Majeure Event, *provided* that the other requirements of Article 12 are satisfied.

3.13 **Physical Security**.

Operator shall provide the necessary security and fare inspection services and make all necessary arrangements to ensure:

3.13.1 the protection of the Concessionaire-operated Components from damage, and

3.13.2 the protection of the safety and security of all Passengers and staff on the Concessionaire-operated Components,

in each case, in accordance with the requirements of the O&M Specifications and all Applicable Requirements. Operator acknowledges that Concessionaire has elected the "RTD Security Staffing Alternative" described in Section 8.7 of the O&M Specifications and shall, as part of the Services, fulfill Concessionaire's obligations thereunder.

3.14 **Advertising and non-Passenger Derived Revenue**.

3.14.1 Operator acknowledges that under Section 29.17 of the Concession Agreement, RTD has all rights relating to advertising on the Concessionaire-operated Components (including the right to sell advertising space on the Rolling Stock and elsewhere on the Concessionaire-operated Components) and Operator shall cooperate with Concessionaire to grant all necessary access to RTD and any third party authorized by RTD in connection with RTD's exercise of its rights relating to advertising. Concessionaire shall pay to Operator the reasonable costs and expenses which are incurred directly by Operator in installing and/or maintaining said advertising (other than routine maintenance), but only to the extent such payments are actually received by Concessionaire from RTD.

3.14.2 Except as may be necessary to enable Operator to comply with its obligations under this Agreement, Operator shall not permit anyone to operate any business on the Concessionaire-operated Components, any Site or any adjacent area, including (A) the sale of products or services, (including any newsstand or concession stand for the sale of food, beverages or gifts or other retail or rental services); or (B) the sale or rental of any wire, cable,

transmission or receiving device or any other utility on, or transmission or receipt of any electronic communication to or from, any part of the Concessionaire-operated Components.

3.15 Promotion of the Commuter Rail Services.

Operator acknowledges that under the Concession Agreement, RTD is responsible for the promotion of the Commuter Rail Services, including the design, production and distribution of any promotional materials. Operator shall be entitled to make suggestions and proposals with respect to the promotion of the Commuter Rail Services, which Concessionaire may or may not present to RTD in its sole discretion.

3.16 Community Relations.

At Concessionaire's request, Operator shall participate in liaising with Concessionaire (and, under Concessionaire's direction and supervision, with RTD) with respect to community relations and public information in accordance with the O&M Specifications.

3.17 Dispatch of Heavy Rail Movements.

From and after the Actual DUS Access Date, Operator shall be responsible for the dispatch of all Heavy Rail Movements, in accordance with the requirements of Section 2.4.6 of the O&M Specifications.

3.18 Interface with Heavy Rail Operators.

3.18.1 Operator shall operate and maintain the Concessionaire-operated Components in accordance with the requirements of the Railroad Agreements and without impairing, disrupting, interfering with, or otherwise having an adverse impact on the activities or operations of any Heavy Rail Operator; *provided* that Operator shall not be in breach of this Section 3.18 in respect of any such interruption that has been agreed by Concessionaire or Operator in advance with the relevant Heavy Rail Operator or that does not constitute a breach of any Railroad Agreement.

3.18.2 To the extent that Operator causes any impairment or disruption to, or interference with or impact on the activities or operations of any Heavy Rail Operator, Operator shall, to the fullest extent permitted by Law, fully and effectively indemnify and hold harmless RTD and Concessionaire for all Losses and or Claims arising out of such impairment, disruption, interference or impact, but only to the extent that such Losses and/or Claims do not arise as a result of the negligent acts, omissions or willful misconduct of RTD or any RTD agent, servant, consultant or employee.

3.18.3 All Losses payable by Operator under this Section 13.18 shall be deemed a debt due and payable within 30 days after receipt by Operator of RTD's or

Concessionaire's demand or, if RTD deducts the amount payable by way of a deduction from the Service Payment, as a reduction from the Monthly Operator's Fee.

3.19 Labor Matters.

3.19.1 Project Services Force. Operator shall provide and make available as necessary all such labor, professional, supervisory, administrative, and managerial personnel as are required in connection with the Services. Such personnel shall be trained and proficient in the required skills, competent, experienced and appropriately qualified to perform the duties to which they are assigned, including holding any required individual licenses or permits, and such qualifications shall be in accordance with Good Industry Practice or as otherwise necessary or appropriate to perform the Services in accordance with this Agreement, with wages and benefits competitive with the industry.

3.19.2 Project Manager. Operator shall propose the appointment of a Project Manager. The Project Manager shall have responsibility and accountability for managing the Project and shall also be designated as the Operator's Representative for purposes of any communication between the Parties in accordance with this Agreement. Operator shall notify Concessionaire in writing of the identity of the Project Manager and any alternates to the Project Manager as the Operator's Representative, along with instructions as to how the Project Manager and the alternates to the Project Manager as the Operator's Representative can be reached at any time. The Project Manager shall have the power and authority to act on behalf of Operator in regards to the performance of the Services and all matters concerning this Agreement, except the Project Manager shall not have the power to approve, or bind Operator to, any amendment, supplement, waiver or other modification to this Agreement.

3.19.3 Removal and Replacement. Concessionaire may require Operator to remove and replace any of Operator's staff or personnel (i) found in possession on the Sites or any Concessionaire-operated Components of firearms, alcohol or illegal drugs, (ii) violating any criminal law involving moral turpitude or threats or harm to persons or property, (iii) performing his or her duties in a Grossly Negligent manner or (iv) whose conduct in his or her interactions with RTD or in the course of performing his or her duties has materially impaired or prejudiced Concessionaire's relationship with RTD, passengers or the public at large. In addition, Concessionaire may request Operator to remove and replace any of Operator's staff or personnel (including the Project Manager and supervisory staff) for poor performance or other grounds by written notice stating the reasons for its dissatisfaction with such individual and its view that justifiable cause exists for the removal and replacement of such individual. Operator shall replace any individual removed under this Section 3.19.3 as soon as practicable with a suitably qualified, competent and experienced individual.

3.19.4 Operator's Key Personnel. Operator shall ensure that, effective as of the applicable dates set forth in Figure E 1 in Section E of Volume 2 of the Technical Proposal contained in the Concessionaire's Proposal, each of the Operator Key Personnel (i) is employed by or seconded to Operator, as the case may be, for the exclusive purposes of the Eagle Project, and (ii) occupies the role and function identified for such person in the Concessionaire's Proposal. Subject to the next sentence, Operator shall not remove, replace or permit the release

of any Operator Key Personnel without Concessionaire's prior written consent. If any of the Operator Key Personnel (x) ceases to have the necessary or relevant experience or qualifications for his or her position as such position may reasonably require from time to time in accordance with this Agreement and Applicable Requirements, (y) voluntarily terminates or (z) is physically incapable of continuing its employment with Operator (or any relevant affiliate thereof), Operator shall propose a replacement to Concessionaire as soon as practicable and shall provide Concessionaire with such information about such replacement's relevant experience as Concessionaire may reasonably require in order for Concessionaire to approve or disapprove such replacement. Operator shall pay all or any portion of the liquidated damages described in Section 9.4 of the Concession Agreement to the extent Concessionaire is required to make such payment thereunder as a result of a breach by Operator of its obligations under this Section 3.19.4.

3.19.5 Compliance with Labor and Employment Laws. With respect to hiring of personnel and its employment policy, Operator shall comply with all applicable Laws and shall exercise control over labor relations in a reasonable manner consistent with the intent and purpose of this Agreement.

3.19.6 Training Program. Operator shall offer an ongoing training program to ensure that Operator's personnel are capable of meeting the standards for performance of the Services set forth in Section 3.29. This training program shall include an orientation element and emphasize, among other things, safety, environmental compliance, operation and maintenance skills and the fundamental economics of the Project.

3.19.7 Labor Relations. Operator shall be responsible and liable for all labor relations matters of Operator and Subcontractor personnel relating to the Services and shall at all times use Reasonable Efforts to maintain harmony among the unions (if any) and other personnel employed in connection with the Services and act in a reasonable, professional and courteous manner with Concessionaire Operators and other Persons performing services on behalf of RTD.

3.20 Permitting.

Operator shall procure and maintain in full force and effect throughout the Term (including renewing, replacing, extending the validity of and arranging necessary amendments to) all Permits legally required in connection with its performance of this Agreement (whether or not set forth on Part A of Exhibit G hereto, excluding only (i) RTD Permits set forth on Part B of Exhibit G hereto which RTD is to obtain to the extent provided pursuant to Section 17. of the Concession Agreement, and (ii) those Permits specified as being the responsibility of the Design-Build Contractor in Part C of Exhibit G attached hereto. Any delay or disruption to or increase in the costs of the performance of the Services or an interruption or impairment of the operation of the Concessionaire-operated Components caused by a failure of or delay by Operator to comply with this Section 3.20 shall be the sole responsibility of Operator. If requested by Concessionaire, Operator shall take all necessary steps and acts such that Concessionaire may comply with its obligation to facilitate RTD's application for the RTD Permits, including providing supporting drawings, data and technical information and the filing of appropriate applications with the Relevant Authorities.

3.21 Project Sites.

3.21.1 Generally. Operator shall not use any Site for any purpose other than for the purposes of carrying out its obligations under this Agreement. Operator further agrees to occupy each Site in accordance with the rights and obligations of RTD under the relevant Third Party Agreements. So long as the Design-Build Contractor retains care, custody and control of any Site or a portion thereof in carrying out its responsibilities under the Design-Build Contract, Operator and its personnel shall comply (and shall cause its Subcontractors and their respective personnel to comply) with any policies and requirements for Site use imposed by the Design-Build Contractor. Unless Concessionaire directs otherwise, upon the occurrence of the Revenue Service Commencement Date for each Commuter Rail Project, Operator shall assume sole care, custody and control of the Concessionaire-operated Components constituting such Commuter Rail Project, together with all relevant Sites or portions thereof on which a relevant Commuter Rail Project is located. From any such Revenue Service Commencement Date through the End Date, Operator shall be solely responsible for the relevant Sites or portions thereof and the ongoing maintenance thereof, subject only to the provisions of this Agreement. Any costs and expenses associated with the performance of the Services on such Sites, including all fees, (subject to Section 5.12) taxes associated with such Sites and costs and fees of an administrative nature shall be borne by Operator.

3.21.2 Acceptance of Sites. Operator agrees that it has satisfied itself as to (i) the access to and through the Sites and the adequacy of the Vacant Possession in respect thereof for purposes of carrying out its obligations under this Agreement, (ii) the precautions and times and methods of working necessary to prevent any nuisance or interference, whether public or private, being caused to any third parties, including the Project Third Parties, (iii) the scope of the Environmental Reports and the Geotechnical Reports, and (iv) the completeness and accuracy of the identification and description of Utilities on the Sites as set forth on the Utility Drawings, the Utility Matrix and in the Utility Data, and accepts the Sites (including the geotechnical, climatic, hydrological, ecological, environmental and general conditions of the Sites, the nature of the ground and subsoil, the form and nature of such Sites, the risk of injury or damage to property near to or affecting each such Sites and to occupiers of such property, Utilities and other structures on or near the Sites) on an "as is, where is" basis, and that Operator shall not be excused from the performance of the Services for any reason relating to the condition of the Sites and the related Rights to Use such Sites except as otherwise provided herein. Concessionaire expressly disclaims any responsibility for, and Operator expressly waives its right to seek any increase in Monthly Operator's Fee or other compensation for, any conditions at or on any Site or any part thereof except as provided in Sections 3.21.3 and 13.8 hereof. Operator has received from Concessionaire and RTD, for its reference purpose only, certain information pertinent to the Sites and the Services. Concessionaire has not made and will not make, and under the Concession Agreement, RTD has not made and will not make, any express or implied warranty to Operator as to the accuracy and completeness of such information, and neither Concessionaire nor RTD shall be liable to Operator with respect to such information.

3.21.3 Site Conditions.

(i) *Archaeological Remains*. If Operator encounters any Archaeological Remains during the Operating Period, it shall notify Concessionaire (and, if directed by Concessionaire, RTD) as soon as possible. Operator shall thereafter comply with the reasonable directions of RTD (whether given directly by RTD or through Concessionaire) in relation to the activities to be taken in response to the discovery of such Archaeological Remains, and if so directed, shall allow Concessionaire or RTD, as the case may be, to enter the relevant part of the relevant Site for the purposes of such activities. Any such activities to be taken in response to the discovery of any Archaeological Remains will be undertaken as directed by RTD (whether direction is given directly by RTD or through Concessionaire) without delay. Operator is responsible for all costs and delays caused by the presence of any Archaeological Remains. Operator shall not knowingly attempt to remove or displace any Archaeological Remains without Concessionaire's prior written approval and shall ensure that its employees, agents, consultants and Subcontractors shall not knowingly remove or displace such Archaeological Remains. Further, Operator shall exercise (and cause its Subcontractors to exercise) reasonable care to ensure that such Archaeological Remains are not damaged. Concessionaire and any Person acting on behalf of Concessionaire and, pursuant to the Concession Agreement, RTD and any Person acting on behalf of RTD, may access any Site for the purposes of investigating and, if necessary, removing or otherwise dealing with any Archaeological Remains, and Operator will provide all reasonable assistance to Concessionaire or RTD, as the case may be, and any Person acting on behalf of Concessionaire or RTD, as the case may be, including making available labor and equipment. Ownership of all Archaeological Remains discovered within any Site will remain with, and shall be deemed to be the property of, RTD. Operator is entitled to seek a Modification for a Relief Event under Section 13.8 for the discovery of any Unidentified Archaeological Remains within a Site to the extent such discovery delays, or increases the cost of, performance of the Services or causes Operator to undertake additional Services; provided that such relief shall be available to Operator only to the extent it had care, custody and control of such Site at the time the discovery was made.

(ii) *Environmental Conditions*.

(I) If either Party discovers or causes any Environmental Condition prior to or following commencement of the Services, it shall notify the other Party as soon as possible. Operator shall carry out all work at its cost (except to the extent otherwise provided in this Section 3.21.3(ii)) relating to the removal, remediation, and clean-up of Environmental Conditions (other than any RTD Retained Environmental Work) in accordance with the Hazardous Materials Removal Process and otherwise in accordance with the provisions of this Agreement and the Concession Agreement, the Project Requirements, and Section 8 of Part A (*General Requirements for Design, Construction and Rolling Stock*) of the Design, Construction and Rolling Stock Requirements, the procedures set out in the Project Management Plan, the Quality Management Plan, the Voluntary Clean-Up Application and Materials Management Plans, Good Industry Practice and the other Environmental Requirements.

(II) No later than 40 days (or such other time period as agreed by the Parties) prior to the proposed date of commencement by Operator of any Environmental Clean-up Work, Operator shall (i) deliver, or shall cause the delivery of, an Environmental Condition

Bid Report to Subcontractors who are qualified to perform such Environmental Clean-up Work and to Concessionaire and (ii) notify Concessionaire as to the identity of the Subcontractors to which Operator has submitted such Environmental Condition Bid Report, and Concessionaire shall forward the same to RTD.

(III) No later than 18 days prior to the proposed date of commencement of such Environmental Clean-up Work as set forth in the Environmental Condition Bid Report, Operator shall deliver to Concessionaire an Environmental Condition Clean-up Report relating to such Environmental Clean-up Work, and Concessionaire shall forward the same to RTD.

(IV) Under the Concession Agreement, RTD is to approve, reject or comment on the Environmental Condition Clean-up Report no later than 10 days following receipt thereof. If RTD fails to respond to the Concessionaire within such time period, RTD shall be deemed to have approved the Environmental Condition Clean-up Report.

(V) If RTD approves (or is deemed to have approved) the Environmental Condition Clean-up Report, the Concessionaire shall so notify Operator, and Operator shall (i) proceed with performance of the relevant Environmental Clean-up Work in accordance with such Environmental Condition Clean-up Report and (ii) submit an invoice to Concessionaire each month following the commencement of such Environmental Clean-up Work for reimbursement of costs incurred by the Operator in respect of Environmental Clean-up Work performed during the prior month. Concessionaire shall forward the same, together with an invoice for other costs incurred by Concessionaire in respect of such Environmental Clean-up Work, to RTD.

(VI) Each invoice delivered in accordance with Section 3.21.3(ii)(V) must (i) specify in reasonable detail the costs claimed and the basis on which such costs have been incurred and calculated and certify that the aggregate amount of costs claimed by Operator with respect to such Environmental Clean-up Work does not exceed the not to exceed cost estimate set forth in the relevant Environmental Condition Clean-up Report (the labor, material and equipment elements of which must not exceed the costs permitted under the RTD Pricing Conditions) and (ii) be accompanied by a written confirmation from Operator that (x) all undisputed amounts due for payment for labor, materials and other services in connection with such Environmental Clean-up Work completed during prior months have been paid and (y) all undisputed amounts due for payment for labor, materials and other services in connection with the Work completed during the relevant period have been paid or, subject to Section 2.3 of Part B (*Disadvantaged and Small Business Enterprises Programs*) of the Specified Requirements will be paid within seven calendar days of receipt of the relevant payment to be paid with the proceeds of such payment.

(VII) RTD is to pay amounts to Concessionaire in respect of such invoices in accordance with the payment procedures for Service Payments set forth in Section 30 (*Service Payments*) of the Concession Agreement, and Concessionaire shall pay the amounts due Operator pursuant to Article 5 hereof.

(VIII) If RTD rejects the Environmental Condition Clean-up Report, RTD is to (i) carry out or cause to be carried out the RTD Retained Environmental Work, and

Operator shall give RTD all reasonable assistance to permit RTD or RTD's third party contractors to carry out such RTD Retained Environmental Work including providing access to the relevant Sites, (ii) reimburse the Concessionaire for the Concessionaire's reasonable, documented and proper professional costs incurred to third parties and other direct design and engineering Incurred Costs, including amounts incurred by Operator, in each case incurred in preparing the relevant Environmental Condition Bid Report and relevant Environmental Condition Clean-up Report and (iii) upon completion of the relevant RTD Retained Environmental Work, deliver to the Concessionaire a notice of completion together with a statement of the costs incurred by RTD in relation thereto. Concessionaire shall provide a copy of the same to Operator.

(IX) Operator may claim a Modification pursuant to Section 13.8 in respect of a Relief Event if (i) the Operator encounters any Unidentified Environmental Condition at a Site which delays, or increases the cost of, performance of the Services or causes the Operator to undertake additional Services, or (ii) RTD carries out, or engages third party contractors to carry out, RTD Retained Environmental Work and materially interrupts or interferes with the Operator's performance of the Services; *provided* that such relief shall be available to Operator only to the extent it had care, custody and control of such Site at the time the discovery was made.

(iii) *Geological Obstructions*. If Operator discovers any Geological Obstructions during the Operating Period, it shall notify Concessionaire as soon as possible. Operator shall carry out all Services notwithstanding the discovery of any Geological Obstructions, in accordance with the Project Requirements, the O&M Specifications, the procedures set out in the Project Management Plan, the Quality Management Plan, Good Industry Practice and otherwise in accordance with the provisions of this Agreement and the Concession Agreement. Operator is responsible for all costs and delays caused by the presence of any Geological Obstructions; *provided* that Operator is entitled to seek a Modification for a Relief Event under Section 13.8 for the discovery of any Unidentified Geological Obstructions at any Site to the extent such discovery delays, or increases the cost of, performance of the Services or causes Operator to undertake additional Services; *provided*, *further* that such relief shall be available to Operator only to the extent it had care, custody and control of such Site at the time the discovery was made.

(iv) *Endangered Species*. If Operator encounters any Endangered Species during the Operating Period, it shall notify Concessionaire as soon as possible. Subject to the requirements of any applicable Law, Operator shall carry out all Services notwithstanding the discovery of any Endangered Species, in accordance with the Project Requirements, the O&M Specifications, the procedures set out in the Project Management Plan, the Quality Management Plan, Good Industry Practice and otherwise in accordance with the provisions of this Agreement and the Concession Agreement. Operator is responsible for all costs and delays caused by the presence of any Endangered Species; *provided* that Operator is entitled to seek a Modification for a Relief Event under Section 13.8 for the discovery of any Unidentified Endangered Species at any Site to the extent such discovery delays, or increases the cost of, performance of the Services or causes Operator to undertake additional Services; *provided* that such relief shall be available to Operator only to the extent it had care, custody and control of such Site at the time the discovery was made.

3.21.4 Reinstatement. Operator shall notify Concessionaire in writing if it believes that any part or parts of a Site are no longer required for the performance by Operator of its obligations under this Agreement. If Concessionaire agrees with Operator's assessment, it will notify RTD as provided in the Concession Agreement. If RTD requires Concessionaire to deliver such part or parts back to RTD in compliance with Section 12.6 of the Concession Agreement, Concessionaire shall provide written notice to Operator of such requirement, and Operator shall do so by expeditiously reinstating (and ensuring that each of the Subcontractors reinstates) such part or parts within the time periods required by Concessionaire (i) in the form specified in the Project Requirements or (ii) if the reinstatement requirements are not specified in the Project Requirements in respect of such parts, with all materials and equipment extraneous to the Services removed and otherwise in a condition consistent with the conditions of the immediately adjacent reinstated Sites or reinstated parts thereof, and, in each case, free from occupation and Encumbrances other than Permitted Encumbrances and in a clean, safe and orderly state, in each case, at no cost to Concessionaire. Prior to reinstating any Site or part or parts thereof, Operator shall submit to Concessionaire a reinstatement plan for approval (such approval not to be unreasonably withheld or delayed); *provided* that the obligation of Concessionaire to not unreasonably withhold or delay approval is subject to and contingent on receipt of RTD's prior approval of such proposed reinstatement plan. Such reinstated part or parts shall cease to be part of the relevant Site, and Operator shall no longer have the right to perform its Services on such part or parts.

3.22 Utilities.

Operator shall ensure that adequate Utilities are available on the Sites to facilitate the performance of the Services and the operation of the Concessionaire-operated Components, and Operator shall bear the cost of the supply of such Utilities (subject to Section 3.12) required for the performance of the Services and the operation of the Concessionaire-operated Components and any interruption to the Services or the operation of the Concessionaire-operated Components or additional costs incurred by Operator, in each case, due to a failure of such supply shall not be a Relief Event unless such failure otherwise qualifies as a Relief Event.

3.23 Unidentified Utilities.

If Operator discovers any Unidentified Utility, then it shall notify Concessionaire (and, at the direction of Concessionaire, RTD and the relevant Utility Owners) of such Unidentified Utility as soon as practicable. Operator is entitled to seek a Modification for a Relief Event in accordance with Section 13.8 in respect of the discovery of an Unidentified Utility, which Modification may allow Operator to be compensated for Incurred Costs resulting from delays or disruptions to the Services or necessitated by the acquisition of replacement property (which shall not be considered Additional Land) in accordance with the terms of the relevant Utility Relocation Agreement.

3.24 Rolling Stock Replacement.

3.24.1 Operator shall maintain, repair and replace consumable and life-expired items for, and appropriately rehabilitate or overhaul, the Rolling Stock throughout the duration of the Operating Period, except to the extent set out in this Section 3.24.

3.24.2 Operator shall fully cooperate with Concessionaire (and, under Concessionaire's direction and supervision, RTD) and provide all data and other information and take all action necessary to facilitate Concessionaire's compliance with its obligations under Section 31.2 of the Concession Agreement (for as often as RTD may require of Concessionaire thereunder), including, without limitation, the preparation of the Rolling Stock Replacement Report and the implementation of a procurement process for the selection of a Replacement Rolling Stock Supplier (including the preparation of any RTD Change Report relating thereto).

3.24.3 Operator shall implement, at the direction of Concessionaire, any procurement process for the selection of a Replacement Rolling Stock Supplier in accordance with the requirements of Section 31.2(d)(i) through (iv) of the Concession Agreement and otherwise as an RTD Proposed Change, including to reflect any impact on Operator resulting from the unavailability of Rolling Stock with a functional level of performance equivalent to the level of performance of the Cars being replaced had at the time of the relevant Revenue Service Commencement Date, but Operator will be provided relief only as and to the extent provided to Concessionaire pursuant to an RTD Proposed Change permitted under Section 31 of the Concession Agreement. If RTD, Concessionaire and the Replacement Rolling Stock Supplier enter into a Replacement Rolling Stock Supply Contract in accordance with Section 31.2(d)(iii) of the Concession Agreement, the Replacement Rolling Stock Supply Contract will be implemented as an RTD Proposed Change, including to take account of the costs, adjustments and other criteria referenced in Sections 31.2(d)(ii)(A) through (D) of the Concession Agreement, and Operator shall be entitled to the benefit of any adjustments to the Monthly Operator's Fee and/or compensation of Incurred Costs incurred in connection with the procurement of the Replacement Rolling Stock Supplier that are provided by such RTD Proposed Change but only to the extent relief is provided to Concessionaire pursuant to the same RTD Proposed Change under the Concession Agreement..

3.24.4 Operator shall be responsible for the timely completion of the procurement process for the replacement Rolling Stock and the delivery and commissioning/entry into service of the replacement Rolling Stock on or before the Rolling Stock Replacement Date; *provided* that Operator shall not be responsible for, and may seek a Modification for a Relief Event under Section 13.8 if the delivery and/or commissioning of the replacement Rolling Stock is delayed as a result of a failure by RTD to comply with its obligations under the Replacement Rolling Stock Supply Contract. Except as set forth in the preceding sentence, Operator shall not be entitled to a Relief Event in respect of the late delivery of, or any issues resulting from defects with, the Rolling Stock, and its sole recourse in respect thereof will be against the Replacement Rolling Stock Supplier pursuant to the Replacement Rolling Stock Supply Contract.

3.24.5 Rolling Stock in use for the provision of Commuter Rail Services as of the Rolling Stock Replacement Date shall remain available for use by Operator until such

Rolling Stock is replaced pursuant to the Concession Agreement, whether such replacement occurs before or after the Rolling Stock Replacement Date, and Operator shall remove the Rolling Stock to be replaced and deliver them to a location specified by RTD. RTD is to bear the additional cost for the delivery of such Rolling Stock to a location or locations off-Site. Operator shall prepare an invoice detailing such additional costs for Concessionaire, and Concessionaire shall promptly present such invoice to RTD. Concessionaire shall promptly pay over to Operator any amounts received in respect thereof from RTD, but shall otherwise have no liability to Operator other than such amounts received from RTD.

3.25 Coordination with Concessionaire and Other Contractors.

3.25.1 Operator shall permit the Concessionaire Contractors to introduce and store materials and perform their work or services with respect to the Eagle Project, in each case so long as the same does not prevent or interfere in any material respect with the performance of the Services by Operator. Operator shall cooperate with Concessionaire and the Concessionaire Contractors to coordinate the Services with the services or work of the Concessionaire Contractors. At Concessionaire's request, Operator shall attend and participate in any negotiations or meetings that Concessionaire has with a third party, including RTD, on a matter which is or shall become Operator's responsibility hereunder.

3.25.2 Operator shall not (and shall cause its Subcontractors to not) interfere with the work or services of, or cause any delay to, the DUS Infrastructure Contractor, the Design-Build Contractor, the Design-Build Subcontractor or any Utility Owner, or any other contractors which may be carrying out work or services in the land adjoining or near any Site for RTD, any Project Third Party or any Relevant Authority, and shall allow each of them reasonable access to any Site and any part of the Commuter Rail Network and otherwise shall comply with the provisions of the Third Party Agreements in respect of such work or services; *provided* that such other contractors shall at all times comply with the Health, Safety and Security Requirements and the safety regulations and policies of Operator and shall not interfere with Operator's or any Subcontractor's performance of the Services; *provided*, *further* that Operator in any event shall not be in breach of this Section 3.25.2 for any temporary interruption to the work or services of any such contractor that has been agreed in advance between Operator, Concessionaire, RTD and such contractor or the relevant Project Third Party, as the case may be, or which is reasonably necessary in accordance with applicable Law and Good Industry Practice to respond to emergencies that create an immediate and serious threat to public health, safety, security or the Environment.

3.26 Restoration.

3.26.1 Subject to Section 3.26.2 and to the provision of funds by RTD where a Force Majeure Event is included in any Uninsurable Risk that RTD has assumed as described in Section 15.11, if any part of the Concessionaire-operated Components in respect of which Operator or RTD, as the case may be, is obligated to maintain insurance pursuant to this Agreement and Section 34 of the Concession Agreement, shall be damaged or destroyed (any "Casualty Event"), whether as a result of a Relief Event, a Force Majeure Event or a breach

by Operator of its obligations under this Agreement, Operator shall repair, rehabilitate and otherwise restore such Affected Portion diligently and expeditiously and Operator shall pay all costs of rectifying any damage caused by a Casualty Event, and, subject to the last sentence of this Section 3.26.1, shall not be entitled to claim any Incurred Costs resulting from such Casualty Event. Operator shall, to the extent required by applicable Law or the Concession Agreement, provide (or shall cause the appropriate Subcontractors to provide) to Concessionaire and RTD a bond, letter of credit or other surety in compliance with C.R.S § 38-26-101 *et seq.* in a form substantially similar to the form of the Construction Security (as defined in the Concession Agreement), to the extent required under such statute. Except as may be provided otherwise under Section 40 of the Concession Agreement and Section 3.26.2, Operator is entitled to seek a Modification under Section 13.8 in respect of a Relief Event or Article 12 in respect of a Force Majeure Event, as applicable.

3.26.2 In the event that a "Relevant Incident" (as defined in the Concession Agreement) requiring the implementation of a "Restoration Plan" pursuant to Section 40 of the Concession Agreement occurs during the Operating Period, and RTD has elected to implement the Restoration Plan in accordance therewith, Operator shall perform the obligations set forth in such section so as to ensure Concessionaire's compliance thereunder, including, without limitation, the preparation of a restoration plan, the carrying out of the restoration of the affected portions of the Project and the procurement of a bond, letter of credit or other surety, each as required under such section. Operator agrees that, subject to the other provisions hereunder, Concessionaire may terminate this Agreement in the event the Concession Agreement is terminated in accordance with its terms as a result of the occurrence of a Casualty Event and, subject to Section 16.7.1, Concessionaire shall pay Operator any Operator Termination Payments (unless the termination resulted from a breach by Operator of its obligations under this Agreement) resulting therefrom, but only to the extent that corresponding amounts have been received by Concessionaire from RTD. If Operator is required to perform restoration work, and Concessionaire is entitled under Section 40 of the Concession Agreement to funds for the payment or reimbursement of such restoration work, Concessionaire shall ensure that all such funds, whether provided by RTD or constituting insurance proceeds for such purpose, shall be forwarded to Operator as and when received; *provided* that Operator has demonstrated to Concessionaire's reasonable satisfaction that the restoration work for which payment is being made has been completed in accordance with this Agreement and the Concession Agreement.

3.27 **Cooperation on Other RTD Projects**.

3.27.1 Following delivery by RTD or Concessionaire (at RTD's request) of a written request for any Project Records, including the Contract Data and Work Products, or other information in the possession or under the control of Operator or the Subcontractors that is relevant or potentially relevant to any Other RTD Project, including for the purpose of preparing, including or making reference to such information in any Other Project Procurement Material, Operator shall (and shall cause the Subcontractors), promptly (and in any event within 30 days of delivery of RTD's or Concessionaire's request) deliver to Concessionaire all such Project Records and other information that Concessionaire may otherwise require Operator to deliver or to procure the delivery of under the terms of this Agreement.

3.27.2 Following delivery by Concessionaire to Operator of a written request pursuant to Section 3.27.1, Operator shall inform Concessionaire by written response within 25 days of such request of all material facts or circumstances of which it is aware that might reasonably be expected to affect the design, construction, operation or maintenance of any Other RTD Project in the light of the details concerning such project that RTD has submitted to Concessionaire and Concessionaire has submitted to Operator or that are otherwise available to Operator, including the Final Project Designs.

3.27.3 If Concessionaire has been notified that RTD is preparing to issue or has issued any Other RTD Project Procurement Materials or is otherwise seeking offers from any person or negotiating with any person in respect of any proposed Other RTD Project, then, in addition to those actions required under Sections 3.27.1 and 3.27.2 above, Operator shall use all Reasonable Efforts as Concessionaire may request to assist such procurement, including, at reasonable times and upon reasonable notice, providing access to RTD and its designees to: (a) each part of the Commuter Rail Network for the purpose of surveying, inspecting or investigating the relevant parts thereof (subject to RTD's agreeing that it and other parties requiring access at RTD's request will comply with all applicable Operator policies and procedures while on any Site) and (b) Project Records, but only to the extent that Concessionaire may otherwise require Operator to deliver or to procure the delivery of such records under the terms of this, to the extent not previously provided in accordance with this Section 3.27.3, in each case under (a) and (b) solely and to the extent necessary to procure and award the relevant Other RTD Project;

3.27.4 If Concessionaire notifies Operator that RTD awards or otherwise undertakes any Other RTD Project other than with Concessionaire, then:

(i) (x) Operator shall use Reasonable Efforts such that Concessionaire may comply with Concessionaire's obligations to cooperate and liaise with RTD and all RTD designated contractors engaged in such Other RTD Project to the extent reasonably necessary to facilitate the Other RTD Project and (y) Operator shall not take any action which is calculated or intended to directly or indirectly prejudice or frustrate or make more difficult such Other RTD Project, *provided* that in either case of (x) or (y), this obligation shall not require Operator to take, or refrain from taking, any action that would reasonably be anticipated to adversely affect the Services or the Concessionaire-operated Components or the carrying out of Operator's other obligations under this Agreement;

(ii) Operator shall, at reasonable times and upon reasonable notice, allow access to RTD and its designees to each part of the Commuter Rail Network as is reasonably necessary to facilitate the efficient carrying out of and interface with the Other RTD Project (subject to RTD's agreeing that it and other parties requiring access at RTD's request will comply with all applicable Operator policies and procedures while on any Site); provided such access is not reasonably anticipated to adversely affect the Services or the Concessionaire-operated Components or the carrying out of Operator's other obligations under this Agreement; and

(iii) Operator shall use Reasonable Efforts to minimize any adverse impact on the Services and the Concessionaire-operated Components, the disruption to the

Commuter Rail Services and any inconvenience to Passengers potentially caused by any Other RTD Project.

3.28 Operations and Maintenance Obligations during the Design/Build Period.

During the Design/Build Period, Operator shall perform the operations and maintenance activities set out in Part E of the Design, Construction and Rolling Stock Requirements; *provided* that the elements of the Project and access to the Sites or portions thereof which are necessary for Operator to perform such activities have been turned over to Operator by the Design-Build Contractor pursuant to the Design-Build Contract.

3.29 Standards of Performance.

3.29.1 Operator hereby acknowledges that it has received and reviewed the terms and conditions of the Concession Agreement, the other Contract Documents, the Final Project Design, the Record Documents, the Technical Proposal and each of the documents forming part of the O&M Standards, copies of which have been previously delivered to Operator. Operator shall comply with all terms applicable to the performance of the Services for the Project contained therein (and in any amendments, supplements or other modifications or additions to such terms) while performing the Services.

3.29.2 Operator shall perform (and shall cause the Subcontractors to perform) the Services and all components thereof in accordance with the following:

(i) Applicable Requirements;

(ii) Project Requirements;

(iii) the O&M Submittals (including the Quality Management Plan);

(iv) the requirements of Sections 2 and 4 of Part B (*Disadvantaged and Small Business Enterprises Programs*) of Attachment 15 (*Specified Requirements*) to the Concession Agreement;

(v) the Contract Documents;

(vi) the Operating Plan and all other plans and procedures referred to in the O&M Specifications; and

(vii) Good Industry Practice (collectively, the "O&M Standards");

provided, that if there is a conflict between any of the above requirements, then Operator shall perform in compliance with the more restrictive requirement. Except as otherwise expressly provided in this Agreement, the standards of performance set forth in this Section 3.29 shall apply to all aspects of the Services, and this Section 3.29 shall be deemed to be incorporated by reference into each provision of the Contract Documents describing the Services, Operator's

obligations to perform the Services, or referring to the "requirements of this Agreement" or words of similar effect. Notwithstanding the foregoing, the effect of any Change in Law (excluding therefrom any change in applicable Permits resulting from the acts or omissions of Operator or any Subcontractor) enacted after the Agreement Date shall be determined under Section 13.7. Operator shall operate the Commuter Rail Services and operate and maintain the Concessionaire-operated Components in compliance with the existing Third Party Agreements, and shall take all necessary steps and acts to facilitate the discharge by RTD of its obligations to the Project Third Parties under any Third Party Agreement.

3.29.3 In addition, Operator shall take, and shall ensure that the Subcontractors and their respective personnel take, all necessary action in accordance with Good Industry Practice, this Agreement, the Concession Agreement and applicable Law:

(i) to ensure the uninterrupted and safe operation of the Commuter Rail Services and operation and maintenance of the Concessionaire-operated Components subject to and in accordance with the O&M Standards;

(ii) to ensure that the operation of the Commuter Rail Services and the operation and maintenance of the Concessionaire-operated Components does not impair, disrupt, interfere with or otherwise have an adverse impact on the operation of RTD's light rail or bus operations; and

(iii) in a manner which will not cause, contribute to, or result in, any breach or default by Concessionaire of Concessionaire's obligations under the Concession Agreement or the other Project Agreements or invalidate or terminate any warranties under this Agreement or any Subcontract or other Project Agreement.

3.29.4 Operator shall operate and maintain the Project in a manner reasonably calculated (i) to minimize Performance Deductions and Service Task Orders, (ii) to maximize the Availability Ratio, and (iii) to minimize, consistent with the preceding clauses (i) and (ii), the costs and expenditures required to operate and maintain the Project.

3.29.5 Operator shall have the right to replace any item of Rolling Stock or Equipment (in each case, a "Replaced Item") with other items of Rolling Stock or Equipment (in each case, a "Replacement Item") so long as the Replacement Item as a value, utility and useful life at least equal to the value, utility and useful life of the Replaced Item immediately prior to the replacement.

3.30 Independent Engineer and the LTA.

The Concession Agreement and the documents which govern Concessionaire's transactions with the Financing Parties for the Eagle Project may require an Independent Engineer and/or LTA to provide certain review, inspection, certification and consultation services concerning the Eagle Project and the Services in order that the Independent Engineer may apprise RTD and the Financing Parties of the progress and other aspects of the Eagle Project and the Services. Operator shall fully and promptly cooperate with the Independent Engineer and LTA as reasonably requested by Concessionaire. Operator agrees that any acceptance or

comment by the Independent Engineer, the LTA, RTD or the Financing Parties shall not be construed to impose on the Independent Engineer, the LTA, RTD or the Financing Parties any control of any portion of the Services, or relieve Operator of any of its duties, liabilities or obligations under this Agreement and the other Contract Documents. All communications to and from the Independent Engineer and the LTA regarding the Services shall be made through Concessionaire, except as Operator is otherwise directed by Concessionaire.

3.31 Federal and State Requirements.

In addition to complying with all other applicable Laws, in performing the Services, Operator shall comply, and cause all Subcontractors to comply, with the Specified Requirements, rules and regulations promulgated by the FTA and FRA applicable to the Services or the Eagle Project, the requirements set forth in Sections 2 and 4 of Part B (*Disadvantaged and Small Business Enterprises Programs*) of the Specified Requirements, C.R.S. § 8-17.5-101 *et seq.* and the FTA's Public-Private Partnership Pilot Program (Penta-P) (as described in 72 Fed. Reg. 2583 (January 10, 2007)); *provided* that with respect to the Disadvantaged and Small Business Enterprises requirements, Operator shall not be in breach of these requirements if it can demonstrate to RTD's reasonable satisfaction that it and each of its Subcontractors have exercised good faith efforts to comply with such requirements.

3.32 Concessionaire's Right to Carry Out Services; No Impairment.

Without prejudice to any right of Concessionaire to suspend any or all of the Services or access the Sites for inspection or other purposes or intervene in the operation and maintenance of the Concessionaire-operated Components, as provided in this Agreement, if Operator defaults or neglects to carry out the Services in accordance with the requirements of this Agreement or if there are defects or deficiencies in the Services that Operator refuses or neglects to repair, in each case after giving effect to and without limiting or diminishing Operator's obligation to cure or repair or correct performance as provided in this Agreement or reducing Operator's warranty obligations under Article 11, and Operator fails within thirty (30) days after receipt of written notice from Concessionaire to commence and continue correction of such default, neglect, defect or deficiency with diligence and promptness, Concessionaire may, without prejudice to any other remedy Concessionaire may have, correct same or retain a third party to cause such correction to be made in accordance with this Agreement. In the event Concessionaire exercises its rights hereunder, Operator shall reimburse Concessionaire the reasonable, documented, out-of pocket costs of correcting such default, neglect, defect or deficiency, including costs of retaining any third party to perform such correction. Concessionaire's rights of set-off under Section 26.18 expressly apply to any amounts not timely paid to Concessionaire under this Section 3.32. If the payments then or thereafter due Operator are not sufficient to cover such amount, Operator shall pay the difference to Concessionaire within thirty (30) days after Concessionaire issues an invoice for such amount together with supporting documentation. Nothing herein shall be deemed to preclude Concessionaire from retaining a third-party operator at its own cost to undertake any re-performance, repair, replacement or other performance of warranty claims hereunder. Operator shall not impair the performance by Concessionaire of its obligations under the Concession Agreement and the other Project Agreements.

3.33 Interface Agreement.

On or prior to the Agreement Date, Operator shall execute and deliver the Interface Agreement in substantially the form attached hereto as Exhibit H. The execution and delivery by each Party and the Design-Build Contractor of the Interface Agreement shall be a condition precedent to the other Party's obligations under this Agreement.

ARTICLE 4

SUBCONTRACTS

4.1 Project Subcontractors.

Subject to this Article 4, Operator may enter into Subcontracts for discrete portions of the Services, but may not subcontract the entire Services. Operator shall employ the Material O&M Subcontractors for the performance of the Services specified in Exhibit C attached hereto; *provided* that Operator shall not replace any Material O&M Subcontractor without the prior written approval of Concessionaire, which approval shall be subject to and contingent on receipt of RTD's prior approval pursuant to Section 29.4 of the Concession Agreement. Other than the Material O&M Subcontractors, Operator shall not subcontract for the performance of any portion of the Services (other than Subcontracts for services for or in connection with employee benefits, payroll, insurance and other services related to employee wages and benefits) with any other Subcontractor under a Subcontract requiring the payment of more than $3,000,000 in any year unless Operator has first provided a written notice to Concessionaire identifying the proposed Subcontractor and describing the proposed scope of Services to be provided by the Subcontractor. If Concessionaire notifies Operator within fifteen (15) days that it objects to the use of such Subcontractor and provides a reasonably detailed explanation of the basis of such objection, then Operator shall reasonably consider Concessionaire's objections and, if Operator elects to proceed with such Subcontractor despite Concessionaire's objections, shall provide Concessionaire with a reasonably detailed explanation of its determination addressing Concessionaire's objections. Promptly upon request by Concessionaire, Operator shall provide to Concessionaire or (if directed by Concessionaire) RTD copies of all Subcontracts entered into with any Material O&M Subcontractor in connection with the carrying out of the Services within a reasonable period of time of each such Subcontract being entered into. Operator is liable for its obligations under this Agreement, and Operator shall not be relieved of any of its obligations or liabilities under this Agreement by reason of any Subcontract, and Operator shall remain responsible to Concessionaire for the acts, omissions, defaults and negligence of any Subcontractor and such Subcontractor's representatives in connection with such Subcontractor's performance or non-performance of its obligations under the applicable Subcontract. RTD shall not in any way be liable to Operator or any Subcontractor or be in any way bound by the terms of this Agreement or any Subcontract. Neither the provision of consent by Concessionaire (or by RTD if such consent is required under the Concession Agreement) to the appointment of any Subcontractor nor the review or approval of the terms of any Subcontract (or, in each case, of any amendment, modification, variation or waiver thereof) will relieve Operator of any of its

obligations, liabilities or responsibilities under this Agreement nor render RTD or Concessionaire in any way liable to any Subcontractor.

4.2 Required Subcontract Provisions.

4.2.1 Each Subcontract shall include (i) the required terms set forth in Section 29.4(g) of the Concession Agreement, (ii) a requirement that the Subcontractor's performance be in accordance with the O&M Standards and be free of the Subcontractor's negligence and willful misconduct, (iii) a requirement for appropriate quality control and assurance practices and procedures, (iv) warranty and breach of warranty provisions no less stringent than those applicable to Operator under this Agreement, (v) a requirement that the Subcontractor carry appropriate insurance coverages, (vi) a requirement for payment and performance bonds, retainage, or comparable alternative, (vii) a requirement that the Subcontract may be freely assigned to Concessionaire upon the request of Concessionaire following termination of this Agreement or to RTD upon the request of RTD if it exercises its rights described in Section 18.2, and in the event of termination of the Concession Agreement, RTD will be entitled to replace such Subcontract on substantially similar terms as such Subcontract (subject to such amendments as may be necessary to reflect any legal requirements or limitations applicable to RTD) between the applicable Subcontractor and RTD, (viii) a requirement not to act or fail to act in any manner that causes or is reasonably likely to cause Concessionaire to breach its obligations under any of the Contract Documents and (ix) a requirement that the Subcontractor provide information and prepare notices, reports and other documents in a timely manner and within such time periods as requested by Operator to enable Concessionaire to comply with its obligations under the Contract Documents. Operator shall monitor and enforce compliance by each Subcontractor with the requirements set forth in Section 29.4(g) of the Concession Agreement, and Concessionaire shall be entitled to require Operator to, if necessary, remove and replace any Subcontractor (or any of its respective personnel) to the extent such Subcontractor does not comply with the requirements set forth in Section 29.4(g) of the Concession Agreement. In addition, Operator shall use Reasonable Efforts to cause all Subcontracts to be assignable to the Financing Parties.

4.3 Delivery of Material Subcontracts; List of Personnel.

4.3.1 Operator shall provide to Concessionaire promptly after execution thereof true and complete copies of all Subcontracts entered into with any Material O&M Subcontractor in connection with the performance of the Services.

4.3.2 Operator shall, at least sixty-five (65) days before the anticipated Revenue Service Commencement Date for each Commuter Rail Service, provide Concessionaire with a list of the members of the personnel of Operator and any Material Subcontractor holding managerial or supervisory positions and their respective qualifications. Operator shall ensure that such list will be updated as and when changes to personnel are made or as required by Concessionaire.

4.3.3 Operator shall be responsible for all payments, and any other liabilities, to its Subcontractors, and Concessionaire shall have no responsibility for such amounts.

ARTICLE 5

OPERATOR COMPENSATION

5.1 Payment for Pre-Operations Services.

As consideration to Operator for the full and complete performance of the Pre-Operations Services in accordance with the terms hereof and all costs incurred in connection therewith, starting with the full or partial month in which Operator commences performance of the Pre-Operations Services, Operator shall become entitled to payment of a monthly fee determined in accordance with Part 1 (*Pre-Operations Fees*) of Exhibit I attached hereto (the "Pre-Operations Fees"); *provided*, that if the Phase 2 Work Commencement Date occurs under the Design-Build Contract, then the amount of the Pre-Operations fees shall be adjusted by an amount equal to 1.5% of any adjustments to the Maximum Annual Phase 1 and Phase 2 Construction Payment Amounts (as defined in the Concession Agreement) made for indexed inflation pursuant to the formulas set forth in Attachment 8(d) to the Concession Agreement) from March 2010 until the Phase 2 Work Commencement Date; *provided, further,* that Concessionaire shall not be liable under any circumstance for the payment of amounts in excess of the Pre-Operations Fees except to the extent Concessionaire has received any increased amounts in RTD Construction Payments from RTD that are allocable to the payment of Pre-Operations Services; *provided*, *further* that with respect to any portion of the Pre-Operations Fees which will be paid through RTD Construction Payments, Operator is entitled to the payment of such Pre-Operations Fees only to the extent and at such times that Concessionaire has first received such RTD Construction Payments from RTD under the Concession Agreement.

5.2 Monthly Operator's Fee.

5.2.1 As consideration to Operator for the full and complete performance of the Services (other than the Pre-Operations Services) in accordance with the terms hereof and all costs incurred in connection therewith, for each calendar month in which the Services have been rendered, starting with the full or partial month in which the first Revenue Service Commencement Date occurs, Operator shall become entitled to payment of the Monthly Operator's Fee in an amount calculated in accordance with the methodologies set forth in Part 2 (*Operator's Fees*) of Exhibit I, pro-rated in the case of any partial calendar month for Services performed; *provided* that, notwithstanding anything in this Agreement to the contrary except Section 5.11, Operator is entitled to the payment of any Monthly Operator's Fee unless and only to the extent that Concessionaire has first received from RTD under the Concession Agreement the corresponding Service Payment (or the portion thereof corresponding to such Monthly Operator's Fee) applicable to the corresponding Services performed by Operator. The parties acknowledge that under the Concession Agreement, RTD may elect to defer commencement of operations for any Commuter Rail Project notwithstanding the satisfaction of the Revenue Service Commencement Requirements for such Commuter Rail Project on a prior date. In such event, the Service Payments will not be reduced to reflect any impact to the Availability Ratio or the accrual of any Performance Deductions arising solely as a result of the deferral of

commencement of operations by RTD, and Operator shall be entitled to receive corresponding payments of the Monthly Operator's Fee with no such reductions.

5.2.2 Monthly Operator's Fee Payments. Subject to Section 5.2.4, the undisputed portion of each Monthly Operator's Fee shall be paid by Concessionaire to Operator within five (5) Business Days after (and only to the extent of) the actual receipt by Concessionaire of the corresponding monthly Service Payment (or a portion thereof corresponding to such Monthly Operator's Fee) with respect to the calendar month for which Operator has submitted an invoice pursuant to Section 5.1.3.

5.2.3 Operator's Invoice. Operator shall submit an invoice for the payment of each Monthly Operator's Fee, as set forth in this Section 5.2.3. By not later than the twenty-fifth (25th) day following the last day of each calendar month beginning with the month during which the first Revenue Service Commencement Date occurs, Operator shall submit an invoice to Concessionaire for the Monthly Operator's Fee in respect of such month, in the form attached hereto as Annex 1 (*Form of Operator Invoice*) to Exhibit I. Each such invoice shall be submitted with all required information completed and accompanied by such supporting documents as Concessionaire may reasonably request (or as requested by RTD of Concessionaire), including a copy of the Monthly Operating Report for such month. Any dispute relating to the payment of any amount of the Monthly Operator's Fee claimed by Operator in its invoice will be resolved in accordance with the Dispute Resolution Procedures.

Each invoice shall also be accompanied by a certification by an Authorized Representative of Operator as to the following: (A) the representations and warranties of Operator in Article 24 are true and correct in all material respects as at the date of the invoice, (B) whether there are any notices and/or claims of any kind whatsoever filed relating to the Project, any outstanding Operator Events of Default or any event or circumstance which is likely, with the passage of time, the giving of notice, or both, to constitute or give rise to any such notices and/or claims or an Operator Event of Default, (C) all accounts payable or reimbursable by Operator for labor, materials and other services in connection with the Services performed during the month to which the invoice relates have been paid or reimbursed in full as of the date of the invoice or will be paid or reimbursed in full by Operator in accordance with Operator's ordinary business practices relating to the payment or reimbursement of accounts payable, (D) any adjustments to reflect previous over-payments and/or under-payments and (E) any other amount due and payable from Operator to Concessionaire or from Concessionaire to Operator under this Agreement. Any interest payable in respect of any amounts owed shall be set forth and submitted in a separate invoice. Concessionaire shall return invoices that are incomplete in any material respect to Operator for correction and resubmission.

5.2.4 Operator acknowledges and agrees that the Service Payments will be the sole source of funds that will be used to pay Operator the Monthly Operator's Fees. Without limiting the proviso in Section 5.2.1, Operator also acknowledges and agrees that the aggregate Monthly Operator's Fees and Renewal Work Payments payable in any given calendar year during the Operating Period shall not exceed the corresponding maximum fixed amounts for that year, (adjusted for inflation based on the same methodology applied to the corresponding Service Payments) set forth in the table set forth in Part 2 (*Operator's Fees*) of Exhibit I. The Monthly Operator's Fees are not subject to adjustment (upward or downward) for any reason (i) other

than as provided in Part 2 (*Operator's Fees*) of Exhibit I, or (ii) unless there is a corresponding adjustment to the corresponding Service Payment (or portion thereof corresponding to such Monthly Operator's Fee) payable under the Concession Agreement with respect to the applicable Services (and then, only to the extent such adjustment relates to the performance of the Services by Operator and is reflected in a Modification agreed by the Parties under this Agreement), including, without limitation, any adjustments to Service Payments pursuant to an RTD Proposed Change under Section 13.3.4 to adjust for fluctuations in Passenger ridership of the Commuter Rail Services.

5.2.5 Except as otherwise expressly provided in this Agreement, the Concession Agreement or by applicable Law, any and all costs and expenses incurred by Operator for and in respect of the Services in excess of the maximum amounts set forth in the table set forth in Part 2 (*Operator's Fees*) of Exhibit I shall be for the sole and exclusive account of, and shall be borne by, Operator, and Concessionaire shall have no liability or obligation with respect thereto.

5.2.6 Operator agrees that any failure of Concessionaire to pay the Monthly Operator's Fee due to Operator under this Agreement shall not constitute a breach or default by Concessionaire to the extent resulting from the failure by RTD to make the corresponding Service Payments (or portion thereof corresponding to such Monthly Operator's Fee) available to Operator at the time and in the amounts set forth in the Concession Agreement where such failure does not result from a Concessionaire-Caused Event; *provided*, *however*, that in such event, Operator shall have the right to require Concessionaire to deliver to RTD the termination notices referred to in Section 41.5 of the Concession Agreement and, absent a cure of the failure to pay by RTD, terminate the Concession Agreement in accordance with its terms. For the avoidance of doubt, Concessionaire may elect to make direct payment to Operator the amounts which RTD has failed to pay, in which case Operator's rights as described in the preceding proviso shall not apply and Operator shall continue performance of its obligations under this Agreement.

5.2.7 Operator shall be entitled to relief to the extent provided in an RTD Proposed Change resulting from the suspension of Services for failure of RTD to appropriate for Service Payments as described in Section 16.2.2. Concessionaire agrees to pursue all rights it may have under the Concession Agreement as a result of such failure by RTD and to provide Operator with the benefit of any relief obtained by Concessionaire thereunder (which relief shall not exceed the maximum amount of the Monthly Operator's Fees payable as set forth in Part 2 (*Operator's Fees*) to Exhibit I, together with interest on any overdue amount, but only to the extent and at the rate paid by RTD on the corresponding portion of the overdue Service Payment).

5.3 Renewal Work Payments.

5.3.1 The Parties acknowledge that Operator has delivered to Concessionaire a budget for Renewal Work costs (expressed in 2010 dollars) and a schedule for each element of Renewal Work to be completed in accordance with this Agreement during the

Operating Period, including all Renewal Work relating to handover obligations, a copy of which is attached as Exhibit J (the "Renewal Work Budget and Schedule").

5.3.2 Operator shall establish (and thereafter administer subject to the provisions of this Agreement) a "Renewal Work Account" on or prior to the date occurring one (1) month prior to the first scheduled element of Renewal Work to be performed in accordance with the Renewal Work Budget and Schedule. Thereafter, no later than 10 days before the last day of each calendar month during the Operating Period, Operator shall submit an invoice for the fixed amount set out in the Renewal Work Budget and Schedule for that calendar month. Concessionaire shall pay the sum so invoiced (which invoiced sum may be adjusted (i) to reflect any Modification to the Renewal Work Budget and Schedule resulting from amendments to the calculation of Service Payments pursuant to the partnering process described in Section 21.4 and (ii) pursuant to the last paragraph of Section 5.5.1) any adjustments within 45 days of the date of the invoice into the Renewal Work Account, each such payment being a "Renewal Work Payment". Notwithstanding the foregoing, Concessionaire shall not be obligated to make such payments unless (and then only to the extent) it has received Service Payments (or portions thereof corresponding to such Renewal Work Payment) from RTD. Subject to Section 5.5.3, Operator is required to use funds in the Renewal Work Account for Renewal Work only and, if reasonably requested by Concessionaire, shall provide such evidence as is reasonably necessary to demonstrate that it is so using such funds.

5.3.3 Operator shall perform Renewal Work substantially in accordance with the then-current Forecast Renewal Work Schedule, and in all events with the requirements of this Agreement, including Sections 3.4 and 3.24.

5.3.4 Operator acknowledges and agrees that the aggregate Renewal Work Payments to be paid into the Renewal Work Account constitutes full payment for the performance of all Renewal Work under this Agreement, and that the Service Payments will be the sole source of funding for Renewal Work Payments. The parties agree that the Renewal Work Payments are not subject to adjustment in amount (upward or downward) or timing of payment from the corresponding amounts and payment schedule set out in the Renewal Work Budget and Schedule for any reason unless there is a corresponding adjustment to the relevant Service Payment (or portion thereof corresponding to such Renewal Work Payment) payable under the Concession Agreement with respect to the applicable Services (and then, only to the extent such adjustment relates to the performance of the Services by Operator and is reflected in a Modification agreed by the Parties under this Agreement). In the event the Renewal Work Payments are not sufficient to cover the Renewal Work costs as incurred or Renewal Work is performed at times other than as scheduled in the Renewal Work Budget and Schedule, Operator shall be liable to provide all required capital necessary to pay the Renewal Work costs as incurred and, except as expressly provided for in this Agreement, Operator will not be entitled to be reimbursed for additional costs from Concessionaire.

5.3.5 Operator agrees that any failure of Concessionaire to pay any Renewal Work Payment due to Operator under this Agreement shall not constitute a breach or default by Concessionaire to the extent resulting from the failure by RTD to make Service Payments (or portion thereof corresponding to such Renewal Work Payment) available to Concessionaire at the time and in the amounts set forth in the Concession Agreement; *provided*,

however, that Operator shall be entitled to relief to the extent provided in an RTD Proposed Change resulting from the suspension of Services for failure of RTD to cause appropriation for Service Payments as described in Section 16.2.2. Concessionaire agrees to pursue all rights it may have under the Concession Agreement as a result of such failure by RTD and to provide Operator with the benefit of any relief obtained by Concessionaire thereunder.

5.3.6 To the extent that there is a defect or deficiency or non-conforming work with respect to Renewal Work, Concessionaire shall have all of its rights and remedies against Operator set out in this Agreement or as may otherwise be available to Concessionaire.

5.4 Reconciliation of Forecast Renewal Work Schedule.

By not later than the date that is 60 days before the end of each calendar year during the Operating Period commencing with the calendar year in which the first scheduled element of Renewal Work to be performed in accordance with the Renewal Work Budget and Schedule occurs, Operator shall provide to Concessionaire the Forecast Renewal Work Schedule for the next-succeeding 5 years. The LTA shall be entitled to review the updated Forecast Renewal Work Schedule. In the event that the LTA is of the view that during the next five years: (i) the timing of Renewal Work as set out in the Forecast Renewal Work Schedule is such that it is likely that by following the Forecast Renewal Work Schedule, Operator will not be able to comply with its obligations under Sections 3.4 and 3.24; or (ii) the budget for Renewal Work as set out in the Forecast Renewal Work Schedule is such that it is unlikely that Operator will be able to perform the Renewal Work as set out in the Forecast Renewal Work Schedule within the budget set out therein, it may advise Operator accordingly of changes required to the Forecast Renewal Work Schedule for these purposes. Operator will be obliged to revise the Forecast Renewal Work Schedule to incorporate such changes to the extent that it is agreed or determined pursuant to the Dispute Resolution Procedures that such changes are reasonably required.

5.5 Renewal Works Security for Variance in Forecast Renewal Work Schedule; Withdrawals.

5.5.1 If, as of January 1 of any calendar year during the Operating Period commencing with the year in which the first scheduled element of Renewal Work is to be performed in accordance with the Renewal Work Budget and Schedule, and continuing to and including the year in which all senior indebtedness under any Designated Credit Agreement has been repaid in full, the events described in the following clauses (i), (ii) and (iii) have occurred:

(i) the amount equal to (A) the costs set forth in the Forecast Renewal Work Schedule for such year less (B) the costs set forth in the Renewal Work Budget and Schedule for such year (in then-current dollars) less (C) the amount on deposit in the Renewal Works Account as at January 1 of such year, if a positive number, exceeds the greater of (x) $1,000,000 or (y) ten percent (10%) of the cost of Renewal Works set forth in the Renewal Work Budget and Schedule for such year (in then-current dollars);

(ii) the amount then remaining undrawn in the O&M Letter of Credit less the dollar amount (if a positive number) calculated under clause (i) above is less than an amount equal to 75% of the Required Security Amount then required; and

(iii) the Availability Ratio of any Commuter Rail Service was less than 91% in four or more calendar months in any rolling six-month period in the previous year, or the Performance Deduction Percentage exceeded 2.3% of the Adjustable Base Service Payment for the relevant month in four or more months in any rolling six-month period in the previous year;

then, within ten (10) Business Days, Operator shall procure and provide to Concessionaire an on-demand letter of credit issued by a Qualifying Institution and in a form acceptable to Concessionaire, in a stated amount equal to 100% of the amount calculated in accordance with clause (i) above with respect to such year and with a stated expiration of not earlier than one year from the issuance date (the "Renewal Works Letter of Credit").

For purposes of the calculations to be made pursuant to this Section 5.5.1 and Section 5.5.3, costs initially set forth in the Renewal Work Budget and Schedule expressed in 2010 dollars shall be adjusted upward or downward by the same percentage change in the "Base Annual Service Payment" under Part G of Attachment 11 to the Concession Agreement from the Base Date (as defined therein) to Year N.

5.5.2 The Renewal Works Letter of Credit shall secure Operator's full and timely payment and performance with respect to Renewal Works under this Agreement; *provided* that Concessionaire shall be entitled to draw on any Renewal Works Letter of Credit which amounts drawn shall be dedicated to the payment for the performance of Renewal Works (except to the extent otherwise required by any Designated Credit Agreements) only to the extent Operator has failed to implement the relevant Renewal Works in the applicable year in accordance with the most recent Forecast Renewal Work Schedule. If the performance of any Renewal Works has been deferred from the most recent Forecast Renewal Work Schedule by not more than one (1) year with the prior written approval of Concessionaire and the LTA, then to the extent such Renewal Works is not timely completed taking into account such deferral period, Concessionaire shall be entitled to draw on the Renewal Works Letter of Credit to pay for the performance of such Renewal Works only upon the expiration of such deferral period (which in no event shall exceed one (1) year). The Renewal Works Letter of Credit shall provide that in the event of any failure to make any such payment, the Qualifying Institution issuing the Renewal Works Letter of Credit shall pay the same in an amount not exceeding the sum specified in the Renewal Works Letter of Credit, together with the Late Payment Rate. For so long as Operator is obligated to maintain any Renewal Works Letter of Credit, in the event: (i) the issuer of the Renewal Works Letter of Credit shall fail to meet the requirements of a Qualifying Institution, or (ii) an issuer of the Renewal Works Letter of Credit shall fail to honor the beneficiary's properly documented request to draw thereon, in each case, within five (5) Business Days thereafter, Operator shall provide a substitute letter of credit from a Qualifying Institution other than the issuer that has been downgraded or failed to honor the outstanding Renewal Works Letter of Credit. If Concessionaire (or the trustee or agent for the Financing Parties, as applicable) does not receive a replacement Renewal Works Letter of Credit from a Qualifying Institution within the time specified in the preceding sentence, it may draw on the full available amount of the Renewal Works Letter of Credit. Amounts drawn in such circumstances

shall be held directly by Concessionaire (or the trustee or agent for the Financing Parties, as applicable) and shall be available to be applied by Concessionaire or the trustee or agent for the Financing Parties, as applicable, under the conditions set forth in the Renewal Works Letter of Credit. In all cases, the costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing or otherwise administering Renewal Works Letters of Credit shall be borne by Operator.

5.5.3 So long as no Operator Event of Default (or a default which with the passage of time, or the giving of notice, or both, will become an Operator Event of Default) has occurred and is continuing and Operator is not subject to increased review and monitoring by Concessionaire pursuant to Section 3.7.1, on the final Business Day of each year during the Operating Period, Operator may withdraw funds from the Renewal Work Account without having to expend such withdrawn funds on Renewal Work, but solely to the extent that, at least three (3) Business Days prior to such proposed withdrawal, Operator has provided calculations to Concessionaire and the LTA demonstrating that as of such date, amounts to be paid to Operator over the next five years for Renewal Work pursuant to the Renewal Work Budget and Schedule (as calculated using the adjustment factor set forth in the final paragraph of Section 5.5.1 above and as may have been adjusted to reflect any Modification to Exhibit I (*Operator's Fee*) resulting from amendments to the calculation of Service Payments pursuant to the partnering process described in Section 21.4), plus funds remaining in the Renewal Account following any withdrawal under this Section 5.5.3 is sufficient to meet expenditures anticipated by the then-current Forecast Renewal Work Schedule, and the LTA has not reasonably objected to such calculations.

5.5.4 Operator shall enter into an account control agreement with Concessionaire in the form of Exhibit K pursuant to which Concessionaire shall hold a first priority security interest in amounts held in the Renewal Work Account. Concessionaire is entitled to give notice transferring control of the Renewal Work Account under such account control agreement following the occurrence and continuance of an Operator Event of Default (or a default which with the passage of time, or the giving of notice, or both, will become an Operator Event of Default). For the avoidance of doubt, unless this Agreement is terminated in accordance with its terms, funds deposited into the Renewal Work Account shall continue to be applied pursuant to Section 5.3. Concessionaire shall rescind the transfer control notice if the applicable Operator Event of Default is cured prior to the termination of this Agreement or if the applicable default which with the passage of time, or the giving of notice, or both, will become an Operator Event of Default is cured prior to its maturing into an Operator Event of Default.

5.6 Conditions to Payment of Monthly Operator's Fee and Renewal Work Payments.

Concessionaire may withhold the payment of all or part of any Monthly Operator's Fee or Renewal Work Payments (but not in excess of the amount necessary to fully protect Concessionaire related to the event, which shall be deemed to be the entire amount of the Scheduled Payment in the case of Sections 5.6.1, 5.6.2, 5.6.6 and 5.6.9), upon the occurrence of any of the following events:

5.6.1 Operator's invoice does not meet the requirements of Section 5.2.3 or Section 5.3.3, as applicable;

5.6.2 Operator has not supplied Concessionaire with the Monthly Operating Report for the month for which an invoice for a Monthly Operator's Fee has been submitted;

5.6.3 one or more third parties have filed a mechanics' lien or similar claim against Concessionaire or the Project or any of the Sites resulting from the actions or inactions of Operator, any Subcontractor, or any person for whom Operator is legally responsible and Operator has not furnished in respect thereof a bond in form, substance and amount reasonably satisfactory to Concessionaire, RTD and the Financing Parties to protect Concessionaire, the Project and the Sites against such liens or claims;

5.6.4 Operator has failed to make timely payments to Subcontractors as required under applicable Subcontracts and applicable Law; *provided*, *however*, that the foregoing shall not apply if Concessionaire has wrongfully withheld payments due to Operator;

5.6.5 Operator fails to pay any amounts owing to Concessionaire under the Contract Documents;

5.6.6 any Operator Event of Default has occurred and is continuing beyond any applicable cure period;

5.6.7 any overpayments have been made by Concessionaire in a previous payment of the Monthly Operator's Fee or Renewal Work Payment;

5.6.8 RTD fails to make any Service Payment (or any portion thereof corresponding to such Monthly Operator's Fee or Renewal Work Payment) that would be used to pay, in whole or in part, such Monthly Operator's Fee or Renewal Work Payment; or

5.6.9 this Agreement is terminated before the Concession Expiry Date, in which event Concessionaire shall not be obligated to make further payments of the Monthly Operator's Fee or other payments except in accordance with Section 5.9 or Section 16.4 hereof, as applicable.

5.7 Deferral of Monthly Operator's Fees or Renewal Work Payments.

Operator shall re-invoice at the next regular invoicing date any of the Monthly Operator's Fee or Renewal Work Payment or portion thereof withheld under Section 5.6 once the cause for such withholding has been removed or resolved, and Concessionaire shall pay such portion of any Monthly Operator's Fee or Renewal Work Payment, other than any portion thereof in dispute, without interest (to the extent interest on the corresponding portion of the Service Payment has been paid by RTD), if all of the conditions to the payment of the Monthly Operator's Fee or Renewal Work Payment, as applicable, have been satisfied. Operator shall continue to perform the Services or the Renewal Work, as the case may be, notwithstanding a withholding by Concessionaire under Section 5.6.

5.8 Set-Off.

Any and all Monthly Operator's Fees and Renewal Work Payments shall be subject to any deductions, set-off or adjustments set out in this Agreement.

5.9 Operator Termination Payments.

5.9.1 Upon a termination of this Agreement pursuant to Section 16.7.1 or Section 16.7.2 hereof, Operator shall be entitled to receive a termination payment (the "Operator Termination Payment 1") equal to the sum of (i) the Monthly Operator's Fees which are due and payable to Operator by Concessionaire for Services performed up to the date of termination and which have not previously been paid to Operator, and (ii) Operator Breakage Costs, but only to the extent the corresponding "Subcontractor Breakage Costs" payable in respect of the "RTD Default Amount" or the "FM Termination Amount" (each as defined in the Concession Agreement), as applicable, (x) are received by Concessionaire from RTD, (y) such amounts are incurred by Operator under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on commercially reasonable terms, and (z) Operator and any relevant Subcontractor have each used its reasonable efforts to mitigate such amounts. Representatives of Concessionaire and Operator shall negotiate in good faith to determine the Monthly Operator's Fees referred to in clause (i) above, and Operator shall document the costs claimed under clause (ii) above to Concessionaire's (and, if applicable, RTD's) reasonable satisfaction. Operator shall submit an invoice to Concessionaire for the Operator Termination Payment 1 with the supporting information and documents referred to above, and Concessionaire shall pay such invoice within thirty (30) days after its receipt of same subject to the provisions of this Section 5.9.1, and unless it disputes certain elements thereof, in which event only the undisputed portion of the Operator Termination Payment 1 need be made within such 30-day period and the dispute over the remainder of the claimed Operator Termination Payment 1 may be submitted to the Dispute Resolution Procedures. The Operator Termination Payment 1 shall be subject to offset for amounts payable by Operator to Concessionaire. As a condition precedent to receiving the Operator Termination Payment 1, Operator shall comply with all the provisions of Section 16.8 or, as to any such provisions that cannot reasonably be satisfied as of the date the Operator Termination Payment 1 would otherwise be payable hereunder, Operator shall be acting in good faith to comply with such provisions. Payment of the Operator Termination Payment 1 shall be the sole and exclusive liability of Concessionaire, and the sole and exclusive remedy of Operator, with respect to termination of this Agreement pursuant to Sections 16.7.1 and 16.7.2. In no event shall Concessionaire have any further liability to Operator in any such event for actual, incidental, consequential or other damages, notwithstanding the actual amount of damages that Operator may have sustained in connection with a termination pursuant to Sections 16.7.1 or 16.7.2. Calculation of the Operator Termination Payment 1 has been agreed upon and fixed hereunder because of the difficulty of ascertaining the exact amount of such damages Operator will actually sustain in the event of a termination of the Services pursuant to Sections 16.7.1 or 16.7.2, and Concessionaire and Operator agree that the calculation of the Operator Termination Payment 1 is reasonable. Operator acknowledges that to the extent any of the Operator Termination Payment 1 are in whole or in part funded by RTD as part of the "RTD Default Amount" or "FM Termination Amount" (each as defined in the Concession Agreement), as applicable,

indefeasible payment by RTD to Concessionaire of such amounts pursuant to the Concession Agreement following an RTD Termination Event or FM Termination Event, as applicable, shall constitute full and final settlement of any Claim against RTD of Operator and any Subcontractor in relation to such RTD Termination Event or FM Termination Event, as applicable, and shall be the sole remedy against RTD in respect of any such termination.

5.9.2 Upon a termination of this Agreement pursuant to Section 16.6 hereof, Operator shall be entitled to receive a termination payment (the "Operator Termination Payment 2") equal to the sum of (i) the Monthly Operator's Fees which are due and payable to Operator by Concessionaire for Services performed up to the date of termination and which have not previously been paid to Operator, and (ii) Operator Breakage Costs. Representatives of Concessionaire and Operator shall negotiate in good faith to determine the Monthly Operator's Fees referred to in clause (i) above, and Operator shall document the costs claimed under clause (ii) above to Concessionaire's reasonable satisfaction. Operator shall submit an invoice to Concessionaire for the Operator Termination Payment 2 with the supporting information and documents referred to above, and Concessionaire shall pay such invoice within thirty (30) days after its receipt of same subject to the provisions of this Section 5.9.2, and unless it disputes certain elements thereof, in which event only the undisputed portion of the Operator Termination Payment 2 need be made within such 30-day period and the dispute over the remainder of the claimed Operator Termination Payment 2 may be submitted to the Dispute Resolution Procedures. The Operator Termination Payment 2 shall be subject to offset for amounts payable by Operator to Concessionaire. As a condition precedent to receiving the Operator Termination Payment 2, Operator shall comply with all the provisions of Section 16.8 or, as to any such provisions that cannot reasonably be satisfied as of the date the Operator Termination Payment 2 would otherwise be payable hereunder, Operator shall be acting in good faith to comply with such provisions. Payment of the Operator Termination Payment 2 shall be the sole and exclusive liability of Concessionaire, and the sole and exclusive remedy of Operator, with respect to termination of this Agreement pursuant to Section 16.6. In no event shall Concessionaire have any further liability to Operator in any such event for actual, incidental, consequential or other damages, notwithstanding the actual amount of damages that Operator may have sustained in connection with a termination pursuant to Section 16.6. Calculation of the Operator Termination Payment 2 has been agreed upon and fixed hereunder because of the difficulty of ascertaining the exact amount of such damages Operator will actually sustain in the event of a termination of the Services pursuant to Sections 16.6, and Concessionaire and Operator agree that the calculation of the Operator Termination Payment 2 is reasonable.

5.10 Payment or Use Not Acceptance.

No payment of the Monthly Operator's Fee or other payment to Operator or any use of the Project by Concessionaire shall alone constitute an acceptance of any of the Services or relieve Operator of any of its obligations or liabilities with respect thereto.

5.11 Relation to RTD Payments.

No undisputed payment required to be paid by Concessionaire to Operator under this Agreement shall be contingent upon or withheld, delayed or reduced on account of Concessionaire's failure to receive any payment from RTD under the Concession Agreement to the extent (1) the Concession Agreement or applicable Law does not provide or allow for Concessionaire to seek a corresponding payment due from RTD, (2) any withholding, delay or reduction of RTD's payment to Concessionaire is due to a Concessionaire-Caused Event, or (3) the payment owing to Operator is for a Modification requested by Concessionaire, but not requested or required of Concessionaire by RTD.

5.12 Taxes.

Solely as between Concessionaire and Operator (and without affecting any right to seek payment or reimbursement therefor under the Concession Agreement, which Concessionaire hereby agrees to pursue at Operator's request to the extent so provided in the Concession Agreement), Operator shall administer and pay all sales and use taxes, gross receipts, customs duty, import duty and other taxes and contributions imposed by any taxing authority upon the sale, purchase or use of materials, supplies, equipment, software, services or labor incorporated in the Project or used in the Services, as well as taxes measured by Operator's receipts hereunder or measured by wages earned by employees of Operator or any Subcontractor (collectively, "Taxes"), and shall furnish to the appropriate taxing authorities all required information and reports in connection with such Taxes and promptly furnish to the appropriate taxing authorities all required information and reports in connection with such Taxes. For the avoidance of doubt, but without limiting Concessionaire's rights to relief therefrom under the Concession Agreement, Concessionaire shall be solely responsible for and shall pay all real property taxes imposed on the Sites, all ad valorem taxes or possessory interest property taxes imposed under the laws of the State of Colorado on Concessionaire's leasehold interest under the Concession Agreement or personal property taxes on the Eagle Project and all income taxes imposed on Concessionaire's operations.

5.13 Guaranty.

Operator shall cause each of the Guarantors to execute and deliver a guaranty in favor of Concessionaire, in the form of Exhibit L-1 and Exhibit L-2 hereto, as applicable, as security for all obligations of Operator hereunder. Such guaranty must be provided by no later than the Agreement Date.

5.14 O&M Security.

5.14.1 As security for the full and timely performance of its obligations hereunder, Operator shall provide to Concessionaire, not later than the first Revenue Service Commencement Date to occur (or, if earlier, within ten (10) days after the occurrence of a Credit Event), an on-demand letter of credit in the Required Security Amount in substantially the form of Exhibit M attached hereto, issued by a Qualifying Institution (the "O&M Letter of Credit").

The amount of the O&M Letter of Credit shall be adjusted each year during the Term to equal the Required Security Amount applicable during such year, and Operator shall cause the O&M Letter of Credit to be amended or replaced to reflect such adjustment within 30 days after the publication of the Inflation Factor for the immediately preceding year. Upon (i) the last Final Completion Date for a Commuter Rail Service to occur and (ii) the end of the last Warranty Period to expire, the O&M Letter of Credit shall be replenished, to the extent previously drawn, to an amount equal to the then applicable Required Security Amount.

5.14.2 Concessionaire shall be named as beneficiary under the O&M Letter of Credit, but Concessionaire may assign its rights thereunder to the agent or trustee for the Financing Parties as collateral security for its obligations under the Designated Credit Agreemetns. Operator shall not commence or permit the commencement of the Services until Operator obtains the O&M Letter of Credit and delivers the original thereof to Concessionaire.

5.14.3 The O&M Letter of Credit shall secure payment by Operator of all sums to Concessionaire (including any Losses) owed under this Agreement, and to Operator's Subcontractors, and payment by any Subcontractor to its lower-tier Subcontractors, and shall secure Operator's full and timely performance under this Agreement. The O&M Letter of Credit shall provide that in the event of any failure to make any such payment, draws under the O&M Letter of Credit may include interest thereon accruing at the Late Payment Rate.

5.14.4 Operator shall be required to maintain the O&M Letter of Credit until the end of the 25th calendar year following the year in which the Operating Period has commenced. Thereafter, subject to the repayment in full of all senior indebtedness under any Designated Credit Agreement, Operator shall either (i) replace the O&M Letter of Credit with a performance bond in a form substantially similar to the form of the Construction Security (as defined in the Concession Agreement) issued by a Qualifying Insurer in a penal amount no less than 50% of the Required Security Amount or (ii) renew or replace the outstanding O&M Letter of Credit with one or more replacement letters of credit complying with the requirements set forth in Section 5.14.1 in a face amount equal to 50% of the Required Security Amount. Such replacement bond or renewed or replacement letter of credit (the "Replacement O&M Security") shall be maintained until the later of (i) six months after the End Date and (ii) such date on which Operator has completed all of its obligations under this Agreement to Concessionaire's satisfaction. The O&M Letter of Credit and the Replacement O&M Security shall include a provision stating that it covers and guarantees the performance by Operator of the warranty provided in Article 11. If any warranty claims remain unresolved as of the date the O&M Letter of Credit or Replacement O&M Security, as applicable, is otherwise permitted to expire pursuant to the first sentence of this Section, Operator shall cause the O&M Letter of Credit or the Replacement O&M Security, as applicable, to remain in effect through the date of resolution of such warranty claims; *provided* that the amount of the O&M Letter of Credit or the Replacement O&M Security, as applicable, shall be reduced to an amount equal to 150% of the cost reasonably estimated by Concessionaire to correct such warranty claims.

5.14.5 For so long as Operator is obligated to maintain the O&M Letter of Credit, not later than thirty (30) days prior to the stated expiration date of the O&M Letter of Credit, Operator shall renew, or cause the renewal of, the outstanding O&M Letter of Credit, or replace, or cause the replacement of, such O&M Letter of Credit with one or more replacement

letters of credit from a Qualifying Institution and having a stated amount equal to that of the O&M Letter of Credit being renewed or replaced (as reduced by the amounts of any draws thereon by Concessionaire). For so long as Operator is obligated to maintain the O&M Letter of Credit, in the event: (i) the issuer of the O&M Letter of Credit shall fail to meet the requirements of a Qualifying Institution, or (ii) an issuer of the O&M Letter of Credit shall fail to honor the beneficiary's properly documented request to draw thereon, within ten (10) Business Days thereafter, Operator shall provide a substitute letter of credit from a Qualifying Institution other than the issuer that has been downgraded or failed to honor the outstanding O&M Letter of Credit. If Concessionaire (or the trustee or agent for the Financing Parties, as applicable) does not receive a replacement O&M Letter of Credit from a Qualifying Institution within the time specified in either of the two preceding sentences, it may draw on the full available amount of the O&M Letter of Credit. In addition, if, in the event of Operator's bankruptcy or insolvency, Concessionaire is precluded by bankruptcy law or other applicable Law from presenting any required demand to Operator, Concessionaire (or the trustee of agent for the Financing Parties, as applicable) may draw on the O&M Letter of Credit without making a prior demand on, or taking any other action with respect to, Operator. Amounts drawn in such circumstances shall be held directly by Concessionaire (or the trustee or agent for the Financing Parties, as applicable) and shall be available to be applied by Concessionaire or the trustee or agent for the Financing Parties, as applicable, under the conditions set forth in the O&M Letter of Credit. In all cases, the costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing or otherwise administering the O&M Letter of Credit shall be borne by Operator.

ARTICLE 6

CONCESSIONAIRE'S OBLIGATIONS

6.1 Representatives.

Concessionaire shall designate a representative (the "Concessionaire's Project Manager") to administer this Agreement on behalf of Concessionaire. Concessionaire's Project Manager shall have the authority to issue Concessionaire's instructions and other communications to Operator, and otherwise act for and on behalf of Concessionaire on certain matters concerning the day-to-day operation of the Project and, subject to receipt of all necessary internal approvals, to bind Concessionaire in relation to any Modification or any other amendment, supplement or waiver to this Agreement.

Concessionaire's Project Manager shall be the recipient of notices and other written communications from Operator under this Agreement and the other Contract Documents. In furtherance of his/her responsibilities described hereunder, Concessionaire's Project Manager may conduct observations and inspections of the Project during operations and maintenance thereof, *provided* that no such observations or inspections shall relieve Operator of any of its obligations under the Contract Documents. Concessionaire shall also designate a representative to observe the Services ("Concessionaire's Field Representative") and to have such other authority as may be expressly delegated in writing by Concessionaire's Project Manager, except that Concessionaire's Field Representative shall have no authority to bind Concessionaire in

relation to any Modification or any other amendment, supplement or waiver to this Agreement. Concessionaire's Field Representative shall have the right to be present at the Sites at all times, to occupy the field office of Concessionaire at the Sites and to participate in all Project status meetings conducted by Operator. Concessionaire's Field Representative shall have the right to observe and inspect the progress of the operations and maintenance of the Project, and may offer advice to Operator about the conformance of the Services with the Contract Documents. Operator shall notify Concessionaire's Field Representative before commencing any changes to the operations or maintenance of the Project. In the event Concessionaire employs or designates a different Concessionaire's Project Manager or Concessionaire's Field Representative, Concessionaire shall give Operator written notice of the identity of the new Concessionaire's Project Manager or Concessionaire's Field Representative. Concessionaire's Project Manager or Concessionaire's Field Representative may delegate any or all of his/her authority to one or more delegates, but such delegation shall not be effective unless made in a written instrument from him/her delivered to Operator naming the delegate, his/her tenure and the extent of his/her authority. In addition, Concessionaire shall have the right to retain one or more independent consultants to monitor and inspect the Services at the Sites or specific portions of the Services.

6.2 Spares and Initial Inventory.

Concessionaire shall make available to Operator such spare parts and inventory as are turned over to Concessionaire by the Design-Build Contractor pursuant to the Design-Build Contract.

6.3 Payments of Monthly Operator's Fees.

Concessionaire shall make all undisputed payments of the Monthly Operator's Fees due to Operator in accordance with Article 5.

6.4 Notice Under Concession Agreement.

In circumstances other than where Contractor is permitted under the terms of this Agreement to do so directly, Concessionaire shall provide timely notice to RTD of any event in relation to which Operator has provided Concessionaire with equivalent notice hereunder and notice to RTD is required so as not to prejudice Operator's rights hereunder.

6.5 No Amendments Without Operator's Consent.

Concessionaire shall not agree to any modifications of its obligations under the Concession Agreement, any Third Party Agreement or the Design-Build Contract that could adversely affect Operator's rights and obligations under this Agreement or the performance of the Services without Operator's prior consent, not to be unreasonably withheld or delayed.

ARTICLE 7

REGISTERS, PLANS AND REPORTS

7.1 Asset Register.

7.1.1 Concessionaire shall, upon its receipt from the Design-Build Contractor, promptly provide to Operator, and Operator shall review and agree to the contents of, the Asset Register to be compiled and updated by the Design-Build Contractor for all construction work and Concession Equipment for which the Design-Build Contractor was responsible for procuring that are in existence at or shortly prior to the commencement of operations with respect to each Commuter Rail Project and the Commuter Rail Maintenance Facility. No later than three (3) months following the issuance of the Final Completion Certificate for each Commuter Rail Project, Operator will update the relevant Asset Register.

7.1.2 Operator shall keep each Asset Register updated throughout the Lease Period to take account of the work carried out on and other changes to the Concessionaire-operated Components.

7.1.3 Concessionaire shall be entitled, by giving reasonable prior written notice to Operator, to require Operator to provide (and, if directed by Concessionaire, to RTD) reports in a form and within a time period as agreed between the Parties (each acting reasonably) on any aspect of any Asset Register.

7.2 Lease Period Site Register.

7.2.1 From the Revenue Service Commencement Date of each Commuter Rail Project and, in the case of the Commuter Rail Maintenance Facility and the DUS Rail Segment, from the first Revenue Service Commencement Date to occur with respect to a Commuter Rail Project and in each case, until the end of the Lease Period, Operator shall keep, with respect to the relevant Sites, a register (including maps and plans as appropriate) of all parts of such Sites and details of the parts of the Commuter Rail Network thereon (each, a "Lease Period Site Register") and shall ensure that the Lease Period Site Registers are updated throughout the Lease Period to take account of the changes to the area of any Site and any Commuter Rail Project or the Commuter Rail Maintenance Facility.

7.2.2 Concessionaire shall be entitled, by giving reasonable written notice to Operator, to require Operator to provide (and, if directed by Concessionaire, to RTD) reports in a form and within a time period as agreed between the Parties (each acting reasonably) on any aspect of any Lease Period Site Register or to require access to such registers for inspection or copies thereof.

7.2.3 Upon the End Date, in accordance with the Handover and Reinstatement Services Procedures, Operator shall take all action necessary to facilitate the surrender by Concessionaire of each Site to RTD free of charge in compliance with Section 12.6 of the Concession Agreement and at the same time, Operator shall deliver to Concessionaire

(and, if directed by Concessionaire, to RTD) an updated Lease Period Site Register setting out the area of each Site and each part of the Commuter Rail Network thereon as of the End Date.

7.2.4 If (x) any part of any Site is surrendered to RTD as described in Section 3.21.4 or (ii) RTD obtains and provides Vacant Possession and related Rights To Use with respect to any Additional Land as described in Section 3.3.1, the definition of the relevant Site as it is used in this Agreement shall be deemed to be modified to reflect the exclusion of such part of such Site surrendered to RTD or the inclusion of such Additional Land, as the case may be.

7.3 Preparation of Plans.

Operator shall, in coordination with Concessionaire, prepare an Operating Plan, a Quality Management Plan, a Management and Administration Plan, a Rolling Stock Fleet Management Plan, a Rolling Stock, Facility and Infrastructure Maintenance Plan, a Safety and Security Management Plan, a System Safety Program Plan, a System Security Plan (each, as defined in the O&M Specifications) and all other plans, procedures or programs in connection with the performance of the Services, each in compliance with the requirements of the O&M Specifications and Sections 22 and 29 of the Concession Agreement. Each proposed plan, procedure and program shall be submitted to Concessionaire for Concessionaire's Approval no later than ten (10) calendar days prior to the submission deadline required for such item under the Contracts Data Requirements List. Operator shall comply with and monitor and enforce compliance with, and shall ensure that each Subcontractor monitors and complies with, the Quality Management Plan.

7.4 Recording of Passenger Data.

Operator shall measure the number and frequency of Passengers through the Automatic Passenger Counters and keep records of all relevant data. Operator shall set out the Passenger data and related information collected and transferred by the Automatic Passenger Counters in accordance with Section 4.6.3 of Part C (*Rolling Stock Requirements*) of the Design, Construction and Rolling Stock Requirements as requested by RTD from time to time in the Daily Operating Report and the Monthly Operating Report.

7.5 Reports During the Operating Period.

7.5.1 Operator shall submit the following documents to Concessionaire (and, if specified below or otherwise as directed by Concessionaire, to RTD):

(i) by 8:00 am on the day following the day to which it relates, a Daily Operating Report to RTD and Concessionaire;

(ii) on each date an invoice in respect of the Monthly Operator's Fee, is submitted by Operator pursuant to Section 5.2.3, a Monthly Operating Report to RTD and Concessionaire;

(iii) no later than five (5) days following the last day of the period to which the report relates, a Quarterly Operating Report;

(iv) no later than twenty (20) days following the last day of the period to which it relates, a Yearly Operating Report; and

(v) at least thirty (30) days in advance of the date on which RTD is required to submit such information, all reports, documents and information required by RTD in order for RTD to comply with the prevailing reporting requirements of the National Transit Database from time to time.

7.5.2 Failure to submit any report specified in this Section 7.5 shall be a material breach of this Agreement, but such failure shall be considered capable of remedy including following service of a notice of default under Section 16.4.1(xx) by the submission of such report.

7.6 Record Documents.

During the Operating Period, Operator shall update and maintain the Record Documents such that they reflect the current configuration and as-built design of the Commuter Rail Network at all times and from time to time.

ARTICLE 8

ENVIRONMENTAL, HEALTH AND SAFETY MATTERS

8.1 Safety.

8.1.1 General Requirements. Operator shall at all times comply with, and shall ensure that each of the Subcontractors at all times complies with, the Health, Safety and Security Requirements. Operator shall assume responsibility for preparing, implementing and monitoring all safety precautions, plans, procedures and programs required in the Contract Documents to the extent they are related to the performance of the Services. Operator will immediately report in writing any safety-related injury, loss, damage or accident arising from the Services to Concessionaire's Field Representative and, to the extent mandated by Applicable Requirements, to all Governmental Authorities having jurisdiction over safety-related matters involving the Eagle Project or the Services.

8.1.2 No Relief. Operator's responsibility for safety under this Section 8.1 is not intended in any way to relieve Subcontractors of their own contractual and legal obligations and responsibility for: (i) complying with all Applicable Requirements, including those related to health and safety matters; and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, Damages or accidents resulting from their performance of the Services.

8.1.3 Intervention. Notwithstanding anything to the contrary herein, Concessionaire shall have the right to intervene immediately in the performance of the Services or the operation of the Concessionaire-operated Components to prevent, mitigate or eliminate a serious threat or risk to the public health, safety, security or the Environment or otherwise to ensure the safety of the Passengers. Operator acknowledges that Concessionaire may enter into any part of the Concessionaire-operated Components or the Sites for this purpose without need for prior notice to Operator.

8.2 Environmental Requirements; Hazardous Materials.

8.2.1 Environmental Requirements. Operator shall carry out each aspect of the Services and ensure that its Subcontractors performs its obligations, in each case, to fully comply with the Environmental Requirements. Operator shall at all times comply with, and shall ensure that each of its Subcontractors complies with, the Sustainability Plan.

8.2.2 Hazardous Materials.

(i) Operator shall be fully responsible for Operator-Caused Hazardous Materials and for the proper handling, removal, transportation and disposal of such Hazardous Materials in accordance with the Hazardous Materials Removal Process and otherwise in accordance with this Agreement and the Concession Agreement, the Project Requirements, the procedures set out in the Project Management Plan, the Quality Management Plan, the Voluntary Clean-Up Application and Materials Management Plan, Good Industry Practice and the other Environmental Requirements. Notwithstanding anything to the contrary in Section 3.21.3(ii), Operator shall be responsible for both the cost and implementation of all clean-up, remediation, removal, treatment, storage and mitigation of spills or emissions or other environmental conditions as a result of any Operator-Caused Hazardous Materials, and Operator shall not be entitled to seek a Modification for a Relief Event in respect thereof. Operator shall give Concessionaire prompt notice of becoming aware of any spill, emission or other environmental problem caused by Hazardous Materials.

(ii) Hazardous Materials shall be stored and used in accordance with Good Industry Practice, Applicable Requirements, the Project Requirements, this Agreement and the other Contract Documents. Operator shall minimize the use of Hazardous Materials in the operations and maintenance of the Project and shall not utilize, or permit or cause any Subcontractor to utilize, such Hazardous Materials as are prohibited from being imported into the United States or used in the State of Colorado under applicable Laws.

(iii) Operator shall maintain an updated file of all material safety data sheets for all Hazardous Materials used by Operator or any Subcontractor in connection with the performance of the Services and shall deliver an update of such file to Concessionaire no more than ten (10) Business Days after the end of each month. Operator shall maintain an accurate record and current inventory of all Hazardous Materials that are the subject of material safety data sheets, which inventory shall identify quantities, location of storage, use and final disposition. Operator shall implement and administer a Hazardous Materials handling program for all of its employees and all Subcontractors which shall include development of guidelines and

training with respect to the proper handling, use and disposal of Hazardous Materials for which Operator is responsible hereunder and the development, implementation and enforcement of procedures for notification of Concessionaire and appropriate Relevant Authorities about, and clean-up of, spills and other emissions of such Hazardous Materials.

(iv) During the period of any clean-up or mitigation activities, Operator shall continue the Services to the maximum extent possible on unaffected parts of the Project and areas of the Sites. Other than pursuant to Sections 13.6 and 13.8, no Change or Relief Event may be claimed for an Environmental Condition at the Sites.

ARTICLE 9

[RESERVED]

ARTICLE 10

LIABILITY AND DAMAGES

10.1 Limitation of Certain Operator Liabilities.

Notwithstanding anything herein to the contrary, the total liability of Operator in contract, tort, equity or otherwise (including negligence, warranty, strict liability or otherwise) relative to or arising out of this Agreement shall be limited during the Term to an aggregate amount not to exceed the Limitation of Liability; *provided* that the foregoing limitation shall not apply to or include:

(i) the proceeds of insurance, not to exceed amounts required to be maintained by Operator in accordance with the terms of this Agreement;

(ii) costs, liabilities or obligations that arise from Gross Negligence, willful misconduct or actual fraud of Operator;

(iii) costs, liabilities or obligations that arise from Operator's abandonment of the Services or from an Operator Event of Default described in Section 16.4.1(i)-(ii);

(iv) Operator's breach of its obligations in Section 11.4;

(v) Operator's indemnity obligations under Article 14;

(vi) any deductions to any payment of the Monthly Operator's Fee arising from or attributable to any impact to the Availability Ratio or the accrual of Performance Deductions;

(vii) any interest due and payable from Operator to Concessionaire arising from Operator's failure to pay amounts otherwise due under this Agreement;

(viii) Operator's liability under the final sentence of Section 11.1 hereof; or

(ix) Sums paid by Operator to the Design-Build Contractor under the Interface Agreement.

10.2 CONSEQUENTIAL DAMAGES.

NEITHER CONCESSIONAIRE NOR OPERATOR SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING LOSS OF USE, LOSS OF PROFIT OR LOSS OF REVENUE, AND CONCESSIONAIRE AND OPERATOR EACH HEREBY RELEASES THE OTHER AND ITS CONTRACTORS AND AGENTS FROM ANY SUCH LIABILITY. THE FOREGOING EXCLUSION (I) SHALL NOT LIMIT PROCEEDS PAYABLE UNDER THE TERMS OF ANY INSURANCE MAINTAINED PURSUANT TO THE TERMS OF THIS AGREEMENT, PAYABLE; (II) SHALL NOT LIMIT DAMAGES WHICH ARE FINES, PENALTIES OR OTHER CHARGES ASSESSED BY A RELEVANT AUTHORITY; (III) SHALL NOT LIMIT AMOUNTS OF DAMAGES WHICH ARE PAYABLE TO RTD BY CONCESSIONAIRE UNDER THE CONCESSION AGREEMENT FOR WHICH OPERATOR IS LIABLE UNDER THIS AGREEMENT OR WHICH ARE INCLUDED AS PART OF THE ASSESSMENT OF PERFORMANCE DEDUCTIONS; AND (IV) SHALL NOT BE CONSTRUED TO LIMIT RECOVERY UNDER ANY INDEMNITY IN ARTICLE 14 FOR THIRD PARTY CLAIMS FOR DAMAGE TO OR DESTRUCTION OF PROPERTY OF, OR DEATH OF OR BODILY INJURY TO, ANY PERSON.

10.3 Further Limitation of Liability.

THE RELEASES AND LIMITATIONS OF LIABILITY AND THE EXCLUSIONS OF CONSEQUENTIAL DAMAGES SET FORTH IN THIS AGREEMENT SHALL APPLY IRRESPECTIVE OF WHETHER A PARTY OR ANY AFFILIATE THEREOF, OR ANY PARTNER, SHAREHOLDER, OFFICER, DIRECTOR OR EMPLOYEE OF A PARTY OR AN AFFILIATE THEREOF, ASSERTS A THEORY OF LIABILITY IN CONTRACT, TORT, NEGLIGENCE, MISREPRESENTATION (INCLUDING NEGLIGENT MISREPRESENTATION), STRICT LIABILITY OR ANY OTHER THEORY OF LIABILITY.

ARTICLE 11

WARRANTY

11.1 Warranty.

Operator warrants to Concessionaire that, during the Term, the Services shall be performed by qualified personnel, any repair or replacement of parts or components as part of the Services shall be performed in a workmanlike manner using good quality components and materials, respecting the common commuter rail operator industry practices, and the Services will satisfy the O&M Standards, it being agreed that any failure to perform in such manner and in satisfaction of the O&M Standards shall constitute a defect or deficiency under this Section 11.1. Operator shall promptly repair or correct the defects or deficiencies at Operator's expense. If Operator fails to repair and/or replace a defect or deficiency within a reasonable time following Concessionaire's notice of a breach of the warranty, Concessionaire (or RTD pursuant to the Concession Agreement) shall have the right to correct the defect or deficiency, or employ another contractor to correct the deficiency or defect, and perform the Services at Operator's expense. The duties, liabilities and obligations of Operator under this Section 11.1 do not extend to any repairs, adjustments, alterations, replacements or maintenance of parts or components which are required as a result of normal corrosion, erosion, or wear and tear in the operation and maintenance of the Project other than as caused by the negligence of or beach of the Contract Documents by Operator. Commencing from the expiration of the applicable Warranty Period and through the end of the statute of repose period mandated by applicable Law, Operator shall be responsible for all costs and expenses resulting from defects, including latent defects, to the Work (as defined in the Design-Build Contract).

11.2 Assignment of Warranties.

To the extent assignable, Operator hereby assigns to Concessionaire all vendors' and manufacturers' warranties that Operator receives with respect to any parts or materials provided to and used by Operator under this Agreement. If any such warranty is not assignable, Operator shall enforce the warranties on behalf of Concessionaire. Operator shall have the prior right to enforce the warranties of vendors and manufacturers that have been assigned to Concessionaire, whether by Operator hereunder or by the Design-Build Contractor under the Design-Build Contract, to the extent necessary to assure satisfaction of Operator's warranty obligations to Concessionaire under the Contract Documents or to assure performance of the Services hereunder.

11.3 Intellectual Property Warranties.

11.3.1 Operator represents, warrants and guarantees that:

(i) the Operator Content, the Operator Tools, the Proprietary Designs and any Third Party Materials are original to Operator or the Subcontractors, and do not infringe the Intellectual Property Rights or proprietary rights of any third party;

(ii) Concessionaire's or RTD's Use of the Operator Content, the Operator Tools, the Proprietary Designs and any Third Party Materials shall not infringe the Intellectual Property Rights or proprietary rights of any third party (excluding any modification or creation of derivative works by Concessionaire or RTD that constitutes the sole cause of such infringement); and

(iii) the performance by Operator and the Subcontractors (including their respective agents, consultants and Operators) of its responsibilities under, pursuant to, or arising from this Agreement and the other Contract Documents and/or the provision or operation of the Concessionaire-operated Components shall not infringe the Intellectual Property Rights or proprietary rights of each other or any third party.

11.3.2 The representations, warranties and guarantees set out in this Section 11.3 shall survive the expiration or termination of this Agreement.

11.4 No Liens or Encumbrances.

Except where caused by Concessionaire's failure to pay undisputed amounts due Operator hereunder, Operator shall not permit or suffer any liens or encumbrances on the Project or the Sites arising from or in connection with the performance of the Services without the prior written consent of Concessionaire, and in the event of a breach of the foregoing obligation, Operator shall take all action as is necessary to cure the consequences of such breach and fully indemnify, hold harmless and defend Concessionaire and RTD from and against any and all Damages (including reasonable attorney's fees) asserted against, resulting from, imposed upon or incurred by Concessionaire or RTD by reason of or resulting from such breach. Operator warrants and guarantees that title to the Project, any portion or component of the Project, and all Services provided hereunder, shall pass to RTD as provided under Article 17 or Section 16.8.1, as applicable, free and clear of all liens, claims, security interests and other encumbrances (other than inchoate liens provided by applicable Laws to secure payments not yet delinquent), and that none of such Services, materials, supplies or equipment shall be acquired by Operator subject to any agreement under which a security interest or other lien or encumbrance is retained by any Person. Such warranty shall become effective as title to the Project passes to RTD under Article 17 or Section 16.8.1, as applicable, subject to Concessionaire's obligation to pay for such Services in accordance with the Contract Documents.

11.5 No Warranties for Reference Data.

Operator acknowledges that RTD has made available to Concessionaire and Concessionaire has made available to Operator, before the date of this Agreement, certain materials, documents and data related to RTD's operations, the Eagle Project, the Sites, Passenger forecasts and other matters which are or may be relevant to the Eagle Project (collectively, the "Reference Data"). Concessionaire makes no warranties, guarantees or representations as to the Reference Data. Without prejudice to Operator's right to seek a Modification for a Relief Event under Section 13.8 as described below, Operator acknowledges that the Reference Data has been provided to Operator for the convenience of Operator only and none of Concessionaire, RTD, the Project Third Parties, DUSPA, the FTA and their respective

advisors, consultants, contractors, servants and/or agents, shall be liable to Operator or any Subcontractor or their respective affiliates, agents or consultants:

(a) (whether in contract, tort, by statute or otherwise howsoever and whether or not arising out of any negligence on the part of Concessionaire, RTD, the Project Third Parties, DUSPA, the FTA and their respective advisers, consultants, servants, contractors and/or agents) in respect of any inaccuracy, error, omission, lack of fitness for purpose, defect or inadequacy in the Reference Data;

(b) in respect of any failure to disclose or make available to Operator any information, documents or data;

(c) in respect of not keeping the Reference Data up to date; or

(d) in respect of not informing Operator of any inaccuracy, error, omission, lack of fitness for purpose, defect or inadequacy in the Reference Data,

except to the extent that Concessionaire, RTD, the Project Third Parties, DUSPA, the FTA or their respective advisors, consultants, servants, contractors and/or agents, as the case may be, has or have, at the time of disclosure of the Reference Data, willfully misled Operator in respect of the Reference Data in a formal written communication issued and signed by RTD. If Operator has been willfully misled in respect of the Reference Data as described in this Section 11.5, Operator may (as its sole and exclusive remedy) seek a Modification for a Relief Event under Section 13.8 or, solely to the extent Concessionaire or its advisors, consultants, servants, contractors and/or agents willfully misled Contractor, in respect of a Concessionaire-caused Event pursuant to Section 13.9 hereof. Operator acknowledges and confirms that: (i) it has conducted its own analysis and review of the Reference Data to its satisfaction; and (ii) except as and to the extent specifically provided in this Section 11.5 and Section 13.8 (including with respect to any Reference Data identified in the description or necessary to determine the occurrence of any Relief Event), it shall not be entitled to make any claim against RTD, the Project Third Parties, DUSPA, the FTA or Concessionaire and their respective advisers, consultants, servants, contractors and/or agents whether in damages or for extensions of time or additional payments under this Agreement on the grounds of any inaccuracy, error or mistake in the Reference Data or any misunderstanding or misapprehension in respect of the Reference Data, or on the grounds that incorrect or insufficient information relating thereto or to the Sites or the Eagle Project was given to it by any Person, whether or not in the employ of RTD, the Project Third Parties, DUSPA, the FTA and their respective advisers, consultants, servants, contractors and/or agents.

11.6 Performance of Warranty Obligations.

Operator acknowledges and agrees that fulfillment of its warranty obligations under this Article 11 is an integral component of its obligations to perform the Services under this Agreement.

11.7 EXCLUSIVE REMEDIES.

THIS ARTICLE 11, SECTION 16.4 AND SECTION 16.5 HEREOF SET FORTH CONCESSIONAIRE'S EXCLUSIVE REMEDIES AGAINST OPERATOR, AND CONCESSIONAIRE HEREBY WAIVES ALL OTHER REMEDIES REGARDING DEFECTS OR DEFICIENCIES IN THE SERVICES, WHETHER PATENT OR LATENT OR ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR PURSUANT TO OTHER LEGAL THEORY, EXCEPT FOR DEFECTS AND DEFICIENCIES IN THE SERVICES RESULTING FROM THE FRAUD OR DECEIT OF OPERATOR. FOR THE AVOIDANCE OF DOUBT, THE FOREGOING WAIVER SHALL NOT AFFECT OPERATOR'S INDEMNIFICATION OBLIGATIONS UNDER ARTICLE 14 HEREOF OR OPERATOR'S OBLIGATIONS WITH RESPECT TO DEFECTS TO THE WORK PURSUANT TO THE LAST SENTENCE OF SECTION 11.1. OPERATOR MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, RELATING TO THE QUALITY OF THE SERVICES, *PROVIDED*, *HOWEVER*, THAT OPERATOR SHALL CONTINUE TO BE RESPONSIBLE FOR ALL OF ITS OTHER OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING THE OPERATION AND MAINTENANCE OF THE CONCESSIONAIRE-OPERATED COMPONENTS, NOTWITHSTANDING THE PARTIES' AGREEMENT TO EXCLUSIVE REMEDIES FOR BREACH OF WARRANTY UNDER THIS SECTION 11.7.

ARTICLE 12

FORCE MAJEURE

12.1 Excused Performance.

If a Party is prevented from or delayed in performing any of its obligations under this Agreement or the other Contract Documents because of a Force Majeure Event, then that Party (the "Affected Party") will be excused from whatever performance is prevented or delayed, and such Party shall not be liable for any failure to comply, or any delay in complying, with any obligation under this Agreement, in each case, to the extent caused directly by the Force Majeure Event; *provided*, that:

(i) no such excuse may be sought in respect of any obligation to pay any amounts that may become owing under this Agreement from time to time;

(ii) the Affected Party gives the other Party timely notice of such Force Majeure Event and provides the information required in Section 12.2, and otherwise complies with all relevant requirements as set forth in such Section;

(iii) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;

(iv) no default of either Party which arose before the occurrence of the Force Majeure Event causing the suspension of performance shall be excused as a result of the occurrence, but so long as the Affected Party shall have commenced and is diligently continuing

to attempt to cure such default prior to the occurrence of the Force Majeure Event, the cure period (if any) provided in Article 16 with respect to such default shall be extended on a day-for-day basis to the extent a cure actually is prevented as a result of the Force Majeure Event;

(v) the Affected Party (and, if the Affected Party is Operator or its Subcontractors) shall have used Reasonable Efforts to anticipate the effect of such Force Majeure Event and shall exercise Reasonable Efforts to mitigate and/or minimize the consequences of such Force Majeure Event (both in terms of delay and cost), including by minimizing the costs of operation and maintenance (including overhead and variable costs) which are incurred during the continuance of the Force Majeure Event;

(vi) such Force Majeure Event is outside of the Affected Party's control and does not arise from and is not contributed to by any breach by the Affected Party of its obligations under this Agreement or the other Contract Documents or any other neglect, default, act or omission of such Affected Party;

(vii) such Force Majeure Event has arisen notwithstanding the affected Party's complying with its obligations under this Agreement, and in accordance with its obligations under Attachment 9 (*Project and Construction Management*) to the Concession Agreement or the O&M Submittals; and

(viii) the Affected Party shall use Reasonable Efforts to continue to perform its obligations hereunder and to correct or cure the event or condition excusing performance.

12.2 Notification and Determination of Effect of Force Majeure Event.

12.2.1 Operator shall, as soon as practicable (and in any event within eight (8) days after first becoming aware of a Force Majeure Event), provide notice thereof to Concessionaire. Operator shall not be entitled to the relief provided in this Article 12 to the extent of any prejudice caused to Concessionaire if a notice (a copy of which Concessionaire shall forward to RTD two (2) days after receipt) regarding the occurrence of a Force Majeure Event is not submitted within this time period. Such notice shall include: (i) details of the circumstances constituting the Force Majeure Event and its likely duration and consequences (to the extent then reasonably ascertainable) and (ii) the Affected Party's obligations under this Agreement which are delayed or prevented. If and for as long as the Force Majeure Event in question is continuing, Operator shall keep Concessionaire informed of any further information it receives relating to such event or any failure or delay in complying with its obligations under this Agreement.

12.2.2 During a period of fifteen (15) days commencing from the receipt of a Force Majeure Notice by the relevant Party, the Parties will meet to discuss (or otherwise communicate regarding) the Force Majeure Event and its consequences and, to the extent then possible, to determine the most effective way of proceeding with the Affected Party's obligations and with the operation of the Concessionaire-operated Components, and will use all Reasonable Efforts to minimize the adverse effects of the Force Majeure Event.

12.2.3 If the Parties cannot agree on a way of proceeding with the Affected Party's obligations, and with the operation of the Concessionaire-operated Components during such 15-day period, either of the Parties may, within five (5) days following such 15-day period, refer the dispute for resolution in accordance with the expedited dispute resolution procedure set forth in Section 13.15 or, if the Force Majeure Notice is not so contested, both Operator and Concessionaire will be deemed to have accepted the validity of the claim.

12.2.4 If a Force Majeure Event occurs during the Operating Period, Operator shall not suffer any deductions to its Monthly Operator's Fee from any impact to the Availability Ratio or the accrual of Performance Deductions as a result of the Force Majeure Event, where the events giving rise to the Force Majeure Event would, absent, a Force Majeure Event, have caused such impact to the Availability Ratio to arise or such Performance Deductions to accrue, but only to the extent Concessionaire does not suffer any deductions to its Service Payments from any such impact to the Availability Ratio or the accrual of Performance Deductions as a result of the same Force Majeure Event.

12.3 Monthly Operator's Fee Adjustment During Force Majeure Event.

Notwithstanding Section 12.2.4, the Monthly Operator's Fee applicable during the continuation of a Force Majeure Event shall be reduced by an amount equal to the avoidable costs of operation and maintenance which are not being incurred by Operator ("Avoidable Costs") as a result of the Force Majeure Event to the extent RTD reduces the amount of the corresponding Service Payment pursuant to Section 39.5(b) of the Concession Agreement. If Operator disputes any portion of the Avoidable Costs and it is later determined or agreed pursuant to the Dispute Resolution Procedures that Operator is entitled to such disputed portion of Avoidable Costs, Concessionaire shall pay such disputed portion to Operator, but only to the extent the same is received from RTD under the Concession Agreement. For the avoidance of doubt, the Monthly Operator's Fee shall not be increased on account of a Force Majeure Event.

ARTICLE 13

MODIFICATIONS

13.1 Modifications Generally.

Concessionaire is not entitled to remove components from the Scope of Services and award such components or any related work to a Concessionaire Contractor except in the exercise of its other rights and remedies under this Agreement or if required to do so by RTD pursuant to the Concession Agreement. Concessionaire or Operator, as applicable, is entitled to seek a modification to the Scope of Services and/or an adjustment to the Monthly Operator's Fee and/or payment or reimbursement of costs and expenses (each, a "Modification") to account for the impact of any Concessionaire Proposed Change, any RTD Proposed Change, any Change in Law Change and any other Relief Event, any Technical Deviation or any Concessionaire-Caused Event. If Concessionaire or Operator believes a Modification is necessary, it shall proceed as set forth in this Article 13. All Modifications shall be subject to RTD's consent except to the extent

otherwise provided in Section 22.5 of the Concession Agreement and Section 26.8. A Modification shall be effected by the execution by the Parties of an amendment, supplement or waiver, as appropriate, to this Agreement and any attachments hereto, as appropriate. In the event RTD requires modifications to the Contract Documents as a condition of its approval of any Modification, the Parties shall cooperate to effect such modifications.

13.2 Concessionaire Proposed Changes.

13.2.1 Concessionaire shall seek a Modification for any proposed variation to the O&M Specifications. If a Modification is initiated by Concessionaire (such Modification, a "Concessionaire Proposed Change") that Concessionaire determines should apply to the Services, other than changes that constitute a Change in Law which are addressed in Section 13.7, Concessionaire shall give Operator a written "Proposal Request" (hereinafter so called) setting forth in detail the nature of the requested change. Upon receipt of a Proposal Request, Operator shall promptly return to Concessionaire two (2) completed copies of its written "Modification Proposal" (hereinafter so called) setting forth (i) the specific changes which would be required to the Final Project Design, the Design, Construction and Rolling Stock Requirements or the O&M Specifications (as applicable), and full details of how such Proposal Request will impact the Eagle Project; and (ii) the matters referred to in Section 13.3.2(vi)(B)-(I) below.

Each Modification Proposal shall be accompanied by appropriate data reasonably acceptable to Concessionaire supporting the proposed adjustments therein, including but not limited to bids, cost estimates, quotations from suppliers and wage schedules. The Modification Proposal or any information contained therein may be used by Concessionaire to prepare a "Concessionaire Change Report" required to be submitted to RTD under Section 36.1(c) of the Concession Agreement.

13.2.2 If Concessionaire approves Operator's Modification Proposal and RTD's approval thereof is not required under the Concession Agreement, then Concessionaire will issue and Contractor will execute and accept a written Modification in the form attached to this Agreement as Exhibit Q, and the Scope of Services and/or the Monthly Operator's Fee shall be adjusted, and/or costs and expenses shall be paid or reimbursed, as set forth in such Modification. Operator shall implement such Concessionaire Proposed Change as soon as practicable in accordance with Section 13.4. If Concessionaire approves Operator's Modification Proposal and RTD's approval thereof is required under the Concession Agreement, then Concessionaire may submit the same to RTD for approval (which approval may be granted, withheld, or be made subject to such conditions as RTD may at its absolute discretion specify). If RTD approves such Modification Proposal and issues written instructions to proceed with the Concessionaire Proposed Change pursuant to Section 36.1 of the Concession Agreement, then Operator may seek a Modification for a Relief Event under Section 13.8 to implement any agreed adjustments with respect to the Scope of Services and/or the Monthly Operator's Fee or payment or reimbursement of costs and expenses with respect to such Concessionaire Proposed Change. Operator shall implement such Concessionaire Proposed Change as soon as practicable in accordance with Section 13.4. If Concessionaire does not approve Operator's Modification Proposal, Concessionaire may, at its option (i) execute and deliver to Operator a Work Order in

accordance with Section 13.10 in lieu of the Concessionaire Proposed Change; *provided* that either Party may submit the disputed matter to the expedited dispute resolution procedure set forth in Section 13.14, or (ii) withdraw the Concessionaire Proposed Change, in which case Concessionaire shall pay to Operator the reasonable, documented costs incurred by Operator in the preparation of the Modification Proposal.

13.2.3 Operator shall use (and shall cause its Subcontractors to use) all Reasonable Efforts to mitigate costs and changes to the Monthly Operator's Fee as a result of any Concessionaire Proposed Change.

13.2.4 At all times notwithstanding any submission of a Proposal Request, or the ongoing consideration or any dispute regarding a Proposal Request, Operator shall continue to comply without delay with all of its obligations under this Agreement and the other Contract Documents including continuing to perform all other Services.

13.2.5 None of the submission of any Modification Proposal pursuant to this Section 13.2, any approval or refusal by Concessionaire or RTD or the submission of comments or objections by Concessionaire or RTD shall relieve Operator in any way from any of its obligations, liabilities and responsibilities under this Agreement and the other Contract Documents, except to the extent Concessionaire agrees to amend or relieve any such obligation, liability or responsibility pursuant to an approved Modification Proposal.

13.3 RTD Proposed Change.

13.3.1 Generally. The Parties acknowledge that RTD has the right, at any time and from time to time during the Term, to require a Modification (i) to change or alter the O&M Specifications or (ii) to require Concessionaire to operate and maintain any Other RTD Project, to the extent such project constitutes a rail line connected to, or fixtures, facilities or infrastructure incorporated into, the Commuter Rail Network, as an additional element of the Eagle Project (a "Concessionaire-operated Expansion"), in each case by initiating an RTD Proposed Change pursuant to Section 36.3 of the Concession Agreement. If RTD initiates such an RTD Proposed Change, Operator shall, as part of the Services, fulfill the obligations of Concessionaire under the Concession Agreement (other than those in respect of securing funding therefor pursuant to Section 36.4 of the Concession Agreement), with respect to such RTD Proposed Change.

13.3.2 Procedure.

(i) If RTD wishes to initiate at any time during the Operating Period any of the Modifications described in Section 13.3.1, then under the Concession Agreement, RTD is to submit to Concessionaire a written request in respect of such Modification (the "RTD Proposed Change"), which Concessionaire will promptly forward to Operator.

(ii) Within twenty (20) days following Operator's receipt of the RTD Proposed Change, Operator shall provide Concessionaire with a preliminary written response (an "RTD Change Summary") (which Concessionaire may forward to RTD), indicating:

(A) whether it has any objection to carrying out the RTD Proposed Change on the grounds of safety of operation of the relevant Commuter Rail Service or Concessionaire-operated Expansion, and upon what basis it makes such objection;

(B) the estimated not-to-exceed cost to be incurred or, as the case may be, saved by Operator in implementing the RTD Proposed Change, which not to exceed cost shall be estimated by reference to the same criteria as are required to be used to determine the additional costs in the RTD Change Report (as defined below in this Section 13.3.2(vi));

(C) the expected not-to-exceed impact of the RTD Proposed Change on operation and maintenance activities, estimated on a fixed time basis, and the method by which Operator has projected such expected impact; and

(D) preliminary identification or estimates of any other information to be included in the RTD Change Report, to the extent reasonably identifiable or estimable under the circumstances and as reasonably requested by RTD;

in each case, in substance sufficient to allow for implementation of the RTD Proposed Change on the basis of the RTD Change Summary as provided in Section 13.3.2(ii).

(iii) No later than fifteen (15) days following receipt of an RTD Change Summary, RTD is to provide Concessionaire with an "RTD Change Summary Notice" in accordance with Section 36.3(c) of the Concession Agreement, which notice Concessionaire shall promptly forward to Operator.

(iv) Operator acknowledges that RTD may instruct Concessionaire, by including such instruction in an RTD Change Summary Notice, to begin to implement such RTD Proposed Change in accordance with the RTD Change Summary pending preparation and approval of an RTD Change Report, in which case Operator shall so implement such RTD Proposed Change and Operator may claim a Relief Event under Section 13.8 with respect to the implementation of an RTD Proposed Change; *provided* that subject to the terms of the related RTD Change Report or the withdrawal of the RTD Proposed Change, RTD shall not compensate Concessionaire, and therefore Concessionaire also shall not compensate Operator, for expenses incurred in relation to such RTD Proposed Change in an amount exceeding the amount set forth in the RTD Change Summary pursuant to Section 13.3.2(ii). Operator acknowledges that RTD may at any time by written notice direct Concessionaire to cease implementation of an RTD Proposed Change initiated pursuant to an RTD Change Summary Notice, and Operator shall cease such implementation promptly upon receipt of such notice from Concessionaire.

(v) If RTD does not direct the implementation of the RTD Proposed Change as described in clause (iv) above, Concessionaire and Operator shall exercise Reasonable Efforts to negotiate a mutually acceptable Modification, including adjustments, if any, to the Monthly Operator's Fee and the terms and conditions of this Agreement; *provided* that notwithstanding an agreement as between the Parties regarding a Modification, such Modification shall not be implemented until RTD has approved the RTD Change Report relevant to such Modification as provided in Section 13.3.2(vii), and Operator acknowledges that a

Modification that has been otherwise agreed between the Parties may need to be renegotiated if RTD does not agree with any estimates or other information provided by Concessionaire in connection with an RTD Proposed Change, and Operator shall use Reasonable Efforts to negotiate a mutually acceptable revised Modification to the extent necessary. Operator shall prepare and submit the RTD Change Report required pursuant to Section 13.3.2(vi) based on such mutually agreed Modification.

(vi) No later than twenty-five (25) days (or, (x) with respect to the operation and maintenance of a Concessionaire-operated Expansion (as defined in the Concession Agreement), fifty (50) days or (y) with respect to all other RTD Proposed Changes, such other period (not to exceed fifty (50) days) as reasonably necessary under the circumstances subject to RTD approval pursuant to Section 36.3e) of the Concession Agreement) following Operator's receipt of a copy of the RTD Change Summary Notice, Operator shall prepare and submit to Concessionaire a written report (the "RTD Change Report") (which may be forwarded to RTD) indicating:

(A) full details of how the proposed implementation of such RTD Proposed Change will impact the Eagle Project;

(B) the additional costs which Operator reasonably expects to incur (the labor, material and equipment elements of which shall be estimated on the basis set out in the RTD Pricing Conditions) and/or any cost savings which could be made by the Concessionaire should such RTD Proposed Change be implemented (providing with such estimate all necessary supporting calculations and information including detailed particulars of additional sums to be paid to the Subcontractors), and any changes to the Monthly Operator's Fee that are required to reflect any projected increases or decreases in the costs of operation of the relevant Commuter Rail Service and/or operation and/or maintenance of the relevant Commuter Rail Project;

(C) any adjustments to the WBS Pricing Form that Operator reasonably requires;

(D) any additional Permits required to be obtained;

(E) any impact on the obligations of Operator under this Agreement or of Concessionaire under the Project Agreements, including any necessary amendments thereto;

(F) the identity of the Subcontractors which Operator intends to engage for the purposes of effecting such RTD Proposed Change;

(G) an estimate of the reasonable likelihood of a long-term increase or decrease in the Availability Ratio or Performance Deductions expected to result from such RTD Proposed Change;

(H) any further effects (including benefits) which, after careful consideration, Operator foresees as being likely to result from such RTD Proposed Change, if implemented; and

(I) any impact on the achievement of the DBE Goals and/or the SBE Goals;

provided, that such RTD Change Report shall be consistent with the RTD Change Summary provided pursuant to Section 13.3.2.(ii).

(vii) Pursuant to Section 36.3(g) and (h) of the Concession Agreement, RTD is required to discuss the contents of the RTD Change Report with Concessionaire and, no later than 15 days following such discussions, confirm in writing whether it agrees with the contents of the RTD Change Report (as such contents may have been amended pursuant to the discussions held prior to such confirmation) or accepts Operator's objections on safety grounds. If RTD issues written instructions to Concessionaire to proceed with the RTD Proposed Change, Operator shall implement the RTD Proposed Change as soon as practicable in accordance with Section 13.4, and Operator may seek a Modification for a Relief Event under Section 13.8 with respect to the implementation of an RTD Proposed Change.

(viii) If RTD requires Concessionaire to implement the RTD Proposed Change in accordance with the RTD Change Report as amended by any conditions or adjustments imposed by RTD, or if Concessionaire does not accept RTD's conditions or adjustments to the RTD Change Report and RTD nevertheless requires Concessionaire to implement the RTD Proposed Change as amended by conditions or adjustments imposed by RTD pending resolution of such dispute, Concessionaire shall issue a Work Order pursuant to Section 13.10 and Operator shall implement the matters described in the RTD Change Report in accordance with the Work Order, and Operator may seek a Modification for a Relief Event under Section 13.8 with respect to the implementation of such RTD Proposed Change. Once Concessionaire and RTD agree or the disputed matter has been resolved with respect to RTD's conditions or adjustments to the RTD Change Report or Concessionaire's proposal under Section 36.3 of the Concession Agreement, and, if RTD has not already done so as described in the first sentence of this clause (viii), RTD issues written instructions to Concessionaire to proceed with the RTD Proposed Change, and, in the case of a Concessionaire-operated Expansion, Concessionaire and RTD execute appropriate amendments to the Concession Agreement, Operator shall implement the RTD Proposed Change as soon as practicable in accordance with Section 13.4, and Operator may seek a Modification for a Relief Event under Section 13.8 with respect to an RTD Proposed Change.

(ix) Operator acknowledges that in the event RTD does not agree with any matter set out in the RTD Change Report, RTD may (unless RTD has already directed Concessionaire to implement the RTD Proposed Change as described in Sections 13.3.2(iv) and 13.3.2(viii) and no instruction to cease implementation has been given) elect to implement the RTD Proposed Change itself or engage one or more third party operators to implement such RTD Proposed Change at its own cost. In such case, Operator shall provide RTD with all reasonable assistance to permit RTD to carry out such implementation, including providing any necessary access to the Sites; *provided* that Concessionaire shall compensate Operator for reasonable, documented and proper costs incurred to third parties and other direct design and engineering Incurred Costs, in each case incurred in preparing the RTD Change Report, but only to the extent and at such times as Concessionaire has received same from RTD pursuant to the Concession Agreement. To the extent that Operator is unable to perform its obligations under

this Agreement or incurs any Incurred Costs or delay as a result of the actions of any third party operator employed by RTD to carry out an RTD Proposed Change, Operator shall be entitled to seek a Modification for a Relief Event under Section 13.8 with respect to the implementation of an RTD Proposed Change.

13.3.3 Operator shall use (and shall cause its Subcontractors to use) all Reasonable Efforts to mitigate additional costs and changes to the Service Payments, and maximize any cost savings, in each case as a result of any RTD Proposed Change.

13.3.4 In the event total combined annual Passenger ridership for all Commuter Rail Services exceeds or is below projected ridership by 15% for a period of one (1) year during the Operating Period (projected ridership to be calculated based on the tables set forth in Tables 2.1.2-1 thru 2.1.2-3, subparts A, B and C in the O&M Specifications), Operator shall provide Concessionaire with an RTD Change Summary outlining Operator's proposal and justification for an adjustment to its Monthly Operator's Fees and providing the other information required in an RTD Change Summary pursuant to Section 13.3.2(ii). Concessionaire shall forward the RTD Change Summary to RTD, and pursuant to terms of the Concession Agreement, RTD may review the RTD Change Summary and initiate such action as it sees fit in accordance with Section 36.3 of the Concession Agreement.

13.4 Implementation of Modifications Resulting from Concessionaire Proposed Change or RTD Proposed Change.

13.4.1 In the event of the occurrence of a Modification for a Concessionaire Proposed Change or RTD Proposed Change, Operator shall be entitled to (i) compensation equal to the fixed price as agreed by the Parties in accordance with, as to Concessionaire Proposed Changes, Section 13.2 hereof and Section 36.1 of the Concession Agreement, and as to RTD Proposed Changes, Section 13.3 hereof and Section 36.3 of the Concession Agreement, (ii) compensation for Incurred Costs with respect to a Directive Letter pursuant to the last sentence of Section 13.5, and (iii) an adjustment to the Monthly Operator's Fees calculated in accordance with Section 13.8.5.

(i) If RTD does not agree with the Subcontractors selected by Operator to carry out a Concessionaire Proposed Change or an RTD Proposed Change or with the contract price or time period submitted by any such Subcontractors, Operator shall conduct a procurement process to select such Subcontractors with the approval of RTD in respect of:

(A) the form and requirements of the proposed procurement documents (including the proposed form of contract between Operator and the relevant Subcontractor and guarantees and other security for performance thereof);

(B) the procurement process itself; and

(C) the selection of, and qualifying criteria for, Subcontractors to be invited to participate in such tendering process.

(ii) Upon a Modification implementing a Concessionaire Proposed Change or RTD Proposed Change being agreed or any dispute relating thereto being resolved or determined, as the case may be, the provisions of this Agreement will continue to apply to Operator's obligations under this Agreement, as such obligations are amended or varied by such Modification. The Parties shall implement any amendments or supplements to this Agreement as are necessary to reflect such Modification.

(iii) If a Modification results in Operator being required to comply with modified or additional performance requirements that are outside the scope of those previously reflected in this Agreement and in the calculation of the Performance Deduction, the Parties shall negotiate in good faith to amend the mechanism for the calculation of Performance Deduction to include deductions resulting from a failure by Operator to adhere to such modified or additional performance requirements; *provided* that RTD shall have approved such amendments and corresponding amendments to the Concession Agreement shall have been agreed between Concessionaire and RTD.

(iv) Operator shall keep Concessionaire and RTD informed of the progress of the implementation of a Modification under Sections 13.2 and 13.3 (and the associated cost) and will notify Concessionaire when such implementation is, in the opinion of Operator, complete.

13.5 Directive Letters.

Operator acknowledges that in the event of any dispute between RTD and Concessionaire regarding the scope of Concessionaire's obligations under the Concession Agreement, RTD may issue a directive letter to Concessionaire under Section 36.6 of the Concession Agreement, directing Concessionaire to perform the work in question, notwithstanding such dispute. Subject to the last sentence of this Section 13.5, upon Concessionaire's receipt of any such directive letter, Concessionaire shall issue a Work Order pursuant to Section 13.10 and Operator shall proceed immediately to implement and perform the work in question in accordance with the Work Order pending resolution of the relevant dispute between Concessionaire and RTD. The provisions of Section 13.15 hereof shall apply in the event Operator and Concessionaire cannot agree on the amount or other terms of any claim to be made against RTD pursuant to the Concession Agreement in respect of a directive letter. If it is determined, in accordance with the dispute resolution procedures in the Concession Agreement, that Concessionaire was not required to perform the work identified in a directive letter, such directive letter shall be deemed to be a Modification implementing an RTD Proposed Change and Operator shall be entitled to reimbursement of Incurred Costs in connection with such directive letter under Section 13.8.

13.6 Modification by Operator.

13.6.1 Operator shall not make any changes to, or deviate in any way from, the terms of this Agreement and the Project Requirements in the carrying out of the Services hereunder except as permitted under this Section 13.6.

13.6.2 If Operator desires to initiate a Modification because of a Relief Event or otherwise (other than a Relief Event that also constitutes the implementation of an RTD Proposed Change or a Concessionaire Proposed Change or a Change in Law Change, to which Section 13.2, 13.3 or 13.7, as applicable, shall apply), Operator shall as soon as practicable and in any event within seven (7) days after first becoming aware that a Modification may be necessary, provide notice thereof to Concessionaire. Operator shall not be entitled to relief to the extent of any prejudice caused to Concessionaire if a notice regarding the occurrence of a Relief Event is not submitted within this time period. Such notice shall include (to the extent reasonably ascertainable at the date of such notice): (i) details of the nature of the Relief Event and its duration (or Operator's estimate of its likely continued duration); (ii) an estimate of its likely impact on the Services and the Project and a description of Operator's obligations under this Agreement which is delayed or prevented, including details of the steps taken or to be taken by Operator to avoid the Relief Event and reasons why the Relief Event could not be avoided by Operator; (iii) an estimate of the extension of time Operator requires to fulfill the relevant obligations under this Agreement; and (iv) an estimate of the reasonable likelihood of a long term increase or decrease in the Availability Ratio or Performance Deductions expected to result from such Relief Event. If and for as long as the Relief Event in question is continuing, Operator shall keep Concessionaire informed of any further information it receives relating to such event or any failure or delay in complying with its obligations under this Agreement, including providing Concessionaire periodically (and at least on a weekly basis) with updates to such notice. During the continuance of any Relief Event, Operator will grant RTD and Concessionaire such access to any Site and/or any aspect of the Services and provide such information as required for the purposes of establishing the accuracy of such notice.

13.6.3 In addition, with respect to all notices of a Modification proposed by Operator (whether relating to a Relief Event or otherwise), as soon as practicable and in any event within seven (7) Business Days thereafter, Operator shall deliver to Concessionaire either (A) a Modification Proposal meeting the requirements specified in clauses (i) and (ii) of Section 13.2.1, together with a detailed description of the proposed Modification, a reasonably detailed explanation of why Operator believes the proposed Modification is necessary, all relevant back-up documentation, including drawings (original vs. latest), relevant technical/commercial agreement references, and a description of the critical activity which is directly affected, and by how long, or (B) such of the foregoing information as is known to Operator at the time, together with its estimate of the date by which a full Modification Proposal will be submitted to Concessionaire. Subject to this Section 13.6.3, Concessionaire shall approve a Modification Proposal evidencing Operator's entitlement to claim a Modification under Sections 13.8, 13.9, and 13.10 due to any of the causes specified therein, but if Concessionaire has a reasonable basis for objecting to any such Modification Proposal, Concessionaire shall state such objections in writing to Operator within ten (10) days of receipt of Operator's Modification Proposal and the Parties promptly shall meet to resolve their differences; *provided* that Concessionaire shall be under no obligation to approve a Modification Proposal resulting from the occurrence of a Relief Event except to the extent of any relief provided to Concessionaire by RTD under the Concession Agreement with respect to such Modification Proposal, but Concessionaire shall, subject to resolution of any objections as provided above, provide Operator with the benefit of any such relief granted by RTD in respect of such Modification Proposal. Except as provided in the immediately preceding sentence,

Concessionaire is under no obligation to approve any other Modification Proposal initiated by Operator.

13.6.4 If the Parties cannot agree on the Modification, either Party may submit the dispute for resolution pursuant to Section 13.15. Operator shall not be entitled to submit a package of one or more Modification Proposals more than once in any month (other than a Modification Proposal which Operator provides pursuant to Section 13.3 or which Concessionaire must approve as set forth in the second preceding sentence, as to which there shall be no limits).

13.6.5 Operator may also request Concessionaire to approve a Modification for any material proposed or actual change, deviation, modification, alteration or exception from the Project Requirements (the "Technical Deviations") by submitting for Concessionaire's Review a Modification Proposal containing details required by clause (A) of this Section 13.6.5, in addition to setting forth Operator's estimate of impacts on costs and operations and maintenance activities attributable to the proposed Technical Deviation, and Concessionaire shall send such Modification Proposal to RTD for its consideration pursuant to Section 36.1 of the Concession Agreement. No Modification for a Technical Deviation shall exist or be effective for the purposes of the Project and the Contract Documents unless and until a written notice of RTD's approval thereof is provided to Operator by Concessionaire.

13.6.6 To the extent any Modification initiated by Operator results in the receipt by Concessionaire of any payment by RTD pursuant to the final sentence of Section 36.1(f) of the Concession Agreement, then Operator shall be entitled to an amount equal to ninety-two and one-half percent (92.5%) of the amount of such payment received by Concessionaire.

13.7 Modifications Due to Changes in Law.

13.7.1 To the extent a Change in Law occurs and Operator believes such Change in Law constitutes a Discriminatory Change in Law or has a Change in Law Effect that Operator cannot, in the absence of incurring material cost, overcome the effect thereof, Operator shall be entitled to seek a Modification to be paid, subject to the following sentence and Section 13.7.2, the Incurred Costs incurred by Operator as a result of the disruption to Operator's performance of this Agreement caused by such Change in Law. Concessionaire's obligation to pay Operator any Incurred Costs as a result of such a Modification, other than Incurred Costs that are for Concessionaire's account pursuant to Section 37.2(b)(iii) of the Concession Agreement, shall be subject to Concessionaire's receipt of such funds from RTD under Section 37.2 of the Concession Agreement (whether RTD provides such funds in a lump-sum payment or pursuant to an adjustment to Concessionaire's Service Payment in accordance with Section 37.2(d) of the Concession Agreement, in which case Operator shall be compensated for such Incurred Costs by adjustment to the Monthly Operator's Fee as and when the adjustments to Concessionaire' Service Payment are made). The provisions of Section 13.15 hereof shall apply in the event Operator and Concessionaire cannot agree on the amount of any claim to be made against RTD pursuant to the Concession Agreement in respect of a Change in Law.

Concessionaire's obligation to pay Contractor any Incurred Costs as a result of such a Scope Change Order, other than Incurred Costs that are for Concessionaire's account pursuant to Section 37.2(b)(ii) of the Concession Agreement, shall be subject to Concessionaire's receipt of funds from RTD under Section 37.2 of the Concession Agreement

13.7.2 Where a Change in Law occurs, Operator may (provided it does so no later than 15 days after becoming aware of the occurrence of such Change in Law) notify Concessionaire in writing (a "Change in Law Notice") of its opinion (and the basis and supporting details for such opinion, including advice of advisers, in particular with respect to the matters described in clauses (i), (ii) and (iii) of Section 13.8.5 as to whether such Change in Law:

(i) constitutes a Discriminatory Change in Law; and/or

(ii) will result in a Change in Law Effect.

13.7.3 No later than thirteen (13) days following the date of receipt of the Change in Law Notice, Concessionaire shall notify Operator that either:

(i) it agrees with the matters in the Change in Law Notice; or

(ii) it does not agree with the matters in the Change in Law Notice, in which case it will set out in its notice the grounds of objection.

13.7.4 If Concessionaire agrees with the matters in the Change in Law Notice, then Concessionaire shall request from RTD a Change in Law Change (as such term is defined in the Concession Agreement) and, subject to the limitations in Section 13.7.1, Concessionaire shall pay any Incurred Costs incurred by Operator as a result of the disruption to Operator's performance of this Agreement caused by such Change in Law, but only to the extent RTD has determined pursuant to Section 37.2 of the Concession Agreement that a Change in Law Change has occurred that has resulted in the incurrence of such Incurred Costs.

13.7.5 If Concessionaire does not agree with the Change in Law Notice, the Concessionaire's Representative shall discuss with the Operator's Representative in good faith in order to agree the disputed matters contained in the Change in Law Notice and any ways in which the effects of the Change in Law may be mitigated or avoided. If the Parties cannot agree on the disputed matters contained in the Change in Law Notice, the dispute shall be determined under Section 13.15 to determine whether a Modification is necessary.

13.7.6 Operator acknowledges that any decrease in the cost of operating and maintaining the Concessionaire-operated Components or increase in the amount of gross income calculated pre-tax received by Concessionaire resulting from any Change in Law that constitutes a Discriminatory Change in Law or has a Change in Law Effect shall be retained by Concessionaire up to the dollar thresholds referred to in Section 37.2(c) of the Concession Agreement. All amounts of benefit resulting from any Change in Law beyond those thresholds will be reflected by a reduction commensurate with the amount of such benefit in the Service Payments so that Concessionaire does not receive a benefit where the benefit is above those thresholds, and therefore, Operator agrees that its Monthly Operator's Fees shall also be reduced

in the same amounts to the extent relating to a decrease in the cost of operating and maintaining the Concessionaire-operated Components.

13.7.7 Operator agrees that its right to relief in respect of a Change in Law Change shall be limited to the relief agreed or determined in accordance with this Section 13.7 and that it shall not pursue, and hereby waives, any claims that it may have in respect of any additional cost relief consequences of such Change in Law Change whatsoever.

13.7.8 If a Change in Law Change results in Operator being required to comply with modified or additional performance requirements that are outside the scope of those previously reflected in this Agreement and in the calculation of the Performance Deduction, the Parties shall negotiate in good faith to amend the mechanism for the calculation of the Performance Deduction to include deductions resulting from a failure by Operator to adhere to such modified or additional performance requirements; *provided* that RTD shall have approved such amendments and corresponding amendments shall have been made to the Concession Agreement.

13.7.9 Operator agrees to provide any information, projections or other data reasonably requested by Concessionaire and to fully cooperate with the Change in Law procedures under the Concession Agreement if Concessionaire independently seeks compensation for a Change in Law Change pursuant to Section 37 of the Concession Agreement.

13.8 Modifications Due to Relief Event.

13.8.1 To the extent a Relief Event prevents Operator from complying with its obligations to perform the Services under this Agreement or Operator's ability to perform the Services is adversely affected by such Relief Event that Operator cannot, in the absence of incurring material costs, overcome the effect thereof, Operator shall be entitled to seek a Modification to be paid the Incurred Costs incurred by Operator as a result of any impact on Operator's performance of this Agreement caused by such Relief Event (other than a Relief Event that also constitutes the implementation of an RTD Proposed Change or a Concessionaire Proposed Change or a Change in Law Change, to which Sections 13.2, 13.3 or 13.7, as applicable, shall apply) and any additional work it is required to carry out as a result of any of the Relief Events described in paragraphs (g), (h), (i), (j) (k), (m), (n), (o), (q), (s), (t), (u), (v), (w), (x), (y) and (z) of Section 38.1 of the Concession Agreement (less any Avoidable Costs which are not being incurred by Operator). Concessionaire's obligation to pay Operator any Incurred Costs as a result of such a Modification for which RTD has agreed to provide funds shall be subject to Concessionaire's receipt of such funds from RTD under Section 38.9 of the Concession Agreement (whether RTD provides such funds in a lump-sum payment or pursuant to an adjustment to Concessionaire's Service Payment in accordance with Section 38.9(a) of the Concession Agreement, in which case Operator shall be compensated for such Incurred Costs by adjustment to the Monthly Operator's Fee as and when the adjustments to Concessionaire' Service Payment are made). The provisions of Section 13.15 hereof shall apply in the event Operator and Concessionaire cannot agree on the amount of any claim to be made against RTD pursuant to the Concession Agreement in respect of such a Relief Event.

13.8.2 Any claim by Operator for payment or reimbursement of Incurred Costs shall be accompanied by supporting details of the Incurred Costs claimed (the elements of which shall be calculated on the basis set out in the RTD Pricing Conditions). Operator acknowledges that any Incurred Costs paid or reimbursed by Concessionaire as a result of a Modification Change due to a Relief Event shall be reduced by the portion of such Incurred Costs that directly resulted from: (i) any breach by Operator of its obligations under this Agreement or any of the Contract Documents or any negligent act or omission of Operator; or (ii) any failure by Operator to minimize and/or mitigate the consequences of such Relief Event in accordance with clause (iii) of the definition of "Relief Event" hereunder.

13.8.3 Operator shall not suffer deductions to its Monthly Operator's Fee from any impact to the Availability Ratio or the accrual of Performance Deductions as a result of a Relief Event (other than a Relief Event that also constitutes the implementation of an RTD Proposed Change or a Concessionaire Proposed Change or a Change in Law Change, to which Section 13.2, 13.3 or 13.7, as applicable, shall apply), where the events giving rise to such Relief Event would, absent, a Relief Event, have caused such impact to the Availability Ratio to arise or such Performance Deductions to accrue, but only to the extent Concessionaire does not suffer any deductions to its Service Payments from any such impact to the Availability Ratio or the accrual of Performance Deductions as a result of the same Relief Event.

13.8.4 Notwithstanding Section 13.8.3, the Monthly Operator's Fee applicable during the continuation of a Relief Event shall be reduced by an amount equal to the Avoidable Costs which are not being incurred by Operator as a result of the Relief Event. If Operator disputes any portion of the Avoidable Costs and it is later determined or agreed pursuant to the Dispute Resolution Procedure that Operator is entitled to such disputed portion of Avoidable Costs, Concessionaire shall pay such disputed portion to Operator, but only to the extent the same is received from RTD under the Concession Agreement. For the avoidance of doubt, the Monthly Operator's Fee shall not be increased on account of a Relief Event.

13.8.5 Concessionaire shall pass through to Operator pursuant to an adjustment (upward or downward) to the Monthly Operator's Fee any corresponding adjustments it receives from RTD via adjustments to the Service Payment following the occurrence of a Relief Event taking into account (i) any Incurred Costs resulting from such Relief Event, without double-counting of any direct lump–sum payments of Incurred Costs made by Concessionaire pursuant to Section 13.8.1, (ii) any increase or decrease in Operator's operation and maintenance costs, and (iii) any costs savings resulting from such Relief Event or payment in accordance with Section 38.8 of the Concession Agreement.

13.9 Modifications Due to Concessionaire-Caused Event.

Except to the extent another consequence is expressly provided in this Agreement, Operator shall be entitled to seek a Modification adjusting the Monthly Operator's Fee or compensating it for Incurred Costs to the extent Operator's performance of the Services is adversely affected by a Concessionaire-Caused Event in respect of which Operator cannot, in the absence of incurring material cost, overcome the effect thereof.

13.10 Work Orders.

If Operator's Modification Proposal delivered pursuant to Section 13.2.1 hereof is not agreed to by Concessionaire, or Concessionaire issues a Work Order for the implementation of an RTD Proposed Change that has been adjusted or conditioned by RTD pursuant to Section 13.3.2(viii), or if RTD issues a directive letter under the Concession Agreement as contemplated by Section 13.5 hereof, Concessionaire may, at its option, execute and deliver to Operator a Work Order in lieu of the Modification that otherwise would be issued under other sections of this Article 13. A "Work Order" is a written instruction to Operator to proceed with the Modification that is the subject of a Modification Proposal. Payment for Modifications undertaken pursuant to a Work Order shall be calculated on the same basis as the RTD Pricing Conditions unless and until an adjustment to the Monthly Operator's Fee has been agreed between Concessionaire and Operator pursuant to an agreed Modification.

13.11 Performance of Modifications.

If Concessionaire executes and delivers to Operator a Work Order, or if Concessionaire and Operator agree to a Modification, Operator promptly shall perform the Services described in the Work Order or Modification. Concessionaire shall not be responsible for premium time Services unless (i) Concessionaire has expressly directed the performance of premium time Services, (ii) the need for such premium time Services was not caused by Operator, and (iii) such premium time Services was not contemplated by Operator's original Operating Plan. With respect to Services performed pursuant to a Work Order, Operator shall deliver to Concessionaire, within twenty (20) days after completion of performance, invoices, statements, payroll data and other evidence of the actual cost of the Services attributable to the Work Order that Concessionaire may reasonably require. Promptly following (a) completion of the Modification required under a Work Order, (b) agreement by Concessionaire and Operator as to the adjustments to the Monthly Operator's Fee or other compensation, and (c) receipt by Concessionaire of all required invoices, statements, payroll data and other evidence of the actual cost of the Services performed pursuant to such Work Order, Concessionaire and Operator shall issue a Modification adjusting the Monthly Operator's Fee or providing for other compensation. If the Modification for a Work Order is performed over a period of more than one (1) month, Operator may request, and, subject to receipt by Concessionaire of a corresponding amount in Service Payments from RTD, shall be entitled to, payments for the Modification performed during each month in the same manner as payments requested for other Services. Agreement on any Modification shall constitute a final settlement on all items covered therein, subject to performance thereof and payment therefor pursuant to this Agreement.

13.12 No Modifications Due to Operator Error.

Notwithstanding anything in this Article 13 to the contrary, no Modification shall be issued and no adjustment to the Monthly Operator's Fee or any other compensation shall be made in connection with any correction of errors, omissions, deficiencies, or improper or defective Services on the part of Operator or any Subcontractor in the performance of the

Services hereunder, or correction of any improper, defective or deficient equipment supplied by Operator or any Subcontractor.

13.13 Relation to Concession Agreement.

No Modification to which Operator is otherwise entitled under this Agreement, and no adjustment to the Monthly Operator's Fee, compensation for Incurred Costs, or modification of any other obligation of Operator under this Agreement to which Operator is otherwise entitled under this Agreement, shall be contingent upon or withheld, delayed, suspended or reduced on account of the receipt of or failure to receive a corresponding Change (as defined in the Concession Agreement), adjustment or modification under the Concession Agreement to the extent (1) the Concession Agreement does not provide or allow for Concessionaire to seek a corresponding Modification, approval, adjustment or modification from RTD or Concessionaire refuses to seek such a Modification, adjustment or modification where otherwise required to do so under this Agreement, or (2) the scope of the Modification, adjustment or modification deviates from that to which Operator is entitled under this Agreement and such deviation is due to a Concessionaire--Caused Event; *provided*, that, notwithstanding the foregoing, no such Modification or adjustment shall be due hereunder if granting the same would cause Concessionaire to violate the Concession Agreement, but Operator shall nevertheless retain its rights under Section 16.6.1(iii) hereof.

13.14 Exclusive Remedies.

Operator agrees that, except as otherwise provided in this Agreement, the remedies set out in Sections 13.2, 13.3, 13.7, 13.8 and 13.9 with respect to Concessionaire Proposed Changes, RTD Proposed Changes, Change in Law, Relief Events and Concessionaire-Caused Events, respectively, will be its sole and exclusive remedies as against Concessionaire for any Damages suffered or costs incurred by Operator arising out of or in connection with such event or the delay or disruption caused by such event (but with respect to Concessionaire-Caused Events, Operator shall nevertheless retain its rights under Section 16.6.1(iii) hereof). Operator shall not pursue, and hereby waives, any claims it may have in respect of any additional cost relief consequences of any such event whatsoever.

13.15 Modifications Dispute.

In the event Operator seeks a Modification to which it believes it is entitled under the terms hereof and the Parties are unable to reach agreement regarding the terms of such Modification within ten (10) Business Days after Operator's submission of the Modification Proposal and supporting documentation, the Parties agree to a fast-track adjudication process in accordance with this Section 13.15, as follows:

(i) A Party may submit the claim to a qualified independent third-party arbitrator with substantial experience in rail operations and maintenance contracts; the Parties agree that any of the Persons named on Exhibit N hereto will be acceptable arbitrators unless a Party sends a notice objecting to such Person's inclusion on Exhibit N prior to the

commencement of the adjudication process. The other Party shall submit its response to the arbitrator within ten (10) days of submission of the claim to the arbitrator by the initiating Party.

(ii) Such independent arbitrator will have fifteen (15) calendar days to make a preliminary determination whether (A) in the case of a dispute described in clause (a) of the first paragraph of this Section 13.15, Operator's claim and proposed cost adjustment amount appears in good faith to be valid, and if the independent arbitrator so determines, he/she shall then advise the Parties of an appropriate interim measure while the Parties proceed with the dispute resolution process as set out in clauses (iii), (iv) and (v) below; or (B) in the case of a dispute described in clause (b) of the first paragraph of this Section 13.15, Operator's claim appears in good faith to be valid, and if the independent arbitrator so determines, the Parties shall follow the procedure set forth in Section 13.15 hereof.

(iii) Subject to Concessionaire's compliance with its obligations under Section 6.8 and to Operator's suspension rights set forth in clause (iv) below, the Parties agree that such interim measure shall require Operator to proceed with the implementation of the disputed Modification and that claims for the work to implement shall occur in accordance with the conditions of this Agreement. If a payment has been made according to the terms of this Section 13.15, and the claim underlying such payment is subsequently determined not to be valid, Operator shall repay all monies to Concessionaire (including accumulated interest at the Late Payment Rate);

(iv) Upon certification by the independent arbitrator, Concessionaire shall pay for the disputed Modification in accordance with this Agreement, and if Concessionaire fails to make such payment, Operator shall be entitled to suspend only that portion of the Services that is affected by the specific disputed Modification until Concessionaire makes the required payment. Any suspension of the Services by Operator under this Section 13.15 shall entitle Operator to make a claim for a Modification under the terms of this Agreement; and

(v) The disputes process employed by the Parties pursuant to this Section 13.15 shall be structured with the goal of fully resolving disputed Modifications and Operator's claims thereto within ninety (90) days of submission by Operator of such Modification.

Nothing in this Section 13.15 shall be deemed to waive or otherwise affect any requirement in this Article 13 that RTD approve a Modification before Operator may issue or implement the same, and Operator shall have no obligation to do so pending receipt of any required RTD approval.

13.16 Claims Against RTD.

In the event Operator and Concessionaire cannot agree on (1) the amount or other terms of any claim to be presented by Concessionaire to RTD under the Concession Agreement as a result of the occurrence of (A) a Relief Event, including an RTD Proposed Change or Change in Law Change, (B) a Directive Letter or (C) a Force Majeure Event, each entitling Operator to claim a Modification hereunder, or (2) any other event affecting Operator's performance of the Services in respect of which Concessionaire has a right under the Concession Agreement to seek

payment or other relief from RTD, then Concessionaire shall, at its election (or, in the case of clause (ii) below, if Operator so directs, must):

(i) with all due diligent exercise seek to enforce its rights and remedies under the Concession Agreement that relate to the Operator's rights and obligations with respect to the Services, and shall allow Operator to participate in the presentation of the claim to and negotiations of the claim with RTD; Operator shall assist Concessionaire as reasonably requested by Concessionaire with respect to the negotiation of any claim amount or other relief with RTD; or

(ii) allow the Operator to bring in the Concessionaire's name (to the extent the Concessionaire has the right under the Concession Agreement to allow a third party to bring) any claim asserted in good faith against RTD related to the Services for the Operator's own benefit under this Agreement. Claims or actions of the Operator must be reasonably grounded on legal, technical and economical terms, on rights and obligations of the Operator assumed in this Agreement, and on rights available to the Concessionaire under the Concession Agreement or applicable Law. The Operator shall indemnify and hold harmless Concessionaire for all costs, expenses, Claims and Losses incurred or suffered in connection with or as a result of Operator's bringing a claim against RTD under this Section 13.16, including any thereof for which Concessionaire is liable to RTD or any other Person (including the Financing Parties).

Operator shall not be entitled to any further relief under this Agreement in respect of any Relief Event, Directive Letter or Force Majeure Event if (A) Concessionaire or Operator successfully obtains the relief requested by Operator, (B) Operator accepts a compromise with RTD pursuant to clause (ii) above, or (C) the matter is finally resolved in accordance with the Concession Agreement.

ARTICLE 14

INDEMNIFICATION

14.1 General Indemnification.

14.1.1 Operator's Indemnity in Favor of RTD Indemnitees. Operator will, to the fullest extent permitted by law, fully and effectively indemnify and hold harmless the RTD Indemnitees and, to the extent required by the Project Agreements, the Project Third Parties and their respective agents, servants, consultants and employees, from and against all Damages (excluding any Losses of, or Claims for, lost revenue to RTD resulting from a failure to collect passenger fares for the Commuter Rail Services through the Fare System Equipment, other than any such failure arising from theft or fraud by Operator or its agents, servants, consultants or employees) to the extent arising out of or in connection with any act or omission of Operator or its Subcontractors, agents, servants, consultants or employees in connection with the Concession Agreement, this Agreement and the other Project Agreements or breach thereof or any willful misconduct of Operator or its Subcontractors, agents, servants, consultants or employees, including any suffered or incurred in respect of:

(i) personal injury (including injury resulting in death), including to an employee of RTD, Concessionaire, Operator, any Subcontractor, the Design-Build Contractor, the Rolling Stock Supplier or any Project Third Party;

(ii) any loss of or damage to any real or personal property of RTD, Concessionaire, any Project Third Party, or any other Person, including loss of use thereof; and/or

(iii) any fines or penalties imposed on RTD or Concessionaire by Relevant Authorities arising as a result of Operator's breach of or failure to comply with Applicable Requirements or its obligations under the Concession Agreement, this Agreement and/or the other Project Agreements;

but only to the extent that such Loss and/or Claim does not arise as a result of the negligent acts, omissions or willful misconduct of RTD, Concessionaire, the Project Third Parties or their respective agents, servants, consultants and employees.

Operator's aforesaid indemnity is for the exclusive benefit of the RTD Indemnitees and in no event shall inure to the benefit of any other Person. Operator will undertake, at the request of Concessionaire, at no charge to Concessionaire, to provide all information and do all acts which may be reasonably required by Concessionaire to allow Concessionaire to fulfill its obligations under Section 35.2 of the Concession Agreement.

14.1.2 Operator's Indemnity in Favor of Concessionaire Indemnified Parties. Operator shall, to the fullest extent permitted by law, fully and effectively indemnify, save harmless and defend Concessionaire, the Financing Parties, the LTA, each of their subsidiaries and Affiliates, and the directors, officers, agents, employees, successors and assigns of each of them (the "Concessionaire Indemnified Parties"), from and against any and all Damages, including without limitation reasonable attorney's fees, directly or indirectly arising out of, resulting from or related to (A) claims by Persons other than Concessionaire Indemnified Parties (except to the extent otherwise provided in clause (B) or (C) below) associated with the operation and maintenance of the Eagle Project, (B) claims of any Person for any damage to or destruction of property other than the Project, and (C) claims for death of or bodily injury to, any Person (whether such person is a Concessionaire Indemnified Party, Operator or any Subcontractor, or is a Person unaffiliated with the Eagle Project), in each case to the extent caused or contributed to by the fault, intentional act, negligence or strict liability of Operator, its Subcontractors or any of the Operator Indemnified Parties in the performance of the Services or by any other breach by Operator, its Subcontractors or any of the Operator Indemnified Parties of the Contract Documents or the Project Requirements. Contractor's aforesaid indemnity is for the exclusive benefit of the Concessionaire Indemnified Parties and in no event shall inure to the benefit of any other Person.

14.1.3 Concessionaire. Concessionaire shall fully indemnify, save harmless and defend Operator, each of its subsidiaries and Affiliates, and the directors, officers, agents, employees, successors and assigns of each of them, (the "Operator Indemnified Parties"), from and against any and all Damages directly or indirectly arising out of, resulting from or related to third-party claims associated with the performance by Concessionaire of its obligations

hereunder, including without limitation any damage to or destruction of property of, or death of or bodily injury to, any Person, to the extent caused by or contributed to by Concessionaire's fault, intentional act, negligence or strict liability in the performance of its obligations hereunder or by any breach by Concessionaire of its obligations hereunder. The indemnity in this Section 14.1.3 is for the exclusive benefit of the Operator Indemnified Parties and in no event shall inure to the benefit of any other Person.

14.2 Additional Indemnification.

Operator shall fully indemnify, save harmless and defend the Concessionaire Indemnified Parties from and against any and all Damages in favor of any Person with respect to: (a) payments of Taxes relating to Operator's income or other Taxes required to be paid by Operator without reimbursement hereunder, or (b) nonpayment of amounts due as a result of furnishing materials or services to Operator or any Subcontractor in connection with the Services to the extent that Concessionaire has paid Operator all undisputed amounts hereunder then due and payable from Concessionaire to Operator, and any liens resulting from such nonpayment.

14.3 Intellectual Property Indemnification.

14.3.1 Operator's Indemnity.

(i) Operator shall be liable for and shall fully indemnify, save harmless and defend Concessionaire and the RTD Indemnitees to the maximum extent permitted by Law from and against all Damages, whether direct or indirect, that Concessionaire or the RTD Indemnitees may suffer or incur (A) arising out of a breach of Operator's warranties set out in Section 11.3 or otherwise out of any Claims arising out of allegations of an infringement of Intellectual Property Rights or other proprietary rights as described in Section 11.3, or (ii) if Concessionaire's or RTD's rights and interests provided under this Agreement with respect to the Operator Content, the Operator Tools, the Proprietary Designs and any Third Party Materials and the Intellectual Property Rights therein are at any time determined by a court of law or other competent authority to be invalid, ineffective or impaired in any material respect.

(ii) Operator shall, at its own cost, provide such cooperation and assistance and take such action and institute such proceedings as Concessionaire or RTD requests in the event of any Claim as described under Section 14.3.1(i) and shall assist Concessionaire and RTD in resolving queries concerning the ownership and licensing of the Operator Content, the Operator Tools, the Proprietary Designs and any Third Party Materials and the Intellectual Property Rights therein.

(iii) Operator shall require each of the Subcontractors to indemnify Concessionaire and the RTD Indemnitees in the same manner and to the same extent as provided for in this Section 14.3.1.

14.3.2 Action in Case of Injunction. If, in any claim, suit or proceeding identified in Section 14.1.1 or Section 14.3.1, a temporary restraining order or preliminary injunction is granted, Operator shall make every reasonable effort, by giving a satisfactory bond

or otherwise, to secure the suspension of the injunction or restraining order. If, in any such claim, suit or proceeding, the Project or any part, combination or process thereof is held to constitute an infringement and its use is permanently enjoined, Operator shall at its own expense and without impairing performance requirements, either replace the infringing Services or part, combination or process thereof with non-infringing components or parts or modify the same so that they become non-infringing. If Operator is unable to do so within a reasonable time, Operator shall promptly make every reasonable effort to secure for Concessionaire or any of the Concessionaire Indemnified Parties a license, at no cost to Concessionaire or the Concessionaire Indemnified Parties, authorizing continued use of the infringing Services. The operations and maintenance of the Project shall not be delayed or disrupted in any way due to any temporary restraining order or injunction described hereunder.

14.4 Notice and Legal Defense.

Except as otherwise required by the Concession Agreement with respect to Persons entitled to indemnification thereunder (in which event Section 35.2 of the Concession Agreement shall apply) promptly after receipt by an Indemnifying Party of any claim or notice of the commencement of any action, administrative or legal proceeding, or investigation as to which the indemnity in favor of the Indemnified Parties provided for in Section 14.1, 14.2 or 14.3 may apply, the Indemnifying Party shall assume on behalf of the Indemnified Parties and conduct with due diligence and in good faith the defense thereof with counsel reasonably satisfactory to the Indemnified Party; *provided* that (a) the Indemnified Party shall have the right to be represented therein by advisory counsel of its own selection and at its own expense, and (b) if the defendants in any such action include both Indemnifying Party and the Indemnified Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from, additional to or inconsistent with those available to Indemnifying Party, then the Indemnified Party shall have the right to select separate counsel to participate in the defense of such action on its own behalf at the Indemnifying Party's expense.

14.5 Failure to Defend Action by Indemnifying Party.

Except as otherwise required by the Concession Agreement with respect to Persons entitled to indemnification thereunder (in which event Section 35.2 of the Concession Agreement shall apply), if any claim, action, proceeding or investigation arises as to which the indemnity in favor of the Indemnified Parties provided for in Section 14.1, 14.2 or 14.3 may apply, and the Indemnifying Party fails to assume the defense of such claim, action, proceeding or investigation, then the Indemnified Party may at the Indemnifying Party's expense contest (or, with the prior written consent of Indemnifying Party, settle) such claim; *provided*, that no such contest need be made and settlement or full payment of any such claim, action, proceeding or investigation may be made without the Indemnifying Party's consent (with the Indemnifying Party remaining obligated to indemnify the Indemnified Party under Section 14.1, 14.2 and 14.3) if, in the written opinion of the Indemnified Party's counsel, such claim is meritorious. All costs and expenses incurred by the Indemnified Party in connection with any such contest, settlement or payment shall be reimbursed by the Indemnifying Party to the Indemnified Party, with interest thereon at the Late Payment Rate, promptly following the Indemnifying Party's demand therefor.

14.6 Insurance.

Operator shall not be liable to indemnify any of the Concessionaire Indemnified Parties under or pursuant to this Article 14 for any Losses and/or Claims, to the extent that they have been fully and effectively indemnified in respect thereof pursuant to (a) insurances maintained under Article 15 including, to the extent RTD has assumed an Uninsurable Risk pursuant to Section 15.11, except to the extent of any deductibles or expenses applicable to such insurance for which Operator shall be liable, or (b) otherwise in accordance with the terms of any Third Party Agreement or other agreement between Concessionaire and, as the case may be, the relevant Concessionaire Indemnified Party.

14.7 Survival.

The provisions of this Article 14 shall survive the expiration or earlier termination of this Agreement.

ARTICLE 15

INSURANCE

15.1 Operator-Provided Insurance.

15.1.1 From the Phase 1 Work Commencement Date until the date on which the first Commuter Rail Project achieves its Revenue Service Commencement Date, Operator shall be subject to the insurance provisions and requirements of Part A of Attachment 12 (*Insurances*) to the Concession Agreement. During the period in which Pre-Operations Services are being performed, Operator shall be an Enrolled Contractor under the OCIP and shall be extended coverage as a named insured under other RTD Design/Build Period Insurances as described in Part A(I) of such Attachment 12. Operator shall procure and maintain, or cause to be procured and maintained, insurances specified in Part A(II) of such Attachment 12 applicable to its activities on the Covered Sites (as defined in such Attachment 12) and off the Covered Sites. To the extent required by applicable Railroad Agreements, Operator, for its activities on Covered Sites during the period in which Pre-Operations Services are being performed, shall also procure and maintain, or cause to be procured and maintained, excess liability insurance with limits that, when combined with the underlying OCIP liability coverage limits, meets the requirements of such Railroad Agreements. From the date on which all Concessionaire-operated Components have commenced full operations, Operator shall at its own cost provide and maintain, or cause to be provided and maintained, the insurance coverages required by Part B (*Operating Period Insurances)* of Attachment 12 to the Concession Agreement and the terms of this Article 15.

15.1.2 From the date on which the first Commuter Rail Project achieves its Revenue Service Commencement Date until the End Date, Operator shall at its own cost provide and maintain (or cause to be maintained), in respect of the active Concessionaire-operated Components, the insurance coverages required by Part B (*Operating Period Insurances*) of

Attachment 12 (*Insurance*) to the Concession Agreement and the terms of this Article 15. The insurance maintained pursuant to this Article 15 shall be project specific and shall apply solely to the use, operation and maintenance of the Project. Capitalized terms used in this Article 15 and not otherwise defined in this Agreement shall have the respective meanings generally ascribed to them in the commercial insurance industry in the United States.

15.2 Responsibility for Deductibles and Premiums.

Deductibles and premiums under all Operating Period insurance policies and all self-insured retentions covering the Project during the Operating Period and the period during which Pre-Operations Services are performed shall be borne by Operator unless expressly specified to be borne by a Person other than Concessionaire in Attachment 12 to the Concession Agreement. The Parties agree that the policies shall contain a single deductible, where available.

15.3 Failure to Procure Insurance.

If Operator fails to procure and maintain or fails to cause others to procure and maintain the required insurance, or any portion thereof, Concessionaire or RTD shall have the right, but not the obligation, to procure and maintain the required insurance for and in the name of Concessionaire or RTD, as applicable. If Concessionaire or RTD procures any such insurance, Operator shall promptly pay the cost thereof and shall furnish all information necessary to acquire and maintain such insurance. Neither Party shall violate or knowingly permit any violation of the coverage terms and conditions of any such insurance. The required insurance, where applicable, shall include a severability of interest clause, and Operator agrees that none of the insurance policies required under this Article 15 shall contain a clause that would void coverage due to the individual actions of any other insured parties.

15.4 [Reserved].

15.5 Operator's or Rented Equipment.

All equipment, supplies and materials belonging to Operator or any Subcontractor used by or on behalf of Operator or any Subcontractor for its performance hereunder or is leased or loaned to any of them, shall be brought to and kept at the Sites at the sole cost, risk and expense of Operator or such Subcontractor, and Concessionaire shall not be liable for loss or damage thereto, and any insurance policies carried by Operator, any Subcontractor, or any third party on said equipment, supplies and materials shall provide for a waiver of the underwriters' right to subrogation against all RTD Indemnitees, Concessionaire, the Financing Parties, the Independent Engineer and their respective permitted assigns, successors, parent companies, subsidiaries, Affiliates, employees, insurers and underwriters.

15.6 Unemployment and Other Insurance Benefits.

Operator agrees to and does hereby accept full and exclusive responsibility and liability for the withholding and payment of any and all Taxes and contributions levied or assessed against Operator for Unemployment Insurance and for Old Age Retirement Benefits, and for pensions and annuities now imposed, or hereafter imposed, by the Relevant Authorities with respect to, assessed against or measured by wages, salaries or other remuneration paid to persons employed by Operator in connection with the Services hereunder. Operator further agrees to indemnify and hold harmless the Indemnified Parties from any and all liability therefor.

15.7 Descriptions Not Limitations.

The coverages referred to in this Article 15 are set forth in full in the respective policy forms, and the descriptions of such policies in this Agreement are not intended to be complete, nor to alter or amend any provision of the actual policies, and in matters, if any, in which the said descriptions may be conflicting with such instruments, the provisions of the policies of insurance shall govern; *provided*, *however*, that neither the content of any insurance policy or certificate nor Concessionaire's Approval thereof shall relieve Operator or any of its obligations under the Contract Documents.

15.8 Named Insureds; Continuity of Insurance.

All insurance policies other than Workers' Compensation, Employers Liability insurance and Professional Liability insurance furnished or caused to be furnished by Operator pursuant to this Article 15 shall:

15.8.1 with respect to liability policies name RTD, its consultants, agents and contractors, Concessionaire, the Financing Parties, the Project Third Parties and Operator, with respect to any insurance Operator causes to be furnished by others, as additional insureds;

15.8.2 with respect to property insurance policies insure as their interests appear RTD, Concessionaire, the Financing Parties, the Project Third Parties, Operator and, where appropriate, relevant Subcontractors; and

15.8.3 entitle RTD to maintain the all-risk policies specific to the Project in force after termination of this Agreement.

15.9 No Limitation of Liability.

The required coverages referred to and set forth in this Article 15 shall in no way affect, nor are they intended as a limitation of, Operator's liability with respect to its performance of the Services hereunder.

15.10 Insurance Primary.

All policies of insurance provided by Operator pursuant to this Article 15 shall be written as primary policies, not contributing with, and not in excess of, the coverage that Concessionaire, the Independent Engineer, RTD, the Financing Parties and their respective permitted assigns, successors, parent companies, subsidiaries and Affiliates may carry against the same hazards.

15.11 Uninsurable Risks.

15.11.1 Operator shall notify Concessionaire and RTD immediately on becoming aware that any risk to be insured by Operator in accordance with this Article 15 has become an Uninsurable Risk. Operator shall in any such notice, make proposals as to the manner in which such Uninsurable Risk may be mitigated, managed or controlled including any proposals as to changing the terms of the insurances or taking out of any substitute insurances at reasonable commercial rates. Operator, Concessionaire and RTD shall, together with their respective insurance advisers, consult on Operator's proposals, and Operator shall effect any amended or new insurances as may be agreed to be appropriate in the circumstances.

15.11.2 Operator shall review the availability of insurance(s) relating to the Uninsurable Risk at intervals of not longer than three months. Should insurance become available in respect of a previously Uninsurable Risk at reasonable commercial rates, Operator shall effect such insurance and such risk shall no longer be deemed to be an Uninsurable Risk.

15.11.3 Under Section 34.4(c) of the Concession Agreement, RTD is to assume the risk of the occurrence of an Uninsurable Risk on the same basis as such Uninsurable Risk would have been insured by Operator in accordance with this Article 15 and covered by the insurance coverages set out in Part A(II) (*Concessionaire Design/Build Period Insurances*) or Part B (*Operating Period Insurances*) of Attachment 12 (*Insurance*) to the Concession Agreement, subject to the limitations, conditions and exclusions set out in the certificates and policies of insurance relating to such coverage provided by RTD to the Concessionaire pursuant to Section 34.6(b) of the Concession Agreement; *provided* that Operator shall remain responsible for the deductibles referred to in Part B (*Operating Period Insurances*) of Attachment 12 (*Insurance*) to the Concession Agreement to the extent the claim or loss results from Operator's failure to comply with its obligations under this Agreement. Operator acknowledges that RTD's obligation to make any payment to Concessionaire in respect of RTD's assumption of Uninsurable Risks is subject to the limitations set forth in Section 34.4(e) of the Concession Agreement.

15.12 Other Insurance Requirements.

15.12.1 Operator shall ensure that at all times the companies issuing the insurance policies referred to in Attachment 12 (*Insurance*) to the Concession Agreement are Qualifying Insurers.

15.12.2 Operator shall deliver to Concessionaire and RTD certificate(s) of insurance (and all required endorsements thereto) executed by an authorized representative of the

insurer evidencing Operator's compliance with the requirements set out in this Article 15 and Attachment 12 (*Insurance*) to the Concession Agreement, prior to the date on which such insurance is required to be maintained. Operator shall deliver such documents to RTD's Risk Manager. Such certificate shall reference the Concession Agreement (and RTD's contract number and title for the Concession Agreement) and the insurance cover to which such certificate applies. Operator shall provide to Concessionaire and RTD copies of all policies of insurance taken out by Operator in accordance with this Article 15 and Attachment 12 (*Insurance*) to the Concession Agreement no later than ninety (90) days after taking out such policy. Operator shall at all times maintain on file current certificates of insurance evidencing proof of the coverage required under this Article 15 and Attachment 12 (*Insurance*) to the Concession Agreement.

15.12.3 Operator shall ensure that all policies required to be taken out by this Article 15 and Attachment 12 (*Insurance*) to the Concession Agreement shall be endorsed to provide Concessionaire and RTD with 60 days' prior written notice of any cancellation, reduction, or material change in the insurance coverage relating thereto.

15.12.4 At least once in each twelve-month period, Operator shall deliver to Concessionaire and RTD (and, in the case of insurance taken out by Operator, to RTD's Risk Manager):

(i) certificates for the renewal or replacement of the insurance cover which Operator takes out pursuant to this Article 15 and Attachment 12 (*Insurance*) to the Concession Agreement; and

(ii) a certificate of an appropriate officer of Operator:

(A) confirming that all insurance policies taken out pursuant to this Article 15 and Attachment 12 (*Insurance*) to the Concession Agreement are in force on the date thereof;

(B) confirming the amounts and expiration date or dates of such policies and the names of the Qualifying Insurers issuing such policies;

(C) including certificates evidencing payment of any premiums then due, in a form reasonably satisfactory to Concessionaire and RTD; and

(D) stating that, to the extent coverage is available in the commercial insurance market, such policies comply with the requirements of this Article 15 and the relevant provisions of Attachment 12 (*Insurance*) to the Concession Agreement, to the extent applicable.

15.12.5 Operator shall ensure that all insurances which Operator is required to take out and maintain or cause to be maintained in accordance with this Article 15 and Attachment 12 (*Insurance*) to the Concession Agreement and any other policies taken out by Operator or any Subcontractor in connection with the Project (including umbrella/excess liability insurance), contain terms to the effect that the insurers issuing the insurance policies have agreed to waive all rights of subrogation against RTD and Concessionaire and to waive any right of the

insurer to any set-off or counterclaim or any other deduction, save for outstanding premium under the relevant insurance only, whether by attachment or otherwise, in respect of any liability of any Person insured under any such policy.

15.12.6 The original copy of all notices, reports and other communications relating to insurance matters to which RTD is entitled shall be sent to RTD to the attention of RTD's Risk Manager with a copy of such communications to be sent to RTD at its address set out in Section 58 of the Concession Agreement.

15.13 Insurance Cost Sharing.

15.13.1 Operator shall provide Concessionaire with written notice (which Concessionaire may forward to RTD) of the Actual Insurance Costs (as defined in the Concession Agreement) for all relevant insurances broken down by category of insurance for each year, as soon as practicable after it becomes aware of the same and prior to the renewal of such insurances. A copy of the premium offer and any other relevant information from the insurers shall be provided with such notice.

15.13.2 Operator acknowledges that pursuant to Section 34.5 of the Concession Agreement, beginning on the anniversary of the first day of the Operating Period, Concessionaire may be entitled to compensation from RTD for certain increased insurance costs as more specifically set forth in such section. Operator agrees that to the extent it desires to benefit from any such insurance cost sharing, Operator shall be solely responsible for complying with the requirements of such section (including providing the notice and other information required by RTD), to receive such benefit, and Concessionaire agrees to pass directly to Operator any such cost sharing compensation for which Operator was responsible as and when received from RTD.

15.14 Approval of Insurance.

The Parties have agreed on all coverage lines, policy limits and other significant policy issues as set forth in this Article 15. Specific policy forms, full policy language and proposed insurance program structure (including deductibles and sub-limits) will be reviewed and agreed by Concessionaire and Operator prior to placement, but in any event prior to Financial Closing.

ARTICLE 16

CANCELLATION; SUSPENSION; TERMINATION

16.1 Cancellation.

This Agreement shall automatically be cancelled and have no further force and effect if the Phase 1 Work Commencement Date has not occurred on or prior to the Phase 1 Conditions Precedent Satisfaction Date.

16.2 Suspension of the Services for Failure to Appropriate.

16.2.1 [Reserved.]

16.2.2 Suspension for Failure to Appropriate.

(i) Operator acknowledges and accepts that, pursuant to Section 30.5(a) of the Concession Agreement, if RTD reasonably anticipates that the Board will not include any RTD Appropriation Obligations that are payable or expected to be payable during the following Fiscal Year in RTD's annual budget for such Fiscal Year (and to the extent RTD has not initiated an RTD Proposed Change the effect of which is to suspend or partially suspend, as applicable, operation of the Concessionaire-operated Components in respect of such shortfall of RTD Appropriation Obligations), RTD is required to notify Concessionaire (and Concessionaire shall promptly notify Operator) no later than forty-five (45) days prior to the start of the Fiscal Year of the amount of such shortfall. Operator shall, as soon as is reasonably practicable under the circumstances, and until Concessionaire notifies it that such shortfall of RTD Appropriation Obligations has been included in RTD's annual budget for such Fiscal Year, suspend or partially suspend, as applicable, operation of the Concessionaire-operated Components from the date of such notice, to the extent and in the manner directed by RTD. Any such suspension or partial suspension, subject to the following sentence, shall be treated as an RTD Proposed Change. Such suspension or partial suspension shall terminate, and Operator shall commence resumption of its obligation to perform the Services under this Agreement upon appropriation by the Board of adequate funds to meet such RTD Appropriation Obligations, with such resumption to be completed (i) in accordance with the terms of the RTD Proposed Change or (ii) to the extent not established by the RTD Proposed Change, as soon as reasonably practicable under the circumstances and in any event no later than six months after the date of the Board's appropriation of adequate funds to meet such RTD Appropriation Obligations.

(ii) In addition, Operator acknowledges and accepts that, pursuant to Section 30.5 of the Concession Agreement, Concessionaire will be required to suspend or partially suspend (in the manner directed by RTD), as applicable, the operation of the Concessionaire-operated Components if the Board fails to include any RTD Appropriation Obligations that are payable to Concessionaire under the Concession Agreement for the following Fiscal Year in its annual budget for such Fiscal Year, as provided therein. Upon receipt of written notice from Concessionaire directing Operator to suspend Services for the foregoing reason, Operator shall immediately suspend or partially suspend (in the manner directed by RTD), as applicable, the operation of the Concessionaire-operated Components on January 1 of the Fiscal Year for which adequate funds to meet such RTD Appropriation Obligations have not been included in such annual budget and such suspension, subject to the following sentence, shall be treated as an RTD Proposed Change. Such suspension or partial suspension shall terminate, and Operator shall commence resumption of its obligation to operate the Concessionaire-operated Components under this Agreement upon appropriation by the Board of adequate funds to meet such RTD Appropriation Obligations, taking into account any additional RTD Appropriation Obligations for the relevant Fiscal Year that have accrued or arisen since the Board's original failure to include RTD Appropriation Obligations in its annual budget as described in Section 30.5(b) of the Concession Agreement, including as a consequence of any RTD Proposed Change resulting from such failure, in an amended annual budget, with

such resumption to be completed (i) in accordance with the terms of the RTD Proposed Change or (ii) to the extent not established by the RTD Proposed Change, as soon as reasonably practicable under the circumstances and in any event no later than six months after the date of the Board's appropriation of adequate funds to meet such RTD Appropriation Obligations.

(iii) Operator acknowledges and agrees that, during any period of suspension or partial suspension described in this Section 16.2.2 in which Concessionaire is paid the TABOR Portion of Service Payments as contemplated in Section 30.5(c) of the Concession Agreement, any TABOR Portions received by Concessionaire shall first be allocated to pay amounts then outstanding under the Designated Credit Agreements (the "Debt Service Amounts") and no portion of the TABOR Portion shall be applied to the payment of any amounts owing under this Agreement, including increased costs incurred by Operator in connection with such suspension, until the Debt Service Amounts then outstanding have been paid in full.

16.2.3 During the continuation of a suspension pursuant to Section 16.2.2, the Monthly Operator's Fee shall be reduced by an amount equal to the Avoidable Costs which are not being incurred by Operator as a result of such suspension to the extent RTD reduces the amount of the corresponding Service Payment pursuant to the Concession Agreement on account of such suspension. If Operator disputes any portion of the Avoidable Costs and it is later determined or agreed pursuant to the Dispute Resolution Procedures that Operator is entitled to such disputed portion of Avoidable Costs, Concessionaire shall pay such disputed portion to Operator, but only to the extent the same is received from RTD under the Concession Agreement. For the avoidance of doubt, the Monthly Operator's Fee shall not be increased on account of a suspension.

16.2.4 Notwithstanding Section 16.2.2, suspension of any or all of the Services arising from any failure by Operator to comply with safety requirements, any failure by Operator to comply with a reasonable instruction of Concessionaire given in accordance with this Agreement or any other default of Operator under this Agreement, in each case, shall not in and of itself entitle Operator to any payment of or reimbursement for increased costs and expenses; *provided* that the foregoing shall not prejudice Operator's right to claim a Relief Event or Force Majeure Event in respect of such event where grounds for a Relief Event or a Force Majeure Event are expressly provided elsewhere in this Agreement.

16.3 RTD's Right to Suspend the Services.

In addition to the suspension rights set forth in Section 16.2 and Section 3.6.1, and without limiting any right of Concessionaire under this Agreement, Operator acknowledges and accepts that RTD is entitled under the Concession Agreement, in addition to its other rights described in Section 16.4.4, to order the suspension of any part of the Services in the event a "Concessionaire Termination Event" under the Concession Agreement occurs and is continuing, all in accordance with and subject to RTD's compliance with, Section 41.2(b) of the Concession Agreement and the terms of RTD's direct agreement with the Financing Parties. Concessionaire shall provide promptly to Operator any notice received from RTD ordering a suspension of the

Services. Operator shall fully cooperate with RTD in its exercise of any suspension rights it has under the Concession Agreement.

16.4 Termination of Operator.

16.4.1 Concessionaire may elect, at Concessionaire's sole option, to terminate this Agreement if any of the following events (any such event, to the extent continuing beyond the expiration of the applicable cure period, an "Operator Event of Default") shall occur:

(i) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (A) liquidation, reorganization or other relief in respect of any of Operator or any Guarantor, or any of their respective debts, or of a substantial part of their respective assets, under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (B) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any of the Operator or any Guarantor or for a substantial part of any of their respective assets, and, in any such case, such proceeding or petition shall continue undismissed for a period of sixty (60) or more days or an order or decree approving or ordering any of the foregoing shall be entered;

(ii) any of Operator or any Guarantor shall (A) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (B) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in Section 16.4.1(i), (C) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for itself or for a substantial part of its respective assets, (D) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (E) make a general assignment for the benefit of creditors or (F) take any action for the purpose of effecting any of the foregoing;

provided, that subject to the next succeeding sentence, if a Guarantor is the subject of an event described in Section 16.4.1(i) or (ii) and Operator obtains within thirty (30) days of the event a replacement guaranty (on the same terms as the guaranty provided by such Guarantor) from another Person reasonably acceptable to Concessionaire, then such event shall not constitute an Operator Event of Default. Notwithstanding the foregoing, (A) if a Guarantor is the subject of an event described in Section 16.4.1 (i) or (ii), then Operator shall not be required to secure a replacement guaranty pursuant to the preceding sentence if all senior indebtedness under any Designated Credit Agreement has been repaid in full at the time of such event; and (B) if a Guarantor other than Fluor Corporation is the subject of an event described in Section 16.4.1 (i) or (ii), then Operator need secure a replacement guaranty pursuant to the proceeding sentence only if the LTA notifies Concessionaire of its determination that the ability of Fluor Corporation to honor its guaranty is materially less than its ability to do so as of the date of this Agreement.

(iii) Operator fails to make payment of any undisputed amounts owed by Operator to Concessionaire under this Agreement, and such payment is not made in full within thirty (30) days following written notice thereof from Concessionaire (which notice requirement shall be waived if applicable Law prohibits the giving of such notice);

(iv) Operator fails, for any reason other than failure of Concessionaire to make payments to Operator when obligated and in accordance with this Agreement, to make payments due to Subcontractors, and such failure is not remedied within the time applicable Law requires Operator to make such payments;

(v) Operator fails to comply in any material respect with any Specified Requirement or Applicable Requirements in the performance of the Services and such failure is not remedied within fifteen (15) days following written notice thereof from Concessionaire (which notice requirement shall be waived if applicable Law prohibits the giving of such notice) or, if such failure is not capable of being remedied within such time, if Operator has not commenced a cure within such time and thereafter diligently pursued the same until a cure is effected, not to exceed an additional fifteen (15) days;

(vi) Operator abandons the Services for a period of thirty (30) consecutive days;

(vii) Operator fails to provide or maintain in effect the O&M Security in the amount and terms required hereunder, and such failure is not remedied within five (5) following written notice thereof from Concessionaire (which notice requirement shall be waived if applicable Law prohibits the giving of such notice), or Operator fails to provide the Handover Security required by Section 17.3.1 in the amount and terms required thereunder, and Concessionaire is unable to cover the amount of the Handover Security by deductions from the Monthly Operator's Fee;

(viii) Any Guarantor fails to provide or maintain in effect the guaranty as required hereunder, and such failure is not remedied within five (5) days following written notice thereof from Concessionaire (which notice requirement shall be waived if applicable Law prohibits the giving of such notice);

(ix) Operator fails to commence Pre-Operations Services on the Phase 1 Work Commencement Date, and such failure is not remedied within sixty (60) days following written notice thereof from Concessionaire; *provided*, *however*, that the availability of the 60-day cure period under this clause (ix) shall not affect Operator's obligations or liabilities under the Interface Agreement should it fail to perform any Pre-Operations Services from and after the Phase 1 Work Commencement Date;

(x) Operator fails to comply with any material requirement of Article 15; and such failure is not remedied within twenty (20) days following written notice thereof from Concessionaire (which notice requirement shall be waived if applicable Law prohibits the giving of such notice);

(xi) With respect to any Commuter Rail Project, Operator fails to commence the Operations Services (A) within five (5) days after the date specified in the Operations Notice to Proceed for such Commuter Rail Project or (B) if later, the date specified by RTD pursuant to Section 29.1 of the Concession Agreement;

(xii) Operator operates the Concessionaire-operated Components in a manner violating the Project Requirements or this Agreement and endangering the safety of

Passengers following a written notice from Concessionaire or RTD outlining such safety concerns;

(xiii) Operator breaches its obligations under Section 18.1 or in respect of subcontracting, including the provisions of Part B (Disadvantaged and Small Business Enterprises Programs of the Specified Requirements;

(xiv) Any of the representations or warranties referred to in Article 24 hereof prove to have been materially untrue or incorrect when made to the extent that such breach of representation or warranty has a material adverse effect on the Services or the Project as a whole or the interests of Concessionaire, and such failure is not remedied within thirty (30) days following written notice thereof from Concessionaire (which notice requirement shall be waived if applicable Law prohibits the giving of such notice);

(xv) A change in Control of Operator occurs or is proposed to occur (other than any such change resulting from a bona fide open market transaction in securities effected on a recognized public stock exchange) and RTD requests termination of this Agreement as provided in Section 46.1 of the Concession Agreement;

(xvi) The Availability Ratio of any Commuter Rail Service (treating the Gold Line Service and the Northwest Electrified Rail Segment as a single Commuter Rail Service) is less than 89% in five or more calendar months of any rolling seven-month period; provided, that a single, continuous event lasting no more than thirty (30) days extending across two calendar months and directly causing the Availability Ratio in both such months to fall below 89%, shall be deemed to have resulted in an Availability Ratio of less than 89% in the first such month only;

(xvii) The Performance Deduction Percentage exceeds 2.9% of the Adjustable Base Service Payment for the relevant month in five or more calendar months of any rolling seven-month period;

(xviii) Operator fails to deliver a remedial plan pursuant to Section 3.7.2 or to diligently implement an approved remedial plan, and such failure is not remedied within thirty (30) days following written notice thereof from Concessionaire;

(xix) Subject to the final sentence of Section 3.3.3, the Operator Final Completion Requirements are not fulfilled; and

(xx) Operator otherwise is in default of any other provision of or has failed to perform obligations under the Contract Documents that is not separately specified as an Operator Event of Default in (i) through (xix) of this Section 16.4.1 and such failure continues for thirty (30) days after written notice from Concessionaire (which notice requirement shall be waived if applicable Law prohibits the giving of such notice) or, if such failure is not capable of being remedied within such time, if Contractor has not commenced a cure within such time and thereafter diligently pursued the same until a cure is effected, not to exceed an additional ninety (90) days unless the failure is not susceptible of cure; *provided* that in the case of any such default that has a corresponding "Concessionaire Termination Event" under the Concession Agreement, then the cure period shall be twenty (20) days after written notice from

Concessionaire (which notice requirement shall be waived if applicable Law prohibits the giving of such notice), which 20-day period shall not be subject to extension.

It is acknowledged and agreed by Operator that none of the cure periods allocated to Operator for an Operator Event of Default shall exceed the cure period for the corresponding "Concessionaire Termination Event" (as defined under the Concession Agreement) under the Concession Agreement.

16.4.2 If any event described in Section 16.4.1 has occurred for which a cure period is provided as set forth therein, Operator shall remedy the default within the applicable cure period if a cure period is available (or such longer period as may be agreed by Concessionaire in its absolute discretion), or, alternatively, solely in respect of events described in clauses (xii) and (xiii) of Section 16.4.1, prepare a reasonable remedial program satisfying the requirements of Section 41.2 of the Concession Agreement and submit the same for Concessionaire's Approval within seven (7) calendar days following notice from Concessionaire of such Operator Event of Default, such program to specify in reasonable detail the manner in which such default is proposed to be remedied and the latest date by which it is proposed that such default shall be remedied, in each case, during which period Concessionaire may not exercise any right to terminate this Agreement, but subject to the remainder of this Section 16.4.2, following which Concessionaire may terminate this Agreement with immediate effect; *provided* that Concessionaire's Approval of a remedial program shall be contingent upon the receipt of RTD's approval of such program in accordance with Sections 41.2 and 41.3 of the Concession Agreement. If Concessionaire does not approve the program, the Parties shall meet no later than the following five (5) days in order to agree any amendments to the proposed program; *provided* that any amendments agreed during such period are contingent upon the receipt of RTD's agreement to such amendments in accordance with Section 41.2(a) of the Concession Agreement. If the Parties fail to agree during such five (5)-day period, the question of whether or not the program (as the same may have been amended by agreement) is reasonable may be referred by either Party for resolution in accordance with the Dispute Resolution Procedures, which the Parties agree must result in a determination prior to the date Concessionaire is obligated to submit its corresponding plan to RTD under Section 41.2(a)(i)(B) of the Concession Agreement. To the extent a remedial program is approved, Operator diligently shall remedy such default in accordance with the agreed remedial program. To the extent Operator fails to cure such default or Concessionaire believes that urgent action is necessary to cure such default, and Concessionaire elects not to exercise its termination rights hereunder, Concessionaire may remedy such default with the cost thereof to be borne by Operator. If Operator proposes a remedial program and Concessionaire's Approval is not obtained (or, where referred to the Dispute Resolution Procedures, Concessionaire's disapproval of such program is determined not to be reversed), or if Concessionaire's Approval is obtained (or determined pursuant to the Dispute Resolution Procedures as being reasonable) but Operator has subsequently not acted in accordance with such program, Concessionaire may, if the default is continuing without remedy and waiver, terminate this Agreement by notice in writing having immediate effect. For the avoidance of doubt, notwithstanding anything to the contrary, Concessionaire shall be entitled to terminate this Agreement immediately with no opportunity for cure or a remedial program upon the occurrence of any Operator Event of Default under Section 16.4.1(i), 16.4.1(ii), 16.4.1(xvi) or 16.4.1(xvii).

16.4.3 If Concessionaire terminates this Agreement in accordance with Section 16.4.2 and/or RTD terminates the Concession Agreement in accordance with the terms thereof and such termination is a result of a breach by Operator of its obligations under this Agreement, Operator shall be liable to Concessionaire for the aggregate of:

(i) the costs reasonably incurred by Concessionaire in replacing Operator to perform the Services;

(ii) all direct Damages suffered or incurred by Concessionaire as a result of such termination and/or the acts or omissions of Operator leading to such termination, including, where the Concession Agreement has not been terminated, the costs and expenses reasonably attributable to the employment of a different operator to fulfill the obligations and services to have been performed by Operator under this Agreement, and any loss of Service Payment attributable to any delay in the achievement of the Revenue Service Commencement Date of any Commuter Rail Project as a result of such termination;

(iii) any Damages incurred by Concessionaire in respect of a failure by Operator to properly fulfill the residual lifecycle requirements of the Concessionaire-operated Components in accordance with the terms of the Concession Agreement (including any requirements relating to the Reinstatement Work); and

(iv) any Damages, costs and expenses suffered or incurred by Concessionaire under the Concession Agreement, the Designated Credit Agreements (including principal, interest and other amounts payable thereunder) or any other related agreement as a result of such termination.

Operator acknowledges that in the event of termination of this Agreement, RTD, pursuant to its rights under the Concession Agreement, will be entitled to replace this Agreement with a contract on substantially similar terms as this Agreement (subject to such amendments as may be necessary to reflect any legal requirements or limitations applicable to RTD) between Operator and RTD.

16.4.4 Subject to Operator's right to cure a default and/or propose and implement a remedial program hereunder, and the terms of the Direct Agreement, and so long as the Operator Event of Default is continuing, Concessionaire may, and under the Concession Agreement, RTD has the right to, at its option and without prejudice to any of its other rights or remedies, do any or all of the following:

(i) require Operator to participate in and carry out such of the handover procedures set out in Section 1.7 (*Handover Procedures at the end of the term*) of Attachment 14 (*Handover and Reinstatement Work Procedures*) to the Concession Agreement as Concessionaire or RTD considers necessary in order for Concessionaire or RTD to take over the operation and maintenance of the Concessionaire-operated Components during the period in which Concessionaire or RTD exercises its step-in rights in accordance with Section 16.4.4(iii);

(ii) suspend payment of the Monthly Operator's Fee or the Service Payments, as applicable, and any other payments otherwise due hereunder or the Concession

Agreement, as applicable, but only during the period in which Concessionaire or RTD, as applicable, exercises its step-in rights in accordance with Section 16.4.4(iii); and

(iii) without terminating this Agreement or the Concession Agreement, as applicable, by notice in writing having immediate effect, following the conclusion of any applicable cure or step-in periods afforded RTD or the Financing Parties, as applicable, suspend operation by Operator of the Concessionaire-operated Components or any system comprising the Concessionaire-operated Components, remove Operator from any Site and the Concessionaire-operated Components and take over the performance of the Eagle Project or any part thereof (in which case Operator shall reimburse Concessionaire and RTD for all reasonable costs incurred by them in performing or engaging others to perform the functions of Operator (including the relevant administrative expenses of Concessionaire and RTD)); *provided* that, notwithstanding the suspension or removal of Operator, Operator is not released from its obligations, liabilities or responsibilities under this Agreement (except during the continuance of such suspension and removal with respect to such obligations, liabilities or responsibilities that are in fact suspended) and this Agreement shall remain in full force and effect until this Agreement is terminated by Concessionaire in writing, having immediate effect subject to any dispute being resolved pursuant to the Dispute Resolution Procedures that may be ongoing as to whether the termination which is claimed to have occurred was wrongful. Concessionaire shall promptly communicate to Operator any notice received from RTD relating to its exercise of rights described in this Section 16.4.4.

16.4.5 Concessionaire may immediately terminate this Agreement if both (i) the aggregate amounts paid by Operator in respect of Damages or claims hereunder exceed the Limitation of Liability, and (ii) Operator does not agree to waive the benefits of the Limitation of Liability or increase the amount of the Limitation of Liability in an amount reasonably acceptable to Concessionaire. Operator shall not be entitled to Operator Termination Payments or payment of any other amounts as a result of a termination pursuant to this Section 16.4.5.

16.5 RTD Termination of Concession Agreement.

(i) Subject to the limitation on damages in Section 16.6.3, if RTD terminates the Concession Agreement as a result of a breach by Concessionaire, Concessionaire shall compensate and hold Operator completely harmless for any Damages or claims incurred by Operator as a result of such termination except to the extent to which such termination was as a result of breach by Operator of this Agreement not caused by Concessionaire.

(ii) If RTD terminates the Concession Agreement as a result of a breach by Operator of its obligations under this Agreement (including its obligations to fulfill Concessionaire's obligations under the Concession Agreement to the extent required under this Agreement) except to the extent to which such termination was as a result of breach by Concessionaire of this Agreement not caused by Operator, Operator shall compensate Concessionaire for any Damages incurred by Concessionaire as a result of such termination, which Damages shall include return of (but not return on) any equity invested in Concessionaire and any amounts required to be paid by Concessionaire to any Financing Parties in respect of the financing of the Project and which is due and payable as a result of such termination.

(iii) This Agreement shall terminate, with immediate effect, upon any termination of the Concession Agreement by RTD as contemplated in Section 41.4 and 41.5 of the Concession Agreement

16.6 Concessionaire Events of Default.

16.6.1 The following events shall constitute "Concessionaire Events of Default":

(i) Concessionaire makes a general assignment for the benefit of its creditors, is generally unable to pay its debts as they become due, or becomes the subject of any voluntary or involuntary bankruptcy, insolvency, arrangement, reorganization or other debtor relief proceeding under any applicable Law, now in existence or hereafter becoming effective, and, in the case of any such involuntary proceeding, it is not dismissed or stayed within sixty (60) days after it is commenced;

(ii) Concessionaire fails to make payment of any undisputed amounts to Operator under this Agreement (unless such failure is due to the failure of RTD to make any corresponding payment when due under the Concession Agreement) and such failure continues for thirty (30) days after written notice thereof from Operator (which notice requirement shall be waived if applicable Law prohibits the giving of such notice); and

(iii) only if relief cannot be provided by issuance of a Modification under Section 13.9, Concessionaire otherwise is in default or has failed to perform any of its other material obligations under this Agreement and such failure continues for thirty (30) days after written notice from Operator (which notice requirement shall be waived if applicable Law prohibits the giving of such notice), or, if such failure is not capable of being cured within such thirty (30) day period, if Concessionaire has not commenced the cure within such period and thereafter diligently pursued the same until a cure is effected, not to exceed an additional ninety (90) days unless the failure is not susceptible of cure.

16.6.2 Upon the occurrence of a Concessionaire Event of Default under Section 16.6.1(ii), Operator may suspend performance of the Services hereunder and, if Concessionaire fails to pay the undisputed portion of the Monthly Operator's Fee then due and owing to Operator within ninety (90) days after written notice of such non-payment (which notice requirement shall be waived if applicable Law prohibits the giving of such notice), terminate this Agreement upon seven (7) Business Days' prior written notice to Concessionaire. In the case of a Concessionaire Event of Default under Section 16.6.1(i), Operator may terminate this Agreement to take effect immediately. Any right of Operator to terminate this Agreement shall be subject to all cure rights of RTD under the Concession Agreement and of the Financing Parties pursuant to the Direct Agreement.

16.6.3 In the event Operator terminates this Agreement pursuant to Section 16.6.2, or the Concession Agreement is terminated as a result of a "Concessionaire Termination Event" as defined in the Concession Agreement that was not caused by or was attributable to an Operator Event of Default hereunder, Concessionaire shall pay the Operator

Termination Payments to Operator in accordance with Section 5.9 hereof as Operator's sole and exclusive remedy.

16.6.4 In exercising its right to terminate this Agreement pursuant to this Section 16.6, Operator shall not have the right to terminate less than all of the Services provided hereunder (for example, terminating Services for the operation and maintenance of a particular Commuter Rail Service, and not all Commuter Rail Services) or otherwise partially terminate this Agreement.

16.7 Other Termination.

Without prejudice to any other provision of this Agreement, and subject to the payment in full by Concessionaire to Operator of any related Operator Termination Payments, if due, this Agreement shall automatically terminate and have no further force and effect in the following circumstances:

16.7.1 subject to Section 3.26, where a Force Majeure Event has occurred and either (i) the consequences thereof are continuing for a period of 180 consecutive days or more or have materially prevented or delayed Concessionaire or RTD from performing a substantial proportion of its obligations under the Concession Agreement for a period of 180 days or more in aggregate within a period of 360 consecutive days; or (ii) Concessionaire or RTD has determined that a restoration plan described in Section 3.26.2 is unfeasible in accordance with the Concession Agreement, and Concessionaire or RTD terminates the Concession Agreement (or, if a dispute exists as to the validity of such termination, it is finally determined under the Concession Agreement that such termination is valid); *provided that*, in each case, Concessionaire shall pay Operator the Operator Termination Payments in accordance with Section 5.9 as Operator's sole and exclusive remedy; and

16.7.2 in the event the Concession Agreement is terminated as a result of an RTD Termination Event as contemplated in Section 41 of the Concession Agreement, or as a result of a termination by either RTD or Concessionaire pursuant to Section 5.13(b) of the Concession Agreement, or as a result of a termination by RTD pursuant to Section 5.13(c) of the Concession Agreement; *provided* that Concessionaire shall pay Operator the Operator Termination Payments in accordance with Section 5.9 as Operator's sole and exclusive remedy.

Operator acknowledges that where the question of whether or not a purported termination of the Concession Agreement described in Section 16.7.1, or any other termination pursuant to the terms of the Concession Agreement is wrongful is being disputed under the Concession Agreement, termination of this Agreement will not take effect (but RTD may exercise its step-in rights described in Section 16.4.4(iii)) unless and until determination is made that the termination of the Concession Agreement is valid and the FM Termination Amount (or other applicable termination amount) is paid in full in accordance with the Concession Agreement).

16.8 Transition Following Cancellation or Termination.

16.8.1 Subject to Section 16.9, upon cancellation or termination of this Agreement, Concessionaire shall be immediately released from any and all obligations to Operator (except for Concessionaire's obligation to pay the Operator Termination Payments or any amount specified in Section 16.4, if applicable) and the remaining rights of Operator under this Agreement will immediately and automatically terminate. Upon cancellation or termination of this Agreement, Operator shall as promptly as possible consistent with Good Industry Practice cease to occupy and shall deliver up the Project and the Sites and all stocks of spares and consumables as are on hand as of the cancellation or termination date, to Concessionaire. However, if requested by Concessionaire, Operator shall hand over and, to the extent not already owned by RTD, transfer ownership of title to the Concessionaire-operated Components to RTD, free of all Encumbrances and free of charge and, as soon as reasonably practicable following cancellation or termination, and shall participate in and carry out the handover procedures in coordination with Concessionaire and RTD and in accordance with Section 1.7 of Attachment 14 (*Handover and Reinstatement Work Procedures*) to the Concession Agreement. Notwithstanding Operator's handover obligations under this Section 16.8.1 and the transition services to be provided under Section 16.8.2, subject to the exercise by Concessionaire or RTD of its step-in rights under Section 16.4.4(iii), Operator shall continue to perform its obligations under this Agreement until a termination of this Agreement becomes final and effective in accordance with this Article 16.

16.8.2 During a period of three (3) months immediately following any cancellation or termination of this Agreement, Operator shall fully cooperate with Concessionaire (and, under the direction and supervision of Concessionaire, RTD) in the transfer of the performance of the Services to, and the training of, a replacement operator. During such period, Operator shall provide Concessionaire (and, under the direction and supervision of Concessionaire, RTD and any replacement operator) full access to the Project and the Sites and to all information, data and records relating to the Project and the Services, and Operator shall comply with all reasonable requests by Concessionaire (and, under the direction and supervision of Concessionaire, RTD and any replacement operator) in connection with taking over the operation and maintenance responsibilities, including the execution and delivery of documents and taking of other actions, in each case as shall be necessary to facilitate the orderly transition of duties from Operator to the replacement operator and to avoid or mitigate insofar as reasonably practicable any inconvenience or any risk to the health and safety of the members of the public and the employees of Concessionaire, RTD and the replacement operator.

16.8.3 If requested by Concessionaire, Operator will make every reasonable effort to cancel any existing Subcontracts upon terms satisfactory to Concessionaire. Except as provided in Section 5.9, any payments to be made to a Subcontractor as a result of any such termination shall be at the expense of Operator. Operator shall also, upon request by Concessionaire, (i) deliver and assign to Concessionaire or, at the direction of Concessionaire, RTD or a replacement operator, as the case may be (but in no event shall Concessionaire be liable for any action or default of Operator occurring prior to such delivery and assignment except to the extent such action or default was caused by Concessionaire, and each Subcontract shall so provide) all of its right, title and interest in and to any and all Subcontracts, purchase order, bonds and options made by Operator in performance of the Services, and (ii) deliver to

Concessionaire or, at the direction of Concessionaire, RTD, as the case may be, or, at Concessionaire's request, a replacement operator, originals of all Contract Documents (except that Operator may keep for its records copies, and, if sufficient originals exist, an original set, of the Agreement and other Contract Documents executed by Concessionaire), Permits, all other materials relating to the Services, and all papers and documents relating to the Permits, orders placed, bills and invoices and financial management under this Agreement which are in Operator's possession or under Operator's control.

16.8.4 At the request of Concessionaire, upon the cancellation or termination of this Agreement, Operator shall:

(i) not assert its rights, if any, to retain its personnel employed by Operator at the Project, other than those persons then occupying the positions of General Manager, Vehicle Engineer and Chief Engineer, and shall otherwise permit such personnel to transfer to the employ of Concessionaire, RTD or a replacement operator;

(ii) transfer, to the extent permitted by applicable Law, its unexpired collective bargaining agreements (if any) to Concessionaire, RTD or a replacement operator and shall cause the plan sponsor or other fiduciary of the pension or other benefits plans (if any) covering such personnel to arrange for the transfer of all plan assets and liabilities relating to accrued benefits of such plan's participants and beneficiaries from such plan to a plan sponsored by Concessionaire, RTD or a replacement operator or a joint labor-management plan, as the case may be;

(iii) transfer to Concessionaire, RTD or to a replacement operator, to the extent permitted by applicable Law, copies of Operator's employee records acquired or accumulated under this Agreement or in the course of the Services and, as applicable, shall use Reasonable Efforts to obtain any necessary consent or releases of such personnel required for Concessionaire, RTD or a replacement operator to receive copies relating to such personnel; and

(iv) until the actual transfer of operations to Concessionaire, RTD or a replacement operator, continue to pay and to perform its contractual and other obligations to and in respect of Operator's personnel and Subcontractors.

16.9 Surviving Obligations.

Cancellation or termination of this Agreement or the retention of Operator to perform the Services (a) shall not relieve Operator of its obligations with respect to the confidentiality of Concessionaire information as set forth in Article 20, (b) shall not relieve Operator of any obligation hereunder which expressly or by implication survives termination hereof, and (c) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Concessionaire or Operator of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination, and shall not relieve Operator of its obligations as to portions of the Services or other services hereunder already performed or of obligations assumed by Operator prior to the date of termination.

ARTICLE 17

END OF TERM HANDOVER AND REINSTATEMENT WORK

17.1 Handover and Reinstatement Requirements.

Operator shall, on the Concession Expiry Date, hand over and, to the extent not already owned by RTD, transfer ownership of title to the Concessionaire-operated Components, free of all Encumbrances and free of charge, to RTD in a condition which:

(i) could reasonably be expected of an equivalent commuter rail system which has been in existence and operated for a period equal to the period during which the relevant Commuter Rail Project has been operated and which has been maintained in accordance with the O&M Standards during that period; and

(ii) is capable of complying with the O&M Standards (as amended pursuant to the terms of the Concession Agreement and this Agreement) for a period of not less than three (3) years from the Concession Expiry Date;

(collectively, the "Handover and Reinstatement Work Requirements").

17.2 Reinstatement Work.

The maintenance or other work of renewal, reconstruction, repair or reinstatement to be carried out by Operator in respect of the Concessionaire-operated Components prior to the Concession Expiry Date in order to satisfy the Handover and Reinstatement Work Requirements shall be referred to as the "Reinstatement Work" and agreed pursuant to Sections 1.2 (Reinstatement Work) and 1.3 (*Reinstatement Proposal*) of Attachment 14 (*Handover and Reinstatement Work Procedures*) to the Concession Agreement. Reinstatement Work shall not include those items which RTD elects in writing to defer in accordance with the procedure defined in Section 1.4(b) (*Implementation of the Reinstatement Work*) of Attachment 14 (*Handover and Reinstatement Work Procedures*) to the Concession Agreement.

17.3 Other Operator Responsibilities.

17.3.1 Operator shall participate in, carry out and cooperate fully with the Handover and Reinstatement Work Procedures in accordance with Attachment 14 (*Handover and Reinstatement Work Procedures*) to the Concession Agreement, including, without limitation, participating in any inspection, examination or review of the Concessionaire-operated Components or Sites, facilitating Concessionaire's compliance with its obligations as a member of the Handover and Reinstatement Work Committee (as defined in Attachment 14 to the Concession Agreement) carrying out the Reinstatement Work, procuring all required warranties with respect to the Reinstatement Work, obtaining and maintaining the Handover Security (as defined in Attachment 14 to the Concession Agreement) as required in such Attachment, and making timely payment of Handover Amounts (as defined in Attachment 14 to the Concession

Agreement), if any. If all or any portion of the Handover Security or Handover Amounts, if any, are not provided by Operator as required, Concessionaire shall be entitled to deduct such amounts from the Monthly Operator's Fee. Concessionaire's three representatives to the Handover and Reinstatement Work Committee shall be selected as follows: one representative shall be selected by each of Concessionaire and Operator and the third representative shall be selected as mutually agreed by Concessionaire and Operator; *provided* that if Concessionaire and Operator are unable to agree to the identity of the third representative, the two representatives independently selected by the Parties shall within ten (10) Business Days of their selection select the third representative.

17.3.2 Operator shall ensure that provision is made in all applicable Subcontracts and other contracts that they have entered into to ensure that it will be in a position to carry out the Handover and Reinstatement Work Procedures.

17.3.3 Operator shall ensure (and shall cause the Subcontractors to ensure) that the Handover and Reinstatement Work Procedures are fully completed on or prior to the Concession Expiry Date. If the Handover and Reinstatement Work Procedures are not completed in any material respect on or before the Concession Expiry Date as a result of an act or omission of Operator or any of its Subcontractors, Operator shall operate the Concessionaire-operated Components until the handover is completed without being entitled to payment of any Monthly Operator's Fee.

17.4 Dispute.

Any dispute between the Parties relating to the carrying out and participation in the Handover and Reinstatement Work Procedures may be referred by either Party for resolution in accordance with the Dispute Resolution Procedures.

ARTICLE 18

ASSIGNMENTS

18.1 Assignment.

Neither Party shall have the right, power or authority to assign or delegate this Agreement or any portion thereof, either voluntarily or involuntarily, or by operation of law, without the prior written consent of the other Party, which consent may be granted or withheld in the sole discretion of such other Party; *provided* that Concessionaire may assign all of its rights and interests in and under this Agreement to the Financing Parties as collateral security for its obligations. Upon request by Concessionaire, Operator shall enter into a direct agreement in the form of Exhibit O hereto (the "Direct Agreement"). Concessionaire also may assign to RTD any or all of its rights under this Agreement and the other Contract Documents to the extent required under the Concession Agreement without Operator's consent. Nothing in this Section 18.1 shall be deemed to preclude Operator from subcontracting portions of the Services in accordance with Article 4 hereof.

18.2 Reserved.

18.3 Successors and Assigns.

All of the rights, benefits, duties, liabilities and obligations of the Parties hereto shall inure to the benefit of and be binding upon their respective successors and permitted assigns.

ARTICLE 19

CONTRACT DATA; INTELLECTUAL PROPERTY

19.1 Contract Data.

19.1.1 Contract Data Generally. Operator shall prepare and submit (and shall cause the Subcontractors to prepare and submit) all Contract Data to Concessionaire and RTD and/or the Project Third Parties, as the case may be, at its sole cost in accordance with the requirements of this Agreement and the Third Party Agreements. All Contract Data shall be consistent with the Concessionaire's Proposal, unless Concessionaire approves a deviation therefrom (such approval not to be unreasonably withheld or delayed); *provided* that the obligation of Concessionaire to not unreasonably withhold or delay approval is subject to and contingent on receipt of RTD's prior approval of such proposed deviation.

19.1.2 Approval of Contract Data. Operator shall submit (and shall cause the Subcontractors to submit) each item of Contract Data which is required to be submitted to RTD pursuant to the Contract Data Requirements List, to Concessionaire first for Concessionaire's Review by no later than ten (10) Business Days prior to the applicable deadline set out in the Contract Data Requirements List for such item of Contract Data, in accordance with the procedures set forth in Section 19.5. Operator shall take (and shall ensure that the Subcontractors take) all steps and actions necessary to facilitate compliance by Concessionaire of its obligations under Section 19 of the Concession Agreement.

19.1.3 Amendments. Operator shall not (and ensure that the Subcontractors do not) amend, modify or vary any item of Contract Data that has been approved (or deemed approved) by Concessionaire without the prior written approval of Concessionaire. Any dispute arising between Concessionaire and Operator in relation to the compliance of any item of Contract Data with the requirements of this Agreement and the other Contract Documents may be referred by either Party for resolution in accordance with the Dispute Resolution Procedures.

19.2 Ownership.

Operator agrees that all O&M Submittals and other Work Product prepared or required to be prepared by Operator as deliverables under this Agreement shall be the sole and exclusive property of RTD and Concessionaire and shall not be used by Operator in connection with any other project without Concessionaire's prior written consent. The foregoing does not apply to

Operator's pre-existing technical experience, expertise, standard formats or the like. Operator agrees that all such documents, as well as any drawings, tracings, specifications, calculations, memoranda, data, notes and other materials which are supplied by Concessionaire and come into the possession of Operator, shall be delivered to Concessionaire at the End Date if not previously delivered hereunder, except to the extent Concessionaire shall instruct Operator not to deliver such materials. Concessionaire may not copy or disseminate such materials in connection with any project other than the Project unless Operator's name is deleted from such materials. Concessionaire shall defend, indemnify and hold Operator harmless from any claim, demand or liability arising from reuse of Operator's documents if such reuse is not in connection with the Project.

19.3 Use of Documents by Operator.

Operator shall be entitled to retain and use solely and specifically in connection with the Services hereunder and for enhancement of its internal files a reproducible set of all O&M Submittals and other Work Product delivered to Concessionaire by Operator in accordance with this Article 19.

19.4 Intellectual Property.

19.4.1 Operator shall provide (and shall cause the Subcontractors to provide) the Work Products to Concessionaire (and, if directed by Concessionaire, to RTD) in accordance with the terms of this Agreement, the Concession Agreement and the time periods set out in the Contract Data Requirements List. As part of the Handover and Reinstatement Work Procedures before the End Date, Operator shall provide (and shall cause the Subcontractors to provide) Concessionaire (and, if directed by Concessionaire, RTD) with copies of all Work Products and related documentation prepared in connection with the Project (i) in native format, which is the original format in which materials were developed and maintained, including, if available, in electronic or digital format and (ii) as Concessionaire or RTD may reasonably request in another format suitable for future Use as anticipated by this Agreement). For the purposes of this Section 19.4, the term Use means the right to use, make, import, reproduce, publish, display, modify, create derivative works from, or otherwise exploit the items identified below and Intellectual Property Rights in or to all or any part of such items. Operator shall preserve any and all Work Products, including Source Code (subject to Section 19.4.7), prior to provision of such Work Product to Concessionaire and RTD as part of the Handover and Reinstatement Work Procedures, and Operator shall replace any such Work Products that are lost, destroyed or damaged prior to completion of Handover on the End Date to the extent practicable without additional cost to Concessionaire or RTD. Concessionaire and RTD shall have the right to, and Operator acknowledges Concessionaire's and RTD's right to, Use all or any part of the Work Products, Operator Content, Third Party Materials and Operator Tools and Proprietary Designs in accordance with and subject to this Section 19.4 and Section 11.3.1. Operator shall provide (and shall cause the Subcontractors to provide) all documentation and licenses, information, materials and assistance reasonably required by Concessionaire or RTD to exercise the rights and licenses granted herein, including (i) any additional licenses needed for new developments or

additions, and (ii) subject to Section 19.4.7 below, all information and Source Code necessary to fully access and create derivative works based on software.

19.4.2 Operator hereby grants (and shall cause the Subcontractors to grant) to Concessionaire and RTD, for the benefit of Concessionaire, RTD and the FTA, a fully paid-up, royalty-free, non-exclusive, irrevocable, perpetual license, with the right to sub-license, limited to the territory of the United States of America, to Use Operator Content for the Eagle Project, any RTD Related Project, and direct purposes of the United States federal government as required by the FTA.

19.4.3 Operator shall obtain (and shall cause the Subcontractors to obtain), on Concessionaire's and RTD's behalf, all necessary rights and licenses for the Third Party Materials in accordance with this Section 19.4.3. Operator shall provide to or obtain for (and shall cause the Subcontractors to provide to or obtain for) Concessionaire and RTD all rights and licenses necessary for Concessionaire, RTD and its sublicensees and contractors to Use the Third Party Materials for the purposes of the Eagle Project, *provided* that such right to Use shall not include the right to create derivative works from Third Party Materials comprised of software or Source Code. Operator shall (and shall cause the Subcontractors to) (i) assign or transfer to Concessionaire and RTD such rights and licenses in and to the Third Party Materials as may validly be assigned or transferred by Operator to Concessionaire and RTD, (ii) acquire for Concessionaire and RTD a direct grant of rights or a license to Concessionaire and RTD in and to the Third Party Materials, (iii) sublicense to Concessionaire and RTD rights and licenses in and to the Third Party Materials, or (iv) take such other action as may be necessary for Concessionaire, RTD and its sublicensees and contractors to have the rights and licenses to Use the Third Party Materials for the purposes of the Eagle Project in accordance with the immediately preceding sentence. All actions by Operator under this Section 19.4.3 shall be at the cost and expense of Operator or the relevant Subcontractor (other than the cost for any additional sublicenses required by Concessionaire or RTD other than for Concessionaire or RTD itself, as the case may be, the cost and expense of which shall be borne by Concessionaire or RTD, as the case may be) and all grants and licenses, and actions taken by Operator hereunder shall be in form and substance reasonably acceptable to Concessionaire and RTD.

19.4.4 Upon the Phase 1 Effective Date, Operator shall furnish (and shall cause the Subcontractors to furnish) a list to Concessionaire and RTD of all Operator Tools and a list of all Proprietary Designs expected to be utilized in performance of this Agreement, in each case containing sufficient descriptive information and supporting evidence to support the classification of such tools and designs as Operator Tools and Proprietary Designs. To the extent not previously identified to Concessionaire and RTD and sufficiently described in such lists, Operator shall clearly and specifically identify Operator Tools and/or Proprietary Designs in each of its submittals, in each case providing sufficient descriptive information and supporting evidence to support the classification of such tools and designs as Operator Tools and Proprietary Designs. Work Products shall not be considered reclassified as Operator Tools and/or Proprietary Designs on the basis of such submittals until RTD has either confirmed such reclassification in writing or failed to respond to Concessionaire within 30 days of the relevant submission. In accordance with Article 19, to the extent Operator or any Subcontractor considers any descriptions or materials provided under this Section 19.4.4 to contain information exempt from public disclosure, it must indicate to Concessionaire and RTD the provision of the

Colorado Open Records Act that exempts such document from public disclosure and otherwise comply with Article 19.

19.4.5 Operator hereby grants (and shall cause the Subcontractors to grant) to Concessionaire and RTD a fully paid-up, royalty-free, non-exclusive, irrevocable, perpetual license, with the right to sub-license, limited to the territory of the United States of America, to Use the Operator Tools and the Proprietary Designs for the purposes of the Eagle Project and any RTD Related Project (as such term is defined in the Concession Agreement) that is a commuter rail project, but only to the extent reasonably necessary to effect systems integration with the Eagle Project.

19.4.6 Operator shall obtain from Subcontractors (and shall ensure that the Subcontractors obtain from all of their respective Subcontractors and suppliers), written assignments or licenses as necessary to effect the rights and licenses granted to Concessionaire and RTD herein (including for the benefit of the FTA), at no additional cost to Concessionaire and RTD, and shall provide copies of such documents to Concessionaire and RTD upon request.

19.4.7 If RTD and Concessionaire agree to enter into a software escrow agreement with respect to Concessionaire's Source Code obligations under the Concession Agreement, Operator shall take all action necessary to ensure Concessionaire's compliance with Section 33.1(h) of the Concession Agreement, including becoming a party to such an agreement if requested at its own cost and pay all costs associated with the maintenance of a source code escrow agreement as required in such section. Operator acknowledges that, unless otherwise expressly provided for in the Concession Agreement, RTD is not to acquire ownership of the copyright in the Source Code deposited in accordance with such a software escrow agreement, but RTD is to be the owner of the copies of the Source Code it receives under the terms of a source code escrow agreement.

19.4.8 Concessionaire hereby grants to Operator a sub-license to use, make, import, reproduce, display and create derivative works from RTD Content solely for the purpose of performing Operator's obligations under this Agreement, which licenses shall terminate with immediate effect on the End Date. Operator acknowledges RTD's unrestricted right to Use RTD Content, and to obtain and hold in its own name patents, copyright and/or trademark registrations for Work Products owned by RTD and any derivative works or developments created by RTD based on the Work Products.

19.4.9 Except for its own internal use, Operator shall not and shall not authorize any other Person, and shall ensure that its Subcontractors shall not, publish or reproduce Operator Content in whole or in part, or in any manner or form, without the prior written consent of Concessionaire until such time as Concessionaire and RTD has either released or approved the release of such Operator Content to the public.

19.4.10 Concessionaire and Operator each undertakes at the request of the other and at no charge to execute all documents and to do all acts which may be reasonably required by the other to bring into effect the provisions of this Section 19.4 and to allow Concessionaire to fulfill its obligations under Section 33 of the Concession Agreement.

19.5 Procedures for Concessionaire's Approval or Concessionaire's Review of Contract Data and Other Items.

Operator shall submit items of work subject to Concessionaire's Approval or Concessionaire's Review, as applicable, to Concessionaire by the date specified in this Agreement or in Exhibit B and Concessionaire shall provide its written approval or denial thereof within five (5) Business Days of such submission, unless another time period for such approval is specified in Exhibit B or in this Agreement. With respect to an item that requires Concessionaire's Approval, if Concessionaire determines to deny its approval, it shall provide a brief summary of the reasons for its determination. If Concessionaire does not respond within the time allotted, Concessionaire's approval or Concessionaire's review, as the case may be, shall be deemed to have been given or made, as applicable, unless otherwise provided in Exhibit B or in this Agreement with respect to the approval of such item.

ARTICLE 20

CONFIDENTIAL INFORMATION

20.1 Confidentiality.

Each Party shall maintain the confidentiality of any Information, and no Information may be disclosed in violation of the Concession Agreement, except that (unless doing so would violate the Concession Agreement), Information may be disclosed or provided:

20.1.1 by either Party to its and its Affiliates' directors, officers, employees, consultants and agents, including accountants, legal counsel and other advisors;

20.1.2 by RTD, to the Project Third Parties or Relevant Authorities or otherwise as RTD may require for the construction, operation, maintenance or improvement of the Concessionaire-operated Components in the event of, or following, termination of this Agreement;

20.1.3 by Concessionaire:

(i) to the Financing Parties to the extent such Information is reasonably required by the Financing Parties in connection with arranging the Concessionaire Financing or which Concessionaire is obligated to supply by the terms of the Designated Credit Agreements; and

(ii) to Operator or its Subcontractors, the Design-Build Contractor or the Rolling Stock Supplier or their respective subcontractors to the extent such Information is necessary for the performance by Concessionaire of its obligations under the Concession Agreement;

20.1.4 by either Party to the extent:

(i) it is required to disclose such Information pursuant to an Applicable Requirement or by any subpoena or similar legal process or by any Relevant Authority;

(ii) the other Party confirms in writing that such Information is not required to be treated as confidential;

(iii) such Information is or comes into the public domain otherwise than through any disclosure prohibited by this Agreement or wrongful act of the other Party;

(iv) such Party can show that such Information was lawfully in its possession prior to receipt thereof from the other Party through no breach of any confidentiality obligation;

(v) such Information was received by such Party from a third party having no obligation of confidentiality with respect thereto;

(vi) such Information was at any time developed independently by such Party provided it is not developed from otherwise confidential information; or

(vii) such Information is required to be disclosed under securities laws applicable to publicly traded companies and their subsidiaries or reporting is required by a Relevant Authority if such Party informs the other Party of the need for such disclosure and, if reasonably requested by the other Party, seeks, through a protective order or other appropriate mechanism, to maintain the confidentiality of such information;

provided that, in the cases of Sections 20.1.1, 20.1.2 and 20.1.3, the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and will so provide such Information subject to the same or similar requirements to maintain confidentiality as contained in this Agreement; *provided*, *further* that Information provided by or on behalf of RTD may not be disclosed in violation of the Concession Agreement, and either Party providing any such Information to the other Party hereunder shall notify such other Party if such Information was originally provided by or on behalf of RTD.

20.1.5 Operator understands that any documents that it or Concessionaire supplies to RTD are subject to public inspection and copying under the Colorado Open Records Act, Section 24-72-201 *et seq*., unless exempt from public disclosure by Law. Operator agrees that if it considers documents to be exempt from public disclosure, it must indicate to RTD the provision of the Colorado Open Records Act which exempts such document from public disclosure and is otherwise responsible for ensuring that any documents exempt from public disclosure are clearly marked as such. Operator agrees that if a Colorado Open Records Act request is filed with RTD seeking disclosure of those documents, Concessionaire shall promptly provide Operator with any notice received from RTD notifying Concessionaire of such request and Operator shall assist RTD in responding to the request by reviewing the documents requested and confirming that Operator does not wish RTD to make them public. In addition, Operator agrees to hold RTD harmless and, at RTD's option, provide legal defense for RTD from all claims and demands, including attorney's fees, asserted against RTD that result from RTD refusing to make public the documents Operator has designated as confidential and

proprietary. Operator also agrees that, if any action is filed in court seeking disclosure of the documents declared confidential and proprietary by Operator, RTD may deposit the documents with the court and Operator will defend in court its designation of the information as exempt from disclosure.

20.1.6 Operator shall inform its Subcontractors, suppliers, vendors and employees of its obligations under this Article 20 and shall require each of its Subcontractors, suppliers, vendors and employees to execute confidentiality arrangements substantially in the form of this Article 20.

20.2 Survival.

Provisions of this Article 20 shall continue in full force and effect in accordance with their terms, and shall survive the expiration or earlier termination of this Agreement.

20.3 Press Releases; Information.

Operator shall not issue any press or similar media release or any advertisement, or publish, release or disclose any photograph or other information concerning this Agreement or the Project, including in accordance with the Public Information Plan, without the express prior written consent of Concessionaire, which consent shall not be unreasonably withheld. Operator shall include this restriction in all Subcontracts and purchase orders. Operator shall give prior notice to Concessionaire of any information contained in documents filed with public authorities or any other public disclosure which would result in the dissemination of confidential information. Concessionaire when marketing the Project may use Operator's name and logo. Concessionaire shall provide Operator a copy for review and comment where any press release or any paid advertisement containing the name or logo of Operator, or any of Operator's parent entities, may require Operator to make a responding press release.

ARTICLE 21

DISPUTE RESOLUTION; PARTNERING PROGRAM

21.1 Arbitration; Other Actions.

Any claim or controversy between Concessionaire and Operator not exceeding One Million Dollars ($1,000,000) in value shall be submitted to binding arbitration in accordance with this Section 21.1 upon written notice of either Party delivered to the other of such Party's intention to arbitrate, the nature of the dispute, the amount claimed and the decision sought, provided that a dispute relating to a Modification shall be resolved in accordance with Section 13.15. Arbitration under this Section 21.1 shall be conducted by JAMS or its successor in accordance with its Streamlined Arbitration Rules and the Federal Arbitration Act, 9 USC Section 1 *et seq*. The notice of intent to arbitrate also shall specify the name and address of an arbitrator selected by the Party requesting arbitration. The other Party shall within ten

(10) Business Days of receipt of the arbitration notice select its arbitrator; *provided* that if it fails to do so, the arbitrator appointed by the Party requesting arbitration shall serve as the sole arbitrator of the dispute. However, if both Parties name an arbitrator, the two arbitrators thus selected shall within ten (10) Business Days of the selection of the second arbitrator select the third arbitrator. All arbitrators shall be qualified, independent and neutral. The decision of any two of the three arbitrators on any issue shall be final. Unless the Parties otherwise agree, all arbitration proceedings shall be held in Denver, Colorado. Concessionaire and Operator shall proceed with any arbitration expeditiously. All conclusions and decisions of the arbitration shall be made consistent with applicable legal principles and the arbitrators' good faith interpretation of the terms and provisions of this Agreement. The award of the arbitrators will be final and binding on both Parties and may be enforced in any court having jurisdiction over the Party against which enforcement is sought. Each Party shall bear its own expenses, including but not limited to counsel fees and witness fees. If the arbitrators determine that the claim or defense of either Party was frivolous (i.e., without justifiable merit), they may require that the Party at fault pay or reimburse the other Party for costs of the arbitration in whole or in part. NOTWITHSTANDING THE FOREGOING, EQUITABLE REMEDIES, INCLUDING INJUNCTION AND SPECIFIC PERFORMANCE, SHALL BE AVAILABLE TO THE PARTIES BY JUDICIAL PROCEEDINGS AT ANY TIME AND, FOR THE PURPOSE OF ENFORCING ANY ARBITRAL AWARD OR DECISIONS, THE PARTIES HEREBY SUBMIT TO THE EXCLUSIVE JURISDICTION AND VENUE OF THE FEDERAL AND STATE COURTS IN DENVER, COLORADO. THE PARTIES ALSO SUBMIT TO THE EXCLUSIVE JURISDICTION AND VENUE OF THE FEDERAL AND STATE COURTS IN DENVER, COLORADO, REGARDING ANY DISPUTE BETWEEN THE PARTIES WHERE THE AMOUNT IN CONTROVERSY EXCEEDS ONE MILLION DOLLARS ($1,000,000). EACH OF THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING UNDER THIS AGREEMENT AND FOR ANY COUNTERCLAIM IN SUCH AN ACTION OR PROCEEDING. THE PROVISIONS OF THIS SECTION 21.1 SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

21.2 Disputes under the Concession Agreement.

Notwithstanding any other provision in this Agreement to the contrary, if any issue in dispute between the Parties to this Agreement is also the subject of, or relates to, a dispute being, or to be determined by a "Dispute Resolution Panel" or arbitration under the Concession Agreement, the Parties shall seek to cause the dispute hereunder to be consolidated with the dispute resolution process occurring under the Concession Agreement, and the Parties shall meet with RTD to coordinate such consolidation. If such consolidation does not occur, then any ongoing proceeding regarding the dispute hereunder shall be stayed pending final resolution of the dispute under the Concession Agreement, which resolution shall be binding on the Parties for all purposes of this Agreement. Operator agrees to meet with Concessionaire, RTD and other relevant parties to disputes under the Concession Agreement in accordance with Section 50.6 of the Concession Agreement.

Each of Concessionaire and Operator consents to the jurisdiction of the District Court of Colorado for the City and County of Denver with respect to matters as to which such jurisdiction

is mandated by Section 50.7 of the Concession Agreement, and irrevocably waives, the fullest extent permitted by applicable Law:

(i) any objection it may have at any time to the laying of venue of any such action or proceeding in such court;

(ii) any claim that any such action or proceeding brought in any such court has been brought in an inconvenient forum; and

(iii) the right to object, with respect to any such action or proceeding that such court does not have any jurisdiction over such Party.

At the request of Concessionaire or RTD, Operator shall, and shall ensure that Subcontractors shall, provide such information and cooperate as requested in connection with any "Dispute Resolution Procedure" under the Concession Agreement.

21.3 Continuation of Services.

Operator shall continue its performance of the Services in accordance with this Agreement during any dispute which may arise between Concessionaire and Operator concerning the Project, subject to Operator's suspension rights in Section 13.14(iv), and Concessionaire shall pay Operator for such performance subject to the terms of Article 5 hereof.

21.4 Partnering Program.

21.4.1 Operator acknowledges the development of a partnering program between RTD and Concessionaire under Section 49 of the Concession Agreement. To the extent requested by Concessionaire, Operator shall participate (and shall cause its Subcontractors to participate) in the implementation of such partnering program, including attending partnering meetings and facilitating the resolution of issues through the partnering mechanism.

21.4.2 Operator acknowledges that under Section 49.1(c)(i) of the Concession Agreement, RTD and Concessionaire may use the partnering program to consider and, if agreed between those parties, address, any material or sustained increases or decreases in operation and maintenance costs that were not foreseeable as of the Final Proposal Due Date and, in the case of any such increases, to the extent that such increases have or are reasonably likely to have a material adverse effect on the ability of Concessionaire to continue to perform its obligations under the Concession Agreement, as determined after taking into account the adjustments to the Base Annual Service Payment that have or will be made in accordance with Part G (*Base Annual Service Payments*) of Attachment 11 (*Service Payments*) to the Concession Agreement to reflect changes through such date in CPI, the Labor Index and the Materials Index. In furtherance of the foregoing, Operator shall attend a partnering meeting with RTD and Concessionaire on or about the tenth anniversary following the first Revenue Service Commencement Date to occur and on or about every tenth anniversary thereafter prior to the End Date to consider any material or sustained increases or decreases in operation and maintenance costs as described in the foregoing sentence and present any proposed amendments to Attachment 11 (*Service Payments*) to the

Concession Agreement as described in Section 21.4.5. Prior to presentation of such proposals at such meetings, Operator shall submit such proposals to Concessionaire for Concessionaire's Review, and Concessionaire shall submit such proposals to RTD at such meetings on Operator's behalf. Operator shall cooperate with Concessionaire to provide all information and otherwise facilitate the partnering process with respect to the resolution of the matters described in the first sentence of this Section 21.4.2. If Operator desires to initiate the partnering program process for the purposes described in this Section 21.4.2, if Operator so requests, Concessionaire shall participate in the implementation of such partnering program, including attending partnering meetings and facilitating the resolution of issues through the partnering mechanism.

21.4.3 Operator shall conduct on Concessionaire's behalf the open market procurement process for the engagement of an O&M Expert (as defined in the Concession Agreement) contemplated in Section 49.1(d) of the Concession Agreement, and where Concessionaire's direct involvement in the process is necessary to implement the same, Concessionaire shall interface with RTD and take all steps to facilitate the process as reasonably requested by Operator.

21.4.4 Notwithstanding the availability of the partnering process to address any material or sustained increases or decreases in operation and maintenance costs that were not foreseeable as of the Final Proposal Due Date as described in this Section 21.4, Operator agrees to use Reasonable Efforts to anticipate the effect of any increase in operation and maintenance costs as may arise from time to time and will use, and will ensure that its Subcontractors use, Reasonable Efforts to mitigate the consequences of any increases (which measures shall include minimizing the costs of operation and maintenance (including overhead and variable costs)) that are incurred in relation to such increases.

21.4.5 If, during the period between the date of any meeting held in as described in Section 21.4.2 and the date of the most recent prior such meeting (or if no prior such meeting has been held, the start of the Operating Period):

(i) any of the Labor Index, the Materials Index and/or CPI (including in each case any successor indexes previously agreed or determined in accordance with the Concession Agreement and Attachment 11 (*Service Payments*) to the Concession Agreement) has not reasonably tracked the actual labor, materials and other costs of Operator of the types that such indices were designed to track; or

(ii) the ratios by which the Labor Index, the Materials Index and CPI (including in each case any successor indexes previously identified in accordance with the Concession Agreement and Attachment 11 (*Service Payments*) to the Concession Agreement) are weighted in accordance with Part G (*Base Annual Service Payments*) of Attachment 11 (*Service Payments*) to the Concession Agreement have not been or are not an accurate reflection of, respectively, the ratio of actual labor, materials and other costs of Operator of the types that such indices were designed to track,

and in either case of (i) or (ii), such condition:

(A) is continuing and is reasonably likely to continue;

(B) in the case of an increase, has had and is continuing to have a material adverse effect on Operator's ability to continue to perform its obligations under this Agreement notwithstanding Operator's compliance with its obligations under Section 21.4.3; and

(C) was not foreseeable as of the Final Proposal Due Date,

then, to address such condition, Operator may submit to Concessionaire for Concessionaire's Review a proposed amendment to Attachment 11 (*Service Payments*) to the Concession Agreement to incorporate (I) a replacement index for any index identified in Section 21.4.4(i) and/or (II) a replacement ratio of indices for the then existing ratio of indices as set forth in Part G (*Base Annual Service Payments*) of Attachment 11 (*Service Payments*) to the Concession Agreement. Concessionaire shall submit such proposed amendments to RTD on Operator's behalf. Operator agrees to cooperate and participate in the partnering process to facilitate Concessionaire and RTD's resolution to any such proposed amendment; *provided* that Concessionaire shall not agree with RTD to any changes or modifications to a proposed amendment without Operator's approval.

21.4.6 If Concessionaire and RTD are unable to reach agreement as to any proposal, Operator shall have the right to require Concessionaire to refer such disagreement to the O&M Expert for determination in accordance with Section 49.1(h) of the Concession Agreement. Operator agrees that any decision made by the O&M Expert in accordance thereto shall be final and binding on it.

21.4.7 Concurrently with the execution of any agreed amendment to Attachment 11 (*Service Payments*) to the Concession Agreement as provided in this Section 21.4, Operator and Concessionaire shall execute a Modification that replaces the then-existing Exhibit I (*Operator's Fee*) with a revised Exhibit I that contains amendments corresponding to the amendments being made to such Attachment 11. The amended Exhibit I (*Operator's Fee*) shall be effective from the first day of the calendar month immediately following the month in which such agreement (or, if the matter was referred to an O&M Expert in accordance with Section 49.1(h) of the Concession Agreement, such determination) was made. Operator acknowledges and agrees that if an amendment to Attachment 11 results in an increase to the Service Payment at any time such that RTD is required to appropriate additional funds not previously appropriated to pay such increased amount, then such increased amount shall only be considered due and payable to Concessionaire from the date on which RTD appropriates such additional funds, and in turn, Operator shall be entitled to payment of any corresponding increase to its Monthly Operator's Fees only to the extent that, and at such times as, Concessionaire has received the corresponding increased amount to its Service Payments from RTD.

ARTICLE 22

AUDIT AND RECORDS

22.1 Books and Records; GAAP.

Operator shall maintain fiscal records and books of account pertaining to the Project in accordance with generally accepted American accounting principles consistently applied. Operator shall cause such books and records to be updated at least quarterly such that Concessionaire may comply with its financial reporting requirements under GAAP, applicable Law and the Designated Credit Agreements.

22.2 Inspection of Books, Records and Audit Rights.

22.2.1 Operator shall keep (and shall cause each of the Subcontractors to keep), full and complete books, documents, papers and records in respect of the maintenance and operation of the Concessionaire-operated Components, including the replacement or disposal of any material part thereof, and the performance of Operator's obligations under this Agreement, including records of actual operations and maintenance performance and personnel records, including evidence of all prices, costs or rates negotiated and invoiced by Operator in connection with the performance of this Agreement (the "Project Records") and otherwise in accordance with Applicable Requirements. Except to the extent required under the Concession Agreement, no inspection or audit rights shall apply to the make-up of the lump-sum or unit price or rate used under this Agreement, after such lump-sum or price or rate has been agreed by the Parties.

22.2.2 Operator shall permit and facilitate (and shall cause each of the Subcontractors to permit and facilitate) access, at any time, for audit, examination, review and inspection of the Project Records, including for the purposes of making excerpts and transcriptions. Such access shall be granted to Concessionaire, RTD (to the extent provided in the Concession Agreement), any Relevant Authority, any Project Third Party (to the extent provided in the Third Party Agreements), or any of their respective authorized representatives or advisers (collectively, the "Reviewing Authorities") (each at its own cost). Any Reviewing Authority may at its own cost inspect (which inspection right shall include the right to take photographs; *provided* that as a condition to taking photographs, each Reviewing Authority must agree that such photographs may be used solely for the purpose of preparing reports for use by such Reviewing Authority and under no circumstances shall such photographs be used for any other purpose or otherwise disseminated outside of such Reviewing Authority except as required by Law) any elements of the Concessionaire-operated Components and Services in order to monitor the performance by Operator of its obligations and responsibilities under this Agreement and by Concessionaire of its obligations and responsibilities under the Concession Agreement.

22.2.3 Following any audit or inspection by Concessionaire, RTD or any Relevant Authority of the Project Records, the Services or the Concessionaire-operated Components, Concessionaire, RTD or any Relevant Authority carrying out such audit or inspection may direct Operator to remedy any noncompliance with the terms of this Agreement or the Applicable Requirements.

22.2.4 If Operator disputes the conclusions of any audit or inspection or any claim of noncompliance by Operator of its obligations hereunder or under the Applicable Requirements, Operator may refer the dispute for resolution in accordance with the Dispute Resolution Procedures no later than seven (7) days following receipt of the audit or inspection results. If Operator does not refer such dispute to the Dispute Resolution Procedures within such period, then it is deemed that Operator accepts the audit or inspection results and it shall remedy any noncompliance as directed by Concessionaire, RTD or any Relevant Authority as soon as practicable.

22.2.5 Operator acknowledges and agrees that in accordance with 49 CFR 633.15, it shall provide (and shall cause the Subcontractors to provide) the FTA with access to the Project Records and the Sites, as reasonably required by the FTA or RTD.

22.2.6 Operator shall make (and shall cause the Subcontractors to make) available all Project Records and other records relating to appeals under the Dispute Resolution Procedures or to the litigation or the settlement of Claims arising under or relating to this Agreement until such appeals, litigation or Claims are finally resolved, in each case, unless (i) such records are exempt from disclosure under the applicable Dispute Resolution Procedures or (ii) disclosure of such records would breach attorney-client privilege. Operator's obligations under this Section 22.2 shall continue for three years following the date of termination or expiry of this Agreement and payment in full of all amounts required to be paid hereunder.

22.2.7 Operator acknowledges and agrees that RTD is entitled to audit compliance by Operator and the Subcontractor with the Quality Management Plan from time to time on providing reasonable notice in advance to Operator and at such times as are reasonably required by RTD. Operator agrees to comply with, and cause its Subcontractors to comply with, the requirements of Section 22.3(c) of the Concession Agreement.

ARTICLE 23

INDEPENDENT OPERATOR

Operator shall be an independent Operator with respect to the Project, each part thereof, and the Services provided hereunder, and neither Operator, its Subcontractors, nor the employees of any of them shall be deemed to be agents, representatives, employees or servants of Concessionaire in the performance of the Services or any other services dealt with herein. Concessionaire shall not have the right to control the methods or means by which Operator or any agent, representative, Subcontractor, or employee or Operator conducts its independent business operations. Concessionaire and Operator covenant and agree that in the performance of the Services by Operator, Operator shall not perform any act or make any representation to any Person to the effect that Operator or any of its agents, representatives, Subcontractors is the agent or representative of Concessionaire.

ARTICLE 24

REPRESENTATIONS AND WARRANTIES OF OPERATOR

Operator represents and warrants to Concessionaire that, as at execution of this Agreement (or, with respect to the representation and warranty made in Section 24.2, the dates specified therein):

24.1 Organization; Power and Authority.

Operator is a Delaware limited liability company, duly organized, validly existing and, where legally applicable, in good standing under the laws of Delaware, is authorized to do business in the State of Colorado and has the corporate power and authority to transact the business it transacts and proposes to transact, to execute and deliver this Agreement and to perform the provisions hereof.

24.2 Authorization, Enforceability.

This Agreement has been duly authorized by all necessary corporate action on the part of Operator, and this Agreement constitutes a legal, valid and binding obligation of Operator enforceable against Operator in accordance with its terms, except as such enforceability may be limited by (A) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (B) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

24.3 No Conflicts.

The execution, delivery and performance by Operator of this Agreement and the performance by Operator of its obligations hereunder and thereunder will not (A) contravene, result in any breach of, or constitute a default under, any agreement, contract, instrument or other undertaking to which Operator is a party or which is binding on Operator or any of its property or assets, (B) conflict with or result in a breach of the articles, bylaws or other governing documents of Operator or (C) violate any Applicable Requirement.

24.4 Consents and Approvals.

At the date of commencement of Operations Services with respect to any Commuter Rail Project, all Permits required to be procured by Operator in accordance with Section 3.20 and to be in effect as at such date for the execution by Operator of, and the performance by Operator of its obligations under, this Agreement have been obtained, are in full force and effect and not subject to appeal.

24.5 Litigation; Observance of Agreements, Statutes and Orders.

There are no actions, suits, investigations or proceedings pending against Operator or any company that is a Holding Company of Operator or, to the knowledge of Operator, threatened against or affecting Operator or any company which is a Holding Company of Operator or any of their respective property in any court or before any arbitrator of any kind or before or by any Relevant Authority that, individually or in the aggregate, could reasonably be expected to have a material adverse effect on the business or condition (financial or otherwise) of Operator. None of Operator or any company which is a Holding Company of Operator, is in default under any term of any agreement or instrument to which it is a party or by which it is bound, or any order, judgment, decree or ruling of any court, arbitrator or Relevant Authority or is in violation of any Applicable Requirement (including Environmental Requirements), which default or violation, individually or in the aggregate, could reasonably be expected to have a material adverse effect on the business or condition (financial or otherwise) of Operator.

24.6 Termination Events.

No Operator Event of Default, or event which, with the passage of time or provision of notice or both, would be a Operator Event of Default arising from the actions or inactions of Operator, has occurred and is continuing nor will such a Operator Event of Default result from the entry by Operator into this Agreement or the exercise by Operator of its rights under, or the performance by Operator of any of its obligations under, this Agreement.

24.7 Financial Statements.

At the date of execution of this Agreement, the audited consolidated financial statements of each of the Guarantors for the most recent reporting year prior to execution of this Agreement for which such audited statements are available have been prepared on a basis consistently applied and using GAAP or equivalent accounting principles utilized and generally accepted in the country of incorporation or formation of such party, and audited by an independent certified public accountant (applying GAAP or equivalent auditing standards utilized and generally accepted in the country of incorporation or formation of such party) and give a true and fair view of the consolidated financial condition of each such group and are unqualified for the accounting period in question.

24.8 No Change in Financial Condition.

At the date of execution of this Agreement, there has been no material adverse change in the financial condition of Operator or the parent company of Operator since the date of their latest audited consolidated accounts that would have a material adverse effect on Operator's ability to perform its obligations under this Agreement.

24.9 Accuracy of Operator Documents.

All written information and certifications furnished by or on behalf of Operator to Concessionaire or RTD, or any of its representatives or advisors, as part of or in connection with this Agreement or delivered by or on behalf of Operator to Concessionaire or RTD or any Person on its behalf pursuant to this Agreement has been and is true and accurate in all material respects when given and taken as a whole and there are no other facts or matters the omission of which would have made any statement or information contained in the written information provided to Concessionaire or RTD or to any of its representatives or advisors that is misleading in any material respect and all expressions of opinion contained therein were honestly made on reasonable grounds after due and careful enquiry.

24.10 Matters Affecting Concessionaire's Decision to Enter into Agreement.

Operator is not aware of any material facts or circumstances that have not been disclosed to Concessionaire and that, if disclosed, would reasonably be expected to materially adversely affect the decision of a prudent person considering whether or not to enter into this Agreement with Operator.

24.11 Necessary Information.

Subject to the other provisions of this Agreement, at the date of this Agreement, Operator has generally obtained for itself all necessary information regarding:

(i) the risks, contingencies and all other circumstances which may influence or affect the Operator's ability to perform its obligation under this Agreement or the Project; and

(ii) any other factors which would affect its decision to enter into this Agreement or the terms on which it would do so.

Notwithstanding that the statements in this Article 24 are represented only at particular times, Operator shall inform Concessionaire as soon as it becomes aware that any (with the exception only of Sections 24.10 and 24.11 of the statements set out in this Article 24 (disregarding the references in those subclauses to the times at which the statements are made) cease to be true and correct, or become misleading in any way, at any time.

ARTICLE 25

REPRESENTATIONS AND WARRANTIES OF CONCESSIONAIRE

Concessionaire represents and warrants to Operator that, as at execution of this Agreement.

25.1 Organization; Power and Authority.

The Concessionaire is a limited liability company, duly organized, validly existing and, where legally applicable, in good standing under the laws of Delaware, is authorized to do business in the State of Colorado and has the corporate power and authority to transact the business it transacts and proposes to transact, to execute and deliver this Agreement and to perform the provisions hereof.

25.2 Authorization, Enforceability.

This Agreement has been duly authorized by all necessary corporate action on the part of the Concessionaire, and this Agreement constitutes a legal, valid and binding obligation of the Concessionaire enforceable against the Concessionaire in accordance with its terms, except as such enforceability may be limited by (A) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (B) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

ARTICLE 26

MISCELLANEOUS

26.1 Estoppel Certificate.

Operator shall at any time and from time to time furnish promptly upon request by Concessionaire or any Financing Party a written statement in such form as may be reasonably requested by the requesting party stating that this Agreement is a valid and binding obligation of Operator, enforceable against Operator in accordance with its terms except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity; that this Agreement has not been released, subordinated or modified; and that there are no offsets or defenses against the enforcement of this Agreement against Operator; or if any of the foregoing statements are untrue, specifying the reasons therefor.

26.2 Waivers.

No failure to exercise, and no delay in exercising, any right, power or remedy under the Contract Documents shall impair any right, power or remedy which any party hereto may have, nor shall such failure or delay be construed to be a waiver of any such rights, powers or remedies, or an acquiescence in any breach or default under the Contract Documents, nor shall any waiver of any breach or default be deemed a waiver of any default or breach subsequently occurring under the Contract Documents.

26.3 Choice of Law.

THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER AND/OR ARISING FROM OR RELATING IN ANY WAY TO THE TRANSACTIONS EVIDENCED BY THE CONTRACT DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF COLORADO, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW RULES THEREOF WHICH MAY DIRECT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

26.4 Severability.

In the event that any of the provisions, or portions or applications thereof, of any of the Contract Documents are held to be unenforceable or invalid by any court of competent jurisdiction, Concessionaire and Operator shall negotiate an equitable adjustment in the provisions of the affected Contract Documents with a view toward effecting the purpose of this Agreement, and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby.

26.5 Notice.

Unless otherwise expressly required or permitted by the Contract Documents, any notice required or permitted to be given by Operator to Concessionaire hereunder shall be in writing and shall be addressed to Concessionaire at:

Denver Transit Partners, LLC
c/o Gregory J. Amparano
General Manager
Denver Transit Holdings, LLC
999 18th Street, Suite 1201 North
Denver, Colorado 80202
Fax: (303) 297-7553

with a copy to:

Nicholas Hann
Executive Director
Macquarie Capital Advisors
Suite 2400, Bentall 5
550 Burrard Street
Vancouver, BC V6C 2B5
Canada
Fax: (604) 605-1634

and any notice required or permitted to be given by Concessionaire to Operator hereunder shall be in writing and shall be addressed to:

Denver Transit Operators, LLC
999 18th Street, Suite 1201 North
Denver, Colorado 80202
Attention: Anne Herzenberg, General Manager
Fax: (303) 297-7553

With a copy to:

Fluor Corporation
100 Fluor Daniel Drive
Greenville, SC 29602-2762
Attn: Spencer Weiss, General Counsel
Fax: (864)281-6868

26.5.1 Delivery. Unless otherwise expressly required or permitted by the Contract Documents, all notices shall be delivered (a) in person to the Party above mentioned, (b) via certified mail with a return receipt requested in a securely sealed envelope, (c) by expedited delivery service with proof of delivery, or (d) by prepaid telegram, telex or telecopy. A notice shall be deemed delivered either at the time of personal delivery or, in the case of delivery service or mail, as the date of first attempted delivery at the address provided herein, or in the case of telegram, telex or telecopy, upon receipt. Concessionaire and Operator, by like notice in writing, may designate, from time to time, another address or office to which notices may be given pursuant to this Agreement.

26.6 Headings.

The Article and Section headings herein have been inserted for convenience of reference only and shall not in any manner affect the construction, meaning or effect of the provisions herein contained nor govern the rights and liabilities of the Parties hereto.

26.7 Entire Agreement.

The Contract Documents contain the entire agreement between Concessionaire and Operator with respect to the Project, and supersede any and all prior and contemporaneous written and oral agreements, proposals, negotiations, understandings and representations pertaining to the Project.

26.8 Amendments.

No amendments or modifications of the Contract Documents, including any Modification, shall be valid unless evidenced by a written instrument signed by a duly authorized

representative of the Party against whom enforcement is sought. The Parties acknowledge that they may not amend or modify this Agreement without the prior written consent (or deemed consent) of RTD in accordance with Section 29.3 of the Concession Agreement; *provided*, *however*, that RTD's consent shall not be required with respect to any amendment or modification that does not constitute a Material Amendment as determined pursuant to Section 29.3 of the Concession Agreement; *provided*, that Operator acknowledges that Concessionaire shall not implement or agree to any Modification or other amendment, modification, variation or waiver of any provision of this Agreement without the prior submission by Concessionaire of details of such proposed Modification or other amendment, modification, variation or waiver to RTD (regardless of whether or not RTD's consent is required therefor), in compliance with Section 29.3 of the Concession Agreement.

26.9 Conflicting Provisions.

26.9.1 Other than as provided in the definition of "Environmental Requirements," in the event of any conflict between the terms or provisions of any Contract Documents, the order of precedence (in order from highest to lowest where the terms or provisions of a higher precedence document shall govern in the event of a conflict with a lower precedence document) shall be as follows:

(i) the Concession Agreement, excluding this Agreement and other Attachments to the Concession Agreement;

(ii) the Alternative Technical Concepts;

(iii) the Attachments to the Concession Agreement, other than (A) Attachment 19 (*Concessionaire's Proposal*) thereto (excluding such portions which are separately and directly incorporated into the Concession Agreement or any other Attachment to the Concession Agreement or which constitute Alternative Technical Concepts), and (B) the Third Party Agreements;

(iv) Attachment 19 (*Concessionaire's Proposal*) to the Concession Agreement (other than such portions which are separately and directly incorporated into this Agreement or any other attachment or which constitute Alternative Technical Concepts);

(v) Third Party Agreements;

(vi) Duly authorized and executed Modifications and written amendments to this Agreement executed by both Parties;

(vii) the Project Requirements (other than the O&M Specifications and the Third Party Agreements);

(viii) This Agreement, excluding Exhibits hereto; and

(ix) Exhibits hereto.

26.9.2 In the event of any conflict, ambiguity or inconsistency between or among any of the terms or provisions within this Agreement (other than as provided in the definition of "Environmental Requirements") or between two or more of the documents described in clauses (i) through (ix) above having the same precedence under Section 26.9.1, the most stringent requirement shall take precedence. Where a conflict, ambiguity or inconsistency exists among codes and standards applicable to the Project or Operator's performance of the Services, the most stringent provision of such codes and standards shall govern.

26.9.3 If the Concessionaire's Proposal includes statements, terms, concepts or designs that can reasonably be interpreted as offers to provide higher quality items or to adhere to more stringent requirements than otherwise required by the other documents described in clauses (i) through (v) above, or to perform services or meet standards in addition to or better than those otherwise required, then Operator's obligations hereunder shall include compliance with all such statements, terms, concepts and designs.

26.9.4 Additional or supplemental details or requirements in a lower priority document described in clauses (i) through (v) above shall be given effect except to the extent they irreconcilably conflict with the terms or provisions contained in a higher priority document described in clauses (i) through (v) above.

26.10 No Third Party Rights.

The Contract Documents and all rights thereunder are intended for the benefit of Concessionaire and Operator, the Financing Parties (to the extent provided in Articles 14 and 18 hereof), RTD (to the extent set out in the Concession Agreement or this Agreement), and the Indemnified Parties (to the extent provided in Article 14 hereof), and shall not imply or create any rights on the part of, or obligations to, any other Person or any other rights on the part of, or other obligations to, the Financing Parties, RTD and the Indemnified Parties beyond the rights and obligations expressly set forth herein. The Parties agree to look solely to each other with respect to the obligations and liability arising in connection with this Agreement and the services performed hereunder. No claims shall be asserted directly between Operator and the Design-Build Contractor (whether arising in contract or tort); rather, such matters, if any, shall be asserted through Concessionaire. Such matters will not be treated as "third party claims" in connection with indemnity obligations; either between Concessionaire and the Design-Build Contractor or between Concessionaire and Operator. This Section 26.10 shall not limit contribution or other claims for bodily injury, death or third-party property damage.

26.11 Recourse Limited to Concessionaire's Assets.

Concessionaire and Operator acknowledge that Concessionaire has entered into this Agreement entirely on its own behalf, and that, except with regard to claims of fraud, Operator shall have no recourse against any parent, subsidiary or Affiliate company of Concessionaire, or against any partners, shareholders, members, owners, joint venturers, officers, directors, employees, agents, successors or assigns of any thereof for any reason.

26.12 Survival of Provisions.

All provisions of the Contract Documents which are expressly or by implication to come into or continue in force and effect after the expiration or termination of this Agreement shall remain in effect and be enforceable following such expiration or termination.

26.13 Obligation to Act in Good Faith.

In all cases where approvals, consents or determinations are required to be provided hereunder, such approvals or consents shall not be withheld unreasonably and such determinations shall be made reasonably except in cases where a different standard (such as, by way of example only, sole discretion) is specified. In cases where sole discretion is specified for an approval, consent, determination or other decision, the decision shall not be subject to the Dispute Resolution Procedures. Concessionaire shall be deemed to be acting reasonably in refusing or withholding any approval, consent or acceptance hereunder, if RTD, pursuant to its rights under the Concession Agreement, has refused or withheld its corresponding approval, consent or acceptance under the Concession Agreement.

26.14 Coordination with RTD and Financing Parties.

Operator acknowledges that each of RTD and the Financing Parties shall have the right to review and approve this Agreement, and that they may require to review and approve this Agreement, and that they may require as a condition to such approval certain rights for their benefit, including the rights (a) to receive notices of default by Operator and notices of inspections and tests, (b) to approve payments, (c) to approve the completion of any component of the Project, and (d) to have the Independent Engineer inspect the progress of any component of the Project. Operator agrees to make changes to this Agreement and to otherwise cooperate with each of RTD and the Financing Parties to the extent reasonably required in order for Concessionaire to obtain RTD approval and to obtain financing for the Project on terms satisfactory to Concessionaire.

26.15 Illegal Aliens.

26.15.1 Operator shall comply, and shall ensure that all Subcontractors comply, in all material respects, with all applicable requirements of C.R.S. §8-17.5-101.

26.15.2 Operator shall not (i) knowingly employ or contract with an illegal alien to perform any work under this Agreement or (ii) enter into a contract with any Subcontractor that fails to certify to Operator that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform any work under such contract or this Agreement.

26.15.3 Operator shall confirm, and shall ensure that all Subcontractors confirm, the employment eligibility of all employees who are hired in connection with Operator's performance of its obligations under this Agreement through participation in either the E-Verify Program or the Department Program.

26.15.4 Operator shall not use the E-Verify Program or the Department Program procedures for the purpose of pre-employment screening of job applicants while this Agreement is being performed.

26.15.5 If Operator participates in the Department Program, Operator shall:

(i) notify RTD (with a copy of such notice to Concessionaire) of participation in the Department Program and shall comply with C.R.S. §8-17.5-102(c) and any other requirements of the Department Program;

(ii) no later than 20 days after hiring an employee who is hired in connection with Operator's performance of its obligations under this Agreement, confirm to RTD (with a copy to Concessionaire), in a notarized certificate in form and substance satisfactory to RTD, that Operator has examined the legal work status of such employee, retained copies of the documents required by 8 U.S.C. §1324a, and not altered or falsified the identification documents for such employees; and

(iii) consent (and does hereby consent) to United States Department of Labor and Employment audits conducted in accordance with C.R.S. §8-17.5-102(5)(C)(III).

26.15.6 If Operator obtains actual knowledge that a Subcontractor responsible for the performance of any part of Operator's obligations under this Agreement employs or contracts with an illegal alien, Operator must notify such Subcontractor and RTD (with a copy to Concessionaire) within three (3) Business Days of Operator having such actual knowledge. If, within three (3) Business Days of receiving such notice, the Subcontractor does not stop employing or contracting with the illegal alien, Operator shall terminate the agreement with the Subcontractor; *provided* that Operator shall not be required to terminate such agreement with such Subcontractor if, during such three (3) Business Days after receiving the notice required in this Section 26.15.6, the Subcontractor provides information to RTD (with a copy to Concessionaire) to establish that the Subcontractor did not knowingly employ or contract with an illegal alien.

26.15.7 Operator shall cooperate and comply with any reasonable request the United States Department of Labor and Employment makes in the course of any investigation it undertakes.

26.16 Disputed Amounts

26.16.1 If either Party disputes in good faith any amount claimed to be payable by it and does so before payment is due under the applicable provision of this Agreement, such Party will pay such amount as is not in dispute and will be entitled to withhold the balance pending resolution of the dispute. If any Party disputes the amount being claimed for payment, it may refer the matter no later than thirty (30) days following receipt of the relevant written demand for resolution in accordance with the Dispute Resolution Procedures. If the matter is not referred for resolution in accordance with the Dispute Resolution Procedures within such 30-day period and the relevant amount is not paid, such amount will become due at the end of that 30-

day period, and the Party from which payment is claimed will pay the amount claimed in full in accordance with the applicable provision of this Agreement.

26.16.2 Payment under Section 26.16.1 shall be made without prejudice to the right of the Party making payment to question at any later date whether the amount claimed for payment and actually paid was in fact due and to claim repayment of any amount determined to have been wrongly claimed or overpaid. Any such matter will be referred for resolution in accordance with the Dispute Resolution Procedures.

26.16.3 The disputed portion of any amount withheld pending resolution of any dispute in accordance with the Dispute Resolution Procedures will, to the extent that such dispute is resolved in favor of the payee, be due and payable (subject to Section 26.16.4) no later than seven (7) days after such resolution and will be paid together with interest on such amount in accordance with Section 26.17, calculated on the basis that the relevant amount is overdue from the date such disputed amount would have become overdue had it not been disputed to the date of payment.

26.16.4 If any Party has paid, in good faith, any amount which the other Party receiving such payment was not entitled to, then such other Party shall return such amount together with interest on such amount in accordance with Section 26.17, calculated on the basis that the relevant amount is overdue from the date such amount has been paid.

26.16.5 Without limiting Concessionaire's right to dispute in good faith any amount claimed to be payable by it hereunder, Operator acknowledges and agrees that Concessionaire shall not be obligated to make any payment to Operator, irrespective of whether Operator is rightfully entitled to such amount, if a corresponding amount has not been made available as part of the Service Payments and actually received by Concessionaire from RTD except to the extent any withholding, delay or reduction of RTD's payment to Concessionaire is due to a Concessionaire-Caused Event.

26.17 Interest on Late Payments

Any undisputed amount not paid when due shall bear interest at the Late Payment Rate from the date such payment is due until the date it is actually paid. Any disputed amount which is ultimately determined to be payable shall bear interest at the Late Payment Rate from the date such amount was originally due hereunder.

26.18 Set-Off

Concessionaire may deduct and set-off against any part of the balance due or to become due to Operator under this Agreement, any amounts due from Operator to Concessionaire under or in connection with this Agreement, including any payments corresponding to any Traction Power Reimbursement Amount due or to become due from Operator to Concessionaire.

26.19 Change of Control Notice

Operator shall provide Concessionaire with prompt written notice of any proposed change in Control of Operator in order to ensure Concessionaire's compliance of its obligations under Section 46 of the Concession Agreement.

26.20 Further Assurances

Operator shall execute and deliver all further instruments and documents, and take all further action that Concessionaire may reasonably request in order to enable Operator to complete performance of the Services or to effectuate the purposes or intent of the Contract Documents.

26.21 Exhibits

All exhibits attached to this Agreement are made a part hereof for all purposes.

[*Signature pages appear on following page*.**]**

IN WITNESS WHEREOF, Concessionaire and Operator, intending to be legally bound, have caused this Agreement to be executed by their duly authorized representatives as of the date indicated below and to be effective as of the day and year first above written.

CONCESSIONAIRE

DENVER TRANSIT PARTNERS, LLC

By: _____
Name: David Parker
Title: Authorized Signatory
Date:

By: _____
Name: Chris Voyce
Title: Authorized Signatory
Date:

By: _____
Name: Charles Nuttall-Smith
Title: Authorized Signatory
Date:

IN WITNESS WHEREOF, Concessionaire and Operator, intending to be legally bound, have caused this Agreement to be executed by their duly authorized representatives as of the date indicated below and to be effective as of the day and year first above written.

CONCESSIONAIRE

DENVER TRANSIT PARTNERS, LLC

By: _____
Name: David Parker
Title: Authorized Signatory
Date:

By: _____
Name: Chris Voyce
Title: Authorized Signatory
Date:

By: _____
Name: Charles Nuttall-Smith
Title: Authorized Signatory
Date:

OPERATOR

DENVER TRANSIT OPERATORS, LLC

By: _____
Name: Richard A. Fierce
Title: Authorized Representative
Date:

OPERATOR

DENVER TRANSIT OPERATORS, LLC

By: Joseph E. Reed
Name: JOSEPH E. REED
Title:
Date:

OPERATION AND MAINTENANCE AGREEMENT

EXHIBITS

Exhibit A

Scope of Services

[See attached]

Exhibit A – Part 1

Scope of Work during Operating Period

References in Part 1 of this Exhibit A to Concessionaire's obligation to perform, comply with or otherwise act in relation to the Scope of Services set forth in Part 1 of this Exhibit A shall be deemed to be the obligation of Operator to so perform, comply with or act (or to cause its Subcontractors to so perform, comply with or act).

Attachment 10

O&M Specifications

Portions of this Attachment 10 may have been supplemented, modified or superseded by the Alternative Technical Concepts. Please see Section E (*Alternative Technical Concepts*) of Volume 3 of the Technical Proposal contained in the Concessionaire's Proposal, which includes a complete description of each concept and how it is intended to be implemented, and Section 1.3 (*Conflict of Terms*) of the Agreement, which concerns resolution of any potential conflict, ambiguity or inconsistency resulting from the application of the Alternative Technical Concepts.

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APPENDIX 1 RTD SNOW AND ICE MANAGEMENT PLAN

ATTACHMENT 14 HANDOVER AND REINSTATEMENT WORK PROCEDURES

1. DEFINITIONS

Capitalized terms used but not otherwise defined herein shall have the meanings given to them in Section 1.1 (*Definitions*) of the Agreement. In addition, the following terms shall have the meanings set out below:

APTA means the American Public Transportation Association, a public transportation trade and standards organization of which RTD is a member.

APTA Manual has the meaning given to it in Section 2.4 (*Operating Plan*).

AREMA Manual means the American Railway Engineering and Maintenance-of-Way Association Manual for Railway Engineering.

Automatic Passenger Counters or ***APC*** means the automated computer-based systems that register the boarding and alighting of each Passenger from each Car, capturing Passenger volumes.

Availability Adjusted Base Service Payment has the meaning given to it in Attachment 11 (*Service Payments*).

Board means the RTD Board of Directors.

Compliant Car has the meaning given to it in Section 5.4.1.

Control Center has the meaning given to it in Attachment 7 (*Design, Construction and Rolling Stock Requirements*).

Customer Service Standards has the meaning given to it in Section 2.4.2(c).

Delay Event Exclusions has the meaning given to it in Section 5.5(a).

Dispatch Center has the meaning given to it in Section 2.4.6.

Dispatcher means any individual whose employment responsibilities include, in whole or in part, Dispatching.

Dispatching means the dispatch or direction of movement of commuter rail, freight rail or other carrier by railroad services subject to the jurisdiction of the Surface Transportation Board under Part A of Subtitle IV of Title 49 U.S.C.

Executive Safety and Security Committee or ***ESSC*** has the meaning given to it in Section 7.2 (*System Safety Program Plan (O&M)*).

Facility Maintenance Program has the meaning given to it in Section 5.3.2(c).

Fare Inspection Program has the meaning given to it in Section 2.4.13.

FRA Class IV has the meaning given to it in 49 CFR 213.

General Code of Operating Rules or ***GCOR*** means the General Code of Operating Rules (Third Edition) dated April 10, 1994 as adopted by certain Rail Operators in the western region of the United States, as the same may be amended, supplemented or updated and adopted by the Concessionaire from time to time.

Headway means the scheduled time interval between trains moving in the same direction on a particular route in revenue service.

Heavy Litter means the presence of opened or spilled food, malodorous and hazardous conditions and any wet litter.

Maintenance Engineering Function has the meaning given to it in Section 5.6 (*Rolling Stock Maintenance Engineering*).

Management Information System or ***MIS*** means the computer hardware and software configured to support recordkeeping, reporting, financial control and management of the Eagle Project.

Maximum Loading Standard has the meaning given to it in Section 2.1.3(b).

Monthly Operating Report has the meaning given to it in Section 4.2 (*Operating Reports*).

NIST means the National Institute of Standards and Technology.

NTD means the National Transit Database.

NTSB means the National Transportation Safety Board.

Offensive Graffiti means the illegal or unauthorized defacement of property, which contains some or all of the following elements: offensive language, language of a politically/racially/religiously insulting/inciting nature, a hate statement, an image which is graphically explicit, and/or an image which is visually offensive or textually offensive by the message that it contains.

O&M Quality Management Plan has the meaning given to it in Section 5.8 (*O&M Quality Management Plan*).

O&M Record Documents means Record Documents relating to the activities of the Concessionaire during the Operating Period showing all relevant and current information needed to operate, inspect, maintain, troubleshoot, upgrade, overhaul, modify, replace, diagnose and repair the Concessionaire-operated Components, including:

(a) field and OEM records;

(b) changes to or deviations from the Concessionaire's subsystem and equipment procurement specifications;

(c) manufacturing, equipment assembly and illustrated parts manuals;

(d) as-built drawings and similar documents;

(e) documentation relating to every major mechanical system (including those created during the Design/Build Period and updated during the Operating Period); and

(f) full Car history files consistent with applicable Law and tracking the removal and exchange of installed component systems in sufficient detail such that NTSB, FRA, FTA or any other Relevant Authority can positively identify the manufacturer and the chain of custody of the installed component or assembly.

O&M Services means the operation of the Commuter Rail Services and the operation and maintenance of the Concessionaire-operated Components in accordance with this Attachment 10.

OEM means original equipment manufacturer.

Operation Lifesaver Program means the grade crossing and right-of-way safety outreach and educational programs sponsored by USDOT and many Rail Operators.

OSHA means the U.S. Department of Labor Occupational Safety & Health Administration.

Persistent Condition means Service Task Orders that are not resolved over the period of time specified in Section 3(f).

Rail Operators means all freight and passenger rail operators under the jurisdiction of the FRA.

Repeated STO Events means Service Task Orders that arise with respect to a single item of equipment or type of event.

RTD Armed Security Staff has the meaning given to it in Section 8.7(b).

Security Command Center has the meaning given to it in Section 8.5 (*Security Command Center*).

Security Procedures has the meaning given to it in Section 8.2 (*Security Procedures*).

Security Staffing Plan has the meaning given to it in Section 8.3(b).

Service Plan has the meaning given to it in Section 2.4.1.

Service Task Order or ***STO*** has the meaning given to it in Section 3 (*Service Task Order Program*).

Service Task Orders Program or ***STOP*** has the meaning given to it in Section 3 (*Service Task Order Program*).

Snow and Ice Management Plan has the meaning given to it in Section 5.11.3(a).

Special Event means any event agreed by RTD and the Concessionaire pursuant to Section 2.4.1(f) to be an event that is likely to generate Passenger demand on one or more Commuter Rail Services that substantially exceeds regular revenue service capacity in the then-prevailing Service Plan.

STOP Points has the meaning given to it in Section 3(c).

STO Remedy Time means, with respect to a Service Task Order, the remedy time set out in the column entitled "STO Remedy Time" in Table 3.

Substance Abuse Testing Coordinator has the meaning given to it in 49 CFR 219.

System Safety Program Plan (O&M) or ***SSPP (O&M)*** has the meaning given to it in Section 7.2.

System Security Plan (O&M) or ***SSP (O&M)*** has the meaning given to it in Section 8.3 (*System Security Plan (O&M)*).

Systemwide STO Events means Service Task Orders of the same or a similar nature that arise with respect to any part of the Concessionaire-operated Components.

Traction Electrification System or ***TES*** has the meaning given to it in Attachment 7 (*Design, Construction and Rolling Stock Requirements*).

Yearly Operating Report has the meaning given to it in Section 4.2 (*Operating Reports*).

2. OPERATING REQUIREMENTS

The Concessionaire shall operate the Concessionaire-operated Components and provide regularly scheduled and Special Event Commuter Rail Services in accordance with the requirements and standards of this Section 2.

RTD acknowledges that RTD shall be the operating railroad of record for purposes of compliance with any regulations promulgated by the FRA, provided that such acknowledgement shall not amend or modify in any respect the Concessionaire's obligations to perform its obligations under the Agreement and this Attachment 10.

2.1 Service Delivery Requirements

(a) East Corridor service shall operate between DUS and DIA with stops at each intermediate station.

(b) Gold Line service shall operate between DUS and Ward Road with stops at each intermediate station.

(c) NWES service shall operate between DUS and South Westminster without stopping at intermediate stations. NWES service trains shall slow to a safe speed to pass the platform edge at intermediate stations.

2.1.1 Spans of Service and Headways

(a) The Concessionaire shall provide the Commuter Rail Services in accordance with its approved Service Plan for the Commuter Rail Services that is consistent with the spans of service and Headways set out in Table 2.1.1B, subject to the following paragraph.

(b) The Concessionaire may request, subject to RTD's approval, operating schedules that differ from Table 2.1.1B during the transition between time periods so long as the loading standards specified in Section 2.1.3 are maintained. RTD's approval of the Service Plan shall constitute approval of the Concessionaire's requested variance from the specified span of service and headways.

(c) For the purposes of Table 2.1.1B, the daily start and end of revenue service shall be defined by Table 2.1.1A.

Table 2.1.1A – Start and End Departure

Service	First Train Departs	Last Train Departs
East Corridor	DUS	DIA
Gold Line	Ward Road	DUS
NWES	South Westminster	DUS

The station designated for "First Train Departs" shall be used for scheduling of the first train in the service day, the first train in the AM Peak and the last train in the AM Peak.

The station designated for "Last Train Departs" shall be used for scheduling of the first train of the PM Peak, the last train in the PM Peak and the last train of the service day.

Table 2.1.1B – Required Spans of Service and Headways

Day	East Corridor			Gold Line			NWES		
Weekday	From	To	Headway	From	To	Headway	From	To	Headway
Early	3:00	6:00	0:30	4:00	6:00	0:30	5:00	6:00	1:00
AM Peak	6:01	9:00	0:15	6:01	9:00	0:15	6:01	8:30	0:30
Midday	9:01	15:00	0:15	9:01	15:00	0:15	8:31	15:30	1:00
PM Peak	15:01	20:00	0:15	15:01	18:30	0:15	15:31	18:30	0:30
Evening	20:01	1:00	0:30	18:31	0:30	0:30	18:31	22:30	1:00
Saturday	From	To	Headway	From	To	Headway	From	To	Headway
AM	3:00	6:00	0:30	4:00	8:00	0:30	5:00	9:00	1:00
Midday	6:01	15:00	0:15	8:01	15:00	0:15	9:01	15:00	1:00
PM	15:01	20:00	0:15	15:01	18:30	0:15	15:01	18:00	1:00
Evening	20:01	1:30	0:30	18:31	0:30	0:30	18:01	22:30	1:00
Sunday	From	To	Headway	From	To	Headway	From	To	Headway
AM	3:00	6:00	0:30	4:00	8:00	0:30	5:00	9:00	1:00
Midday	6:01	15:00	0:15	8:01	15:00	0:15	9:01	15:00	1:00
PM	15:01	20:00	0:15	15:01	18:30	0:15	15:01	18:00	1:00
Evening	20:01	1:00	0:30	18:31	0:30	0:30	18:01	22:30	1:00

Note 1 - East Corridor Friday evening service shall run until 1:30am.

2.1.2 Service Capacity Requirements

(a) The Concessionaire shall provide sufficient directional capacity to meet the load point capacity requirements specified in Tables 2.1.2-1 thru 2.1.2-3, subparts D, E and F for each Commuter Rail Service. These tables define the minimum directional passenger capacity that is required to be provided for each corridor during each time period.

(b) The capacity requirements provided below shall be effective on the first Service Plan change that occurs in the new five-year period.

(c) Services meeting the load point capacity requirements up to and including 2035 levels shall be delivered using the Rolling Stock supplied by the Concessionaire under this Agreement until such Rolling Stock has been in service for its declared design life duration. Services that are required to meet capacity requirements exceeding 2035 levels up to 2055 levels shall be delivered using additional rolling stock that will be provided by RTD. Following the expiry of the declared Rolling Stock design life, all services shall be delivered using replacement rolling stock provided by RTD in accordance with Section 31.2 (*Rolling Stock Replacement*) of the Agreement.

(d) In the event that total combined annual ridership for all lines exceeds projections set forth in Tables 2.1.2-1 thru 2.1.2-3, subparts A, B and C by 15% or is below projections by 15% for any calendar year, the Concessionaire shall provide RTD with an RTD Change Summary outlining the Concessionaire's proposal and justification for an adjustment to its variable O&M cost structure. RTD shall review this RTD Change Summary and take such action as it sees fit in accordance with Section 36.3 (*RTD Proposed Changes*) of the Agreement. Total ridership by period and day of week is defined in Tables 2.1.2-1 thru 2.1.2-3, subparts A, B and C.

Table 2.1.2-1 – East Corridor Ridership and Load Point Capacity Requirement

A	East Corridor					
	Total Weekday Ridership					
Period	Early	AM Peak	Midday	PM Peak	Evening	Total
2015	1560	2100	4680	3140	1560	13040
2020	1740	2530	5230	3800	1740	15040
2025	1950	3060	5840	4590	1950	17380
2030	2170	3700	6520	5550	2170	20110
2035	2430	4470	7280	6710	2430	23310
2040	2710	5400	8120	8110	2710	27050
2045	3020	6530	9070	9800	3020	31450
2050	3380	7890	10130	11840	3380	36610
2055	3770	9540	11310	14310	3770	42700

D	East Corridor				
	Weekday - Minimum Load Point Capacity Required Per Hour				
Period	Early	AM Peak	Midday	PM Peak	Evening
2015	570	1210	860	1210	350
2020	640	1470	960	1470	380
2025	720	1770	1080	1770	430
2030	800	2140	1200	2140	480
2035	890	2590	1340	2590	540
2040	1000	3130	1500	3130	600
2045	1110	3780	1670	3780	670
2050	1240	4570	1870	4570	750
2055	1390	5520	2080	5520	830

B	East Corridor					
	Total Saturday Ridership					
Period		AM	Midday	PM	Evening	Total
2015		330	3590	1630	980	6520
2020		380	4140	1880	1130	7520
2025		430	4780	2170	1300	8690
2030		500	5530	2520	1510	10060
2035		580	6410	2920	1750	11660
2040		680	7440	3380	2030	13530
2045		790	8650	3930	2360	15730
2050		920	10070	4580	2750	18310
2055		1070	11740	5340	3200	21350

E	East Corridor				
	Saturday - Minimum Load Point Capacity Required Per Hour				
Period		AM	Midday	PM	Evening
2015		120	440	360	200
2020		140	510	420	230
2025		160	590	480	260
2030		190	690	560	310
2035		220	790	650	360
2040		250	920	750	410
2045		290	1070	880	480
2050		340	1250	1020	560
2055		400	1450	1190	650

C	East Corridor					
	Total Sunday Ridership					
Period		AM	Midday	PM	Evening	Total
2015		260	2610	1830	520	5220
2020		300	3010	2110	600	6020
2025		350	3480	2430	700	6950
2030		400	4020	2810	800	8040
2035		470	4660	3260	930	9320
2040		540	5410	3790	1080	10820
2045		630	6290	4400	1260	12580
2050		730	7320	5120	1460	14640
2055		850	8540	5980	1710	17080

F	East Corridor				
	Sunday - Minimum Load Point Capacity Required Per Hour				
Period		AM	Midday	PM	Evening
2015		120	390	500	140
2020		130	450	570	160
2025		160	520	660	190
2030		180	600	760	220
2035		210	700	880	250
2040		240	810	1030	290
2045		280	940	1190	340
2050		330	1100	1390	400
2055		380	1280	1620	460

Note – load point capacity refers to passengers per hour per direction.

Table 2.1.2-2 – Gold Line Ridership and Load Point Capacity Requirement

A	Gold Line					
	Total Weekday Ridership					
Period	Early	AM Peak	Midday	PM Peak	Evening	Total
2015	590	1740	2380	2130	990	7830
2020	650	1930	2590	2360	1080	8600
2025	710	2140	2820	2610	1180	9450
2030	770	2370	3070	2900	1280	10390
2035	840	2630	3350	3210	1400	11420
2040	910	2910	3650	3560	1520	12550
2045	990	3230	3970	3950	1660	13800
2050	1080	3580	4330	4370	1800	15160
2055	1180	3970	4720	4850	1970	16680

D	Gold Line				
	Weekday - Minimum Load Point Capacity Required Per Hour				
Period	Early	AM Peak	Midday	PM Peak	Evening
2015	330	900	440	900	180
2020	360	990	480	990	200
2025	390	1100	520	1100	220
2030	420	1220	560	1220	240
2035	460	1350	620	1350	260
2040	500	1500	670	1500	280
2045	550	1660	730	1660	300
2050	600	1840	800	1840	330
2055	650	2040	870	2040	360

B	Gold Line					
	Total Saturday Ridership					
Period		AM	Midday	PM	Evening	Total
2015		780	1760	590	780	3920
2020		860	1940	650	860	4300
2025		950	2130	710	950	4730
2030		1040	2340	780	1040	5200
2035		1140	2570	860	1140	5710
2040		1260	2830	940	1260	6280
2045		1380	3110	1040	1380	6900
2050		1520	3410	1140	1520	7580
2055		1670	3750	1250	1670	8340

E	Gold Line				
	Saturday - Minimum Load Point Capacity Required Per Hour				
Period		AM	Midday	PM	Evening
2015		220	280	190	140
2020		240	310	210	160
2025		260	340	230	180
2030		290	370	250	190
2035		320	410	270	210
2040		350	450	300	230
2045		380	490	330	260
2050		420	540	360	280
2055		460	600	400	310

C	Gold Line					
	Total Sunday Ridership					
Period		AM	Midday	PM	Evening	Total
2015		310	1410	780	630	3130
2020		340	1550	860	690	3440
2025		380	1700	950	760	3780
2030		420	1870	1040	830	4160
2035		460	2060	1140	910	4570
2040		500	2260	1260	1000	5020
2045		550	2480	1380	1100	5520
2050		610	2730	1520	1210	6060
2055		670	3000	1670	1330	6670

F	Gold Line				
	Sunday - Minimum Load Point Capacity Required Per Hour				
Period		AM	Midday	PM	Evening
2015		100	270	300	140
2020		110	300	330	160
2025		130	330	370	170
2030		140	360	400	190
2035		160	400	440	200
2040		170	440	490	220
2045		190	480	530	250
2050		210	530	590	270
2055		230	580	640	300

Note – load point capacity refers to passengers per hour per direction.

Table 2.1.2-3 – NWES Ridership and Load Point Capacity Requirement

A	NWES					
	Total Weekday Ridership					
Period	Early	AM Peak	Midday	PM Peak	Evening	Total
2015	20	240	120	300	50	720
2020	20	280	140	350	50	840
2025	60	770	360	940	140	2260
2030	80	1030	490	1250	190	3030
2035	90	1190	570	1450	220	3510
2040	100	1380	660	1680	250	4070
2045	120	1600	760	1950	290	4720
2050	140	1850	880	2270	340	5470
2055	160	2150	1020	2620	390	6340

D	NWES				
	Weekday - Minimum Load Point Capacity Required Per Hour				
Period	Early	AM Peak	Midday	PM Peak	Evening
2015	20	120	20	120	10
2020	20	150	20	150	10
2025	70	390	60	390	40
2030	90	530	80	530	50
2035	100	610	90	610	60
2040	110	710	100	710	70
2045	130	820	120	820	80
2050	150	950	140	950	90
2055	180	1100	160	1100	110

B	NWES					
	Total Saturday Ridership					
Period		AM	Midday	PM	Evening	Total
2015		70	140	70	70	360
2020		80	170	80	80	420
2025		230	450	230	230	1130
2030		300	610	300	300	1520
2035		350	700	350	350	1760
2040		410	820	410	410	2040
2045		470	940	470	470	2360
2050		550	1100	550	550	2740
2055		630	1270	630	630	3170

E	NWES				
	Saturday - Minimum Load Point Capacity Required Per Hour				
Period		AM	Midday	PM	Evening
2015		20	30	30	20
2020		20	30	30	20
2025		60	80	90	60
2030		80	110	110	70
2035		100	130	130	90
2040		110	150	150	100
2045		130	170	180	120
2050		150	200	210	140
2055		180	240	240	160

C	NWES					
	Total Sunday Ridership					
Period		AM	Midday	PM	Evening	Total
2015		30	130	70	60	290
2020		30	150	90	70	340
2025		90	410	230	180	900
2030		120	540	300	240	1210
2035		140	630	350	280	1400
2040		160	730	410	330	1630
2045		190	850	470	380	1890
2050		220	990	550	440	2190
2055		250	1140	640	510	2540

F	NWES				
	Sunday - Minimum Load Point Capacity Required Per Hour				
Period		AM	Midday	PM	Evening
2015		10	30	30	20
2020		10	30	40	20
2025		30	90	100	50
2030		40	120	140	70
2035		50	140	160	80
2040		50	160	190	100
2045		60	190	210	110
2050		70	220	250	130
2055		80	260	290	150

Note – load point capacity refers to passengers per hour per direction.

2.1.3 **Maximum Loading Standards**

(a) The Concessionaire shall prepare its Service Plan by scheduling sufficient service capacity to provide the required load point capacity within the Maximum Loading Standards applicable for each time period.

(b) The average ***Maximum Loading Standard*** for each day type shall be:

(i) for peak periods, at all times until December 31, 2029, no less than 3.2 square feet per standee at the peak load point in the peak direction of travel;

(ii) for peak periods, from January 1, 2030, no less than 2.15 square feet per standee at the peak load point in the peak direction of travel;

(iii) for all weekday Early AM, Midday, PM Evening and Late Evening periods and during all periods on Saturday and Sunday, 50% of the number of allowable weekday peak period standees shall be permitted in the peak direction of travel; and

(iv) for Special Events, at all times, no less than 2.15 square feet per standee at the peak load point in the peak direction of travel.

(c) The service capacity shall be considered adequate when 60% of individual trips operate within the applicable Maximum Loading Standard within a consecutive period of ten days on the same schedule (i.e., ten weekdays, ten Saturdays, etc.)

(d) No standees are expected outside the boundaries of current RTD Fare Zones A and B, or more than 15 minutes to or from an originating terminal station at any time, excepting random occurrences permitted within paragraph (c) above. Stations shall be considered in the following fare zones:

(i) Zone A: DUS, 38th/Blake, Colorado, 41st/Fox;

(ii) Zone B: Central Park, Pecos, South Westminster, Federal, Sheridan, Olde Town;

(iii) Zone C: Peoria, 40th/Airport, Arvada Ridge, Ward Road; and

(iv) Zone E (special zone for the airport): DIA.

(e) If, in any calendar month, the service capacity for any individual trip is not adequate, the Concessionaire shall so notify RTD and shall provide RTD with an RTD Change Summary outlining the Concessionaire's proposal as to how to increase capacity on the relevant Commuter Rail Service above the load point capacity requirements level defined in Tables 2.1.2-1 thru 2.1.2-3. RTD shall review this RTD Change Summary and take such action as it sees fit in accordance with Section 36.3 (*RTD Proposed Changes*) of the Agreement.

(f) To the extent that actual Passenger volumes on a Commuter Rail Service exceed the Maximum Loading Standard for such Commuter Rail Service for the relevant five-year period in Tables 2.1.2-1 thru 2.1.2-3 and RTD has not implemented a Change that allows

the Concessionaire to meet the additional Passenger demand within the Maximum Loading Standards described in Section 2.1.3, the Concessionaire shall be relieved from complying with the requirements of Section 2.1.3(a); **provided** that the Concessionaire shall continue to provide the amount and frequency of revenue service required to meet the Passenger volumes and minimum capacity requirements specified in Tables 2.1.2-1 thru 2.1.2-3.

2.2 Maximum Allowable Running Times

The Concessionaire shall operate each Commuter Rail Service within the maximum allowable running time set forth in Table 2.2. Such running times are inclusive of vehicle dwell times at stations and timetable pad. Turn and cycle times for Cars shall be determined by the Concessionaire in accordance with Good Industry Practice related to minimum equipment turn times.

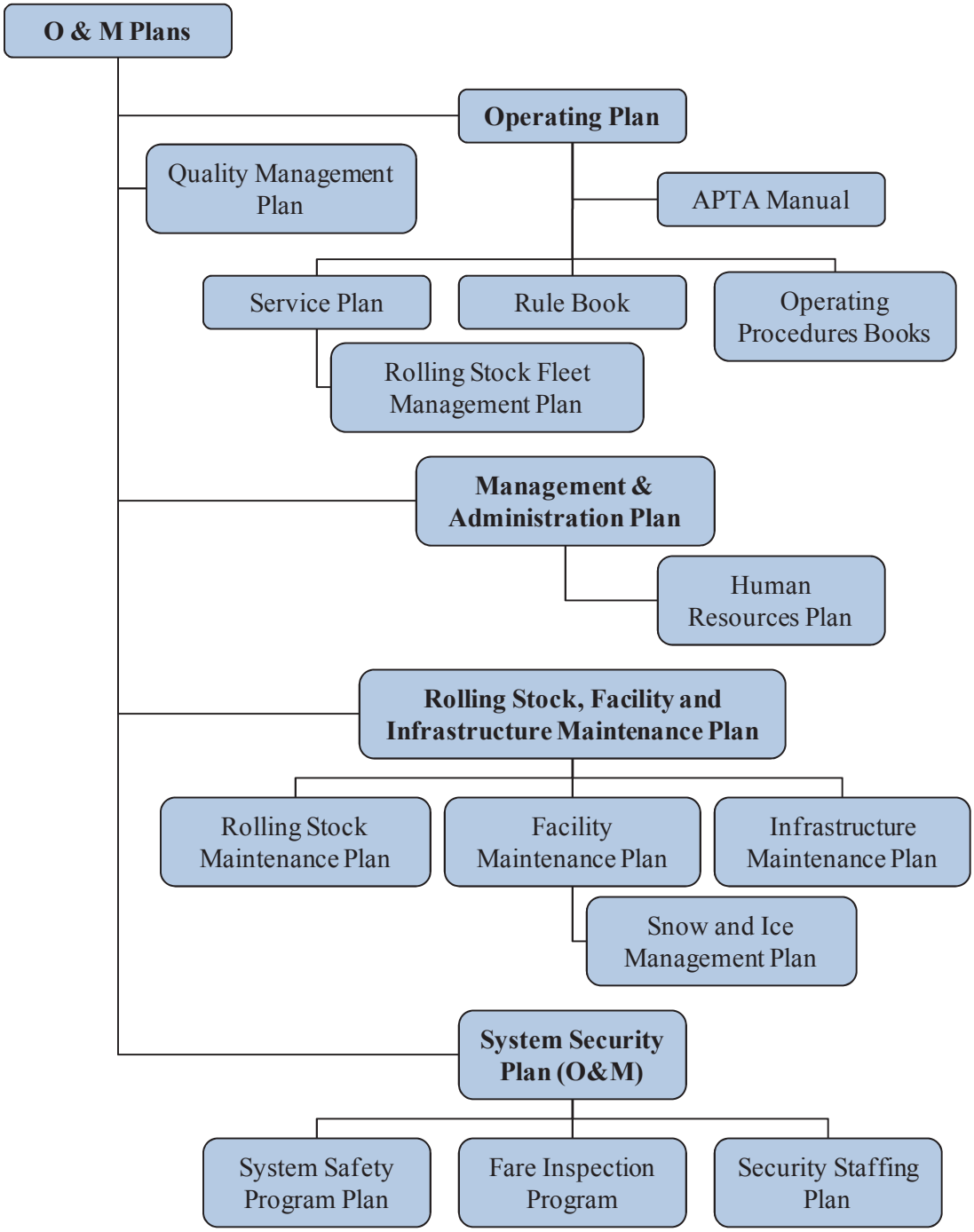
Table 2.2 – Running Times

Commuter Rail Service	Maximum Allowable One-Way Running Times (Minutes)
East Corridor Service	35:00
Gold Line Service	27:00
NWES Service	12:00

2.3 Overview of Plans and Requirements

The Concessionaire shall provide the plans set forth in Figure 2.3 in accordance with the requirements for each of these individual plans as set out in this Attachment 10.

Figure 2.3
O&M Plans



2.4 **Operating Plan**

(a) The Concessionaire shall prepare, submit and keep updated an Operating Plan that describes how the Concessionaire-operated Components shall be scheduled, operated,

maintained and staffed (the ***Operating Plan***) [CDRL #10-01]. This Operating Plan shall be in sufficient detail for RTD to assess the management approach of the Concessionaire.

(b) The Operating Plan shall include a Service Plan, a Rule Book and Operating Procedures, each as described in further detail below.

(c) The Operating Plan shall incorporate and be consistent with the *APTA Manual of Standards and Recommended Practices for Rail Transit Systems* (the ***APTA Manual***). The Concessionaire shall request variances for any differences between the Operating Plan and the APTA Manual.

(d) The Concessionaire shall operate the Commuter Rail Services in accordance with the approved Operating Plan.

(e) The Concessionaire shall maintain a controlled copy of the Operating Plan at the rail dispatch center that shall be available for audit by RTD or any Relevant Authority at any time in accordance with Section 32 (*Audit and Records*) of the Agreement.

2.4.2 **Service Plan**

(a) The Concessionaire shall prepare and submit to RTD for approval a Service Plan that defines the regularly scheduled revenue service trains to be operated by the Concessionaire on the Commuter Rail Network and, subject to Section 2.1 (*Service Delivery Requirements*), is consistent with the service spans and Headways set out in Table 2.1.1B (*Minimum Spans of Service and Headings*) (the ***Service Plan***) [CDRL #10-02]. The Service Plan shall meet or exceed the minimum revenue service delivery requirements specified in Section 2.1.2, subject to Section 2.1.3(a).

(b) The Service Plan shall identify scheduled windows for track outages required for maintenance, engineering and inspections of the Commuter Rail Network.

(c) Either Party may propose changes to the Service Plan no more than three times a year, coinciding with RTD's regular network schedule changes, which, as at the Effective Date, take place in January, May and August. Where the Concessionaire initiates a proposed change to the Service Plan, it shall provide RTD with a written report outlining the operating impacts of the proposed change. When RTD initiates a proposed change to the Service Plan, the Concessionaire shall, within 30 days from receipt of RTD's proposed change, determine and report the operating impacts of the proposed change to RTD.

(d) Service Plan changes are subject to RTD's public outreach and public hearing requirements. Without prejudice to the Concessionaire's rights pursuant to this Agreement, the Concessionaire acknowledges that the Board shall review and make final determinations about revenue service delivery levels for RTD.

(e) The Concessionaire's holiday service calendar shall follow the RTD holiday service calendar as established for RTD's light rail system.

(f) Prior to the beginning of each year of the Operating Period, RTD and the Concessionaire shall jointly develop a schedule of Special Events for that year. RTD and the Concessionaire shall update such schedule of Special Events as necessary during the

relevant year. The Concessionaire shall prepare and submit to RTD for approval a Special Events revenue service timetable (including the capacity and frequency of cars to be provided as well as the schedule for provision of revenue service for the Special Events) on the basis of the agreed schedule of Special Events and shall provide additional revenue service to meet additional demand generated by Special Events in accordance with the approved Special Events revenue service timetable. RTD shall compensate the Concessionaire for the provision of Special Event revenue service through the Service Hour Price for Incremental Service in accordance with Attachment 11 (*Service Payments*).

(g) The Concessionaire shall submit an annual update of the Service Hour Price for Incremental Service as defined in Attachment 11 (*Service Payments*) 90 days prior to the start of the operating year for RTD review. Such update shall provide an inclusive rate for each revenue service hour operated beyond the number shown in the standard Service Plan and a three tiered charge schedule that includes small to large scale Special Events.

(h) The Concessionaire shall define the Revenue Service Commencement Date for each Commuter Rail Service to coincide with an RTD regular network service change. The Concessionaire may request to initiate service at an alternative day with 180 days notice to RTD should the proposed Revenue Service Commencement Date for any Commuter Rail Service not coincide with a regular RTD schedule change day. Notwithstanding this clause (h), with respect to any Commuter Rail Service the Concessionaire may satisfy the Revenue Service Commencement Requirements in accordance with Section 28.2 (*Revenue Service Commencement Certificates*) of the Agreement and the Independent Engineer may issue a Revenue Service Commencement Certificate and such certificate will be issued prior to the Revenue Service Commencement Date previously scheduled in accordance with this Section 2.4.1(h), **provided** that in such event RTD may in accordance with Section 29.1 (*Operating Period*) require the Concessionaire to begin operation of such Commuter Rail Service on a date following the issuance of the Revenue Service Commencement Certificate.

2.4.3 **Rule Book**

(a) The Concessionaire shall submit a Rule Book, including all rules necessary to govern the activities of personnel involved in any aspect of the operation of the Commuter Rail Services and the operation and maintenance of the Concessionaire-operated Components, including Concessionaire personnel and any other rail (passenger or freight) operating personnel that may operate on the Concessionaire-operated Components (the ***Rule Book***) [CDRL #10-03].

(b) The Rule Book shall be consistent with the requirements stipulated by:

(i) the General Code of Operating Rules;

(ii) applicable Law, including the Federal Railroad Administration, the State of Colorado's and any other Relevant Authority's regulations; and

(iii) the Concession Agreement.

(c) The Rule Book shall contain detailed customer service standards (the ***Customer Service Standards***). The Customer Service Standards are intended to ensure that Passengers benefit from the highest quality customer service and that all available means of communication with customers are utilized appropriately. The Concessionaire must interact with Passengers with the highest degree of courtesy and professionalism. The Customer Service Standards shall contain all requirements that relate to the interface between the Concessionaire's or any of its contractors' or subcontractors' personnel and Passengers, even if such requirements also appear in other sections of the Rule Book.

(d) The Customer Service Standards shall address;

(i) professional conduct;

(ii) personal appearance;

(iii) dress code;

(iv) nametag and identification requirements;

(v) on-board and station announcements;

(vi) positioning of crewmembers;

(vii) car availability during revenue service hours;

(viii) lost and found policy;

(ix) distribution of approved materials, schedules and surveys; and

(x) assistance for individuals with disabilities.

2.4.4 **Operating Procedures Book**

(a) The Concessionaire shall submit an Operating Procedures Book, which shall govern routine operations and operations in response to emergencies, such as police and fire situations, system failures, accidents and maintenance-related matters (the ***Operating Procedures Book***) [CDRL #10-04].

(b) The Operating Procedures Book shall address the following areas:

(i) general and administrative requirements;

(ii) Rolling Stock operations;

(iii) Control Center operations;

(iv) emergency operations;

(v) abnormal operations;

(vi) service and schedule recovery;

(vii) required safety testing;

(viii) security;

(ix) fare collection and verification; and

(x) compliance with the Concessionaire's Sustainability Plan.

2.4.5 **Maintenance of the Rule Book and Operating Procedures Book**

(a) The Rule Book and the Operating Procedures Book shall be subject to review by RTD, the FRA, the Public Utilities Commission in Colorado and other Relevant Authorities from time to time. The Rule Book and the Operating Procedures Book must be approved and ready for distribution to Concessionaire personnel prior to the conduct of any activity regulated by the FRA on any part of the Concessionaire-operated Components.

(b) The Concessionaire shall revise existing rules and procedures and develop new rules and procedures as necessary to comply with the requirements in Section 2.4.1(b). Updates and changes to the Rule Book or the Operating Procedures Book shall be submitted to RTD for review and approval not less than one month before its proposed effective date. If RTD fails to respond with comments concerning the proposed changes within ten Business Days of delivering the proposed changes, the proposed changes shall be deemed approved by RTD.

(c) Distribution of the Rule Book and the Operating Procedures Book shall be strictly controlled and a process implemented to ensure that the authorized personnel are always in possession of the current versions. The Concessionaire shall determine the method of distribution and maintenance of these Books, subject to RTD approval.

2.4.6 **Third Party and Public Access**

(a) The Concessionaire shall develop and implement a policy (the ***Use of Facilities Policy***) to govern the public's access to and use of those areas of the Concessionaire-operated Components typically open to the public and traditionally treated as public fora for purposes of allowing expressive, political, commercial or other constitutionally protected speech in accordance with Law. The Use of Facilities Policy shall establish a process by which permits prescribing reasonable time, manner and place restrictions may be issued to the public for organized activities or activities likely to result in crowd gatherings (***Use Permits***). The Concessionaire shall coordinate with RTD with respect to any request to use those Concessionaire-operated Components that interface with the RTD bus or light rail operations. Any Use Permit issued by or on behalf of the Concessionaire must provide that RTD is indemnified and additionally insured to the same extent that the Concessionaire is indemnified and additionally insured. The Concessionaire shall forward all Use Permits issued by the Concessionaire to RTD. RTD shall forward all requests for Use Permits on the Concessionaire-operated Components to the Concessionaire for processing.

(b) Third party requests for on-going access to the Concessionaire-operated Components for:

(i) the purposes of installing permanent structures or improvements, including Utility facilities, on the Concessionaire-operated Components; or

(ii) the conduct of work on land adjacent to the Concessionaire-operated Components within 25-feet of centerline of track,

shall be forwarded by the Concessionaire to, and processed by, RTD. Such requests, if granted, shall be governed by an agreement entered into by RTD and the relevant third party, a draft of which shall be provided by RTD to the Concessionaire for comment. The Concessionaire shall provide any comments to RTD within 15 days or the Concessionaire will be deemed to have no objection. RTD is under no obligation to incorporate the Concessionaire's comments. In all cases, RTD shall require the third party to indemnify and additionally insure the Concessionaire for so long as the Concessionaire provides the Commuter Rail Services to the same extent that RTD is indemnified and additionally insured. Once any such agreement has been executed, the Concessionaire shall grant access to the relevant part of the Concessionaire-operated Components in accordance therewith. The Concessionaire shall be responsible for coordinating initial construction and major maintenance and for ensuring safety during third party access, including the provision of trained and certified flagging staff when required. The Concessionaire may recover any Incurred Costs incurred as a result of third party access, including required training, directly from RTD by submitting to RTD an invoice and supporting documentation for any such Incurred Costs.

2.4.7 **Rail Dispatch Center**

(a) The Concessionaire shall provide staff and operate a rail dispatch center (the ***Dispatch Center***) to regulate all Heavy Rail Movements and commuter rail operations, system availability and access to the Concessionaire-operated Components in accordance with the provisions of the General Code of Operating Rules, the Rule Book, the Service Plan, the Operating Procedures Book, the Railroad Agreements and the requirements of Relevant Authorities.

(b) The rail dispatch center staff shall coordinate as necessary with RTD's light rail control center and bus dispatch center, RTD's telephone information center, DIA security, Railroad dispatch offices and other relevant entities.

(c) The rail dispatch center shall be located within the District, easily accessible by RTD.

(d) The Concessionaire shall provide a bulletin board (or alternative posting method approved by RTD) for the posting of orders at every location where train crews report for duty. The Concessionaire shall post general orders, bulletin orders, and division notices for the applicable territory on the bulletin boards for crew members to review when they report for duty.

2.4.8 **Establishment of the Dispatcher Unit**

(a) Prior to employing any Dispatcher, or engaging in Dispatching, the Concessionaire shall:

(i) establish and maintain an identifiable and separable enterprise (the ***Dispatching Unit***) in the form of either a department, or an entity with a separate legal personality, in either case with the sole purpose of conducting all Dispatching and employing all Dispatchers for the Eagle Project;

(ii) ensure that the Dispatching Unit establishes and maintains separation of the payroll for Dispatchers from the payroll for any other employees engaged in connection with the Eagle Project;

(iii) ensure that Dispatchers do not engage in any employment activities other than Dispatching;

(iv) ensure that employees who are not Dispatchers do not engage in Dispatching;

(v) ensure that any individual with direct supervisory, management or oversight authority over either the Dispatching Unit or any Dispatcher does not supervise, manage or oversee (A) any Person who is not a Dispatcher or (B) activities other than Dispatching;

(vi) establish procedures, and take all other Reasonable Efforts, sufficient to ensure that the Dispatching Unit does not dominate or control, in whole or in part the Concessionaire or the Eagle Project (other than with respect to Dispatching only); and

(vii) ensure that the business of the Dispatching Unit and the number of Dispatchers employed thereby constitute a non-material proportion of, respectively, the Concessionaire's overall business operations and the total number of Eagle Project employees from time to time; **provided** that in no event shall the number of Dispatchers exceed 15% of Eagle Project employees (as determined both on the basis of aggregate salaries and headcount).

(b) Prior to employing any Dispatchers or engaging in any Dispatching, the Concessionaire shall prepare at its own cost a submission for the Railroad Retirement Board (the ***RRB Submission***) [CDRL #10-05]:

(i) detailing the Concessionaire's proposed approach to engaging in Dispatching and employing Dispatchers in accordance with the requirements of 20 C.F.R. §202.3; and

(ii) requesting a determination by the Railroad Retirement Board that (other than a Dispatcher) no Eagle Project employee shall be considered to be an "employee" for purposes of either the Railroad Retirement Tax Act, 45 U.S.C. §231 *et seq*. or the Railroad Unemployment Insurance Act, 45 U.S.C. §351 *et seq*.

The Concessionaire may only submit the RRB Submission to the Railroad Retirement Board after such RRB Submission has been approved by RTD in accordance with

Section 2.4.7(c); **provided** that subject to RTD's compliance with its obligations under this Section 2.4.7(b), the Concessionaire shall be responsible for any costs and delays to the Eagle Project resulting from any delivery of the RRB submission to the RRB less than 240 days prior to the earlier of (x) the Concessionaire's scheduled commencement of Dispatching or (y) the Concessionaire engaging in Dispatching or hiring Dispatchers.

(c) The Concessionaire shall deliver to RTD a final draft of the RRB Submission, together with such information as RTD may reasonably require in respect of such RRB Submission for RTD comment and approval no later than the date that is one year before (i) the earlier of (A) the Concessionaire's scheduled commencement of Dispatching or (B) the date the Concessionaire reasonably anticipates beginning to engage in Dispatching or hiring Dispatchers or, (ii) if sooner, 45 days after RTD delivers a written notice requiring the Concessionaire to prepare, and once approved, submit such RRB Submission. No later than 45 days after delivery of such draft RRB Submission, RTD shall by written notice to the Concessionaire either approve or reject such draft RRB Submission. If RTD rejects the draft RRB Submission, RTD shall:

(i) specify in reasonable detail the grounds on which it has arrived at such determination; and

(ii) identify the provision(s) in the draft RRB Submission to which RTD objects.

(d) Following any rejection under Section 2.4.7(c), the Concessionaire shall revise the RRB Submission and no later than the date that is 45 days after RTD has delivered its notice re-submit the revised draft RRB Submission to RTD for review and approval. Subsequent draft submissions by the Concessionaire and review for approval by RTD shall be in accordance with Section 2.4.7(c) and this paragraph (d), provided the periods for such resubmissions or reviews shall be 15 days each.

(e) If RTD does not approve or otherwise comment upon any draft RRB Submission within the time frame specified above in Sections 2.4.7(c) and 2.4.7(d), then such draft RRB Submission shall be deemed to be approved by RTD.

(f) The Concessionaire may only engage in Dispatching and hire Dispatchers, in each case through a Dispatching Unit, following and in compliance with a final unappealable determination by the Railroad Retirement Board (or, on appeal, a Relevant Authority); provided that if at any time that such decision is pending and the Concessionaire is otherwise in compliance with its obligations under this Section 2.4.7, the Concessionaire may engage in Dispatching and hire Dispatchers to the extent necessary to perform its obligations under this Agreement.

(g) If at any time the RRB or STB (or, on appeal, a Relevant Authority) determines that any Eagle Project employee (other than a Dispatcher) shall be covered or treated as an "employee" for purposes of either the Railroad Retirement Tax Act, 45 U.S.C. §231 *et seq*. or the Railroad Unemployment Insurance Act, 45 U.S.C. §351 *et seq*., then the Concessionaire shall promptly notify RTD of such determination and shall take such actions and initiative such proceedings as RTD requests to appeal such decision to the Relevant Authority(ies) with jurisdiction to hear such appeal.

2.4.9 **Dispatch Records**

(a) The Concessionaire shall maintain FRA-required logs and records including logs of train movements, track permits, grade-crossing failures, and notes of other extraordinary and unusual events.

(b) The Concessionaire shall maintain traction power management logs to ensure safe and efficient operation and to comply with regulatory standards.

(c) The Concessionaire shall make and retain for not less than 30 days audio recordings of all voice communications to and from the rail dispatch center, including telephone calls, radio transmissions and other communications. The Concessionaire shall operate, maintain, upgrade and replace recording devices for this purpose, as necessary.

(d) The Concessionaire shall provide RTD, any Relevant Authority including FRA and NTSB, and any other third party agreed to by RTD and the Concessionaire, including FRA and NTSB, upon request and without delay, copies of any records and audio recordings relating to its dispatch functions.

(e) The Concessionaire shall provide RTD with copies of reports furnished to the Concessionaire by any Relevant Authority concerning the O&M Services, within twenty-four hours of the Concessionaire's receipt of such reports.

(f) The Concessionaire shall investigate all signal violations, including downloading affected vehicle performance history and provide a report to RTD with recommended corrective actions. The rail dispatch center shall initiate this investigation.

2.4.10 **Access to Rail Dispatch Center**

(a) Authorized RTD staff may, at any time, enter the rail dispatch center for the purpose of observing train and power operations or monitoring proper adherence to agreed upon standards. The Concessionaire shall provide the security procedures and access control protocols to the authorized RTD staff, who must follow these access protocols.

(b) The Concessionaire shall operate and maintain the dispatch center, including required telecommunications, monitoring and control systems. The Concessionaire shall maintain field signal, communication and traction power systems on the Concessionaire-operated Components.

2.4.11 **Operations Coordination**

The Concessionaire shall provide continuous coordination with RTD's light rail control center and bus dispatch center and Federal, regional or municipal public emergency centers. From time to time, RTD may issue instructions relating to dispatching in accordance with this Section 2.4.10, which must be implemented by the Concessionaire without delay. To the extent that these instructions cause revenue service delays or impact revenue service availability, such delays or revenue service impacts will not be taken into consideration in calculating the Availability Adjusted Base Service Payment.

2.4.12 **Intermodal Service Coordination**

The Concessionaire shall contact the appropriate RTD office or RTD's designee if any revenue service on the Concessionaire-operated Components will miss connections by more than 4 minutes 59 seconds at any station. As general practice, the Concessionaire shall not hold revenue service trains during peak hours. During off-peak hours, RTD reserves the right to request the Concessionaire to hold revenue service trains to accommodate a delayed intermodal transfer. Alternatively, the Concessionaire may supply MIS equipment and automate this notification process with the appropriate RTD office.

2.4.13 **Alternative and Replacement Services**

(a) The Concessionaire shall utilize train shuttles to the greatest extent possible to provide alternate service around a planned or unplanned revenue service disruption. The Concessionaire shall adequately staff these operations to provide on-site information to Passengers. These shuttles shall operate as close to the Service Plan as practical.

(b) When no rail service can be operated for more than 15 minutes and there is no reasonable expectation that revenue service can be restored within the next 45 minutes, the Concessionaire shall contact the RTD bus dispatch center to request alternative bus service. The Concessionaire shall advise the RTD bus dispatch center of the cause, expected time of restoration, locations impacted and approximate number of Passengers impacted. Unless the cause of the revenue service interruption constitutes a Delay Event Exclusion, the Concessionaire will be responsible for the costs incurred by RTD for coordinating and providing alternative bus service; provided, however that the Concessionaire shall be responsible for the costs incurred by RTD for coordinating and providing such alternative bus service during approved maintenance, engineering and inspection work periods. The Concessionaire shall be responsible for coordinating and executing its approved emergency and incident management plan (which forms part of the Operating Plan) for any planned and unplanned revenue service disruption.

2.4.14 **Fare Revenue Collection and Verification**

(a) RTD shall establish a Fare Revenue policy for the Commuter Rail Services, including fare zones, tariff levels, collection and verification procedures, interline and interagency transfers, and fare media and technology.

(b) At least one year prior to the first Revenue Service Commencement Date, the Concessionaire shall develop and submit to RTD a program describing its fare inspection procedures and training program (the ***Fare Inspection Program***), which shall be updated from time to time to reflect changes to the RTD Fare Enforcement Manual. [CDRL #10-06]

(c) The Concessionaire shall provide fare enforcement by conducting fare inspections using train conductors, and/or other personnel as assigned by the Concessionaire. The Concessionaire shall use a combination of approved fare inspection tactics including on-board inspection, station sweeps and on-board sweeps using a team of trained fare inspectors. Conductors shall conduct fare inspections while on board trains as part of their regular assigned duties.

(d) The Concessionaire shall, at a minimum, conduct fare inspection activities in accordance with the RTD Fare Enforcement Manual. The Concessionaire shall report fare inspection data, activities and the fare evasion rate to RTD in a weekly fare inspection summary report. [CDRL #10-07] Failure to conduct fare inspection activities shall result in the issuance of Service Task Orders pursuant to Section 3 (*Service Task Order Program*).

2.4.15 **Emergency Operations and Incident Management**

(a) As part of the Operating Plan, the Concessionaire shall develop an emergency operations and incident management plan, which shall include:

(i) notification sequence to internal Concessionaire staff, RTD, Passengers and other relevant entities;

(ii) information type and frequency of updates;

(iii) field management procedures;

(iv) revenue service recovery plan; and

(v) post-incident assessment reports and corrective action plan.

(b) Such emergency operations and incident management plan shall also address likely and high impact system failures and emergencies and the planned management response to such incidents, shall define contingent operating modes and shall establish operational guidelines for safely returning to normal operations. Such emergency operations and incident management plan shall designate sufficient qualified operations and maintenance personnel as well as equipment and transport to immediately respond to such failures and emergencies during operating hours.

2.5 **Rolling Stock Fleet Management Plan**

The Concessionaire shall submit and maintain a plan (the ***Rolling Stock Fleet Management Plan***) that demonstrates the number of Cars to be procured by the Concessionaire and their capability to support the service requirements of this Section 2. [CDRL #10-08] The Rolling Stock Fleet Maintenance Plan shall include for each service individually and as a combined fleet of Cars:

(a) end-to-end run times, including allowance for stops at intermediate stations;

(b) terminal layover times, including allowance for crew changes, as necessary;

(c) a calculation of the quantity of trains in service for each operating period and each operating day;

(d) a calculation of the quantity of Cars in each train to meet the capacity requirements;

(e) provision of additional Cars to allow for planned and unplanned maintenance and standby trains, as considered necessary;

(f) a summary of the fleet demand to support the service requirements throughout the Operating Period; and

(g) the schedule for delivery of Cars in order to meet the fleet demand at the Revenue Service Commencement Date and subsequently to meet the increasing capacity requirements throughout the Operating Period, consistent with the requirements of Figure 2.2 in Part A, Section 2.2 of Attachment 7 (*Design, Construction and Rolling Stock Requirements*).

2.6 **Management of Radio Sets**

The Concessionaire shall maintain an inventory of radios, which shall be made available to RTD for periodic audit. The Concessionaire shall report to RTD immediately the loss or theft of any radio set. Decommissioning and replacement of radios shall be coordinated with RTD. Programming of replacement radios will be performed by RTD.

3. SERVICE TASK ORDER PROGRAM

(a) The Concessionaire shall issue "Service Task Orders" (***STOs***) if the standards set out in Table 3 below are not met. The Concessionaire shall establish and manage a comprehensive program (including an MIS) for compiling and tracking Service Task Orders (the ***Service Task Order Program*** or ***STOP***). [CDRL #10-09]

(b) Service Task Orders shall be entered and tracked by the Service Task Order MIS application. RTD reserves the right to periodically audit actual performance and Service Task Order response times against the Concessionaire's records and field checks.

(c) RTD will dispatch reported STOs to the Concessionaire for investigation, confirmation and resolution by the Concessionaire within the prescribed STO Remedy Time set out in Table 3 below. The Concessionaire shall notify RTD promptly of STOs that are reported to it, STOs of which it is aware and STOs that the Concessionaire itself discovers. When the Concessionaire remedies the matter that is the subject of an STO, the Concessionaire shall review the time of completion and compare such time against the relevant STO Remedy Time. If the Concessionaire is not able to address an STO within the relevant STO Remedy Time, ***STOP Points*** shall be assessed based on the specific issue or incident as provided in Table 3 and in this Section.

(d) The Concessionaire shall ensure that RTD has a direct input interface for delivery or notice of STOs into the STOP and its management reports, via email or other RTD-approved method.

(e) If an STO remains unremedied after the relevant STO Remedy Time has been exceeded, STOP Points will be assessed as follows:

(i) if such STO exceeds the first 12-hour period, then at a rate equal to 125% of the STOP Points provided in Table 3;

(ii) if such STO exceeds the second 12-hour period, then at a rate equal to 150% of the STOP Points provided in Table 3;

(iii) if such STO exceeds the third 12-hour period, then at a rate equal to 175% of the STOP Points provided in Table 3; and

(iv) if such STO exceeds the fourth (and each subsequent) 12-hour period, then at a rate equal to 200% of the STOP Points provided in Table 3.

(f) If any Service Task Order has not been remedied by the end of the fourth 12-hour period referenced in paragraph (e) above, the Concessionaire shall promptly provide to RTD for its review and approval a plan (a ***Remedial Action Plan***) that details the actions that will remedy the cause of the event, the schedule for those corrective actions and the mitigating actions that will be taken to minimize the impact on Passengers. [CDRL #10-10]

(g) The Concessionaire shall analyze the STOs each month and identify each instance of:

(i) Systemwide STO Events that have occurred five or more times in any month, and/or ten or more times in any 12-month period; and

(ii) Repeated STO Events that have occurred five or more times in any month, and/or ten or more times in any 12-month period.

(h) The Concessionaire shall promptly prepare a Remedial Action Plan for each occurrence of a Systemwide STO Event described in paragraph (g)(i) above and each occurrence of a Repeated STO Event described in paragraph (g)(ii) above. Each Remedial Action Plan shall be submitted to RTD for its review and approval (not to be unreasonably withheld). Upon RTD receipt and during RTD review, the STOP Points will stop being assessed. If RTD accepts the Remedial Action Plan, only the original STOP Points will be assessed. If RTD finds the Remedial Action Plan unreasonable, STOP Points will resume retroactive to the point that they were suspended when the Remedial Action Plan was submitted for RTD review.

(i) Failure by the Concessionaire to (i) submit a Remedial Action Plan, (ii) successfully implement the actions described in the approved Remedial Action Plan within the time periods specified therein, or (iii) take interim actions to mitigate the impact on Passengers, shall be considered a Persistent Condition and shall result in the accrual of 10 STOP Points per occurrence, per month.

(j) The Concessionaire may request, and RTD may, at its sole discretion, excuse, suspend or reduce STOP Points on any STO.

Table 3 – Service Task Orders, STO Remedy Times and STOP Points

Service Task Order		STO Remedy Time	STOP Points
Element/Item	**Standard**		
a) Elevators			
(i) Availability	At least one elevator functional per required location and in good repair during service hours	2 hours initial response; 12 hours completed repair	5
(ii) Preventative maintenance	All preventative inspections must be completed within the approved intervals specified in the Facility Maintenance Plan	None	5
(iii) Cleanliness and Odor	No overpowering foul odor or heavy litter	4 hours	2
b) Rolling Stock			
(i) Preventative maintenance	All preventative inspections must be completed within approved intervals specified in the Rolling Stock Maintenance Plan	None	5
(ii) Interior Cleanliness	No heavy litter or significant fluids	1 round-trip	2

Service Task Order		STO Remedy Time	STOP Points
Element/Item	**Standard**		
(iii) Seats	All seats available and in good condition or, if unavailable, covered	Unavailable seats covered within 1 round-trip; repaired within 24 hours	2
(iv) CCTV cameras and equipment	All installed cameras and equipment function as designed	12 hours	2
(v) Automated Passenger Counter (APC)	All installed devices functioning as intended	24 hours	2
(vi) Graffiti	Major "tags" greater than 12" diameter and all Offensive Graffiti content regardless of size	Area isolated, covered or cleaned within 8 hours	2
c) Infrastructure, track and structures			
Preventative maintenance	All preventative inspections must be completed within approved intervals specified in the Infrastructure Maintenance Plan	None	5
d) Life safety systems			
(i) Fire extinguishers and firefighting equipment	Installed equipment available with current inspections	4 hours	5
(ii) Pull boxes	No obstructions at or near fire pull stations	2 hours	5
(iii) Emergency doors and pathways	No obstructions at or near egress paths	2 hours	5
(iv) Fire hydrants	No obstructions at or near fire hydrants, including snow	2 hours	5
e) Facility and Stations			
(i) Waiting area/shelter	Seating and vertical structures in good repair	12 hours for minor damage; 48 hours for major damage	2
(ii) Litter	No Heavy Litter accumulation	4 hours	2
(iii) Preventative maintenance	All preventative inspections for major system components must be completed within the intervals specified in the Facility Maintenance Plan	None	5
(iv) Graffiti	Major "tags" greater than 12" diameter and all Offensive Graffiti content regardless of size	Area isolated, covered or cleaned within 8 hours	2
(v) Employee relief facility and /or bathroom	No overpowering foul odor or heavy litter	6 hours	2

Service Task Order		STO Remedy Time	STOP Points
Element/Item	**Standard**		
(vi) CCTV cameras, emergency telephones, and equipment	All installed cameras, emergency telephones, and equipment function as designed	12 hours	2
(vii) Bicycle parking area(s)	Abandoned bicycles	7 days	2
(viii) Signage	Regulatory or directional signage available	24 hours	2
(ix) Platform lighting	No lighting fixtures out or flickering	24 hours	2
(x) Parking lots lighting	No lighting fixtures out or flickering	24 hours	2
(xi) Schedule/maps kiosk	Posted schedule and maps current and in good repair	24 hours	2
(xii) Real-time displays (if installed)	Real time display systems operational	4 hours initial response; 36 hours completed repair	2
(xiii) Parking lots and structures condition	Drive lanes free of obstructions	2 hours	2
(xiv) ADA ramps	Ramps and railings in good repair and maintained in accordance with Law	12 hours for minor damage; 48 hours for major damage	5
f) Waste management			
(i) Trash bins	No more than 75% full	4 hours	2
(ii) Recycling bins	No more than 75% full	4 hours	2
(iii) Dumpsters	No more than 100% full	8 hours	2
(iv) Rodent control	No visible infestations	24 hours	2
g) Snow and ice removal			
Stations, ADA ramps, parking lots and structures	Failure to perform in accordance with Snow and Ice Management Plan	2 hours	5
h) Fare enforcement			
(i) On-board inspection	Failure to perform in accordance with the Fare Inspection Program	2 hours	5
(ii) Weekly fare sweeps	Failure to perform in accordance with the Fare Inspection Program	24 hours	5
(iii) Fare data reporting	Failure to provide weekly report	Per occurrence	2
i) Safety			
Hazard management	Unacceptable hazard per Concessionaire's hazard identification analysis and resolution process	Corrective Action Plan due upon mutually agreed schedule	5
j) Security			
(i) Locks	All doors or gates equipped with locks securable	6 hours	2
(ii) Reporting	Failure to provide reports	4 hours overdue	5

4. MANAGEMENT AND ADMINISTRATION REQUIREMENTS

4.1 Management and Administration Plan

The Concessionaire shall develop a plan (the ***Management and Administration Plan***) that describes how the Concessionaire-operated Components shall be managed and supported. The Management and Administration Plan shall be subject to review and approval by RTD. [CDRL #10-11] The Management and Administration Plan shall detail procedures and policies covering:

(a) Operating Reports;

(b) Regulatory reports;

(c) Management Information Systems operation, interfaces and design;

(d) Passenger complaints and communications;

(e) Marketing and public relations; and

(f) Human resources, in each case in accordance with the requirements of this Section 4.

4.2 Operating Reports

The Concessionaire shall establish a process for reporting system performance and provide RTD with daily, monthly, quarterly and yearly system operating reports in accordance with the requirements of Table 4.2 (respectively, a ***Daily Operating Report***, a ***Monthly Operating Report***, a ***Quarterly Operating Report*** and a ***Yearly Operating Report***).

Table 4.2
Operating Report Requirements

Area to be covered	Daily	Monthly	Quarterly	Yearly
a) Operations and dispatch				
(i) On-time performance – by line	X	X	X	X
(ii) Delay cause and duration by incident type	X	X	X	X
(iii) Scheduled and actual Passenger service Car hours and miles (revenue and total)	X	X	X	X
(iv) Passenger counts by Commuter Rail Service (by train and by station)	X	X	X	X
(v) STOP time response against remedy time	X	X	X	X
(vi) Operating pay hours and counts by FTA NTD type and category		X	X	X
(vii) Elevator out-of-service by cause	X	X		
(viii) Unusual occurrences and incidents	X			

Area to be covered	Daily	Monthly	Quarterly	Yearly
b) Rolling Stock				
(i) Rolling Stock service dispatch performance	X	X	X	X
(ii) Mean distance between failure	X	X	X	X
(iii) Rolling Stock failure by type	X	X		
(iv) Rolling Stock inspection and maintenance hours		X		X
(v) Long term Rolling Stock out-of-service by cause	X	X		X
(vi) Material/parts out of stock		X		
c) Passenger services				
(i) Passenger complaints/investigations under review	X			
(ii) Passenger complaints by cause	X	X	X	X
d) Track, Signal and Power				
(i) Slow orders – cause, duration and expected relief	X	X		
(ii) Upcoming work and outages – scheduled	X	X	X	X
(iii) Energy consumption by source		X	X	X
(iv) FRA hazards and findings		X		
e) Budget and finance				
Operating expenses by FTA NTD category		X	X	X
f) Safety and Security				
(i) OSHA lost time accidents			X	X
(ii) Security incidents and occurrences by type	X	X	X	X
(iii) Fare verification warnings, citations and ejections	X	X	X	X
(iv) Employee injuries by type	X	X	X	X
(v) Fare evasion rates		X	X	X
(vi) Passenger injuries by type	X	X	X	X
(vii) Passenger claims under review		X		

4.3 **Regulatory Reports**

The Concessionaire shall comply with all regulatory reporting requirements of any Relevant Authority and shall provide to RTD sufficient regulatory reporting information for RTD to obtain State or Federal operating subsidies and to meet the prevailing FTA National Transit Database reporting requirements.

4.4 **Management Information Systems**

(a) The Concessionaire shall develop and provide a comprehensive MIS plan to support the records and operating requirements specified herein. The Concessionaire shall specify the systems, interfaces and access requirements of its proposed network in its Management and Administration Plan.

(b) All MIS shall comply with APTA Transit Communications Interface Profiles standards to ensure interoperability and exchange with RTD systems to the greatest extent practicable.

(c) The MIS shall include a fully-featured relational data base system to monitor and manage operation of the Concessionaire-operated Components. The Concessionaire shall record train trip information, including information about train movements, train number, date, car numbers, crew members, scheduled and actual arrival and departure times by station and other key time locations (such as interlockings), detailed delay information and causes, trip origin and destination stations, trip mileage and number of passengers carried. This system shall have real-time automatic data feeds for a train tracking application used to determine schedule adherence at key locations and will retrieve and verify daily trip level data from Automatic Passenger Counters installed on each Car. This system is required in order to collect and process data needed for the calculation of the Service Payments.

(d) The MIS shall include a fully-featured relational database system to monitor and manage inspection and maintenance of Concessionaire-operated Components, infrastructure and major assets. This system shall be used to perform activities including but not limited to:

(i) maintaining an inventory of each facility component of the Concessionaire-operated Components with a unique identifying number and digital photograph, where applicable;

(ii) recording required tests and inspections;

(iii) recording preventative, predictive and corrective maintenance activities;

(iv) scheduling and control of predictive, preventative, and corrective maintenance programs and associated labor and materials;

(v) issuing work orders and purchase orders, including Service Task Orders;

(vi) issuing status and repair reports for infrastructure components;

(vii) retaining a minimum of ten years' worth of information on predictive, preventative and corrective maintenance for each major installed component to produce and analyze trends;

(viii) recording information necessary for warranty administration; and

(ix) downloading and transferring to RTD raw format APC data from each car on a daily basis. RTD will process the data into standard reports, consistent with those currently prepared for bus and light rail operations. These reports will be made available to the Concessionaire in a timely manner.

(e) The MIS will include a fully-featured relational data base to track, monitor and manage stations, facilities, Rolling Stock and security and to dispatch Service Task Orders.

(f) The MIS shall cover, at a minimum:

(i) human resources and payroll, including training and qualifications;

(ii) purchasing and SBE participation;

(iii) crew and train scheduling;

(iv) train dispatching and power management;

(v) engineering;

(vi) communications, including radio dispatch systems and integration;

(vii) safety and security;

(viii) customer service;

(ix) Rolling Stock-installed Automated Passenger Counters and data transfer to RTD;

(x) quality assurance and quality control;

(xi) facility, Rolling Stock and Service Task Order dispatching and response tracking;

(xii) mechanical and Rolling Stock maintenance, including manuals;

(xiii) material, stock room and warranty management, including illustrated parts manuals;

(xiv) permits and licenses, including environmental compliance requirements; and

(xv) asset management and registers.

4.5 **Passenger Complaints and Communications**

(a) RTD shall be responsible for the coordination and distribution of service complaints and communications, travel planning services and printed material related to the Concessionaire-operated Components. The Concessionaire shall have access to the RTD Passenger Complaint system. RTD shall manage the Passenger contact process.

(b) The Concessionaire shall maintain a dedicated point of contact for RTD for issues that require immediate or escalated priority resolution.

(c) Complaints, concerns, suggestions or commendations received by RTD or by the Concessionaire shall be forwarded to the Concessionaire. The Concessionaire must investigate and report its findings, if any, to RTD within nine working days of transmittal. The Concessionaire must provide RTD with a summary of the disposition of the complaint, including any action taken. Copies of the Concessionaire's response shall be provided and/or posted in RTD's customer service correspondence tracking MIS or an alternative approved by RTD.

(d) The Concessionaire shall post RTD hotline information for Passenger complaints prominently throughout the Concessionaire-operated Components and shall encourage Passengers to report issues about stations or trains to RTD via the RTD hotline. Passenger complaints may be of such a serious nature that it becomes necessary for RTD to contact the Concessionaire directly. The Concessionaire must respond to these calls on the same Business Day.

(e) The Concessionaire is obligated to report complaints, concerns, suggestions and commendations relating to the Concessionaire-operated Components that are received directly from Passengers to RTD within 24 hours.

(f) RTD and the Concessionaire shall log all Passenger complaints pertaining to vehicles and/or facilities into the Concessionaire's designated Service Task Order MIS system and each such complaint shall, if appropriate, generate a Service Task Order.

(g) The Concessionaire shall tag lost articles which are found on the Concessionaire-operated Components with relevant information (including the day, route, description of the article, the owner's name (if available), and the finder's name (if available)) and deliver such articles to the nearest RTD Lost and Found office by 11:00 AM Monday through Friday for articles lost on the previous day.

4.6 **Marketing and Public Relations**

RTD shall have primary responsibility for the promotion of the Commuter Rail Services. The Concessionaire shall cooperate with RTD for the public outreach and marketing of the Commuter Rail Services and shall support RTD's public relations efforts related to the Commuter Rail Services, as further described below.

4.6.1 **Public Relations and Tours**

The Concessionaire shall designate an authorized staff member whose responsibilities shall include public relations coordination with RTD. This shall include general inquiries about the

Commuter Rail Services, requests for information about the Commuter Rail Services, and requests for authorized tours of the Concessionaire-operated Components. RTD shall coordinate inquiries and tour requests with the Concessionaire, providing at least seven days' notice. The Concessionaire shall be responsible for managing safety protocols during these tours.

4.6.2 **Media Relations**

Any news media inquiries received by the Concessionaire regarding the Concessionaire-operated Components shall be forwarded to RTD immediately upon receipt. The Concessionaire shall designate an individual who is authorized to speak to the media on behalf of the Concessionaire should such a resource be determined to be needed by RTD.

4.6.3 **Public Meetings**

If the Commuter Rail Services and/or the Concessionaire-operated Components are the primary topic of discussion at Board or public meetings, RTD shall take reasonable steps to notify the Concessionaire in advance of these meetings and of the particular concerns which may be expressed. The Concessionaire shall make reasonable effort to attend the meetings and shall directly respond to relevant comments or questions as best it can and shall submit to RTD within seven days a plan to address the issues discussed.

4.6.4 **Operation Lifesaver Program**

The Concessionaire must provide an adequate number of Operation Lifesaver Program-qualified instructors who shall offer Operation Lifesaver Program training to the public (including "train the trainer" programs), public safety officials, teachers, community groups and others as required by RTD.

4.6.5 **Printed Materials**

RTD shall print and distribute timetables for revenue services operated by the Concessionaire at its own cost. The Concessionaire shall maintain inventory control and notify RTD when there is need for additional timetables prior to depletion of supply. Timetables shall be reused whenever possible to avoid waste. RTD shall provide "new" timetables in advance of a schedule change, with new timetables placed on the appropriate routes not less than one week and not more than two weeks before the schedule change goes into effect. The Concessionaire shall remove from circulation and recycle outdated timetables.

4.7 **Advertising**

(a) RTD reserves the right to place advertising in or on any of the Concessionaire-operated Components and to receive advertising revenues.

(b) The Concessionaire shall install, maintain and replace carborne advertising materials provided by RTD or its advertising company. The Concessionaire and RTD shall mutually develop a schedule for the installation of new carborne advertising not to exceed one update per every seven calendar days.

(c) The Concessionaire shall permit reasonable access by RTD's advertising company for the purposes of installing and/or maintaining stationary advertising on the Concessionaire-

operated Components. Should RTD wish to place advertising in station locations that cannot be accessed without the benefit of "Roadway Worker Protection", the Concessionaire shall install and maintain such advertising for RTD.

(d) The Concessionaire shall not affix and shall not permit to be affixed to or distributed on any car or facility any other advertising, political or other printed or published material, and shall not utilize or permit to be utilized any loud speaker or other device for the purpose of advertising or other similar communication other than as required by this Agreement or directed by RTD.

4.8 **Human Resources**

The Concessionaire shall provide a coordinated and comprehensive Human Resources function (the ***Human Resources Plan***) [CDRL #10-12] consistent with its Operating Plan and Management and Administration Plan. The Human Resources Plan shall, at a minimum:

(a) identify in detail the numbers and categories of staff planned to be utilized for the performance and management of its operations, maintenance and administration functions;

(b) provide policies on employment practices, work environment, attendance, and related topics;

(c) provide organizational charts, specific job descriptions, and provide job codes, titles and compensation rates; and

(d) provide hiring, promotion, return-to-service, termination standards and qualification requirements, including employment verification and criminal background checks as allowed by Law.

4.8.2 **Training and Competency Testing**

(a) The Concessionaire shall implement an annual program for personnel training and competency testing for workforce compliance requirements, including its security and other Subcontractors. RTD shall review and concur with or request changes to this testing program.

(b) The Concessionaire shall provide its personnel, designated contractors and relevant other commuter rail personnel with sufficient training and re-training, including formal written examinations, to assure such personnel's capability to safely discharge their duties in accordance with relevant rules and regulations.

4.8.3 **Employee Removal**

(a) Promptly upon the written demand of RTD, the Concessionaire shall remove any employee(s) from service and/or property whom RTD considers unsuitable. The employee(s) shall have a Concessionaire-defined appeal process available. In the event that RTD does not consider the appeal adequate, the Concessionaire shall not reinstate any removed employee to any RTD service without RTD's prior written approval.

(b) The Concessionaire shall secure workplace materials, uniform items, pass and company identification and any company issued tools, computer access, keys or security items promptly at the time of removal of the relevant employee. The Concessionaire shall report any failure to comply with this requirement to RTD.

(c) The Concessionaire shall undertake employment-related termination action with the greatest tact, respect and dignity for the affected party that it can reasonably offer under the circumstances and Law. The Concessionaire shall take reasonable subsequent protective actions for the workplace against possible retaliation by any terminated employee.

4.8.4 **Records Retention**

(a) The Concessionaire shall keep and maintain adequate personnel records for such periods as are required to comply with applicable Law, Good Industry Practice and the requirements of Relevant Authorities. The Concessionaire shall make such records available to RTD on request and provide them to RTD in their entirety after an employee's termination or separation.

(b) Such records shall include:

(i) Concessionaire personnel lists, including each employee's name, employee number, and badge number (where applicable);

(ii) hire dates;

(iii) wage and benefit records as to Concessionaire personnel engaged in providing the O&M Services; and

(iv) the records of Concessionaire personnel regarding drug and alcohol testing, competency tests, qualifications, training, and criminal violations that directly relate to the performance of the O&M Services as allowed by Law.

(c) The Concessionaire shall provide the relevant records of terminated or separated employees to RTD after termination or separation to ensure coordination for possible rehire or permissible restriction for other RTD divisions or its contractors.

4.8.5 **Substance Abuse Policies**

(a) The Concessionaire shall develop and adopt substance abuse policies and random testing protocols that comply with Law. In the event that different substance abuse requirements overlap, the more stringent requirement shall apply.

(b) The Concessionaire shall establish and implement a drug and alcohol testing program that complies with 49 CFR Part 219, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Colorado, or RTD, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 219 and review the testing process. The Concessionaire shall certify its compliance with 49 CFR Part 219 before December 31 of every year and submit the MIS reports not later

than February 15th of every year to the Substance Abuse Testing Coordinator for RTD or other designated RTD officer.

(c) To certify compliance, the Concessionaire shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

(d) The Concessionaire shall implement and require the implementation of pre-employment substance/drug screening of applicants. Such testing, at a minimum, shall satisfy the requirements of the FRA or other relevant agency regulated drug testing protocol, and be performed at a facility approved by RTD. Any confirmed positive test resulting from this screening shall cause the applicant to be rejected by the Concessionaire.

4.8.6 **Employee Appearance and Conduct**

(a) The Concessionaire shall prescribe uniforms for employees that are appropriate to their positions. The uniforms shall be approved by RTD. The Concessionaire's employees interfacing with the public shall wear the prescribed uniform when on duty, and shall maintain a professional appearance and demeanor when in uniform.

(b) The Concessionaire staff shall at all times comply with the Customer Service Standards set out in the Rule Book.

(c) The Concessionaire shall establish employee conduct standards, disciplinary procedures and policies pertaining to violations of the Rule Book. RTD shall approve these standards and policies [CDRL #10-13].

4.8.7 **Employee Transportation Pass Program**

(a) RTD shall issue to the Concessionaire's employees and other individuals identified by the Concessionaire as performing services under this Attachment 10 on its behalf an RTD employee transportation pass in accordance with the RTD employee transportation pass program. Individuals in possession of an RTD employee transportation pass may travel on the RTD transit system at no cost, provided that the transportation pass is presented upon request for or for proof of fare payment. RTD personnel and RTD-approved parties may travel on revenue service trains for no charge, **provided** that the transportation pass is presented on request for fare inspection.

(b) Transportation pass travel and its use for personal travel shall follow terms and conditions approved by RTD. The Concessionaire shall bear any tax consequences resulting from this privilege for its employees.

4.8.8 **Whistleblower Protection**

The Concessionaire shall not adopt any rule, regulation, or policy preventing an employee from disclosing information to a Relevant Authority, where the employee believes the information discloses a violation or a noncompliance with applicable Law, nor shall the Concessionaire retaliate against an employee for taking such action.

5. MAINTENANCE REQUIREMENTS

5.1 Responsibility

The Concessionaire shall maintain each element of the Concessionaire-operated Components, including Rolling Stock, stations, track, signaling equipment, grade crossing equipment, communications equipment, buildings and structures in accordance with the requirements specified herein.

Subject to the requirements of Attachment 22 (*Railroad Agreements*), maintenance responsibility for each Site, with regard to the parallel Railroad, shall be as specified below.

(a) On the NWES, between DUS and Pecos junction, the Concessionaire shall maintain all grade crossings and all facilities within the commuter rail fenced corridor, including the fencing. Between Pecos junction and South Westminster station, the Concessionaire shall maintain all facilities within the commuter rail fenced corridor, including the fencing and commuter rail grade crossing equipment between the tracks and the commuter rail crossing equipment house.

(b) On the Gold Line, between Sheridan Boulevard and Ward Road, the Concessionaire's maintenance responsibility shall include upkeep of the entire width and all elements of the RTD-owned right-of-way, with the exception of the BNSF trackwork and insulated joints. Between Pecos junction and Sheridan Boulevard, the Concessionaire shall maintain grade crossing equipment on the commuter rail side of the corridor and all facilities within the commuter rail fenced corridor, including the fencing and any Corridor Protection Barriers.

(c) In accordance with the applicable Railroad Agreement included in Attachment 22 (*Railroad Agreements*) a joint facilities group will be established with representatives from BNSF, RTD and the Concessionaire in order to coordinate operations and maintenance activities in the shared corridor.

(d) On the East Corridor, the Concessionaire shall maintain grade crossing equipment on the commuter rail side of the corridor and all facilities within the commuter rail fenced corridor, including the fencing and any Corridor Protection Barriers.

5.2 Maintenance Program

(a) The Concessionaire shall develop and administer an integrated program to inspect, service, clean, repair, upgrade and maintain the Concessionaire-operated Components, in accordance with or exceeding OEM maintenance and warranty standards, directives of the FRA or other Relevant Authorities, and the prevailing industry best practices as defined by the APTA Manual or any successor to APTA.

(b) The Concessionaire shall maintain trackwork used for revenue service to FRA Class 4 standards (as defined in 49 CFR 213.9) or better. The Concessionaire shall maintain trackwork not used in revenue service to FRA Class 1 standards (as defined in 49 CFR 213.9) or better.

5.3 Rolling Stock, Facility & Infrastructure Maintenance Plan

The Concessionaire-operated Components shall be managed and maintained in accordance with an integrated plan (the ***Rolling Stock, Facility and Infrastructure Maintenance Plan*** or ***RSFIMP***) prepared, submitted and updated by the Concessionaire [CDRL #10-14]. The RSFIMP shall describe in detail the Concessionaire's maintenance program, including:

(a) reliability and maintainability requirements for the fleet and fixed assets on the Concessionaire-operated Components;

(b) the maintenance and inspection functions and frequencies required;

(c) the personnel or Subcontractors that shall perform those functions;

(d) the quality control and monitoring system; and

(e) compliance with and support of the Concessionaire's Sustainability Plan.

The RSFIMP shall include procedures, standards, frequencies and schedules for the performance of maintenance functions related to the Concessionaire-operated Components and shall describe how the Concessionaire will exercise its responsibility for the timely and consistent maintenance of stations, platforms, station amenities, storage facilities, vehicle maintenance facilities, Rolling Stock, parking surfaces and structures, landscaping, elevators, mechanical, electrical and life safety systems in accordance with the Agreement.

The RSFIMP shall be divided into the following sections:

(i) Rolling Stock Maintenance Plan;

(ii) Facility Maintenance Plan; and

(iii) Infrastructure Maintenance Plan.

5.3.1 Rolling Stock Maintenance Plan

The ***Rolling Stock Maintenance Plan*** shall describe:

(a) all OEM and supplier specifications and requirements;

(b) daily maintenance and inspection program;

(c) programmed life cycle maintenance – periodic inspections and maintenance;

(d) running repair and corrective maintenance;

(e) heavy repairs;

(f) periodic overhaul(s);

(g) Rolling Stock;

(h) manuals, training and engineering bulletins;

(i) material supply chain, warranty and unit repair program;

(j) quality management program; and

(k) tools and diagnostic equipment, including a calibration program.

5.3.2 **Facility Maintenance Plan**

(a) The ***Facility Maintenance Plan*** [CDRL #10-15] shall describe the facility maintenance activities for the Concessionaire-operated Components and shall comply with applicable Law, including OSHA regulations, as well as the following standards and requirements:

(i) buildings, building systems and public facility systems shall be maintained in accordance with the manufacturer's specifications and the industry standards described below;

(ii) mechanical systems shall be maintained in accordance with the standards of the American National Standards Institute and American Society of Heating, Refrigerating and Air-Conditioning Engineers;

(iii) fire systems shall be maintained in accordance with the standards of the National Fire Protection Association as well as any applicable Law;

(iv) electrical systems shall be maintained in accordance with the standards of the National Fire Protection Association and National Electric Code as well as any applicable Law;

(v) plumbing systems shall be maintained in accordance with the standards of the International Plumbing Code as well as any applicable Law;

(vi) windows shall be maintained in accordance with ANSI/IWCA I-14.1, Window Cleaning Safety Standard, issued by the International Window Cleaners Association; and

(vii) buildings shall be maintained in accordance with the standards of the National Fire Protection Association, Life Safety Code and the International Energy Conservation Code.

(b) The Facility Maintenance Plan shall define the facility maintenance activities for the Concessionaire-operated Components, including:

(i) daily systems maintenance and inspection program for major facility systems (HVAC, electrical, plumbing, safety);

(ii) programmed life cycle maintenance of major component systems (e.g. roofing, HVAC, electrical);

(iii) repair and corrective maintenance service contracts;

(iv) station and parking management;

(v) Snow and Ice Management Plan;

(vi) security and access control systems;

(vii) rehabilitation and reconditioning;

(viii) emergency response and system recovery; and

(ix) Service Task Order tracking and dispatching.

(c) The Concessionaire's ***Facility Maintenance Program*** shall address likely and high impact system failures and emergencies and planned management response to such incidents, define contingent operating modes and establish operational guidelines for returning safely to normal operations. The Facility Maintenance Program shall designate sufficient qualified maintenance personnel as well as equipment to respond to such failures.

(d) The Concessionaire shall maintain the Concessionaire-operated Components facilities in accordance with the Facility Maintenance Program. The Facility Maintenance Program shall include preventative maintenance schedules, a policy for scheduling and prioritizing repairs, a policy for handling emergency responses, and scheduling of custodial cleaning and landscape/grounds maintenance. At a minimum, the Facility Maintenance Program shall address the following areas:

(i) details and facts describing the facilities;

(ii) environmental compliance;

(iii) potential hazardous conditions/events;

(iv) management plan for mitigation;

(v) energy management system;

(vi) fire protection system;

(vii) plumbing system;

(viii) electrical system;

(ix) emergency generator system;

(x) elevator system;

(xi) natural gas system;

(xii) heating, ventilating and air conditioning system;

(xiii) TES;

(xiv) hot water heat;

(xv) vehicle hoist/general lifting system;

(xvi) plant air system;

(xvii) engine exhaust system;

(xviii) fueling and other fluid dispensing and storage systems;

(xix) waste oil system;

(xx) vehicle wash system;

(xxi) fuel storage tanks;

(xxii) overhead doors;

(xxiii) safety and training;

(xxiv) emergency operations; and

(xxv) maintenance organization and staffing, including organization structure, responsibility description, departmental staffing requirements and organization chart(s).

5.3.3 **Infrastructure Maintenance Plan**

(a) The ***Infrastructure Maintenance Plan*** shall address, at a minimum, the following topics:

(i) periodic infrastructure inspection and testing;

(ii) rail grinding and profiling;

(iii) rail and fastener replacement;

(iv) tie replacement;

(v) grade crossing inspection, maintenance and renewal;

(vi) drainage culvert and channels;

(vii) fencing and access control;

(viii) signal failure reduction program;

(ix) train control system and signal inspection, maintenance and renewal;

(x) switch inspection, maintenance and renewal;

(xi) bridge inspection, maintenance and renewal;

(xii) traction electrification system inspection, maintenance and renewal;

(xiii) power distribution system inspection, maintenance and renewal;

(xiv) embedded track maintenance and renewal (if any); and

(xv) communication conduits and related fixtures.

(b) The Infrastructure Maintenance Plan shall include a comprehensive maintenance and inspection program for the train control and communication systems. The Infrastructure Maintenance Plan shall be consistent with the specifications for these systems provided in Part B (*Infrastructure Requirements*) of Attachment 7 and shall include:

(i) frequency and test protocols for systems;

(ii) malfunction reporting requirements;

(iii) corrective action requirements;

(iv) replacement and equipment overhaul requirements; and

(v) false proceed reporting and corrective action requirements.

(c) The Infrastructure Maintenance Plan shall include a comprehensive maintenance and inspection program for grade crossings. Grade crossing warning systems shall be maintained in accordance with the applicable sections of the Manual on Uniform Traffic Control Devices (published by the USDOT Federal Highway Administration and incorporated by reference under 23 CFR Part 655, Subpart F) or its successor.

5.4 **Rolling Stock Maintenance**

The Concessionaire shall maintain its Rolling Stock in a condition appropriate to its age and consistent with the general appearance of the RTD transit network. This maintenance shall meet or exceed safety and maintenance requirements of Relevant Authorities including FRA and the standards of APTA and the OEM.

5.4.1 **Compliant Cars**

Each Car entering into revenue service shall comply with the mechanical and Passenger environment standards defined in Table 5.4.1 (each such Car, a ***Compliant Car***).

Cars operating in revenue service shall meet the mechanical standards defined in Table 5.4.1 at all times, and the Concessionaire shall remedy any defects within the prescribed periods set forth in Table 5.4.1.

Failure to remedy mechanical defects within the prescribed periods set out below shall result in the relevant Car ceasing to be a Compliant Car, including for the purposes of calculating Rolling

Stock Availability in accordance with Attachment 11 (*Service Payments*), until such Car is returned to such a condition that it is a Compliant Car.

Car defects with respect to Passenger environment standards that arise during revenue service shall, if not remedied within the relevant STO Remedy Time, result in the accrual of STOP Points in accordance with Section 3 (*Service Task Order Program*).

Table 5.4.1
Compliant Car Standards

Mechanical standards:			
Area:	**Dispatch standard:**	**En route defect remedy period**	**En route action required**
a) Cab and FRA systems	All controls, monitors and FRA-required systems (brakes, lights, interlocks, etc.) available	None	Remove from service within FRA timeframes
b) Passenger Doors	All platform doors available	1 round-trip	Isolate door; swap or fix equipment
c) Life safety systems	All available and functional, including emergency lighting	None	Remove from service
d) HVAC	Ambient temperature and humidity operating within car design standard	1 round-trip	Swap or fix equipment
e) Interior lighting	All primary lights on with none flickering	Next peak period	Swap or fix equipment
f) Windows	No etchings, cracks, or clouded glass (Major is crack greater than 4")	Minor: 24 hours Major: None	Minor: Swap or fix equipment Major: Remove from service
g) Panels and lockers	All service cabinet, panels and compartment access doors secured	1 round-trip	Secure and isolate car; swap or fix equipment
h) Stanchions and internal fittings	Secure and presenting no hazard to Passengers	Poles: None Straps: Next service day	Poles: Isolate car, swap at terminal Straps: Remove
i) ADA systems	Tie-down area and straps available	1 round-trip	Swap or fix equipment
	Communication/assist request button	1 round-trip	Swap or fix equipment
j) Passenger information systems	Automated Passenger Counters fully functioning	Next peak period	Swap or fix equipment
	Destination and run number signs fully functioning	Next peak period	Swap or fix equipment
	Speakers – interior and exterior	Next peak period	Swap or fix equipment

Passenger environment standards:	
Area:	**Dispatch standard**
k) Interior Cleanliness	No heavy litter or significant fluids
l) Exterior Cleanliness	No heavy dirt or dust (except if exterior washing is not permitted by local water resource regulations or not viable due to weather conditions)
m) Floors	No gum; floors reasonably clean
n) Seats	All seats available and in good condition
o) Graffiti	No graffiti larger than 3 inches in maximum diagonal dimension

5.4.2 **Pre-Departure Inspection**

(a) The Concessionaire shall develop and submit to RTD for review and approval a pre-departure inspection protocol to verify compliance with Section 5.4.1. [CDRL #10-16] This inspection shall be used by the Concessionaire to qualify each Car for dispatch into revenue service. The Concessionaire shall base the protocol on the APTA Manual provisions regarding pre-departure inspection protocols.

(b) In the case of Rolling Stock being operated continuously from one calendar day to the next without returning to the CRMF, the Cars shall be subjected to a pre-departure inspection by the Concessionaire at a terminal location within 24 hours of its previous pre-departure inspection.

5.4.3 **Car Cleaning Standards**

(a) Cars shall be cleaned in accordance with Good Industry Practice, including daily and periodic detail cleaning of the interior and exterior, and so as to keep Rolling Stock in compliance with the requirements of Section 5.4.1. The Concessionaire's Sustainability Plan shall describe solid waste, recycling and hazardous material handling procedures.

(b) In the event that local environmental requirements dictate a limitation or suspension of exterior cleaning (e.g., water use restrictions or bans), the Concessionaire shall be excused from performance requirements related to exterior cleaning of the car body. The Concessionaire shall spot wash the exterior of windows if allowed by Relevant Authorities during this period.

5.5 **Delay Event Exclusions**

(a) The Concessionaire shall not be responsible for delays and revenue service interruptions due to the circumstances set out in Table 5.5 (***Delay Event Exclusions***), provided that any such disruption which is not rectified within the time stipulated in, or in a manner consistent with, the approved Operating Plan, shall be deemed not to have been caused by a Delay Event Exclusion and shall be taken into account in the calculation of the Availability Ratio in accordance with Attachment 11 (*Service Payments*).

(b) Delays and revenue service interruptions shall be assumed to be the Concessionaire's responsibility until it can be demonstrated to RTD's satisfaction that any such delay or interruption qualifies as a Delay Event Exclusion.

Table 5.5 – Delay Event Exclusions

Delay Description	Delay Event Exclusion
a) General Delays	
(i) Force Majeure Events	All
(ii) Derailment	If caused solely by a third party
(iii) Grade Crossing Accident	If accident not caused by Concessionaire's equipment or violation of operating rules
(iv) Other Train Conflict	If a passenger or freight train is disabled or its operation fouls RTD service
(v) Dispatcher Error	If dispatching is conducted by a third party, such as a freight railroad
(vi) Communications Failure	If caused solely by a third party or RTD radio network failure
(vii) Third Party Contractor Work	If delay is within an RTD approved work period
(viii) Approved Maintenance, Engineering and Inspections during track outage work periods	If delay is within an RTD approved work period
(ix) Utility Failure – Telephone	If caused solely by a third party
(x) Utility Failure – Electric	If caused solely by a third party
(xi) Utility Failure – Water	If caused solely by a third party
(xii) Hazardous Material Spill	If caused solely by a third party
(xiii) Police/Fire Department/Medical Activity	All
(xiv) FRA conducted or required tests	If the Concessionaire has provided prior notification to RTD and is in compliance with its operating plan
(xv) Vandalism	If caused by a third party, provided the Concessionaire has taken reasonable actions to prevent said vandalism
(xvi) Obstruction in Right of Way or grade crossing	If caused solely by a third party
(xvii) Passenger Initiated Emergency Stop	All
(xviii) Trespass	If reported to law enforcement
(xix) Passenger–Related	If Passenger is injured or sick

Delay Description	Delay Event Exclusion
	(not caused by any violation by Concessionaire of Operating Rules or Rules of Conduct)
(xx) Passenger–Related	Unruly Passenger in RTD's determination – if police notified
(xxi) Passenger–Related	Special Situation in RTD's determination – report required
(xxii) RTD Direction	If RTD requested
(xxiii) Slippery Rail due to leaves	If in relevant season (so long as train has sand and functioning sanders)
b) Delays Resulting from Engineering Performance	
(i) Damaged Rail	If caused by a third party
(ii) Detector Devices	If detector maintained by a third party malfunctions
(iii) Automatic Highway Crossing Warning System (AHCWS) Malfunction	If caused by high winds or excessive road salt
(iv) Train control system power supply failure	If caused by a third party
c) Transportation Crew and Dispatcher-Related Delays	
(i) Tests and Observations	If caused solely by a third party or conducted in accordance with regulations
(ii) Handicapped Passenger	In RTD's determination, special situation only – report required
(iii) Other railroad crew	If other railroad crew did not follow the instructions of the Concessionaire or follow GCOR.
d) Operating Impact from Previous Delay – Assign to root cause of original delay	
(i) Bus Connections	If root cause was a Delay Event Exclusion
(ii) Train shuttle operation	All
(iii) Crew (Plug Crew) Swap	If root cause was a Delay Event Exclusion
(iv) Late Train Ahead	If root cause was a Delay Event Exclusion
(v) Late Turn	If root cause was a Delay Event Exclusion
(vi) Meet Late Train	If root cause was a Delay Event Exclusion
(vii) Track Warrant/Train Order Copy/Delivery	If root cause was a Delay Event Exclusion
(viii) Run Wrong Iron/Routing irregularity	If root cause was a Delay Event Exclusion
(ix) Late Train	If root cause is assisting train disabled under a Delay Event Exclusion

5.6 **Rolling Stock Maintenance Engineering**

Using qualified staff, the Concessionaire shall perform a Rolling Stock maintenance engineering function (the ***Maintenance Engineering Function***), the responsibilities of which include:

(a) organizing and directing engineering work in support of vehicle maintenance, rail maintenance and facility maintenance;

(b) conducting reliability and performance studies;

(c) evaluating Rolling Stock/equipment design and availability;

(d) providing technical guidance to the mechanical instruction program;

(e) developing and revising technical requirements and specifications, operating and maintenance instructions, and preventative maintenance programs for Rolling Stock, shops and equipment;

(f) managing and controlling Cars and equipment configuration, and developing and designing changes to upgrade Cars, systems and equipment;

(g) administration, oversight and qualification of mechanical procurements, including component systems;

(h) component engineering and rogue unit identification and isolation;

(i) support for the Concessionaire's quality assurance and quality control programs;

(j) reviewing and responding to hazards identified by relevant regulatory bodies, including the FRA and Colorado PUC; and

(k) cooperate in signal violation incident investigation, including downloading relevant vehicle performance history.

5.7 **O&M Record Documents**

The O&M Record Documents shall be kept (in native electronic file format and in other approved electronic file format or hard copy) at the Concessionaire's offices, manufacturing plant and each job site during the Operating Period. The Concessionaire shall provide RTD and the Relevant Authorities with access to the O&M Record Documents for review and audit immediately upon request.

5.8 **O&M Quality Management Plan**

(a) The Concessionaire shall submit to RTD a plan (the ***O&M Quality Management Plan***) for those elements of the Concessionaire-operated Components utilized during the Operating Period. The O&M Quality Management Plan is a separate and distinct document from the Quality Management Plan for the Design/Build Period.

(b) The O&M Quality Management Plan shall be submitted to RTD at least six months prior to, and approved by RTD at least 90 days prior to, the anticipated first Revenue Service Commencement Date [CDRL #10-17]. The O&M Quality Management Plan shall be in accordance with ANSI/ISO/ASQ 9001-2008 (or latest version) as appropriate for the provision and maintenance of O&M service.

(c) Maintenance of ISO registration during the Operating Period is not required.

5.9 Tools and Diagnostic Equipment

Tools and equipment that require precision in their prescribed use shall be calibrated, including torque wrenches, meters, gauges, and test equipment. The Concessionaire shall develop its tool calibration and certification program as part of its supply chain and quality assurance program. Such quality assurance program shall be consistent with the APTA Manual and NIST requirements.

5.10 Supply Chain Management

(a) The Concessionaire shall develop, manage and provide an integrated supply chain operation. This function shall support the requirements of the Operating Plan, and its quality management program.

(b) The supply chain function shall support the asset register requirements in Section 29.10 (*Asset Registers*) of the Agreement. The Concessionaire shall update the Asset Register consistent with the requirements of the Concessionaire's quality plan and of any Relevant Authority.

(c) The Concessionaire shall integrate its supply chain operation into the Concessionaire's Sustainability Plan. The Concessionaire shall perform recycling, waste stream management, material specifications and Hazardous Material reclamation in accordance with the Concessionaire's Sustainability Plan.

5.11 Facility and Station Maintenance

The Concessionaire shall maintain the Concessionaire-operated Components facilities including facilities, warehousing, indoor and outdoor storage, stations, driver's kiosks, elevators cars, platforms, shelters and parking surfaces and structures in a decent, safe and sanitary condition. The Facility Maintenance Plan shall provide the standards and requirements for maintaining each of these facilities, including the facility cleaning requirements set out in Table 5.11.1.

5.11.1 **Facility and Station Cleaning**

Table 5.11.1 – Facilities and Station Cleaning Requirements

ID	Daily	Weekly	Monthly
a) All Facilities			
	Pick up and remove litter Empty trash and recycling receptacles Clean and stock restrooms, as applicable Remove and sanitize human/animal waste, beverage and food spills Mop floors (spot power wash in exterior locations) Vacuum carpeted areas Remove or paint over graffiti	Dust interior surfaces	Shampoo carpeting if needed Power wash exterior facilities and amenities if needed
b) Stations			
	Pick up and remove litter Empty trash and recycling receptacles Remove or paint over graffiti	Clean by washing, wiping dry and polishing glass, furniture, signs, lights, miscellaneous apparatus, and surfaces. Remove fallen leaves (seasonal)	Clean shelter roofs. Perform vegetation control
	Pressure wash station platforms and the underside and tops of canopies at least semi-annually or more frequently as necessary to maintain in a condition appropriate for its age.		
c) Parking Lots			
	Pick up and remove litter Remove or paint over graffiti		Sweep clean. Remove fallen leaves (seasonal) Perform vegetation control

ID	Daily	Weekly	Monthly
d) Employee facilities and/or relief points			
	Pick up and remove litter Empty trash and recycling receptacles Clean toilet and restock supplies	Wash floor	Power wash floor and wall tiles.
e) Track and Structures			
	Remove debris Remove or paint over graffiti	Visual inspection and removal of heavy debris	Pick up litter & remove debris. Perform vegetation control (quarterly)

5.11.2 **Landscaping and Vegetation Control**

(a) The Concessionaire shall provide a comprehensive plan for performing landscaping work throughout the Commuter Rail Network in accordance with Attachment 7 (*Design, Construction and Rolling Stock Requirements*) and the requirements of this Section 5.11.2. Landscaping shall be maintained to ensure a neat and attractive in appearance. Vegetation shall be controlled to ensure that it does not obscure the visibility of signals, grade crossings, station platforms, and signs. Vegetation shall be controlled to ensure that it does not overhang or potentially interfere with the traction electrification system and supports. Walkways and track areas including areas within the track clearance envelope shall be kept free of vegetation. Trees shall be tended to prevent branches from falling on the tracks or power systems.

(b) Landscape areas, plant material, trees shrubs, flowers and sod shall be provided necessary nourishment, water, cultivation and trimming to establish and sustain healthy, vigorous growth and industry standard appearance throughout the natural life of the plantings. Dead and dying plant material shall be removed and replaced in the same season that the failure occurred and the cause of the failure shall be identified and mitigated prior to replacement.

(c) The Concessionaire shall address the use of native plants, trees, grasses and shrubs as well as xeriscape landscaping techniques in the Concessionaire's Sustainability Plan.

5.11.3 **Snow and Ice Management**

(a) The Facilities Maintenance Program shall include a plan for snow and ice management (the ***Snow and Ice Management Plan***), which shall be consistent with the policies, practices and provisions of RTD's snow and ice management plan (attached as Appendix 1 to this Attachment 10). The Concessionaire is responsible for snow removal, sanding, and salting operations on the Concessionaire-operated Components in accordance with the Snow and Ice Management Plan. The Snow and Ice Management Plan shall specify in sufficient detail the requirements, schedule and deployment criteria to address potential snow and ice conditions across the Concessionaire-operated Components.

(b) Snow and ice shall be removed as needed from track and switches to allow for the safe and unimpeded passage of trains. The Concessionaire shall develop and follow operating rules and procedures to efficiently remove snow from tracks.

5.12 **Track and Structures**

(a) The Concessionaire shall maintain its track, signals and structures in accordance with the Infrastructure Maintenance Plan and applicable Law, including the AREMA Manual and standards and the APTA Manual. Mainline track shall be maintained, at a minimum, to FRA Class IV standards.

(b) The Concessionaire shall provide and maintain up-to-date record documentation on the infrastructure forming part of the Concessionaire-operated Components pursuant to the requirements of Section 29.10 (*Asset Registers*) of the Agreement. Records shall be maintained in an online database designed for use in railway fixed asset management and maintenance control.

5.12.2 **Train Control and Communications Systems**

(a) The Concessionaire shall ensure that appropriate devices and equipment are in place and functioning, including striping and advance warning lights.

(b) The Concessionaire shall keep correct, as-in-service, and up-to-date CAD or approved equivalent plans of interlockings, control points, grade crossings and other wayside equipment.

5.12.3 **Traction Electrification System**

The Concessionaire shall provide a comprehensive maintenance and inspection program for the TES. This maintenance program shall be consistent with the specifications for such systems provided by the OEM, NFPA 130, NESC standards and other applicable standards and shall include:

(a) frequency and test protocols;

(b) corrective action requirements;

(c) compliance with NFPA 130 and NESC standards;

(d) equipment replacement and overhaul requirements; and

(e) emergency access and restoration requirements.

5.12.4 **Fare System Equipment**

RTD shall be responsible for cleaning, maintaining, and servicing the Fare System Equipment. The Concessionaire shall report known defects, alarms and conditions to Fare System Equipment to RTD without delay.

6. AVAILABILITY AND PERFORMANCE ADJUSTMENTS

The Concessionaire's performance shall be evaluated and compensated on the basis of the following performance metrics:

6.1 Rolling Stock Availability

The availability of the Rolling Stock for the provision of the Commuter Rail Services shall be determined as set forth in Section 3 of Part D (*Availability Ratio*) of Attachment 11.

6.2 On-Time Performance

The on-time performance of the Commuter Rail Services shall be determined as set out in Section 4 of Part D (*Availability Ratio*) of Attachment 11.

6.3 Station Availability

The availability of the stations on the Concessionaire-operated Components shall be determined as set out in Section 5 of Part D (*Availability Ratio*) of Attachment 11.

6.4 Performance Adjustment

The Concessionaire's performance with respect to the remedying of STOs and the incurrence of STOP Points will be evaluated in accordance with Part E (*Performance Deduction*) of Attachment 11.

7. SAFETY

7.1 Passenger Conduct Code

The Concessionaire shall develop and submit a code regarding appropriate Passenger conduct (the ***Passenger Conduct Code***), which is consistent with established RTD policy and applicable Law in this regard. The Passenger Conduct Code shall be subject to review and approval by RTD and shall be posted in public areas and made available as required to maintain appropriate Passenger conduct. [CDRL #10-18]

7.2 System Safety Program Plan (O&M)

(a) The Concessionaire shall develop and implement a system safety program plan (the ***System Safety Program Plan (O&M)*** or ***SSPP (O&M)***) that identifies the Concessionaire's approach to safety management during all stages of the Operating Period and ensures that the Concessionaire-operated Components are operated and maintained in a safe manner. The Concessionaire shall prepare and submit the SSPP (O&M) to RTD for RTD's approval. The SSPP (O&M) shall be based on the APTA Manual for the Development of Rail Transit System Safety Program Plans for Commuter Railroads, FRA requirements and USDOD MIL-STD 882D and shall be consistent with this Section 7. [CDRL #10-19]

(b) No later than five days following RTD's confirmation that the SSPP (O&M) complies with relevant requirements. RTD will submit such plan to the FTA, the FRA and any other Relevant Authority on the Concessionaire's behalf. The Concessionaire shall not amend, modify or vary the SSPP (O&M) that RTD has submitted to the FTA, the FRA and other Relevant Authorities at any time without the approval of RTD and such Relevant Authority.

(c) The Concessionaire shall update the SSPP (O&M) annually throughout the Operating Period so that it accurately reflects the then-current safety and security requirements of the Concessionaire-operated Components. [CDRL #10-19] RTD will follow the process described in paragraph (b) above with regard to review, approval and submittal to Relevant Authorities on the Concessionaire's behalf of such updates to the SSP (O&M).

(d) The SSPP (O&M) shall describe the Concessionaire's organization of, and the individuals responsible for, safety tasks and the Concessionaire's internal safety audit process. The SSPP (O&M) shall identify processes for safety documentation configuration, hazard identification and resolution, safety certification of the Eagle Project's safety and security certifiable elements, procedures for planning emergency response (including drills and simulations), methods and processes for accident/incident investigation and reporting, internal and external safety audits, and a program for inspection of fire/life safety equipment.

(e) The Concessionaire shall initiate and maintain a separate working group (an ***Executive Safety and Security Committee*** or ***ESSC***). The ESSC shall function as the safety and security authority for the Concessionaire for the Eagle Project. The ESSC shall recommend actions for safety and security and have final decision-making authority regarding safety and security issues. The ESSC shall serve as the Concessionaire's authority on configuration management, safety and security certification processes and

activation of major project components. The Concessionaire shall chair the ESSC, maintain meeting minutes and distribute meeting schedules, notifications and meeting minutes. An RTD system safety and security representative will be a full time member of the ESSC. The ESSC shall convene no less than every two months and more frequently if meeting agenda items (action items) or O&M items warrant. The ESSC has the following authority and responsibilities:

(i) to set and implement safety and security policies;

(ii) to review and approve rules and procedures pertaining to safety and security;

(iii) to ensure attainment of safety and security goals and objectives;

(iv) to ensure that the Eagle Project meets established safety and security criteria;

(v) to investigate incidents involving serious injury or fatality;

(vi) to monitor, review, and approve final safety and security certification/acceptance of major project components; and

(vii) to ensure the implementation of the Concessionaire's System Safety Program Plan, System Security Plan, and the Safety and Security Management Plan.

(f) The Concessionaire shall establish a Fire/Life Safety Committee, which RTD will support by participation in that committee's work and facilitating co-operation with other fire/life agencies. Committee members shall include representatives from emergency responders, RTD and the Concessionaire. The Fire/Life Safety Committee will oversee and provide guidance for the Concessionaire's system safety approach and processes. The Fire/Life Safety Committee will review hazard analyses and safety certifications, and will assist in coordination of emergency planning and response. The Fire/Life Safety Committee shall meet no less frequently than annually during the Operating Period.

7.3 **Hazard Identification**

The Concessionaire shall develop and implement a hazard identification analysis and resolution process, which shall be consistent with *FTA's Hazard Analysis Guidelines for Transit Projects Report #DOT-FTA-MA-26-5005-00-01* and *FRA's Collision Hazard Analysis Guide: Commuter and Intercity Passenger Rail Service* and *FRA's Approach to Managing Gap Safety*. During the Operating Period, the Concessionaire shall use this process to minimize or eliminate potential hazards, support early hazard identification, integrate safe operating procedures into operations and maintenance, and provide for constant and continuous safety evaluation and assessment. The Concessionaire shall track all hazards and provide a quarterly Hazard Management Report to RTD. [CDRL #10-20]

8. SECURITY

8.1 Overview

(a) The Concessionaire shall provide for the safety and security of the Concessionaire-operated Components, Concessionaire personnel, Passengers and members of the general public whenever present on the Concessionaire-operated Components, in accordance with the requirements of this Section 8.

(b) The Concessionaire shall implement, and shall ensure that its personnel, the O&M Contractor and each O&M Subcontractor implements, the Security Plans and Security Procedures established and maintained under this Section 8.

8.2 Security Procedures

(a) The Concessionaire shall establish and maintain throughout the Operating Period written system safety and security policies and procedures (the ***Security Procedures***) in accordance with applicable Law and the standards of the APTA *Safety and Security Standards and Recommended Practices*, as amended from time to time, and as RTD may request in accordance with Section 36.3 (*RTD Proposed Changes*) of the Agreement. The Concessionaire shall submit any proposed variances from the APTA *Safety and Security Standards and Recommended Practices* in its Security Procedures to RTD. RTD shall provide comments or approval of the proposed variance (such approval not to be unreasonably withheld) within 14 days of delivery of the proposed variance by the Concessionaire to RTD, **provided** that the Concessionaire shall not implement any such variance without RTD's prior written approval.

(b) During the Operating Period, the Security Procedures shall be consistent in all material respects with the Safety and Security Management Plan, the SSPP (O&M) and the System Security Plan (O&M) (together the ***Security Plans***).

8.3 System Security Plan (O&M)

(a) The Concessionaire shall prepare and submit to RTD for RTD's approval a plan (the ***System Security Plan (O&M)*** or ***SSP (O&M)***) establishing its approach to security management and threat and vulnerability management. The SSP (O&M) shall be in accordance with applicable Law and the standards of the APTA, FRA and DHS. [CDRL #10-21] No later than five days following RTD's confirmation that the SSP (O&M) complies with the relevant requirements, RTD will submit such plan to the FTA and the FRA and any other Relevant Authority on the Concessionaire's behalf. The Concessionaire shall not amend, modify or vary the SSP (O&M) that RTD has submitted to the FTA, the FRA and any Relevant Authority at any time without the approval of RTD and such Relevant Authority.

(b) The SSP (O&M) shall include a detailed security staffing and operations plan (the ***Security Staffing Plan***) setting forth all aspects of security staffing and operations, necessary to achieve compliance with Law and the standards set forth in Section 8.3(a), including:

(i) minimum hiring qualifications;

(ii) training standards and training programs emphasizing professionalism, courtesy, customer service and ambassadorship;

(iii) the roles and responsibilities of the Security Command Center staff; and

(iv) patrol duties for security officers (if any).

(c) The Security Staffing Plan shall be materially consistent with RTD's current security personnel staffing and security operations, as updated from time to time.

(d) The Concessionaire shall at least annually review the SSP (O&M); update the SSP (O&M) to ensure continued compliance with each of the Concessionaire's obligations in this Section 8; and submit such updates to RTD. [CDRL #10-21] RTD will follow the process described in paragraph (a) above with regard to review, approval and submittal to Relevant Authorities on the Concessionaire's behalf of such updates to the SSP (O&M).

8.4 **Reporting**

The Concessionaire shall submit a summary of security-related statistics to RTD each month in a form reasonably acceptable to RTD as part of its Monthly Operating Report. The Concessionaire shall track and compile security-related statistics required by the National Transit Database; and provide a monthly report of on-board, station, and park-n-Ride security-related statistics, as included in the RTD Monthly Crime Statistics Report.[1] [CDRL #10-22]

8.5 **Security Command Center**

The Concessionaire shall establish a security command center (the ***Security Command Center***) to be located at the Control Center. The Security Command Center shall coordinate with RTD's security command center and, in accordance with Law and otherwise as necessary in respect of police, fire and emergency services or any other Relevant Authority responsible for security, homeland security or emergency management. The Concessionaire shall maintain network connectivity between the Security Command Center and RTD's security command center that allows viewing of all Commuter Rail Network video systems at RTD's security command center.

8.6 **Security Staff**

The Concessionaire shall provide all security staff necessary to perform its obligations under the SSP (O&M).

8.7 **RTD Security Staffing Alternative**

(a) The Concessionaire shall:

[1] NOTE: See Reference Data Item No. 6M.

(i) hold RTD harmless for any damage to RTD's property or personnel caused by third-parties;

(ii) continue to be responsible for maintenance and upkeep of the Concessionaire-operated Components;

(iii) provide sufficient space at the CRMF to host RTD security personnel, equipment, motor vehicles and security command center as set forth in Section 8.7.2;

(iv) provide RTD with review and design approval of all Concessionaire-operated Components related to security, security systems (rail vehicle and fixed facilities), stations and park-n-Rides; and

(v) comply with Section 14 – System Safety and System Security of the RTD Commuter Rail Design Criteria.

(b) RTD shall provide and supervise armed security staff (***RTD Armed Security Staff***) to perform security duties on the Concessionaire-operated Components including the following:

(i) physical patrol of Rolling Stock, stations, platforms and parking facilities;

(ii) fare inspection on Rolling Stock, stations and fare paid areas;

(iii) security support of Concessionaire train crews;

(iv) enforcement of RTD rules and regulations, and other applicable Law;

(v) accident and incident reporting, including cooperation with all Federal, state and local law enforcement personnel;

(vi) operation and monitoring of CCTV security systems; and

(vii) mobile patrols.

8.7.2 **Conditions and Limitations**

(a) RTD will provide the RTD Armed Security Staff subject to the following conditions and limitations:

(i) in providing the RTD Armed Security Staff, RTD will provide the same or reasonably equivalent level of security services on the Concessionaire-operated Components as provided at other RTD facilities and on RTD public transportation services, including all light rail, bus and commuter rail services under the FasTracks Plan;

(ii) RTD shall, in its sole discretion, determine the number of RTD Armed Security Staff and the amount of equipment necessary to perform its security obligations under this Section 8.7;

(iii) RTD shall, in its sole discretion, determine the duties of each RTD Armed Security Staff member; and

(iv) RTD shall ensure that, if any RTD Armed Security Staff are performing security duties hereunder pursuant to a contract entered into between RTD and an entity for which such RTD Armed Security Staff are employees, such contract shall provide that the Concessionaire shall be an additional insured and shall be covered by insurance procured by such entity to the same extent as RTD with respect to claims arising out of the conduct of such RTD Armed Security Staff.

(b) The Concessionaire shall appoint a Security Manager who shall be identified in the SSP (O&M) and have a background in and knowledge of the security industry (as reasonably approved by RTD). The Security Manager shall:

(i) be assigned full-time to security of the Commuter Rail Network and be available by mobile telephone 24 hours per day, 365 days per year;

(ii) operate out of an office at the Security Command Center and serve as the single point of contact for RTD;

(iii) oversee all Concessionaire-operated security functions and ensure compliance with the SSP (O&M) and other Applicable Requirements related to security; and

(iv) coordinate with the RTD Armed Security Staff to fulfill all obligations in subparagraphs (i) through (iii).

(c) The Concessionaire shall respond to requests from any RTD Armed Security Staff as reasonably necessary under the circumstances for such staff member to perform its duties.

(d) Notwithstanding paragraphs (a) through (c) of this Section, RTD and the Concessionaire understand and agree that RTD provides no guaranty, warranty or other assurance as to:

(i) the level of security achieved by RTD under this Section 8.7 on the Concessionaire-operated Components; and

(ii) the level of fare evasion to be achieved through the Fare Inspection Program under this Agreement or through any other RTD activities to reduce fare evasion with respect to the Commuter Rail Network.

8.7.3 **Security Command Center Requirements**

(a) The Concessionaire shall maintain space and equipment at the Security Command Center sufficient for the RTD Armed Security Staff including:

(i) one security console for East Corridor and one security console for Gold Line/NWES for RTD Armed Security Staff to conduct radio communications; answer telephones; answer emergency telephones; monitor video surveillance on a minimum of 6, 10-inch (measured diagonally) video monitors per console;

conduct name checks and fare inspection-related activities; log all activities; and conduct video investigations;

(ii) radio equipment; telephone equipment; and video equipment to conduct the activities listed in 8.7.2(a)(i);

(iii) network connectivity between the Security Command Center and RTD's security command center that allows viewing of all Commuter Rail Network video systems at RTD's security command center;

(iv) three, 12-foot by 12-foot offices with desks and file cabinet storage for RTD Armed Security Staff administration;

(v) five reserved and marked parking spaces for RTD security vehicles; and accommodate for fifteen parking spaces per Commuter Rail Service in operation within the employee parking area for RTD Armed Security Staff;

(vi) fifteen lockers for RTD Armed Security Staff per each Commuter Rail Project.

(b) The Concessionaire shall maintain communications capability between the Security Command Center and RTD's security command center as identified by RTD.

(c) The Concessionaire shall provide RTD Armed Security Staff physical access to the Control Center as necessary to perform its obligations under this Section 8 and any operations necessary for managing emergencies, maintaining safety and enforcing RTD rules and regulations. Such access includes:

(i) use of Security Command Center premises for carrying out security and enforcement operations; and

(ii) use of CCTV security systems, operator consoles, and other equipment in the Security Command Center.

(d) The Concessionaire shall provide RTD Armed Security Staff access to all data that is necessary to perform its obligations under this Section and any operations necessary for managing emergencies, maintaining safety and enforcing RTD rules and regulations. Such access includes access to any data:

(i) generated by the Concessionaire on the Concessionaire-operated Components, including information compiled and reported in accordance with the provisions of Section 8.4;

(ii) otherwise provided for in any Security Plan or the Security Procedures; or

(iii) reasonably requested by RTD.

(e) The Concessionaire shall provide access to all data at its own expense. To the extent reasonably practicable, all data conveyed or otherwise made available by the Concessionaire to RTD shall be conveyed or made available in real time (for purposes of this obligation, real time shall be defined as the transmission of data and video by the

Concessionaire to RTD within approximately five seconds of collection and receipt by the Concessionaire).

APPENDIX 1

RTD SNOW AND ICE MANAGEMENT PLAN

REGIONAL TRANSPORTATION DISTRICT

SAFETY, SECURITY & FACILITIES DEPARTMENT

FACILITIES DIVISION

SNOW AND ICE MANAGEMENT PLAN
Draft for Eagle P3 RFP

SAFETY, SECURITY & FACILITIES DEPARTMENT

FACILITIES DIVISION

SNOW AND ICE MANAGEMENT PLAN

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SNOW AND ICE MANAGEMENT PLAN

I. Introduction

This Directory provides a description of the plan for deployment of Facilities Division and other coordinated RTD resources during a snow and/or ice event. This plan is deemed necessary for the safety, convenience and mobility of RTD patrons and employees.

The combined represented and contractual resources of RTD are responsible for snow and ice management at approximately 675 locations throughout the 2400 square mile District.

II. Goal/Objective/Time

The goal of this management plan is to assure the efficient, timely, and effective management of snow and ice conditions.

The objective of snow and ice management is to improve pedestrian and vehicular traction and remove obstacles and hazards that impede the movement of both pedestrians and vehicles.

The optimum time for completion of this work is just prior to morning and evening peak activity periods.

III. Priorities

Priorities: Subject to the necessary application of reasonable judgment given actual circumstances, snow and ice management shall adhere to the following priorities:

- **First:** pedestrian walkways
- **Second:** transit lanes
- **Third:** patron lanes
- **Fourth:** parking, either employee or patron

IV. Snow Events/Basic Procedures

A snow event is the accumulation of snow and/or ice sufficient to reduce traction and create hazards for pedestrian and/or vehicular movements. Several different types of situations are foreseeable, each of which calls for a different response on the part of RTD resources. Inevitably, however, judgment must be applied to each situation to determine the most effective response. The following conditions and procedures are predictable.

Surface Preparation Event: Prior to the onset of snow/ice accumulation and freezing conditions likely to cause substantial vehicle traction problems it may be prudent to prepare bus way surfaces by applying ice melting compound. Improve traction event is initiated when snow/ice accumulation and freezing conditions likely to cause substantial vehicle traction problems are anticipated.

- **Procedure:** Apply liquid ice melt compound to selected vehicle movement areas.

Pedestrian-Only Event: A pedestrian-only snow event is the accumulation of less than two inches of snow:

- **Procedure:** Remove snow from pedestrian areas and apply ice melt compound.

Whole-Facility Event: A whole-facility snow event is the accumulation of two inches or more of snow sufficiently in advance of a peak use period that the service can be completed prior to the onset of the peak use period:

- **Procedure:** Remove snow from pedestrian, bus circulation, and other vehicle movement and parking areas prior to onset of peak period and apply ice melt and traction compounds if anticipated weather conditions warrant.

On-Peak Event: An on-peak snow event is a Whole-Facility event but the accumulation of two inches of snow or more occurs just prior to or during the peak use period such that the service cannot be completed prior to the onset of the peak period:

- **Procedure:** Remove snow from pedestrian areas and apply ice melt compound if anticipated weather conditions warrant; remove snow from bus circulation and other vehicle movement areas and apply traction compound; complete removal of snow from parking areas after the peak period, considering traffic and pedestrian safety and apply a traction compound if anticipated weather conditions warrant.

Traction-Only Event: A traction only event is an ice storm or other accumulation of ice that creates traction problems for vehicles and slip/fall conditions for pedestrians.

- **Procedure:** Apply ice melt compounds to established pedestrian areas where ice exists; apply approved traction compound to vehicle movement areas if anticipated weather conditions warrant

Bus Shelters: Snow accumulation at RTD bus shelters interferes with passenger boarding and de-boarding.

- **Procedure:** Shelter cleaning crews, either represented or contracted, shall remove snow to provide pedestrian access to each shelter and to the adjacent curb at all sites as a part of the normal cleaning cycle.

Registered Disabled Bus Stops: Heavy snow accumulations are routinely moved by local jurisdictions to the curb to facilitate vehicular movements in the curb lane. This practice results in a bank of snow that interferes with pedestrian access at bus stops. People with disabilities find these obstacles insurmountable.

- **Procedure:** If requests to local jurisdictions are not successful, at the Snow Captain's direction registered bus tops shall be cleared of snow and ice to enable deployment of boarding ramps and access by people with disabilities.

Snow Storage: During periods of heavy snow accumulation the storage of plowed snow may substantially constrain vehicle movements and reduce available parking.

- **Procedure:** Each facility manager shall designate snow storage areas that minimize impact of traffic and parking.

Follow-up Event: The freeze/thaw cycle often results in isolated ice conditions along pedestrian routes until substantially all snow has melted.

- **Procedure:** Each facility manager shall monitor such conditions and direct that ice melt compounds be applied as needed to avoid pedestrian hazards.

Snow Hauling: In order to restore traffic movements and parking spaces to full efficiency after major snow events, it may be necessary to haul snow from the premises.

- **Procedure:** If necessary the Snow captain shall organize snow hauling through use of RTD and contracted equipment.

On-Site Towing: Under severe circumstances, due either to the unusual depth of snowfall resulting from a single event or multiple back-to-back events, clearing of snow from parking areas may be ineffective because of the presence of numerous parked vehicles. This condition may be more pronounced at facilities where skyRide service is provided resulting in vehicles parked for long periods of time.

- **Procedure:** If, in the judgment of the responsible facility Manager, snow removal efforts are rendered ineffective to due to the number of parked vehicles, offending vehicles may be relocated on the same site after obtaining approval of the Snow Captain and approval of RTD Security. All such towing shall be performed by licensed towing vendors under formal arrangement with RTD.

V. Assembly and Deployment of Resources

As a general rule RTD represented human resources to be deployed for any snow event shall be assembled no more than one hour before deployment is anticipated. Deployment shall occur with enough lead time to complete the assigned work prior to the beginning of the peak period in response to a Pedestrian-Only or Whole-Facility event. In response to an On-Peak event, deployment shall be determined as conditions dictate.

Except during an on-peak event, RTD contracted resources shall be deployed to RTD sites approximately two hours before the onset of the peak period and should complete the work prior to peak period.

To assure the timely assembly of essential employees, weather-worthy, overnight, take-home vehicles may be assigned for the duration of the event only, with the Snow Captain's prior agreement. Pooling arrangements shall be established to include the largest possible number of employees.

VI. Ice and Snow Melt Materials

Mixtures: RTD's snow and ice control program used a 10% salt/sand mixture until 1994 when it began using liquid magnesium chloride (25% solution) applied as a spray CF-7 is used on pedestrian areas. "IceSlicer"[2], a mixture of sandy soil and salt, is used for traction in many

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[2] IceSlicer is a copyrighted term of Redmond Minerals, Inc. Where that product is called for in this document, the Concessionaire may propose an equivalent substitute for RTD's approval.

applications. All ice melt materials shall be applied with industry standard spreaders appropriate for the circumstances.

Compliance with EPA Clean Air Standards: RTD's commitment to annual PM-10 reduction and compliance with EPA Clean Air Standards, requires that liquid magnesium chloride be sprayed on the street by means of a tanker truck. The objective is to reduce the amount of particulates in the air during the winter months, while providing an adequate snow/ice management.

Application of Melting Agent: In all areas where snow compaction and/or freezing conditions have occurred, or are likely to occur, the Contractor shall apply a melting agent using a handheld or vehicle mounted commercially available broadcast mechanical spreader (such as Broadcast Fertilizer Spreader, Drop Spreader or a hand-held or "Ortho Whirlybird" or similar type spreader) appropriately sized for the surface to which the agent is being applied and calibrated to discharge the agent appropriately.

1.1.1.1.1

1.1.1.1.2 ***SAND LOTS***

Denver:

- Weston lot next to building 1

Aurora:

- Call Chris Carnahan (303-326-8200)
    1. Hampden & Dawson (about Parker & Hampden – behind water treatment plant)
    2. Chambers – on 32nd Avenue, just East of Chambers Road

Lakewood:

- Call Chris Jacobsen (303-987-7951)
    1. 1050 Quail
    2. 650 Depew

VII. Centralized Management: Snow Captain

The Facilities Maintenance Manager for Operating Facilities is the designated Snow Captain, who has overall management control of all Facilities Division resources during a snow event and shall serve as the single point of contact immediately prior to and during a snow event. The Snow Captain is responsible for monitoring weather conditions, managing communication, directing forces, monitoring progress, adjusting priorities if warranted and reporting conditions to the Senior Manager, Facilities and others as necessary.

VIII. Communication

Communication is essential before, during and after the deployment of snow and ice management resources. This plan makes use of the following information sources and modes of communication:

- **Monitoring Weather Conditions:** All Managers and Supervisors are responsible for monitoring public and private weather reports and forecasts, for sharing that information and for using the best available consensus for decision making. The Snow

Captain has the authority to make these judgments and other team members have the responsibility to follow the captain's lead.

- **Dispatch:** RTD dispatch serves as a central point through which deployment and re-deployment can be accomplished.

- **Periodic Reporting:** Cell phones with voice and/or e-mail capability provide a means by which periodic reports can be provided to the Facilities Division Administrative Assistant who is responsible for compiling an AM and PM progress report based upon field verified information. The Snow Captain, Alternate # 1 and the Facilities Maintenance Manager, Contracted Public Facilities shall provide a status report to the Administrative Assistant by 9:00am and by 3:00 pm each weekday during a snow event.

- **Local Jurisdiction Contacts:** Annually, prior to the onset of the snow season, a letter shall be directed to all known local authorities the purpose of which is to:

    - re-new a direct line of communication with responsible personnel
    - discuss any emerging issues
    - request a confirmation or update of contact information

IX. Facility Resources & Responsibilities

A pre-established set of responsibilities and resources shall be developed including emergency notification and call out lists of all personnel and contractors involved in snow and ice management. This shall include resources established for each location requiring management and descriptions of the properties and elements to be managed including: station platform and ADA ramps, walkways, plaza, transit lanes, bus access routes, parking areas, shelters, sidewalks, and bus stops.

X. Specialized Facilities

The following specialized facility requirements shall be addressed as described below:

DISABLED ACCESS TO BUS SHELTERS

Throughout the District persons with disabilities who also require public transit access are, under severe circumstances, confronted with insurmountable obstacles as the result of how snow is removed by local jurisdictions from streets and placed along curbs where bus stops are located. This accumulation of snow can effectively preclude disabled access.

In order to ameliorate this impact, RTD shall establish a procedure for persons with disabilities who require access to a bus stop near their residence, place of employment and/or location of a retail food outlet that enables each of them to register up to three existing bus stops for specialized attention. Upon registration of such stops, RTD shall notify local jurisdictions to enlist their cooperation with snow removal at these sites such that disabled access can be achieved.

The Facilities Division Administrative Assistant shall collect the information, establish, update and provide a list of disability stops to local jurisdictions via written communication from the

Senior Manager, Facilities and to the Snow Captain who shall deploy resources as they become available to clear these sites to the extent not done so by local jurisdictions.

Handover and Reinstatement Work Procedures

- **Handover and Reinstatement Work Committee**

- Thirty months prior to the Expiry Date, RTD and the Concessionaire shall establish a committee (the ***Handover and Reinstatement Work Committee***) comprised of three appropriately qualified and experienced representatives of each Party who shall be responsible for agreeing the manner, procedures and timetables for carrying out and participating in these Handover and Reinstatement Work Procedures to ensure that the Concessionaire-operated Components comply with the Handover and Reinstatement Work Requirements on the Expiry Date.

- The activities to be performed by the Handover Committee shall include, at a minimum, the following:

  an examination of the Asset Register in accordance with Section 1.1(c) below, spare parts inventory, maintenance facilities, maintenance records and delay statistics;

  a detailed joint inspection of the Concessionaire-operated Components and the Sites conducted during the review of the Asset Register pursuant to Section 1.1(c) below and prior to issuance of the Handover Register (the ***Initial Inspection***) in order to agree the Reinstatement Work in accordance with Section 1.2 (*Reinstatement Work*) of this Exhibit A;

  follow-up inspections and joint progress reviews of the completion of the Reinstatement Work at least at three monthly intervals;

  an examination of documentation and training proposals; and

  agreement as to scope of the Reinstatement Work and the scope of the report to be prepared and submitted by the Concessionaire to RTD (the ***Reinstatement Proposal***) in accordance with Section 1.3 (*Reinstatement Proposal*) of this Exhibit A.

- The Handover Committee shall review the then current Asset Register in comparison to the assets identified during the Initial Inspection and in comparison to previous historic versions of the Asset Register.

- The Handover Committee shall complete such review and issue a revised Asset Register and submit it to RTD [CDRL #14-01] no later than 24 months prior to the Expiry Date, following which such revised Asset Register, inclusive of any modifications agreed by the Handover Committee as a result of its review (the Asset Register as so revised, the ***Handover Asset Register***) shall reflect the assets which the Concessionaire shall be required to hand over to RTD on or before the Expiry Date. If the Handover Committee fails to agree on the Handover Asset Register prior to such required date of issuance, either Party may refer such matter for resolution in accordance with the Dispute Resolution Procedures.

- During the Initial Inspection, the Handover Committee shall compare the spare parts inventory identified in the then current Asset Register to the inventory listing maintained over the 36 months preceding the establishment of the Handover Committee. A level of

not less than 90% of the maximum inventory values for each item over the 36 months, except as agreed otherwise by the Parties, shall be considered fully stocked and shall be included in the Handover Asset Register.

- **Reinstatement Work**

- The Handover Committee shall take into account and consider relevant the following criteria in agreeing the necessary Reinstatement Work:

  the main civil and structural works shall not exhibit any undue signs of damage, wear, stress, cracking, settlement, corrosion, or weather erosion, such that they cannot reasonably be expected to satisfy their full design life specification and to support reliable service operations for a period of three years beyond the Expiry Date;

  limited life and "wear and tear" components of the Equipment have been replaced by the Concessionaire during the Operating Period in accordance with Good Industry Practice as and when they failed, wore out, or reached their design life or customary replacement frequency, as part of ongoing maintenance activities;

  major electrical and mechanical components or equipment (excluding the Rolling Stock) have been repaired, refurbished, or replaced by the Concessionaire as appropriate prior to handover if their condition indicates that they are unlikely to support reliable service operations (without recourse to major repair) for a period of three years beyond the Expiry Date; and

  Rolling Stock and its components, whether original or replacement equipment, has been, and continues to be, maintained in accordance with the original equipment manufacturers' recommendations, subject to reasonable modification of maintenance practices, up until the Expiry Date.

- The Handover Committee shall agree the necessary scope of the Reinstatement Work (the ***Reinstatement Work Scope***) and the Concessionaire shall submit this to RTD no later than 24 months prior to the Expiry Date. [CDRL #14-02]

- **Reinstatement Proposal**

- No later than 30 days following issuance of the Reinstatement Work Scope, the Concessionaire shall provide a proposal to RTD for performance of the work items listed within the Reinstatement Work Scope (the ***Reinstatement Proposal***), detailing the following for each Reinstatement Work Scope item: [CDRL #14-03]

  the specific work plan, such that Reinstatement Work can be performed without disruption to the Commuter Rail Services in compliance with the O&M Standards (the ***Reinstatement Work Plan***);

  the proposed schedule for implementation of the Reinstatement Work, such that all Reinstatement Work is completed not less than 90 days prior to the Expiry Date (the ***Reinstatement Schedule***); and

an estimate of the cost to the Concessionaire to perform the Reinstatement Work in the proposed manner (the ***Reinstatement Amount***).

- RTD will, no later than 30 days after receipt of the Reinstatement Proposal, either accept the Reinstatement Proposal or make reasonable objection to any item within the Reinstatement Proposal in respect of any or all of the Reinstatement Work Plan, the Reinstatement Schedule and the Reinstatement Amount. Any such objection to the Reinstatement Proposal shall detail the grounds for such objection and include RTD's proposed revisions to the Reinstatement Proposal in respect of the Reinstatement Work Plan, the Reinstatement Schedule and/or the Reinstatement Amount, as applicable.

- The Concessionaire shall, no later than 15 days after receipt of any such objection by RTD to the Reinstatement Proposal, either accept RTD's proposed revisions or declare its disagreement with specific items and refer those specific items for resolution in accordance with the Dispute Resolution Procedure. [CDRL #14-04]

- **Implementation of the Reinstatement Work**

- Upon agreement or determination in accordance with the Dispute Resolution Procedure of the Reinstatement Work Scope and each element of the Reinstatement Proposal, and subject to the establishment of the Handover Security and receipt of RTD's direction to proceed with Reinstatement Work for each item identified in the Reinstatement Work Scope, the Concessionaire shall carry out, or arrange for the carrying out of, the items of the Reinstatement Work in accordance with the Reinstatement Proposal, in each case at its own cost notwithstanding that the actual cost of the Reinstatement Work may be higher than the Reinstatement Amount.

- For each item of the agreed Reinstatement Work Scope identified in the agreed Reinstatement Proposal, prior to the scheduled start of work on such item in accordance with the Reinstatement Schedule, RTD may by written notice to the Concessionaire either (a) direct the Concessionaire to implement the applicable Reinstatement Work or (b) elect to defer the implementation of the applicable Reinstatement Work and direct the Concessionaire to deposit the associated portion of the Reinstatement Amount for that scope item into an account specified by RTD to the Concessionaire in writing. If RTD does not notify the Concessionaire as to RTD's decision regarding any item of the Reinstatement Work Scope prior to the scheduled start of work on such item in accordance with the Reinstatement Schedule, RTD will be deemed to have directed the Concessionaire to implement the applicable Reinstatement Work.

- Once RTD has notified the Concessionaire of its election to defer an item of the Reinstatement Work Scope and the associated portion of the Reinstatement Amount has been transferred to the account specified by RTD to the Concessionaire, the Concessionaire shall be relieved of the obligation to implement that item of the Reinstatement Work and RTD shall be required to issue an RTD Proposed Change pursuant to Section 36.3 (*RTD Proposed Changes*) if it subsequently requires the Concessionaire to perform such Reinstatement Work.

- The agreement of RTD to any items of the Reinstatement Work, the Reinstatement Proposal, the participation of RTD in the Initial Inspection or the complete or partial

carrying out of the Reinstatement Work (whether revised or otherwise) will not relieve or absolve the Concessionaire from:

its obligation under Section 1.5 (*Handover Security*); or

any obligation to conduct any other inspection or perform any other work in accordance with or otherwise comply with its obligations under the O&M Standards.

- The Concessionaire shall ensure that all contractors carrying out the Reinstatement Work provide a two-year warranty in respect of such work, such warranty being stated to be transferable to RTD or any successor operator of the Concessionaire-operated Components nominated by RTD.

- **Handover Security**

- The Concessionaire will, no later than seven days after agreement of the Reinstatement Proposal or determination in accordance with the Dispute Resolution Procedure, but in any event not earlier than 18 months before the Expiry Date, provide one or more on-demand letters of credit (in such form as may be reasonably required by RTD) for the benefit of RTD in respect of the Reinstatement Work valid for a period of 90 days after the Expiry Date in an aggregate amount that is 20% higher than the Reinstatement Amount (the ***Handover Security***). [CDRL #14-05]

- Where there is any Dispute in relation to the Reinstatement Amount, the existence of the Dispute shall not in any way reduce or limit the liability of the Concessionaire to provide the Handover Security under this Section 1.5, except to the extent of any such part of the Reinstatement Amount that is in dispute. Upon resolution of the Dispute, the value of the Handover Security shall be adjusted to reflect the outcome of the Dispute.

- The Handover Security shall be subject to reduction during the period following the provision of the Handover Security to the extent that items of the Reinstatement Work are implemented to RTD's satisfaction and as the Concessionaire meets the requirements of Section 1.6 (*Handover Inspection*) for items of the Reinstatement Amount that RTD elects to transfer to the Reinstatement Account.

- The Concessionaire will ensure that at all times any bank issuing the Handover Security is a Qualifying Institution and is acceptable to RTD in its sole discretion. If an issuer of the Handover Security ceases at any time to be a Qualifying Institution, the Concessionaire will, upon becoming aware of this, notify RTD without delay and will, no later than 30 days after service of a notice by RTD on the Concessionaire requiring it to do so, replace the Handover Security with a replacement on-demand letter of credit issued in substantially identical terms by a Qualifying Institution in the amount required for the Handover Security.

- If the Concessionaire (i) does not provide the Handover Security in accordance with this Section 1.5 or (ii) does not replace the Handover Security in accordance with Section 1.5(d), RTD shall be entitled to deduct the total required amount of the Handover Security from Service Payments which would otherwise be payable to the Concessionaire by RTD. RTD shall transfer any monies deducted from the Service Payments pursuant to

this Section 1.5(e) into an escrow account (the ***Handover Escrow Account***) on the date on which they would otherwise have been paid to the Concessionaire. Any interest accrued on the amounts transferred to such escrow account shall be paid to the Concessionaire.

- **Handover Inspection**

- Not later than three months before the Expiry Date, the Parties shall conduct a joint inspection of the Concessionaire-operated Components (the ***Handover Inspection***) to assess the condition of the Concessionaire-operated Components and the Reinstatement Work and to identify which items of the Reinstatement Work and the Handover Procedures remain outstanding. The findings of the Handover Inspection will be recorded on each Site, which record will be signed by the Parties. The Concessionaire shall submit these records to RTD. [CDRL #14-06]

- If RTD, on the basis of the Handover Inspection, determines that not all elements of the Concessionaire-operated Components comply with the Handover and Reinstatement Work Requirements, RTD shall, within ten days, notify the Concessionaire of its opinion and the Parties shall meet at the earliest opportunity to attempt to resolve the issues raised by RTD.

- If no agreement is reached between the Parties as to whether each element of the Concessionaire-operated Components complies with the Handover and Reinstatement Work Requirements within 10 days after RTD's notification of its opinion, then either the Concessionaire or RTD may refer the matter for resolution in accordance with the Dispute Resolution Procedure within five days thereafter.

- If it is agreed or determined in accordance with the Dispute Resolution Procedure that the Concessionaire-operated Components do not comply in all material respects with the Handover and Reinstatement Work Requirements, without prejudice to any other right or remedy of RTD, the Concessionaire will pay to RTD an amount equal to the estimated cost of ensuring that the Concessionaire-operated Components comply in all material respects with the Handover and Reinstatement Work Requirements, as agreed or as determined in accordance with the Dispute Resolution Procedure (the ***Handover Amount***). Such payment will be made not later than 14 days after such estimated cost has been agreed or determined in accordance with this Section 1.6(d), after which the Handover and Reinstatement Work Requirements shall be deemed satisfied. To the extent that the Concessionaire does not pay the Handover Amount to RTD within this period, RTD will be entitled to make a claim for payment of such unpaid amount under the Handover Security or draw an amount equal to the unpaid amount from the Handover Escrow Account, after which the Handover Requirements shall be deemed satisfied.

- Where there is any such Dispute in relation to the Handover Amount, the existence of the Dispute shall not in any way reduce or limit the liability of the Concessionaire to pay any undisputed portion of the Handover Amount under this Section 1.6. Upon resolution of the Dispute, the value of the Handover Amount shall be adjusted to reflect the outcome of the Dispute. The amounts in the Handover Escrow Account or the Handover Security, as the case may be, will be returned to the Concessionaire as soon as is reasonably practicable after agreement or determination following Dispute Resolution (as the case may be) to the extent (if any) not drawn once the Handover Amount has been paid in full.

- **Handover Procedures at the end of the term**

Upon the Termination Date or prior to the Expiry Date as set out in Section 44 (*Handover and Reinstatement Work Requirements on the Expiry Date*) of the Agreement (as applicable), the Concessionaire and RTD shall, at the Concessionaire's cost (except where otherwise provided), carry out and participate in the following procedures and requirements:

- The Concessionaire shall record the assets and other items handed over to RTD, as well as any observations or objections by either Party, in an asset register signed by the Parties. [CDRL #14-07]

- The Concessionaire shall surrender the Sites to RTD and as soon as practicable vacate the Sites (leaving the Sites in compliance with Section 12.6 (*Reinstatement*) of the Agreement) and remove from the Sites all equipment, materials, temporary buildings, road vehicles, spare parts and other property which RTD notifies the Concessionaire in writing is not required by RTD for the continuation of the Eagle Project, or which is not acquired by RTD pursuant to these Handover and Reinstatement Work Procedures, and if it has not done so within 28 days after any notice from RTD requiring it to do so RTD may (without being responsible for any loss) remove and sell any such property and will hold any proceeds less all costs incurred to the credit of the Concessionaire. If the costs incurred exceed such proceeds RTD will, by giving written notice to the Concessionaire, set out the amount by which the costs incurred exceed the proceeds and the Concessionaire will pay such amount to RTD within 14 days after receipt of such notice.

- The Concessionaire shall cooperate fully with RTD and any potential bidders throughout the course of any procurement process that RTD may conduct in order to determine a successor operator. The Concessionaire shall provide potential bidders with copies of or access to the Contract Data and Work Products [CDRL #14-08] and with such access to the Sites and to operational staff as may be necessary for the preparation of complete and competitive bids.

- The Concessionaire shall cooperate fully with RTD and any successor operator of the Concessionaire-operated Components in order to achieve an efficient and effective transfer of the operation of the Concessionaire-operated Components, as necessary to protect the safety of, and avoid undue delay or inconvenience to, Passengers and to de-register the Memorandum of Lease from the relevant land registries.

- The Concessionaire's lease and all other rights of access to, and use of, the Sites will terminate and RTD will assume and acquire the rights of the Concessionaire over the Sites.

- To the extent it has not already done so and to the extent possible, the Concessionaire will transfer all Permits to RTD or obtain the right to use all Permits for the benefit of RTD. [CDRL #14-09]

- RTD or any successor operator of the Concessionaire-operated Components nominated by RTD may make offers of employment to operational staff. Insofar as such offers extend to the employees of the O&M Contractor, the Concessionaire shall not hinder or obstruct (and shall procure that the O&M Contractor does not hinder or obstruct) the

transfer of such employees who wish to accept such offers of employment and so transfer their employment as aforesaid.

- The Concessionaire will ensure that the benefit of the Work Products and the Intellectual Property Rights relating thereto are or have been transferred to RTD pursuant to Section 33 (*Intellectual Property Rights*) of the Agreement and that copies of all Work Products have been delivered in accordance with Section 33.1(a) of the Agreement.

- The Concessionaire shall provide, convey or surrender (as the case may be) to RTD (to the extent not already provided, conveyed or surrendered to RTD):

  originals of all Contract Data (including documents, designs, drawings, O&M Submittals and other information created and submitted to RTD in accordance with the Contract Data Requirements List and all records required to be maintained by the Concessionaire pursuant to the terms of this Agreement and Applicable Requirements) required for the operation and maintenance of the Concessionaire-operated Components or otherwise produced in connection with the Concessionaire-operated Components; [CDRL #14-10]

  one complete set of "as built drawings" (to the extent that such drawings have been finalized at the time of termination and not already provided to RTD); [CDRL #14-11]

  the Equipment and all fixtures, structures, installations and fixed and movable equipment or property required for the safe operation and maintenance of the Concessionaire-operated Components in good condition, and all improvements and modernizations effected by the Concessionaire during the Lease Period;

  spare parts of a type and quantity equivalent to its stock accumulated in accordance with Good Industry Practice; and

  all keys, access codes or other devices required to operate the Concessionaire-operated Components. [CDRL #14-12]

- The Concessionaire will ensure that the benefit of all unexpired warranties, guarantees, obligations or other commitments given by any Project Contractor or professional consultant involved in the Eagle Project and all unexpired manufacturer's warranties in respect of mechanical and electrical equipment used or made available by the Concessionaire in connection with the Eagle Project but not previously assigned to RTD are assigned, or otherwise transferred, to RTD with full title guarantee ensuring that the Concessionaire has sufficient title to effect the transfer. [CDRL #14-13]

- If termination occurs prior to the Revenue Service Commencement Date to the extent not already conveyed or vested in RTD pursuant to Section 23.1 (*Ownership of Concessionaire-operated Components*) of the Agreement:

  the Concessionaire will convey to and RTD will assume and acquire all elements of the Commuter Rail Network, the Work (including Temporary Work) and the Rolling Stock; and

the right of the Concessionaire to use the Work (including Temporary Work) and the equipment and other materials on or near the Sites will remain available to RTD for the purposes of completing the Work.

- If RTD so elects, the Design/Build Contract, the O&M Contract and any other Subcontracts to which the Concessionaire is a party (and any other contracts referred to in this Agreement as being able to be replaced with a similar contract to be effective from or after the End Date between the relevant contractor and RTD) will be replaced with a similar contract between the relevant contractor and RTD. Upon such election, the Concessionaire will take all necessary steps as soon as reasonably practicable to effect such replacement.

- RTD will have the right to use all spare parts, fixtures, structures, installations and fixed and movable equipment and all other property required for the safe operation and maintenance of the Concessionaire-operated Components.

- Commencing 12 months prior to the Expiry Date, the Concessionaire, at RTD's sole cost and expense, shall at RTD's request conduct an effective training program for various categories of RTD staff and third party staff nominated by RTD who will be responsible for operation and maintenance of the Concessionaire-operated Components following the Expiry Date to ensure the successful continuation of all operation and maintenance activities. An outline of the content and style of and program for the training shall be submitted to RTD by the Concessionaire for review 18 months prior to the Expiry Date [CDRL #14-14] and the Concessionaire shall comply with RTD's reasonable requirements in relation thereto. The training shall be supported by appropriate documentation and training manuals [CDRL #14-15] and shall include practical fieldwork or "on-the-job" training in addition to classroom sessions.

Exhibit A – Part 2

[Reserved]

Exhibit A – Part 3

Scope of Work during Pre-Revenue Period

Following (except in relation to the Gold line and the Northwest Electrified Segment) the Phase 1 Work Commencement Date and also, if it occurs following the Phase 2 Work Commencement Date (including in relation to the Gold line and the Northwest Electrified Segment), Operator shall provide those Pre-Operations Services identified in Attachment 1 to this Part 3 of Exhibit A and further described below. Operator shall provide the Pre-Operations Services for each Commuter Rail Project in accordance with the Project Schedules (as defined in the Design-Build Contract).

In order for Operator to provide the Pre-Operations Services identified in the Design-Build Contractor shall provide those services identified in Attachment 1 to this Part 3 of Exhibit A and as further described below as being the responsibility of the Design-Build Contractor.

The Operator will provide the Pre-Revenue Services identified in this Part 3 of Exhibit A generally in accordance with the schedule set out in Attachment 2 of this Part 3 of Exhibit A in return for the Pre-Operations Fees referenced in Article 5.1 of the Operation and Maintenance Agreement.

2.0 DESIGN REVIEW

Operator shall have a consultative role in respect of engineering and design work required to be undertaken to complete the Design Documents. Design-Build Contractor shall make copies of the Design Documents available to Operator. Operator may provide comments and feedback on a Design Document (or a proposed change thereto) if, in the opinion of Operator, such Design Document has or is reasonably likely to have an impact upon the cost, implementation or other aspect of the Services or where there is a potential value engineering benefit and shall be obligated to provide comments on the Design Documents (or a proposed change in respect thereof) that it reviews if Operator is of the opinion that such Design Document (or proposed change) is wholly or partially inconsistent with the O&M Specifications, other O&M Standards or the Design, Construction and Rolling Stock Requirements. Operator's review of the Design Documents shall be for the purpose of providing comments only and the Operator shall not be responsible for any errors and omissions in the final Design Documents.

A representative of Operator may attend scheduled periodic design review meetings, as necessary.

3.0 PREPARATION OF OPERATING PLANS AND PROCEDURES

3.1 ***PREPARATION OF O&M CDRLS.*** *OPERATOR SHALL DEVELOP AND PREPARE ALL CONTRACT DATA IDENTIFIED IN ATTACHMENT 3 OF THIS PART 3 OF EXHIBIT A.*

3.2 ***PREPARATION OF CDRL SECTIONS RELATING DIRECTLY TO O&M.*** *OPERATOR SHALL PREPARE THOSE ITEMS ON THE CONTRACT DATA REQUIREMENTS LIST IDENTIFIED IN ATTACHMENT 3 TO THIS PART 3 OF EXHIBIT A WHICH DIRECTLY PERTAIN TO THE OPERATION AND MAINTENANCE OF THE EAGLE PROJECT.*

3.3 ***REVIEW OF O&M-RELATED CDRLS.*** *OPERATOR SHALL REVIEW AND COMMENT, AS NECESSARY, ON THOSE ITEMS ON THE CONTRACT DATA REQUIREMENTS LIST WHICH MAY POTENTIALLY IMPACT EITHER THE OPERATOR AND/OR THE OPERATION AND MAINTENANCE OF THE EAGLE PROJECT.*

Operator shall provide its Services in relation to this Section 2.0 in a time frame so as to comply and to enable compliance with the requirements of the CDRLs and the Project Schedules.

4.0 OPERATION OF TRAINS FOR TESTING AND COMMISSIONING.

4.1 *OPERATOR SHALL OPERATE ROLLING STOCK DURING THE TESTING AND COMMISSIONING OF THE EAGLE PROJECT AND DURING THE SYSTEM PERFORMANCE DEMONSTRATIONS IN ACCORDANCE WITH THE PROJECT SCHEDULES AND THE APPROPRIATE TEST PLANS AND PROCEDURES, USING FULLY TRAINED AND CERTIFIED OPERATORS. SUBJECT TO OPERATOR PERFORMING THE PRE-OPERATIONS SERVICES AT THE TIME AND IN THE MANNER REQUIRED, DESIGN-BUILD CONTRACTOR IS RESPONSIBLE FOR ENSURING THAT THE SCHEDULE AND DURATION OF TESTING AND COMMISSIONING AND OF THE SYSTEM PERFORMANCE DEMONSTRATIONS ARE IN ACCORDANCE WITH THE PROJECT SCHEDULES.*

5.0 HIRING AND TRAINING

5.1 *Operator shall train its personnel, as needed, to fulfill the requirements set out in Attachment 10 to the Concession Agreement for start and continuation of Revenue Service. Design-Build Contractor is (through its Subcontractors) responsible for training Operator's trainers and supervisors in accordance with the respective Subcontracts at no cost to Operator.*

6.0 PARTICIPATION IN TESTING, COMMISSIONING AND CERTIFICATION

6.1 *Operator shall support Design-Build Contractor during testing and commissioning and in certification as requested by Design-Build Contractor. Operator shall provide Rolling Stock maintenance personnel to assist Design-Build Contractor in testing and commissioning activities, it being noted that prior to this Design-Build Contractor is responsible for ensuring that the Rolling Stock supplier has provided training of Operator's trainers and supervisors in accordance with the respective Subcontracts. Operator is responsible for supporting Design-Build Contractor in carrying out the Systems Performance Demonstrations in accordance with the Project Schedules and the applicable test plans, including the provision of maintenance personnel to support Rolling Stock testing and systems testing.*

7.0 MATERIALS, EQUIPMENT, INFRASTRUCTURE, TRACTION POWER AND SERVICES TO BE PROVIDED BY OTHERS

7.1 *Prior to the Operating Period Operator shall have responsibilities for providing the materials, equipment, infrastructure, power and Services identified in Attachment 1 of this Part 3 of Exhibit A. Design-Build Contractor shall be responsible for providing all other materials as shown in Attachments 4, 5 and 6 of this Part 3 of Exhibit A, equipment, infrastructure, power and services needed prior to the Operating Period.*

8.0 SITE MAINTENANCE AND SECURITY DURING PRE-REVENUE PERIOD

8.1 *OPERATOR SHALL NOT HAVE RESPONSIBILITY FOR THE CARE AND UPKEEP OF ANY ELEMENT OF A COMMUTER RAIL PROJECT UNTIL THE START OF REVENUE SERVICE, EXCEPT THAT OPERATOR SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF THE COMMUTER RAIL MAINTENANCE FACILITY (THE "CRMF") AND THE ROLLING STOCK AS DESCRIBED BELOW.*

8.2 *OPERATOR SHALL BE RESPONSIBLE FOR MAINTENANCE OF THE CRMF FROM THE DATE OF BENEFICIAL OCCUPANCY.*

8.3 *OPERATOR SHALL NOT HAVE RESPONSIBILITY TO CONTROL ACCESS TO ANY SITE UNTIL THE START OF REVENUE SERVICE OF EACH COMMUTER RAIL PROJECT.*

9.0 DISPATCHING

9.1 *OPERATOR SHALL BE RESPONSIBLE FOR THE DISPATCHING OF HEAVY RAIL MOVEMENTS FROM THE ACTUAL DUS ACCESS DATE AND FOR THE DISPATCHING OF MAINTENANCE TRAINS AND OTHER HI-RAIL TRAFFIC FOR EACH COMMUTER RAIL PROJECT WHEN OPERATOR TRAINING AND VEHICLE COMMISSIONING STARTS ON THAT COMMUTER RAIL PROJECT. DISPATCHING SHALL BE PERFORMED IN ACCORDANCE WITH THE REQUIREMENTS OF APPLICABLE LAW, PROJECT REQUIREMENTS, AND THE GENERAL CODE OF RAILROAD RULES (GCOR).*

10.0 TRACK INSPECTIONS

10.1 *OPERATOR SHALL BE RESPONSIBLE FOR ALL FRA-REQUIRED TRACK INSPECTIONS ON THE DUS RAIL SEGMENT BETWEEN THE ACTUAL DUS ACCESS DATE AND THE FIRST REVENUE SERVICE COMMENCEMENT DATE.*

11.0 CRMF MAINTENANCE

11.1 *OPERATOR SHALL MAINTAIN THE CRMF (EXCLUSIVE OF ITS SITE) AND PAY FOR ALL ASSOCIATED UTILITIES, INCLUDING ELECTRICAL POWER FOR THE CRMF, BEGINNING ON THE DATE OF BENEFICIAL OCCUPANCY OF THE CRMF. OPERATOR SHALL ENSURE THAT MAINTENANCE PROCEDURES ARE DEVELOPED, AS REQUIRED AND AS DEFINED IN ATTACHMENT 10 TO THE CONCESSION AGREEMENT (O&M SPECIFICATIONS) IN ADVANCE OF THE START SUCH BENEFICIAL OCCUPANCY.*

12.0 MAINTENANCE OF ROLLING STOCK AND SUPPORT OF ROLLING STOCK CONTRACT.

12.1 *Operator shall provide routine maintenance of Rolling Stock at the Sites from the date that the Rolling Stock supplier has provided sufficient training for Operator trainers and supervisors, as required by the Rolling Stock supply contract. Operator shall support the Design-Build in relation to its Rolling Stock supply contract in testing, design review and inspections in Philadelphia and Denver, as reasonably requested by Design-Build Contractor, including the provision of a full-time rolling stock engineer, in accordance with the staffing plan.*

13.0 REPORTING

13.1 *Operator shall submit to the Concessionaire maintenance reports, consistent with those required in the Operating Period as defined in Attachment 10 (O&M Specifications) for the CRMF from the date of beneficial occupancy and for the Rolling Stock from the date that it is turned over to Operator.*

13.2 *Operator shall submit to the Concessionaire dispatching reports consistent with those required during the Operating Period pursuant to Attachment 10 (O&M Specifications) to the Concession Agreement for any dispatching conducted by Operator prior to the Operating Period.*

14.0 REPORTING

14.1 Operator shall provide input in the potential impact to the Agreement of changes under the Design-Build Contract as reasonably requested by Concessionaire or Design-Build Contractor.

Exhibit A - Part 3 - Attachment 1
Division of Responsibilities for the Pre-Revenue Scope of Work

Activity*	Responsible Party
Design Review from O&M perspective	O&M Contractor
Review field modification requests from O&M perspective	O&M Contractor
Develop Submission to Railroad Retirement Board	O&M Contractor
O&M CDRL's	O&M Contractor
Review D/B CDRL's with implications for O&M e.g. -corrosion control,	O&M Contractor
Safety and Security of the site	Design Builder
Dispatch of DUS Rail Segment - from actual DUS Access Date through start of revenue service	O&M Contractor
Dispatcher Training (minimum of 4 months after the OCC system testing complete)	O&M Contractor
Dispatching of Test trains and work trains during burn in and operator training through start of revenue service.	O&M Contractor
Recruit, hire and retain permanent staff in accordance with Attachment 2, the schedule through start of revenue service	O&M Contractor
Procure non-revenue vehicles listed in Attachment 4 other than SUVs one year before revenue service begins. Vehicles shall be new or up to 5-years old, having been used by others during the Design Build period, as indicated in Attachment 4. SUVs to be provided when needed by O&M.	Design Builder
Provide fuel for and maintain SUVs (included in list in Attachment 4) during pre-revenue service.	O&M Contractor
Provide fuel for and maintain non-revenue vehicles listed in Attachment 4 from handover from Design Builder, which shall not be more than one year before revenue service	O&M Contractor
Procure and Install Administrative and Maintenance Systems -Maintenance Management System -Hastus -Desk Tops and Lap Tops -Shop Floor Kiosks -Hand-held devices	O&M Contractor
Customize and Prepare Reports and Train Staff on Administrative and Maintenance Systems -Maintenance Management System -Hastus -Desk Tops and Lap Tops -Shop Floor Kiosks	O&M Contractor
Provide all radios in accordance with Attachment 5.	Design Builder
Cell Phones	O&M Contractor
Establish Benefits Program	O&M Contractor

Maintain Rolling Stock between handover from Design/Builder to start of revenue service provided that Design Builder has provided the required training.	O&M Contractor
Maintain Signals & Grade Crossings through revenue service commencement	Design Builder
Maintain CRMF before beneficial occupancy	Design Builder
Maintain CRMF from beneficial occupancy	O&M Contractor
Maintain stations until start of revenue service	Design Builder
Maintain power system until start of revenue service	Design Builder
Maintain track & systems until start of revenue service except for track in the DUS Rail Segmet from the Actual DUS Access Date.	Design Builder
Maintain track & systems track in the DUS Rail Segmet from the Actual DUS Access Date.	O&M Contractor
Hire and train personnel to maintain Signals & Grade Crossings	O&M Contractor
Hire and train personnel to maintain Facilities	O&M Contractor
Hire and train personnel to maintain Power system	O&M Contractor
Hire and train personnel to maintain track & row system	O&M Contractor
Provide OEM training in operations and maintenance of systems, vehicles and facilities.	Design Builder
Procure, deliver and unload inventory for Rolling Stock (capital spares, specialty tools and testing equipment and parts for maintenance for the first 3 years after start of revenue serview in accordance with Attachment 6)	Design Builder
Procure deliver and unload inventory for Track Maintenance (capital spares and testing equipment and parts for maintenance in accordance with Attachment 6)	Design Builder
Procure deliver and unload inventory for Signal System Maintenance in accordance with Attachment 6	Design Builder
Procure deliver and unload inventory for Power System Maintenance in accordance with Attachment 6	Design Builder
Procure inventory for OCC Maintenance in accordance with Attachment 6	Design Builder
Procure inventory for Communications Maintenance in accordance with Attachment 6	Design Builder
Procure inventory for Faciities Maintenance in accordance with Attachment 6	Design Builder
In addition to the spare parts specifically identified elsewhere in Attachment 6, before the first revenue service commencement date, procure, deliver and unload spare parts for all CRMF equipment provided by Design Builder so that O&M contractor will be able to replace any defective or failed part of the design-builder provided equipment immediately upon initial failure.	Design Builder
Provide offices, furniture utilities, document control, telephones, photocopiers, office supplies and IT support until beneficial occupancy of CRMF	Design Builder
Provide offices, furniture utilities, document control, telephones, photocopiers, office supplies and IT support from beneficial occupancy of CRMF	O&M Contractor

Train Operators, Dispatchers and Supervisors	O&M Contractor
Train rolling stock maintenance personnel	O&M Contractor
Train administrative personnel	O&M Contractor
Provide Traction Power for Testing, Commissioning and Training - before first revenue service date for each corridor	Design Builder
Provide Traction Power for Testing, Commissioning and Training - beginning with the first revenue service date for each corridor	Design Builder
Provide CRMF Power - until beneficial occupancy	Design Builder
Provide CRMF Power - from beneficial occupancy to the start of revenue service for the first line	O&M Contractor
Provide Station and CRMF Power - beginning with the first revenue service date	O&M Contractor
Provide all project-required insurance except for non-revenue vehicle insurance during the last year before start of revenue service.	Design Builder
Provide insurance for non-revenue vehicles during the last year before the start of the first revenue service date	O&M Contractor
Conduct testing and commissioning	Design Builder
Support Testing and Commissioning and participate in safety certification with qualified personnel e.g. operators, supervisors, technicians	O&M Contractor
Provide reports on testing and commissioning to Design Builder - Primary	Design Builder
Support reports on testing and commissioning to Design Builder - Support	O&M Contractor

Anticipated Schedule for Selected Pre-Revenue Activities and Start of Revenue Service

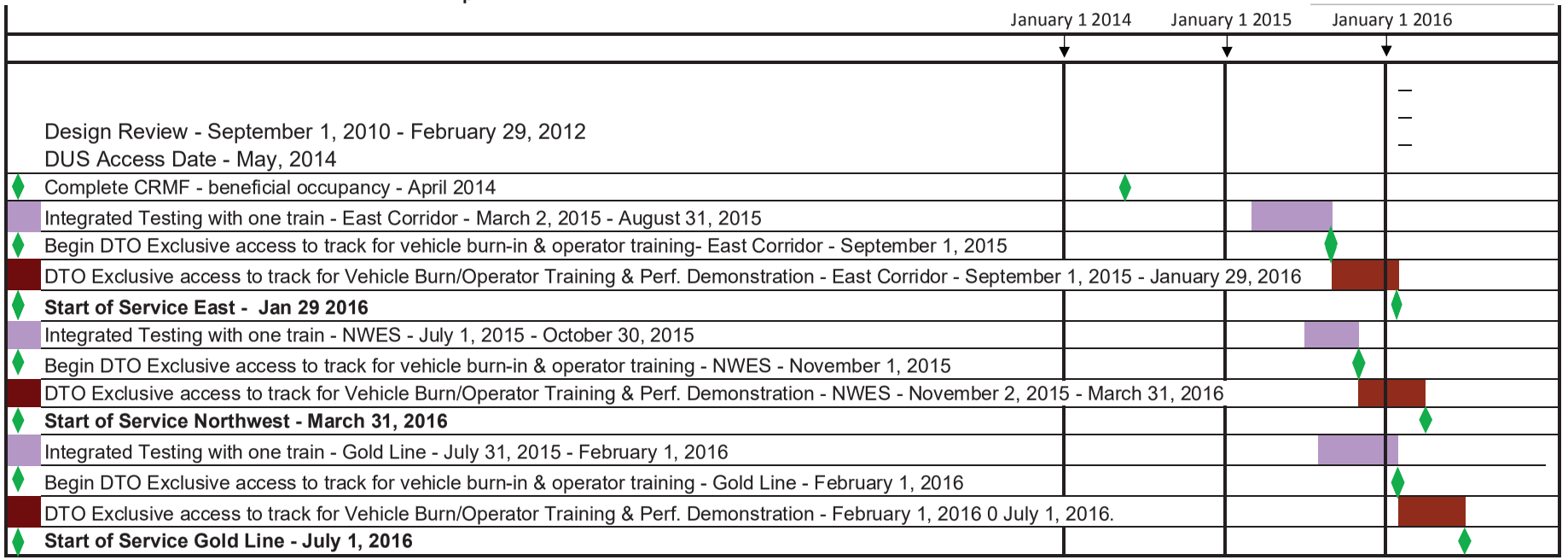


Exhibit A - Part 3 - Attachment 3

O&M CDRLs

CDRL #	Description of Contract Data Requirements Item	CDRL Due Date
O&M CDRLS OUTLINED IN SECTION 10		
10-1	Operating Plan	One year prior to operation
10-2	Operating Timetable	One year prior to operation
10-3	Rule Book	At least six months prior to operation
10-4	Operating Procedures Book	At least six months prior to operation
10-5	Railroad Retirement Board Submission	Prior to engaging in any Dispatching or employing any Dispatchers
10-7	Fare Inspection Summary Report	Weekly
10-6	Fare Inspection Program	At least 1 year prior to first Revenue Service Commencement Date
10-8	Rolling Stock Fleet Management Plan	Two years prior to operation; quarterly thereafter until the final Revenue Service Commencement Date; and Annually thereafter
10-9	Service Task Order Program	One year prior to operation
10-10	Service Task Order Remedial Action Plan	48 hours after the STO Remedy Time has expired.
10-11	Management and Administration Plan	One year prior to operation
10-12	Human Resources Plan	Two years prior to operation
10-13	Employee Conduct Standards, Disciplinary Procedures and Policies	At least six months prior to operation
10-14	Rolling Stock, Facility & Infrastructure Maintenance Plan	One year prior to operation
10-15	Facility Management Plan	One year prior to operation
10-16	Pre-Departure Inspection Protocol	At least six months prior to operation
10-17	O & M Quality Management Plan	At least six months prior to operation and approved by RTD at least 90 days prior to first Revenue Service Commencement Date
10-18	Passenger Conduct Code	At least six months prior to operation
10-19	System Safety Program Plan (O&M)	Prior to operation and updated annually during operating period.
10-20	Hazard Management Report	Quarterly
10-21	System Security Plan (O&M)	Prior to operation and updated annually during operating period.
CDRLS OF WHICH OPERATOR WILL WRITE A PORTION		
CA-049	Monthly Progress Report	Monthly, by 5th day of each month
CA-053	Asset Registers	By 3 mos following each Final Completion Certificate
7A-01	Concessionaire's Accessibility Plan and Compliance Report	Effective Date + 12 months
7A-02	Concessionaire's Sustainability Plan	Effective Date + 6 months
7D-11	System Performance Demonstration Plan	Effective Date + 24 months
7D-12	System Performance Demonstration Test Procedures	Not less than 4 months before first test
7D-13	System Performance Demonstration Testing - Daily Status Reports (multiple)	By noon of the following day
7D-14	System Performance Demonstration Testing - Weekly Status Reports (multiple)	Each Monday
7D-15	System Performance Demonstration Testing - Completion Report	Within 21 days of test
7E-01	Interim DUS Rail Segment Dispatching Procedure	At least 90 days prior to Beneficial Occupancy of DUS
7E-02	DUS Rail Segment Dispatching and MaintEnance Reports	30 days prior to RTD submittal due date to FRA-PUC
7E-03	Gold Line, East Corridor and CRMF Asset Maintenance Reports	30 days prior to RTD submittal due date to FRA-PUC
7E-04	Gold Line and East Corridor Dispatching Reports	30 days prior to RTD submittal due date to FRA-PUC
9-01	Project Management Plan	Effective Date+1 months, then not less than annually
9-06	Monthly Progress Reports	On or before the fifth of each month after the Effective Date
9-09	Original Baseline Schedule	Effective Date+30 days
9-10	Revised Baseline Schedule	On October 1 of each year or at RTD's Request
9-11	Monthly Progress Schedule	The fifth day of each month
9-12	Recovery Schedule	As required
15-04	DBE/SBE Plan - O	No later than October 1 2014 & annually thereafter
15-05	SBE Participation Report	Monthly during the D/B Period
15-06	Summary of O&M SBE Payments	End of the Concession

Exhibit A - Part 3 - Attachment 4

Non-Revenue Vehicles to Be Procured, Delivered and Unloaded By the Design Builder During Pre-Revenue Period

Item #	Unit Description	new	5 years old	# of Units
1	SUV	x		12
2	Forklift (4 ton, 15' vertical)	x		2
3	Hi Rail Boom Truck	x		1
4	Backhoe/Loader & Trailer	x		1
5	Rack Truck	x		1
6	Snow Plow Attachments	x		2
7	Generators	x		10
8	Lighting Units	x		5
10	Yard Shunter (UNIMOG, Hi Rail)		x	1
11	Hi Rail Pick-Up (27,28,35)	x		7
12	Hi Rail Crew Truck (26)	x		4
13	Hi Rail Welding Truck (1 ton)	x		1
14	Tamper		x	1
15	Ballast Regulator		x	1
16	Speed Swing		x	1
17	Hi Rail Dump Truck		x	1
18	Track Stabilizer (Plasser)		x	1
19	Stanley Trailer	x		1
20	Welding Equip. Trailer	x		1
21	Geometry Car Set-up (Passenger Car)	x		1
25	Stone Cars	x		2
29	Bucket Truck (Cherry Picker, Hi Rail)	x		2
30	Platform/Line Truck (Hi Rail)	x		1
31	Cable Drum/Roller Trailer	x		1
32	Trolley/Ladder Set-Up	x		1
33	Pick-Up Truck (36,37,38)	x		6
34	Heights & Stagger Meas. Device	x		1
39	Van	x		2
40	Snow/Ice Removal Veh. w/Brushes for Walkways/Platforms	x		8
41	Rail Heater (not on list) with Hydraulic Puller		x	1
42	Prentice Loader, Hi Rail		x	1
43	Re-Railing Equipment Plus Hi Rail Trailer	x		1
44	CWR Cart	x		1
46	Air Compressors (portable)	x		2
45	Small MOW/System Tools	x		1

Exhibit A - Part 3 - Attachment 5

Radios to be Provided by Design Builder During Pre-Revenue Period

115 handhelds radios
17 truck mounted
62 coach (rolling stock) mounted

Exhibit A-6

Spare Parts and Tools to be Provided by Concessionaire during Pre-Revenue Period

Part A - Rolling Stock

8.0 CAPITAL SPARES, TEST EQUIPMENT, SPECIAL TOOLS AND INVENTORY

The Contractor shall furnish the following capital spares, test equipment, and special tools. If a Rolling Stock Option is exercised, the proportional number of capital spares will be provided. Selected special tools and test equipment shall also be required depending on the nature of the tools/equipment and its intended usage.

8.1 Capital Spares

A minimum of 2 Car sets of all replaceable/rebuildable interior body units will be provided as capital spares deliverable to the Site before the delivery of the last production Car of the Base Order. This provision will include but not be limited to all interior body panels and fixtures, seats, window assemblies, windshields assemblies door leafs, end doors, and other body parts as may be damaged and require replacement.

A minimum of 3 Car sets of all replaceable/rebuildable mechanical/electrical units will be provided as capital spares deliverable to the Site before the delivery of the last production Car of the Base Order. This provision will include but not be limited to fully dressed (built-up, ready to install) trucks, traction motors, air compressors, air conditioning compressors, air conditioning condensers, complete air conditioning units (including frame), propulsion equipment, auxiliary power equipment, train control equipment, communications/radio equipment, safety equipment, master controller, operators “desk” equipment, door operators and other major mechanical, electrical, and electromechanical equipment.

A minimum of 4 Car sets of couplers and draw bar assemblies will be provided as capital spares deliverable to the Site before the delivery of the last production Car of the Base Order. In addition, 4 compromise couplers will be provided.

8.2 Special Tools

All tools, excluding tools commonly available from standard suppliers such as Granger and/or Snap-On that are required or desirable for the effective/efficient conduct of maintenance and repair of the vehicles will be provided as a "special tool" in quantities necessary to support the level and intensity of vehicle maintenance anticipated. This requirement extends through mechanical, electrical, electromechanical, and electronic tools, including software products. These tools will be provided within 60 days of the delivery of the first production Car of the Base Order.

8.3 Portable and Bench Test Equipment

All test equipment required or desirable for the conduct of maintenance and repair activities of the Car will be provided in sufficient quantity to adequately support the maintenance operation. All such test equipment to be provided by the Contractor regardless of the equipment's availability from other common sources. Portable test equipment (Two of each kind, including instruction manuals, cables, connectors and associated software), shall be provided for all on-board systems. All portable test equipment shall be delivered within 30 days of the delivery of the first production Car of the Base Order. One set of bench test equipment shall be provided for the purpose of testing, troubleshooting and calibrating all electrical, electronic, mechanical and electro-mechanical components of each vehicle subsystem. All test equipment, including bench test equipment, shall be delivered within 90 days of the delivery of the first production Car of the Base Order.

8.4 Inventory

The Contractor will provide an initial stock of spare parts and consumables within 60 days of delivery of the first production Car. The initial stocking levels of the Inventory will be at a minimum level of one year's anticipated usage of all spare parts and consumables, over and above the Capital Spares. The inventory will be maintained by the Contractor at approximately this level for the duration of the three (3) year General Warranty period. At the conclusion of the General Warranty period, the Contractor will adjust the on hand quantity of all parts and consumables to a level equal to actual usage for the third year of service. At such time, responsibility for maintaining the inventory will pass to the O&M contractor. The Inventory shall be included in the price of the base order of Cars. "Warranty stock" maintained by the Contractor will be separate and distinct from the inventory. Any residual warranty stock will be made available for purchase by the Company on a part-by-part basis, at the Company's sole option, at an agreed upon price.

Subsequent purchases of parts and consumables will be priced at "best-customer" pricing, and that best-customer pricing will be made available to the company until the last vehicle is retired from service.

Spare Parts and Tools to be Provided by Design Builder during Pre-Revenue Period

Section B - Facilities

Item	Quantity
Platform Edge (Rub) Strip	2.00 MBM
Tactile Warning Strip	200.00 SF
Bus Shelter	2.00 EA
Pedestrian Shelters	2.00 EA
Bike Lockers	1.00 EA
Bike Racks	2.00 EA
Trash Receptacle-RTD Std	15.00 EA
Benches -6'	10.00 EA
Mapcases, Freestanding	3.00 EA
Doors & Hdwre	5.00 EA
Misc Parts/Pieces	1.00 LS

Note: Design Build Contractor will provide miscellaneous parts and pieces at an estimated cost of $23,000

Exhibit A - Part 3 - Attachment 6

Spare Parts and Tools to be Provided by Design Builder during Pre-Revenue Period

Section C - ROW and Track

Part #	Part Name	Quantity	
2RR100	Rail-115RE	40.00	TN
2RR130	DF Fasteners incl inserts	50.00	EA
2RR132	DF Fastener Shims	50.00	EA
2RR150	Field Weld Kits	20.00	EA
2RR160	Bonded IJ Kits	10.00	EA
2RR180	Timber Ties 7x9x8'-6	100.00	EA
2RR182	Timber Switch Ties	9.00	MBM
2RR190	Std Timb Tie Plates w/clips	50.00	EA
2RR192	Lagscrews for Tie Plates	150.00	EA
2RR200	Std Conc Ties incl clips, et	100.00	EA
2RR201	Grdrail Conc Ties incl clips	100.00	EA
2RR300	Ballast (trucked, FOB Site)	1,000.00	TN
2RR409	#9 Turnout, Ball incl plates	3.00	EA
2RR411	#11 Turnout, Ball, incl plat	1.00	EA
2RR415	#15 Turnout, Ball, incl plat	1.00	EA
2RR420	#20 Turnout, Ball, incl plat	1.00	EA
2RR609FR	#9 Frog	1.00	EA
2RR609SP	#9 Switch Points	2.00	EA
2RR611FR	#11 Frog	1.00	EA
2RR611SP	#11 Switch Points	2.00	EA
2RR615FR	#15 Frog	1.00	EA
2RR615SP	#15 Switch Points	2.00	EA
2RR620FR	#20 Frog	1.00	EA
2RR620SP	#20 Switch Points	2.00	EA

Exhibit A - Part 3 - Attachment 6

Spare Parts and Tools to be Provided by Design Builder during Pre-Revenue Period

Section D - Systems

Visa Santana
Exhibit A

ITEM DESCRIPTION	DB Spares to be provided	ACTION INFO	NOTES	QUANTITY TO BE PROVIDED
TPSS				
PLC's	YES	10 year	units	4
Breakers	YES	not envisage	units	3
Relays	YES	10 year	units	4
Transformers	NO	NO		0
Bus Bar	NO	NO		0
CT/PTs	YES	20 years	units	2
MOS SCADA units	YES	10 years	units	4
Insulators	YES	NO	One of each type	
Surge Arrestors	YES		units	4
Jumper cables/connectors	YES		One spare reel	1
Batteries	NO	8-10 years		0
TPSS lighting	YES	10 years	one of each style pole	1
Misc light bulbs etc	NO	NO		0
Cable & Other:				
750 KCMIL, 35 KV Class, 133% Insulation cable	YES		cable feet	10,000
1/0, 35 KV Class, 133% Insulation cable	YES		cable feet	10,000
50mm2 Messenger Wire	YES		cable feet	10,000
100mm2 Contact Wire	YES		cable feet	10,000
50mm2 jumper wire	YES		cable feet	10,000
4/0 SuperFlex Cable	YES		cable feet	10,000
3/0 ACSR Static Wire	YES		cable feet	10,000
Cadwelds	YES			10

OCS				
		V.S. Salama Exhibit A		
Contact Wire	YES	Yes - twice single track/once other	one reel (incl above)	see above
Messenger Wire	YES	NO	one reel (incl above)	see above
MO Switches	YES	Some wear parts/motors	units	3
other cables	YES	NO	one reel (incl above)	see above
Section Insulators	YES	Insulator -2; Skids - 5 years	units	3
OCS Components	YES	NO	Spares as a percentage of total order	0.45%
OCS POLES	YES		Spares as a percentage of total order. Minimum one of each	1.0%
Train Control				
Wayside Signals	YES	LEDs -7 years	unit	1
Switch machines	YES	wear parts/motors - 20 years. Flood zone every 5 years	unit	2
Cables			reel of each size	
2/c #6 tw	YES		cable feet	2,500
3/c #6	YES		cable feet	2,500
5/c #6	YES		cable feet	2,500
7/c #6	YES		cable feet	2,500
5/c #14	YES		cable feet	2,500
7/c #14	YES		cable feet	2,500
12/c #14	YES		cable feet	2,500
3/c #16 sh	YES		cable feet	2,500
12/c (6pr) #18	YES		cable feet	2,500
3/c #2 with ground	YES		cable feet	2,500
5/c #9	YES		cable feet	2,500
#1/0 pwr	YES		cable feet	2,500
#1/0 pwr	YES		cable feet	2,500
#4/0 pwr	YES		cable feet	2,500
7/c #6	YES		cable feet	2,500
7/c #9	YES		cable feet	2,500
2/c #12 tw/sh	YES		cable feet	2,500

Grade Crossing:				
Gate mechanisms	YES		unit	3
gate motor	YES	wear parts	unit	1
gates	YES		unit	1
flasher assemblies	YES		unit	1
Cantilevers	YES		unit	1
Interlock lamps	YES		unit	1
Train Control Vendor	YES		percentage of total materials	1.0%
Communications				
CCTV cameras	YES	Replacement after 8-10 years	unit	2
Fiber cables	YES	No	each size - longest single run	1
Wimax	YES		units	1
Wifi	NO	Replacement after 10 years		0
Radios	NO	Replacement after 10 years		0
PA speaker	YES	Replacement after 15 years	units	4
PA amplifier	YES		units	1
VMS	YES	Replacement after 10 years	units	2
OCC				
Overview Screen Board	NO	Replace every 10 Years		0
Workstations (computer)	YES	Replacment after 10 Years	units	2
Screens	NO			0
PLC	NO			0
Software	NO	licensing/replacement		0

V.S. Salama
Exhibit A

Exhibit B

Items for Concessionaire's Review or Concessionaire's Approval

[See attached]

OPERATIONS and MAINTENANCE DOCUMENT MATRIX	EFFECTIVE DATE (ED)	ED Plus 6 Months	FINAL DESIGN	CONSTRUCTION	2 Years Prior to REV	1 Year Prior to REV	6 Months Prior to REV	Prior to REV	REVENUE SERVICE (REV)	Per Schedule	Upon RTD Request	Event Driven	Prior to Expiry Date	Termination or Expiry Date	Contract Reference
Lease Period Site Register (and Updates)										◆	◆				CDRL CA-033
Copies of all subcontracts with Material O&M Subcontractor												◆			CDRL CA-068
List of Material O&M Contractor / Subcontractor Managerial or Supervisory Personnel								◆							CDRL CA-069
Notification of Service Interruption for 2 Hours or more[8]												◆			CDRL CA-070
Notification of Accidents, Emergencies, Other Accidents[9]												◆			CDRL CA-071
Asset Register (and Updates)							◆								CDRL CA-072
Asset Register Reports											◆				CDRL CA-073
Daily Operating Report										◆					CDRL CA-074
Monthly Operating Report										◆					CDRL CA-075
Quarterly Operating Report										◆					CDRL CA-076
Yearly Operating Report										◆					CDRL CA-077
Reports, Documents and Information for the NTD[11]										◆					CDRL CA-078
Traction Power Usage Report and Related Information												◆			CDRL CA-079
Final Traction Power Usage Report and Related Information												◆			CDRL CA-080
Rolling Stock Replacement Report										◆					CDRL CA-084
Concessionaire R/S Supply Contract Bid Evaluation and Rankings												◆			CDRL CA-085
Work Products (in native format)												◆			CDRL CA-086
Documentation, Source code, etc needed to acess and create derivative works based on software												◆			CDRL CA-087
Written Assignments or Licenses from Project Contractors, Subcontractors and Suppliers											◆				CDRL CA-089
Notification of Uninsurable Risk[10]												◆			CDRL CA-091
Restoration Plan												◆			CDRL CA-112
Notification of Contracting Illegal Alien												◆			CDRL CA-137
DUS Infrastructure Design Submittal Response												◆			CDRL 3-1
DUS Infrastructure As-Built Submittal Response												◆			CDRL 3-1
Proposal of Equipment Not Meeting Previous Usage (if required)												◆			CDRL 7A-03
Test Procedures for Tests Performed by Concessionaire and O&M Contractor (multiple)												◆			CDRL 7D-06
Interim DUS Rail Segment Dispatching Procedures												◆			CDRL 7E-01
DUS Rail Segment Dispatching and Maintenance Reports												◆			CDRL 7E-02
GL, EC, and CRMF Asset Maintenance Reports												◆			CDRL 7E-03
GL and EC Dispatching Reports												◆			CDRL 7E-04
Test Procedures for tests to be performed by the Concessionaire and O&M Contractor (multiple)										◆					CDRL 7D-06
System Performance Demonstration Test – Daily Status Reports (multiple)										◆					CDRL 7E-12
System Performance Demonstration Test – Weekly Status Reports (multiple)										◆					CDRL 7E-13
System Performance Demonstration Test – Completion Report										◆					CDRL 7E-14
Reliability Analysis Reports[1]		◆													CDRL 9-28
Operating Plan						◆									CDRL 10-01
Operating Timetable						◆									CDRL 10-02
Rule Book							◆								CDRL 10-03
Operating Procedures Book							◆								CDRL 10-04
Railroad Retirement Board Submission[2]								◆							CDRL 10-05
Fare Inspection Summary Report										◆					CDRL 10-06
Fare Inspection Program						◆									CDRL 10-07
Rolling Stock Fleet Management Plan					◆					◆					CDRL 10-08
Service Task Order Program						◆									CDRL 10-09
Service Task Order Remedial Action Plan												◆			CDRL 10-10

OPERATIONS and MAINTENANCE DOCUMENT MATRIX	EFFECTIVE DATE (ED)	ED Plus 6 Months	FINAL DESIGN	CONSTRUCTION	2 Years Prior to REV	1 Year Prior to REV	6 Months Prior to REV	Prior to REV	REVENUE SERVICE (REV)	Per Schedule	Upon RTD Request	Event Driven	Prior to Expiry Date	Termination or Expiry Date	Contract Reference
Management and Administration Plan						◆									CDRL 10-11
Human Resources Plan					◆										CDRL 10-12
Employee Conduct Standards, Disciplinary Procedures and Policies							◆								CDRL 10-13
Rolling Stock, Facility & Infrastructure Maintenance Plan						◆									CDRL 10-14
Facility Management Plan						◆									CDRL 10-15
Pre-Departure Inspection Protocol							◆								CDRL 10-16
O&M Quality Management Plan[3]							◆								CDRL 10-17
Passenger Conduct Code							◆								CDRL 10-18
System Safety Plan - O&M								◆							CDRL 10-19
System Safety Plan - O&M Updates										◆		◆			CDRL 10-20
Hazard Management Report										◆					CDRL 10-21
System Security Plan - O&M								◆							CDRL 10-22
Monthly Crime Statistics Report										◆					CDRL 10-23
Handover Asset Register													◆		CDRL 14-01
Reinstatement Workscope[4]													◆		CDRL 14-02
Reinstatement Proposal[5]													◆		CDRL 14-03
Response to RTD Proposal Objection												◆			CDRL 14-04
Handover Security[6]													◆		CDRL 14-05
Handover Inspection[7]													◆		CDRL 14-06
End of Term Asset Register														◆	CDRL 14-07
Contract Data and Work Products for Potential Bidders														◆	CDRL 14-08
Transfer Permits to RTD														◆	CDRL 14-09
Contract Data to RTD														◆	CDRL 14-10
Complete Set of As-Built Drawings														◆	CDRL 14-11
Keys, Access Codes and Other Devices														◆	CDRL 14-12
Assign or Transfer all Unexpired Warrantees, Guarantees, Obligations or Commitments														◆	CDRL 14-13
Outline the Content and Style of a Program for Training													◆		CDRL 14-14
Documentation and Training Manuals													◆		CDRL 14-15
Utility Work Task Orders												◆			CDRL 20-01
DBE / SBE Plan - O&M[12]									◆						Att 15 4.2, CDRL 15-04
Summary of O&M SBE Payments									◆						Att 15 4.4, CDRL 15-06
Operating Procedures Book – O&M							◆								Att 10, 2.4.3 CDRL 10-04
Rule Book - O&M							◆								Att 10, 2.4.3 CDRL 10-03
System Safety Program Plan - O&M (SSPP)								◆							Att 10, 7.2 CDRL 10-19
System Security Plan – O&M (SSP)								◆							Att 10, 8.3 CDRL 10-22
Test Procedures for tests to be performed by the O&M Contractor (multiple)										◆					CDRL 7D-06

notes:

1. Updates as required

2. Prior to engaging in any dispatching or employing Dispatchers

3. To be approved by RTD 90 days prior to first revenue service

4. No later than 24 months prior to Expiry Date

5. No later than 30 days following Reinstatement Workscope

6. No later than 7 days after agreement of Reinstatement Proposal, but not earlier than 18 months before Expiry Date

7. No later than 3 months before Expiry Date

8. In advance and as soon as reasonable practicable under circumstances; 10 days notice to passengers when reasonably practicable

9. Within 24 hours of occurrence

10. Immediately on becoming aware

11. At least 30 days in advance prior to RTD's submission to National Transit Database

12. The Updated plan shall be submitted no later than October 1, 2014, and thereafter no later than October 1 of each year until the end of the Operating Period, the Concessionaire shall prepare and submit to RTD an O&M SBE Plan for the following period of two calendar years.

Exhibit C

Material O&M Subcontractors and Related Services

None.

Exhibit D

Quality Management Plan

[See attached]

Quality Management Plan (O&M)

for the

Eagle Project

Proposal Draft
Revision 0
April 14, 2010

Prepared by

Denver Transit Partners
999 18th Street
Suite 1201, North Tower
Denver, Colorado 80202

The Commuter Rail Network Operations and Maintenance Quality Management Plan (QMP) has been prepared in accordance with Volume I, Invitation to Proposers of the Request for Proposal and Volume II, Concession Agreement, Attachment 10, Section 5.8.

The purpose of this QMP is to show that all aspects of operations, maintenance, engineering, safety and security, and support systems are consistent with the highest performance standards within the commuter rail industry. The QMP defines the specific practices, resources, activities, and capabilities that Denver Transit Operators (Denver Transit Operators) will use to provide quality assurance and quality control for the Eagle Project.

The QMP follows the framework of ANSI/ISO 9001-2008 and addresses both Quality Control and Quality Assurance. Quality Control relates to operational means to fulfill quality requirements, while Quality Assurance aims to provide confidence in this fulfillment, both within the organization and externally to customers and authorities. The QMP is structured to control the technical, administrative and human factors that may affect the quality of service. All such controls focus on avoiding and preventing defects in quality.

By organizational design, the Denver Transit Operators Quality Management team has the authority and responsibility for implementing and maintaining the QMP while having no direct responsibility for the functional activities involved with operating and maintaining the commuter rail service. The organizational independence of the Quality Management team allows it to be objective in identifying quality concerns and opportunities for improvement.

To achieve its goals and objectives, the Quality Management team will conduct independent assessments of operational activities, issue nonconformance reports and recommendations for corrective actions; communicate quality concerns to management; monitor any training recommended in corrective action reports; and follow up on areas of weakness with additional audits.

Submitted by:

Denver Transit Operators General Manager

Approved by:

Approver Name

Approver Name

Quality Management Plan (O&M)
Eagle Project
Operating Period

Document Control No. ____

April 14, 2010

This is a controlled document; please do not duplicate. If additional copies are required, request them from Denver Transit Partners Document Control. This procedure will assure that all recipients of the document will receive revisions and additions as they are approved. Any unauthorized duplications will be considered uncontrolled copies.

Approved by:

_____ _____

Name of Project Director/Manager

Eagle Project
Operating Period
Quality Management Plan (O&M)

Revision History

Revision Number	Revision Date	Description of Changes	Document Number
Draft Rev 0	04.14.2010	Proposal Submittal	

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Acronyms

QA/QC	Quality Assurance and Quality Control
QAM	QA/QC Manual (collection of all SOPs)
QMP	Quality Management Plan
SOP	Standard Operating Procedure

1.0 Development and Control of the O&M Quality Management Plan

The Commuter Rail Network Operations and Maintenance Quality Management Plan (QMP) is a description of the methodology that Denver Transit Operators has established to maintain the quality of Denver Transit Operators' activities. The QMP is to be used to apply quality concepts to all aspects of operations, maintenance, engineering, safety, and security and to support systems so they are consistent with the highest performance standards of the commuter rail industry. We define the specific practices, resources, activities, and capabilities that Denver Transit Operators will use to provide quality assurance and quality control for the Commuter Rail Network. Implementation of the QMP is the responsibility of the Quality Management Team, led by the Quality Manager.

1.1 Development of the QMP

The organizational structure, procedures, processes, and resources needed to manage quality are known collectively as the Quality Management System (DTP-QA-2.0).

The essential functions in the QMS are to identify the need for procedures, to prepare and issue those procedures, and to train personnel in applying the procedures consistently. The standard operating procedures (SOPs) for these activities are known collectively as the Quality Assurance Manual.

Any person in the Operations and Maintenance organization may recommend the development of a new procedure or a revision to an existing one. All proposed recommendations are submitted in writing to the Quality Manager and will include the logic, rationale, and benefits anticipated from the new or revised procedure. The Quality Management Team reviews and evaluates each recommendation in consultation with the managers of the departments that are impacted and determines a recommended course of action. The Quality Manager advises the originator of the proposed change of the action to be taken, including an explanation if the change is rejected.

In accordance with the development and issuance of procedures in the Quality Management System procedure (DTP-QA-02), each draft procedure is assigned a unique procedure number and a numerical revision number. The draft procedure will be clearly marked as "Draft." If the Quality Manager subsequently approves the new or revised procedure, the procedure is published without the "Draft" designation, signed by the concerned parties as defined in DTP-QA-02, and published by controlled distribution to appropriate end users.

Each procedure becomes effective on the date it is approved. The Quality Manager coordinates the issuance and notification of the approved procedure to affected management personnel. A master list with original signed copies of each approved procedure is maintained by Document Control.

Any employee associated with the implementation of project-related activities may submit a "request for variance" when adhering to a procedure that is deemed not feasible or not in the best interest of Denver Transit Operators. All requests of this nature must be submitted to the Quality Manager for approval. The "request for variance" includes:

- Procedure number and title
- The variance requested
- The impact to the "product" with respect to quality
- The department manager's concurrence, as appropriate

The Quality Manager evaluates each request and advises the originator of any action to be taken, including an explanation if rejected. Each approved "request for variance" is made part of the documented performance of QA activities relating to the job function of the originator.

All employees are responsible for adherence to established quality procedures and other Denver Transit Operators procedures. The Quality Management Team periodically monitors the quality of performance and provides recommendations, as required.

1.2 Distribution and Access of the QMP

This QMP applies to all participants in Operations and Maintenance of the Commuter Rail Network, including but not limited to employees, vendors, auditors, subcontractors, and others. Distribution of the QMP to third parties is granted upon the approval of the Quality Manager.

1.3 Modifications to the QMP

The Quality Management Team will maintain this QMP and is responsible for modifications to the plan and its associated procedures. If a procedural change is implemented, the Quality Manager documents the new or revised procedure and forwards a draft to the Department Managers impacted by the change. Following the incorporation of viable comments, a revised and final draft is submitted to the affected Department Managers for comments or approval.

2.0 Quality Management Team

2.1 Responsibilities

Management responsibilities contained in procedure DTP-QA-01 are used to establish and document the organizational responsibilities of the Denver Transit Operators Quality Management Team and its interrelationships with other Denver Transit Operators Departments.

- Quality Manager – The manager is responsible for establishing and directing the appropriate policies and procedures for the Quality Management Team so that management's quality policy is implemented and maintained. The manager is also responsible for establishing a systematic program of quality assurance for operations, systems maintenance, and quality oversight for projects and contracts.
- Quality Management Team – The team will have two components: a dedicated QA staff who report to the Quality Manager, and one supervisor from each of the following departments:
  - Transportation
  - Safety
  - Vehicle Maintenance
  - Systems & ROW Maintenance
  - Procurement
  - Information Technology
- Quality Assurance Officers – The officers are responsible for planning, scheduling, and coordinating programs of systematic quality assurance and quality oversight of assigned programs. QA Officers coordinate objectives and schedules and with the team support requirements for projects and contracts. They are also responsible for conducting routine inspections and assessments, appropriately reporting their findings, and monitoring corrective actions with follow-up inspections and assessments. QA Officers audit, collect, organize, review, and analyze operations and maintenance data, inspection, and assessment reports to identify trends and conditions affecting operations and maintenance performances. They act as a liaison to support and establish quality control procedures for the operational, maintenance, and safety and security areas. QA Officers provide the level of quality

oversight on projects and contract activities that is necessary to verify the effectiveness of quality management programs and that products meet contract specifications for quality and safety.

- Document Controller – The Document Controller maintains the repository of documents for the entire operation and is responsible for revision control and security of the document library. The latest approved version of every document will be published by the Document Controller, and each document will have a security profile which dictates who in the organization may have access to it.

2.2 Quality Management Training

The Quality Manager is responsible for providing training to the Quality Management Team as detailed in the SOP DTP-QA-11. Personnel assigned to the Quality Management Team are trained to industry standards of quality assurance and quality control. Training of personnel will be formal, including a written outline of the training with a written or hands-on objective, examination, and certification. For the successful adoption of quality systems, each team member must be able to perform each essential duty satisfactorily, following the requirements listed in his or her job description.

The scope of the required knowledge and capabilities includes:

- Principles
- Practices
- Techniques and theories of the quality process for research
- Assessments
- Reports and auditing practices and techniques relating to quality assurance and quality control programs and procedures
- Project management principles, practices and methods
- Quality standards of ISO 9001
- Engineering, design and construction principles such as inspection, test practices
- Process diagramming
- Methods

Trained personnel may also have the following reasoning abilities:

- Problem-solving ability
- Research
- Multi-tasking
- Making sound decisions based on scientific evidence and regulatory requirements
- Strong attention to detail
- Ability to work well independently and as part of a team, and to work effectively with people at all levels in the organization
- Reading, interpreting, and applying relevant regulatory laws, ordinances, and codes
- Analyzing problems and execute effective solutions
- Ability to handle internal information with confidentiality
- Using sound discretionary judgment when escalating critical issues

All members of the Quality Management Team will be trained in the use of appropriate Denver Transit Operators software systems. For example, they will use the AssetWorks MMS for monitoring maintenance schedules, auditing completion of required tasks and work documentation, and tracking vendor performance. They will become experts in the service performance database and will use trend analysis to determine areas where Denver Transit Operators can improve operating and maintenance performance. Team members may also be required to attend operational training for the areas they will audit. Additional informal training may be required, including on-site training of specific aspects under a QA evaluation for better understanding of the process. Both formal and informal training must be documented in compliance with Denver Transit Operators training policies and procedures.

2.3 Quality Management System

The Quality Management System (QMS) relates to all activities of the overall management function that determine the quality policy, objectives, and responsibilities and their implementation by means such as quality planning, quality control, quality assurance, and quality improvement. An effective QMS is one in which products and services delivered meet or exceed established levels of safety and quality. The Denver Transit Operators Quality Management System is detailed in SOP DTP-QA-02.

The following responsibilities will be applied when developing, approving, implementing, and verifying the effectiveness of our QMS:

- Leadership – Denver Transit Operators managers will provide leadership and guidance to their respective departments. This policy instills and promotes a culture that values quality.
- Continuous Improvement – The Quality Management Team will monitor actions taken throughout the organization to increase the effectiveness and efficiency of activities and processes in order to provide added benefits to both the organization and our customers.
- Teamwork and Employee Participation – Employees will, to the best of their ability and within the bounds of their areas of expertise, participate in the delivery of products and services that embody a quality performance.
- Training and Development – All Denver Transit Operators personnel will receive quality training relative to their functional and managerial responsibilities within the organization.
- Design Quality and Design Review – Design Review relates to documented, comprehensive, and systematic examination of a design to evaluate its capability to fulfill the requirement of quality; to identify problems, if any; and to propose the development of solutions.
- Strategic Quality Planning – All departments will set quality objectives and will determine specific necessary operational processes and resources to fulfill their long-term goals.
- Focus on Customer Satisfaction – Policies, instructions, and procedures will clearly identify customer requirements used in making decisions that support Denver Transit Operators' commitment to meet the requirements.

The Denver Transit Operators Quality Management Team supports the accomplishment of the established company Mission and the System Safety Program Plan by developing, maintaining, and administering a QMS that includes:

- A Quality Assurance Program to provide Denver Transit Operators management with adequate confidence that products or services satisfy the stated requirements for quality.
- A Quality Control Development Program to assist operation and maintenance departments toward defining and developing their own quality control programs.

2.4 Quality Assurance Planning

The Quality Management System procedure DTP-QA-02 defines the methods, instructions, and responsibilities for scheduling, performing, documenting, and reporting quality assurance activities. This system outlines the policies and procedures necessary to improve and control the various processes that will ultimately lead to improvement in performance.

This procedure applies to all personnel involved in the performance of, but is not limited to, the following planning activities:

- Development and maintenance of the Quality Assurance Manual and related procedures
- Assistance in the preparation of project quality plans and procedures
- Review of outside consultant and/or contractor quality systems manuals
- Guidance for the preparation, contents, and maintenance of procedures for Denver Transit Operators departments
- Coordination of training lesson plans and course instruction for appropriate emphasis on effective implementation of quality procedures and processes

Essential elements of this process include the prioritization of planning activities commensurate with Denver Transit Operators' needs; performance, follow-up, and reporting activities including notes, observations, deficiencies, corrections and recommendations; and document control relating to the review and modification of project-related documentation.

When a department identifies a need for improvement, the department manager schedules a meeting with the Engineering and Quality Manager or his/her designee to address quality-related issues in areas outlined under the scope. The Engineering and Quality Manager reports and forwards the results of each planning activity to appropriate departments. Any related observation, deficiency, correction, and/or recommendation is noted in the report. For each deficiency noted, requests for preventive or corrective action are included. It is the Quality Management Team's responsibility to follow up on any deficiency noted so that appropriate action is completed.

2.5 Quality Assurance Inspection and Testing Planning

To support the consistent application of approved procedures, the Quality Inspection and Testing procedure DTP-QA-03 defines the methods, instructions, and responsibilities for scheduling, planning, performing, documenting, and reporting quality assurance inspection and testing.

This procedure applies to all personnel involved in inspection and testing activities. All inspection and testing activities are planned, prioritized, and performed on an ongoing basis, as required, so that Denver Transit Operators standards are consistently achieved. Inspection and testing activities are documented, and related findings are reported to all impacted levels of management.

The Quality Manager schedules and assigns inspection and testing activities on a priority basis. Information derived from RTD and/or Denver Transit Operators personnel and the subsequent data analysis are used to prioritize QA inspection and testing activities. Inspection and testing activities are planned and performed following a review of appropriate documentation, including management procedures (maintenance, operating, materials management, etc.), procurement documents, contract drawings, and specifications. These documents are used as references for requirements and acceptance criteria during the inspection and testing process.

The actual inspection and testing includes the witnessing of job site activities, special processes, design, installation, construction, repair processes, and testing by Denver Transit Operators or third party personnel. The Quality Manager selects pertinent information from related documentation governing QA

activities to evaluate QMS compliance. The Quality Manager or designee uses a checklist designed for a comprehensive and systematic review of procedures being reviewed. Inspection and testing are conducted by one or more individuals as deemed appropriate by the Quality Manager. Personnel from other departments in Denver Transit Partners (DTP) may participate in inspection and testing as approved by the Quality Manager. All inspection and testing participants meet to review relevant audit activities and to discuss the objective, schedule, and other related information as appropriate.

Upon completion of inspection and testing activities, the Quality Management Team documents the results of such activities and issues a report to appropriate Denver Transit Operators managers. The inspection and testing report will include all inspection and testing activity findings and will describe each noncompliance discovered. Impacted management personnel are responsible for developing a corrective action plan as required to address any noncompliance identified. The Quality Manager retains, in a secure archive, all documentation associated with the performance and identification of the status of quality assurance inspection and testing activities.

Inspection and testing procedures provide the means for conferring status so that only work that has passed the required inspections and tests is accepted. To enforce the quality control inspections and testing, the QAM includes the following procedures:

- DTP-QA-03 Inspection and Testing Procedures
- DTP-QA-04 Inspection and Test Status
- DTP-QA-05 Control of Nonconforming Process/Product

2.6 Internal Quality Control Audits

The Quality Management Team periodically conducts quality audits for consistent application of procedures and to identify areas that need improvement. The QAM includes procedures for Quality Assessments (DTP-QA-08) and Quality Audits (DTP-QA-09) that include the methods and instructions and how responsibility is assigned for scheduling, performing, documenting, and reporting quality assurance assessments and audits.

This process applies to all personnel responsible for performing assessments and audits of areas and elements affecting service quality. Audit activities are planned, prioritized, and performed on a regular basis and are supported by the current performance standards. All audit activities – including findings related to noted deficiencies, nonconformities, and applicable recommendations – are reported to appropriate managers and the General Manager. The Quality Management Team is responsible for documenting all quality assurance assessment and audit activities and the related findings.

The Quality Management Team also prepares and submits annually to the Quality Manager the quality assurance audit schedule identifying each area and operation that will be audited during the year. Changes to the audit schedule, such as additions and revisions made upon management request, will be reviewed and approved by the Quality Manager. It should be noted that, as part of the assessment activity, inspections will be performed as required, without providing advance notification to the location to be inspected.

The Quality Management Team is responsible for documenting all aspects of the audit, including the draft report summarizing activities and results. The draft report documents include:

- A cover letter describing the background, scope (audit elements), and description of the audit
- Audit findings, observations, and recommendations, including related reference criteria
- Audit meeting(s) attendance sheets
- Plan for Preventive and Corrective Actions

The draft audit report is forwarded to managers responsible for the area, operation, and/or project audited. Subsequent responses and comments will be identified and discussed for inclusion in the final audit report. The Quality Manager is responsible for finalizing the audit report and distributing the document to the General Manager and appropriate personnel. All nonconformance reports noted require the impacted department to prepare preventive and corrective action plans, including target completion dates. A follow-up audit will be performed to confirm that appropriate recommendations have been implemented. The Quality Management Team maintains all audit records and documentation for a period of six years.

2.7 External Quality Assurance Audits

On an annual basis, the Quality Management Team is responsible for preparing a Subcontractor and Vendor quality assurance audit schedule based on DTP user departments' requests. The Quality Manager will notify the Subcontractor or Vendor scheduled for a QA audit reasonably in advance. Subsequently, the Quality Management Team will prepare a Subcontractor or Vendor audit notification letter outlining the audit scope, objectives, schedule, projected duration, and listing of personnel needed for consultation. Included with this letter will be a form letter of agreement for authorizing release of Vendor audit information.

The Subcontractor or Vendor audit consists of reviewing pertinent documents, records, procedures, instructions, plans, inspection reports, tests, quality audits, procurement documents, and other documentation related to activities affecting Denver Transit Operators services.

The Quality Management Team prepares a draft report of the subcontractor or vendor audit activities, findings, observations, and recommendations and discusses the report with the Subcontractor or Vendor. The Quality Manager evaluates any proposed changes and finalizes the audit report findings. Based on the audit results, a preventive and corrective action plan may be required from the subcontractor or vendor, including a timetable for implementation. The Quality Management Team tracks all outstanding findings to closure and reports on progress made by the Subcontractor or Vendor. Follow-up for audits may be required to determine that appropriate standards, procedures, and practices are consistently applied. All documentation related to subcontractor or vendor audits will be maintained by the Quality Management Team for a period of six years.

2.8 Trends Analysis

The Quality Management Team is responsible for quality data collection and analysis. All system performance statistics will be generated from failures in service, customer feedback, accident/incident/injury data collection, safety hazard reports, maintenance work history, and/or internal audits. Failure trend analysis is conducted on an as-needed basis, and recommendations will be issued to improve the quality of DTP safety and operational performance.

2.9 Nonconforming Products and Processes

The process of controlling nonconforming product and processes is defined in the Control of Nonconforming Process/Product procedure DTP-QA-05. The procedure contains the methods, instructions, assigned responsibility for documenting and reporting all nonconforming conditions, and responsibility to make recommendations for preventing reoccurrence of such nonconformance. This procedure applies to all personnel responsible for documenting unsatisfactory compliance to quality standards.

The Quality Management Team tracks and follows up all nonconformance reports until closed. The team also performs a trend analysis and recommends to the respective department manager and General Manager action(s) to prevent further occurrence. Identified negative trends will be tracked until resolution in the quality report submitted quarterly to the General Manager.

2.10 Corrective and Preventive Action

Corrective and preventive action procedures will be established, documented, and maintained. The Corrective Action Request procedure defines this process. It includes procedures for investigation of the cause of nonconforming work and the corrective action needed to prevent recurrence, as well as procedures for analysis to detect and eliminate potential causes of nonconforming work. Corrective actions must be taken with respect to nonconforming work in order to eliminate potential problems. These also include the implemented and recorded changes in procedures resulting from corrective actions.

The Quality Manager evaluates the proposed preventive and corrective actions so that they adequately address all deficiencies identified. The Quality Management Team tracks and follows up all nonconformance reports until closed and provides to the respective Department Manager a recommended action to prevent further occurrence.

2.11 Document Control Quality Requirements

All documentation that presents a potential impact on the quality of products or services provided will be controlled by document control procedures.

For an effective Quality Management System, all activities such as construction, engineering, and maintenance modifications must be monitored so that drawings, procedures, manuals, etc., will be kept current and so that revisions are submitted to document and data control. The incoming documentation and information must be reviewed, and configuration management confirmed. Drawings must be verified for correct revision status. Copies of documents shall be distributed so that they will be available and easily retrievable at all required locations.

All controlled documentation is reviewed and approved by management prior to release. A master copy of all approved documentation shall be retained and shall indicate, by date and name, the authority releasing it. Where existence of an outdated or obsolete copy may compromise quality, a copy identification record is maintained with the master copy.

2.12 Document and Data Changes—Configuration Control

Where an existing document requires revision or changes, a new or revised master copy will be retained. When appropriate, current copies may be revised, provided they clearly indicate, by date and name, the authority making the revision. In addition to updating a document because of change, all documents that are affected by a change must be updated. (For example, a module replacement may require changes in software, drawings, manuals, and maintenance and operations procedures.) When a document is rendered obsolete, all known copies will be either destroyed or clearly marked “Reference Only” or “Obsolete.” Documents that provide critical information that affects operation, such as safety issues, equipment functionality, etc., will be controlled documents so that updated information is provided to users.

3.0 Development of Quality Plans

Denver Transit Operators’ operating rules and procedures are followed so that transportation services are consistently provided in a safe, secure, reliable, and efficient manner. Denver Transit Operators quality control procedures will be established and designed to support consistent application of these objectives. These quality control procedures encompass, but are not limited to, the following operational elements:

- On-site inspection reviews documented
- Standard operating procedure and schedule established for quality inspections
- Random checks for safety sensitive/critical equipment and documents to verify configuration and document control

- Internal audit reviews
- Vendor and subcontractor inspection conducted
- Standard Operating Procedures (SOPs) and work prioritization of safety and security critical repairs

3.1 Vehicle and Systems Maintenance

All Denver Transit Operators maintenance activities and programs are held to rigorous quality standards as established by the Quality Department. Quality control maintenance procedures will be established for each functional area, and they encompass maintenance-of-way, vehicles, facilities, power, train control/signals, electrical, communications, elevators, grade crossings, materials management, and security systems. Once the procedure is approved, it will be published within the Maintenance Management System (MMS) to be easily available to all maintenance staff. Preventive maintenance schedules and reported defects will be tracked by the MMS and closed only when the required work is recorded as complete.

Supervisors and foremen of each area will be responsible for the quality of the work being performed. Quality control procedures will be developed so that safety- and security-critical maintenance procedures are being consistently applied. Maintenance quality control procedures will encompass these additional operational elements:

- Preventive and corrective maintenance checklists for supervisor/foremen quality control inspections
- Vendor and subcontractor inspection conducted
- Standard Operating Procedures (SOPs) and work prioritization of safety and security critical repairs
- Standard Operating Procedure for work-around (repair acceptance with exceptions noted)
- Deferred maintenance criteria
- Standard Operating Procedure for equipment calibration
- Special procedures that are equipment-specific, for example, procedure for managing The Denver Transit Operators' Software Management Control Plan (SMCP) for processor-based signal and control systems

3.2 Operations Safety & Security

Careful attention will be given to the operating safety and security elements of the commuter rail operation. These elements are included, as appropriate, in all operating and maintenance plans. The degree of risk associated with critical safety and security activities being performed predicates the level of resources invested in managing the O&M function. Denver Transit Operators' safety and security policies and procedures will be established commensurate with RTD requirements, to provide guidance and a structured process for conducting the critical safety and security tasks. Quality control objectives are focused on seeing that these procedures are being consistently applied as designed. In addition to those already specified in other sections of this document, quality control elements relevant to safety and security rules and procedures include the following:

- Operator sign-in and fitness for duty check
- Train pre-departure inspection and test
- Verification of employee rules and procedures training, qualification/requalification standards, and certification
- Distribution and receipt of operations bulletins and special instructions

- Rule of the day/week
- Availability and distribution of operating rules and procedures to all affected personnel expected to operate and/or work on the operating right-of-way
- Simulated Emergency Preparedness Exercises including command, control, and communications coordination, as well as table-top exercises
- Operations efficiency testing
- Scheduled review of safety and security rules and procedures (rule book, safety and security policies and procedures, System Safety Program Plan, Security Plan and Procedures, and other related safety and security critical documents)
- Employee safety and security programs assessment
- Internal audit review of safety and security practices
- Interdepartmental safety and security committees' activities
- Safety and security data gathering and analysis reviews

3.3 Purchasing

All purchasing will pass through a staged approval process to assess the quality and consistency of materials and service procured. Requisitions will include detailed specifications that will be used for the bid and selection process. Purchasing orders will contain data clearly describing the product ordered, including where applicable:

- The type, class, grade, or other precise identification
- The title or other positive identification, and applicable issues of specifications, drawings, process requirements, inspection instructions, and other relevant technical data including requirements for approval or qualification of the product, procedures, process ,equipment and personnel
- The title, number, and issue of the quality plan standard to be applied

The Purchasing staff will review purchasing orders for completeness of the specified requirements prior to release. The procurement process is managed with the AssetWorks Enterprise Purchasing module, which is fully integrated with the inventory management and maintenance modules. This will facilitate quality audits, allowing the Quality Management team to trace faulty materials back from the failed equipment, to the inventory issue, inventory receipt, and original purchase order and vendor.

3.3.1 Verification of Purchased Product

Subcontractor Verification at Vendor Premises

Where the subcontractor proposes to verify a purchased product at the vendor premises, the subcontractor will specify verification arrangements and the method of product release in the purchase order.

Department Verification of Subcontracted Product

The Department representative shall be afforded the right to verify at the vendor premises and at the subcontractor premises that the subcontracted product conforms to specified requirements. Such verification will not be used by the subcontractor as evidence of effective control of quality by the vendor.

Verification by Denver Transit Operators personnel shall not absolve the subcontractor of the responsibility to provide an acceptable product, nor shall it preclude subsequent rejection by Denver Transit Operators.

3.4 Inventory Management

Inventory replenishment and management will be controlled with the AssetWorks Inventory Management module. Denver Transit Operators' inventory procedures also include those for special handling, marking, tagging, labeling, segregating, record-keeping, and handling nonconforming material. Inventory procedures account for material that has a shelf life so that the proper materials are used in the production process.

Procedures are followed so that only items that have passed inspection are used and so that 100% of safety- and security-critical items have passed their final acceptance inspections and tests before distribution and use.

Items that have a shelf life, such as adhesives and gaskets, will be used on a first-in/first-out basis, and the inventory will be controlled so that items that have exceeded their shelf life are not used. Measures are provided to track shelf life, e.g., marked on product containers and in the warehouse database, and to segregate and dispose of all material with an expired shelf life.

So that only correct materials are used and so that they have passed final inspection and test, Denver Transit Operators will designate a controlled staging area for materials in process. Warehouse/inventory personnel control the issuance of all materials for use on the commuter rail.

Nonconforming materials are clearly identified and segregated from materials that have passed final inspection and test. To preclude the use of nonconforming materials, a "nonconformance hold area" will be established with access restricted to only warehouse/inventory personnel.

3.5 Safety and Training

Denver Transit Operators will prepare procedures so that individuals have appropriate qualifications and training for the jobs they are performing. Denver Transit Operators will keep records of each employee's education, experience, and training on the technical obligations and requirements of his or her job. The records will also provide verification that an employee is both qualified and certified to perform special procedures or testing as required of the job classification.

Training of personnel may be formal, including a written outline of the training with a written or hands-on objective examination, or informal, including on-the-job training encompassing a qualitative determination of the trainee's ability. Both formal and informal training will be documented. Lesson plans are developed to encompass all safety- and security-related critical activities of the position, the necessary classes, and the on-the-job training (OJT) time. All safety- and security-sensitive employees will be subject to an initial evaluation of their knowledge and skills and to re-examination for recertification as required. All evaluations and re-evaluations are documented.

The Human Resources Training Group will maintain a list of employees qualified to perform each operation, and each employee's training and qualification file will list the functions the employee is qualified to perform. The employee's supervisor will have access to this information to verify the employee's qualifications.

Denver Transit Operators training programs include logistics, protocol, and guidelines for the following:

- Lesson plan development and sign-off process
- Training program evaluation
- Identification and establishment of safety and security requirements for safety- and security-sensitive or -critical training
- Pass/fail test criteria (100% on safety- and security-critical questions)

- Training Instructor qualifications and evaluation
- Certification and recertification criteria, guidelines, and processes
- On-the-job training criteria
- Training records control
- Emergency response training program criteria

3.6 Management Information Systems

The Quality Management department will work closely with the IT department. Both departments support quality-focused practice throughout the organization. Among the quality-related objectives of the IT department are:

- Provide specialized support to all departments through internal consultations to identify, implement, and support appropriate systems and reporting functions
- Facilitate all activities required to develop, specify, procure, implement, install, maintain, and enhance transportation and management information systems
- Manage activities required in the identification of process improvements, system design, testing, and implementation of information-technology–related projects
- Identify, evaluate, and implement operational practices to improve information and processing systems and to perform system administration tasks on embedded systems, as defined
- Procure, develop, test, and implement applications; provide coordination with appropriate information systems networking infrastructure; and perform data analysis on existing systems
- Provide training for all system users and administrators; obtain feedback from them and prepare detailed specifications for changes, enhancements, and additional system interfaces; see that training records comply with requirements established by contract
- Manage ongoing software and systems maintenance for current and future information management systems; develop policy instructions, SOPs, system procedures, guidelines, and technical documentation of new systems
- Review enhancements and projects after implementation, for compliance to specifications and cost-effectiveness

4.0 Quality Management Plan Index

1. Quality Assurance / Quality Control Plan

2. Quality Assurance / Quality Control Manual

Procedure Number	Procedure Title	Supersedes	Revision Number
DTP-QA-01	Management Responsibilities	N/A	0
DTP-QA-02	Quality Management System	N/A	0
DTP-QA-02-01	Procedures Formatting and Numbering System	N/A	0
DTP-QA-02-02	Forms Control	N/A	0
DTP-QA-02-03	Configuration Management System	N/A	0
DTP-QA-02-04	Configuration List	N/A	0
DTP-QA-03	Inspection and Testing Procedures	N/A	0

Procedure Number	Procedure Title	Supersedes	Revision Number
DTP-QA-04	Inspection and Test Status	N/A	0
DTP-QA-05	Control of Nonconforming Process/Product	N/A	0
DTP-QA-06	Corrective Action Request	N/A	0
DTP-QA-07	Quality Records	N/A	0
DTP-QA-08	Quality Assessments	N/A	0
DTP-QA-09	Quality Audits	N/A	0
DTP-QA-10	Quality Inspections	N/A	0
DTP-QA-11	Quality Training	N/A	0

Exhibit E

[Reserved]

Exhibit F

Form of Operations Notice to Proceed

OPERATIONS NOTICE TO PROCEED

DENVER TRANSIT PARTNERS, LLC
[_____]
[_____], [_____]

_____, 20__

[_____]
[Project Director]
Denver Transit Operators, LLC
[_____]
[_____], [____]

Re: Operations Notice to Proceed for [the East Corridor Project] [the Gold Line Project] [the Northwest Rail Electrified Segment Project]

Ladies and Gentlemen:

This Operations Notice to Proceed is hereby delivered to you pursuant to Section 3.1.1(ii) of the Operations and Maintenance Agreement for the Regional Transportation District FasTrack Rail Project, dated as of [_____], 2010 (the "Agreement"), by and between Denver Transit Partners, LLC ("Concessionaire") and Denver Transit Operators, LLC ("Operator"). Capitalized terms used herein that are not otherwise defined herein shall have their respective meanings set forth in the Agreement.

Concessionaire hereby notifies Operator to commence, on [the date hereof] [_____, 20__], performance of the Commuter Rail Service and certain operations and maintenance services relating to the Commuter Rail Project[s] identified in the subject line hereof and other Concessionaire-operated Components, and the Renewal Works, all as described in the Agreement.

Sincerely,

DENVER TRANSIT PARTNERS, LLC

By: _____
Name:
Title:

Exhibit G

Permits

A. Other than as excluded in Section 3.20 of the Agreement, Operator shall procure and maintain in full force and effect throughout the Term (including renewing, replacing, extending the validity of and arranging necessary amendments to) all Permits legally required in connection with its performance, including all Permits listed below:

No.	Name of Permit	Issuing Authority	Date Obtained / Anticipated Date of Receipt
1			
2			

B. RTD Permits which RTD is to obtain to the extent provided pursuant to Section 17 of the Concession Agreement:

No.	**Name of Permit**	**Issuing Authority**	**Date Obtained / Anticipated Date of Receipt**
1	Nationwide Permit (Section 404) for GL Construction	U.S Army Corps of Engineers	[February 2009]
2	Individual Permit (Section 404) for EC construction	U.S Army Corps of Engineers	December 10, 2009
3	Individual Permit (Section 404) for Phase 1 of NWR	U.S Army Corps of Engineers	March 15, 2010

C. Other than as excluded in Section 2.1.7 of the Design-Build Contract, Design-Build Contractor shall apply for, obtain, renew, replace, extend the validity of and arrange necessary amendments to, all Permits legally required in connection with its performance of the Design-Build Contract, including all Permits listed below:

V.S. Salama
Exhibit A

No.	Name of Permit	Issuing Authority	Date Obtained / Anticipated Date of Receipt
1	Conditional Letter of Map Revision (CLOMR)	FEMA/Urban Drainage Flood Control District	
2	Letter of Map Revision (LOMR)	FEMA/Urban Drainage Flood Control District	
3	Colorado Discharge Permit System-Stormwater Construction Permit (CDS-SCP)	Colorado Department of Health and Environment	
4	Demolition Permit	Colorado Department of Public Health and Environment	
5	Air Pollution Control Division Construction Permit Application	Colorado Department of Public Health and Environment	
6	Air Pollution Emission Notice and Application for Construction Permit	Colorado Department of Public Health and Environment	
7	Minimal Discharge Industrial Wastewater Application	Colorado Department of Public Health and Environment	
8	Special Use Permit	Colorado Department of Transportation	
9	Use and Occupancy Agreement	Colorado Department of Transportation	
10	Common Use Agreement	Colorado Department of Transportation	
11	Access Permit	Colorado Department of Transportation	
12	Adams County Building Permit	Adams County	
13	Adams County Floodplain Use Permit	Adams County	
14	Adams County Right of Way Permit	Adams County	
15	City of Arvada Site Development Permit	City of Arvada	
16	Jefferson County Right- of-Way	Jefferson County	
17	City of Wheatridge Right-of-Way Permit	City of Wheatridge	
18	Permit to Capture, Transport and Relocate Prairie Dogs	Colorado Division of Wildlife	

19	City and County of Denver Sewer Use and Drainage Permit	City and County of Denver
20	City and County of Denver Floodplain Development Permit	City and County of Denver
21	City and County of Denver Right-of-Way Occupancy Permit	City and County of Denver
22	City and County of Denver Demolition Permit	City and County of Denver
23	City and County of Denver Construction Permit	City and County of Denver
24	City and County of Denver Major Encumbrance Permit	City and County of Denver
25	City and County of Denver Street and Alley Vacation Permit	City and County of Denver
26	City and County of Denver Easement Relinquishment Permit	City and County of Denver
27	City and County of Denver Build Over Permit	City and County of Denver
28	City and County of Denver Construction Activities Stormwater Discharge (Erosion Control) Permit	City and County of Denver
29	City and County of Denver Street Occupancy Permit	City and County of Denver
30	City of Westminster Right of Way Permit	City of Westminster
31	City of Westminster Street Cut Permit	City of Westminster
32	City of Westminster Flood Plain Development Permit	City of Westminster

Exhibit H

Form of Interface Agreement

[See attached]

INTERFACE AGREEMENT

for

REGIONAL TRANSPORTATION DISTRICT

FASTRACKS EAGLE RAIL PROJECT

among

DENVER TRANSIT SYSTEMS, LLC

and

DENVER TRANSIT OPERATORS, LLC

and

DENVER TRANSIT PARTNERS, LLC

Dated July 9, 2010

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Exhibit A - Copy of Design-Build Contract

Exhibit B - Copy of O&M Agreement

Exhibit C - Division of responsibility between Contractors prior to the start of revenue service

Exhibit D – List of acceptable arbitrators

INTERFACE AGREEMENT

REGIONAL TRANSPORTATION DISTRICT

FASTRACKS EAGLE RAIL PROJECT

This Interface Agreement (the "**Agreement**") is entered into and effective as of July 9, 2010 by and between:

DENVER TRANSIT SYSTEMS, LLC (the "**DB Contractor**");

- and -

DENVER TRANSIT OPERATORS, LLC (the "**O&M Contractor**");

- and-

DENVER TRANSIT PARTNERS, LLC (the "**Concessionaire**" and, together with DB Contractor and O&M Contractor, the "**Parties**" and individually, a "**Party**").

BACKGROUND

WHEREAS:

A. The Regional Transportation District ("**RTD**") and Concessionaire have entered into a Concession and Lease Agreement, dated as of July 9, 2010 (the "**Concession Agreement**") whereby Concessionaire will develop, design, construct, finance, operate and maintain the Eagle Project (as such term is defined in the Concession Agreement and herein called the "**Project**");

B. Concessionaire and DB Contractor have entered into a Turnkey Lump Sum Design-Build Contract, dated as of July 9, 2010 (the "**Design-Build Contract**") whereby DB Contractor has agreed to furnish all aspects of the Work, as more particularly described in the Design-Build Contract;

C. Concessionaire and O&M Contractor have entered into an Operation and Maintenance Agreement, dated as of July 9, 2010 (the "**O&M Agreement**") whereby O&M Contractor has agreed to carry out the Services; and

D. The Parties wish to record their understanding as to certain matters involving their common interests with respect to the Work and the Services as they relate to the Project.

NOW THEREFORE, in consideration of the sum of $10.00 paid by each of the Parties to the other and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each of the Parties), the Parties covenant and agree as follows:

ARTICLE 1
INTERPRETATION

1.1 Definitions

Unless otherwise indicated, capitalized terms used in this Agreement shall have the meaning ascribed to them in the Design-Build Contract or the O&M Agreement, as applicable, and the following expressions have the following meanings (and where applicable their plurals have corresponding meanings):

"**Agreement**" means this Interface Agreement including the recitals and Exhibits, as amended or supplemented from time to time.

"**DB Contractor-Related Entity(ies)**" means (a) DB Contractor, (b) shareholders, partners, joint venturers and/or members of, in or with DB Contractor, (c) DB Contractor's Subcontractors, (d) any Persons engaged by DB Contractor to perform any of the Work, (e) any of the Persons for whom DB Contractor may be legally or contractually responsible, and (f) the employees, agents, officers, directors, shareholders, representatives, consultants, successors, assigns and invitees of any of the foregoing.

"CA Change" means any Change as defined in the Concession Agreement.

"**Change**" (except within the definition of CA Change) means any DBC Change or O&M Change.

"**Change Notice**" has the meaning ascribed thereto in Section 3.3.1.

"Commissioning Documents" means the System Testing and Commissioning Plan, the Integrated Testing Program Plan and the System Performance Demonstration plan and all required procedures, reporting forms and other related documentation to be provided by Contractor pursuant to Section 6.1 of the Design-Build Contract.

"**Concession Agreement**" has the meaning ascribed thereto in Recital A.

"**Concessionaire**" includes any successors or assigns of Concessionaire under the Concession Agreement and, if RTD exercises its "step-in" rights under the Concession Agreement, RTD.

"**Contract**" means the Design-Build Contract or the O&M Agreement, as the case may be.

"**Contractor**" means the DB Contractor or the O&M Contractor, as the case may be.

"**Coordination Committee**" has the meaning ascribed to it in Section 2.2.1.

"**DB Contractor**" includes any successors or permitted assigns of DB Contractor under the Design-Build Contract or any replacement DB Contractor under any contract replacing the Design-Build Contract.

"**DBC Change**" means any "Scope Change Order" as defined in the Design-Build Contract.

"**DB Contractor Defects**" means any defects or deficiencies in the Work (other than in the Rolling Stock) or any other matter that gives rise to a claim of a breach of the General Warranty under Section 10.2 of the Design-Build Contract (other than in respect to Rolling Stock).

"**DB Contractor Records**" has the meaning ascribed thereto in Section 5.3.1.

"DB Warrantor" means the Warrantor responsible for the relevant DB Contractor Defect, if such Warrantor exists, or DB Contractor, if no such Warrantor exists.

"**Defect Dispute**" has the meaning ascribed thereto in Section 5.1.2.

"**Design-Build Contract**" has the meaning ascribed thereto in Recital B.

"Design Work" has the meaning ascribed thereto in Section 3.1.1.1.

"**Determination**" has the meaning ascribed thereto in Section 5.1.2.

"**Dispute**" means any disagreement, failure to agree or other dispute between DB Contractor, O&M Contractor and/or Concessionaire arising out of or in connection with this Agreement, including a Defect Dispute.

"**Dispute Notice**" means a notice from one Party to the other Party providing details of a Dispute and invoking the IA Dispute Resolution Procedure in respect of such Dispute.

"**IA Dispute Resolution Procedure**" means the procedure for resolving disputes, as set out in Article 7.

"**Non-Compliant Design Document**" has the meaning ascribed thereto in Section 3.1.1.

"**O&M Agreement**" has the meaning ascribed thereto in Recital C.

"**O&M Change**" means any "Modification" as defined in the O&M Agreement.

"**O&M Contractor**" includes any successors or permitted assigns of O&M Contractor under the O&M Agreement or any replacement O&M Contractor under any contract replacing the O&M Agreement.

"**O&M Contractor-Related Entity(ies)**" means (a) O&M Contractor, (b) shareholders, partners, joint venturers and/or members of, in or with O&M Contractor, (c) O&M Contractor's Subcontractors, (d) any Persons engaged by O&M Contractor to perform any of the Services, (e) any of the Persons for whom O&M Contractor may be legally or contractually responsible, and (f) the employees, agents, officers, directors, shareholders, representatives, consultants, successors, assigns and invitees of any of the foregoing.

"**Parties**" and "**Party**" has the meaning ascribed thereto in the introductory paragraph of this Agreement.

"**Resulting Change**" has the meaning ascribed thereto in Section 3.3.1.

"Requirements" has the meaning ascribed thereto in Section 3.1.1.

"Rolling Stock Supplier" has the meaning ascribed to it in the DB Contract.

"**Services**" has the meaning ascribed to it in the O&M Agreement.

"**Settlement Meeting**" has the meaning ascribed thereto in Section 7.2.1.5.

"**Settlement Meeting Notice**" has the meaning ascribed thereto in Section 7.2.2.1.

"Warrantor" means any entity other than Rolling Stock Supplier that has provided a warranty pursuant to a subcontract (of any tier) to the DB Contract the benefit of which has been made available to O&M Contractor pursuant to the O&M Agreement.

"**Work**" has the meaning ascribed to it in the Design-Build Contract.

1.2 Interpretation

1.2.1 The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined;

1.2.2 Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms;

1.2.3 The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation";

1.2.4 The verb "will" shall be construed to have the same meaning and effect as the verb "shall";

1.2.5 Any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein);

1.2.6 Any reference to a Law shall be construed as a reference to (i) such Law as it may be amended, modified or supplemented from time to time, (ii) all regulations and rules pertaining to or promulgated pursuant to such Law, (iii) the successor to the Law resulting from recodification or similar reorganizing of Laws and (iv) all future Laws pertaining to the same or similar subject matter;

1.2.7 Any reference herein to any Person, or to any Person in a specified capacity, shall be construed to include such Person's successors and assigns or such Person's successors in such capacity, as the case may be;

1.2.8 The words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof;

1.2.9 All references herein to Articles, Sections and Exhibits shall be construed to refer to Articles and Sections of, and Exhibits to, this Agreement. The Exhibits to this Agreement are an integral part hereof. The provisions of this Agreement shall prevail over the provisions of the Exhibits to the extent of any inconsistency.

1.2.10 The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement; and

1.2.11 References to this Agreement or to any other agreement or document relating to the Eagle Project include a reference to this Agreement, or, as the case may be, such other agreement or document as amended from time to time.

ARTICLE 2
GENERAL PRINCIPLES; COORDINATION COMMITTEE

2.1 General Principles

2.1.1 Each Contractor acknowledges and agrees that it has received a copy of the other Contractor's Contract as provided pursuant to this Agreement and has reviewed such other Contract and has obtained an understanding of the issues and matters thereunder on which it may be consulted or requested to provide its views.

2.1.2 Each Contractor agrees to effectively cooperate with the other Contractor in the performance of its respective obligations under the Design-Build Contract and the O&M Agreement, respectively, and under this Agreement.

2.1.3 Nothing herein creates any rights in favor of a Contractor as against Concessionaire, it being understood that any such rights are set forth exclusively in the Contract to which such Contractor is a party.

2.1.4 Each Contractor agrees that the performance or nonperformance of the other Contractor under the Contract to which it is a party shall not be a defense available to the first Contractor for its own breach or failure to perform its obligations under Contract to which it is a party, except to the extent such other Contractor's breach or failure to perform results from a Concessionaire-Caused Event (as defined in the applicable Contract) that itself is not caused by the performance or nonperformance of the first Contractor. Each Contractor agrees that, except as otherwise expressly provided in this Agreement or its Contract, it shall not be excused from, and shall not otherwise be entitled to any extension of time or any compensation for the performance of, any obligation under its respective Contract or under this Agreement and it shall not be entitled to assert or claim any Change or seek any other relief under its respective Contract, in any such case, as a result of any actual or alleged act, omission, performance or non-performance by the other Contractor (including such other Contractor's Subcontractors) under its respective Contract or this Agreement, except to the extent such other Contractor's act, omission, performance or non-performance results from a Concessionaire-Caused Event (as defined in the applicable Contract) that itself is not caused by the performance or nonperformance of the first Contractor.

2.1.5 The Contractors agree to the division of responsibility between them prior to the start of revenue service as set out in Exhibit C to this Agreement. The Contractors acknowledge their mutual dependencies on each other, such that O&M Contractor is dependent upon DB Contractor in order to perform its pre-operations services in preparation for its take-over of operating services following commencement of revenue service, and DB Contractor is dependent

upon O&M Contractor in order to obtain the Revenue Service Commencement Certificates.

2.2 Coordination Committee

2.2.1 The Parties shall establish a coordination committee (the **"Coordination Committee"**) to coordinate their respective efforts and activities pursuant to the Design-Build Contract and the O&M Agreement, respectively. Through the Coordination Committee, the Parties shall endeavor to achieve efficiencies in the review of Design Documents, the processing of Changes that are reasonably expected to affect both Contractors, the achievement of the Revenue Service Commencement Dates and Final Completion for each of the Commuter Rail Projects, the resolution of issues as they arise from time to time, and the development of plans and reports that require joint participation. At the monthly meetings of the Coordination Committee contemplated in this Section 2.2, DB Contractor shall advise the Parties as to the status of the progress of the Work and the estimated Revenue Service Commencement Date for each of the Commuter Rail Projects.

2.2.2 The Project Manager of DB Contractor and the General Manager of O&M Contractor shall be the representatives on the Coordination Committee for DB Contractor and O&M Contractor, respectively. Any change to the representative of DB Contractor or O&M Contractor on the Coordination Committee shall be subject to the approval of the other Parties hereto, each acting reasonably.

2.2.3 Concessionaire's Project Manager, or his or her designee at any time and from time to time, shall be the representative of Concessionaire on the Coordination Committee.

2.2.4 Unless otherwise agreed, the Coordination Committee shall continue until the last Final Completion Date to occur under the Design-Build Contract, including in relation to any outstanding issues arising prior to or in connection with any such Final Completion.

2.2.5 The members of the Coordination Committee may:

1. adopt such procedures and practices for the conduct of activities of the Coordination Committee as they consider appropriate from time to time;

2. invite to any meeting of the Coordination Committee such other persons as the members of the Coordination Committee may agree; and

3. receive and review reports from any person or organization agreed to by the members of the Coordination Committee.

In addition, Design-Build Contractor may invite representatives of Design/Build Subcontractor, Rolling Stock Supplier and/or Design/Build Subcontractor's lead designer to any meeting of the Coordination Committee.

2.2.6 Once established, the Coordination Committee shall meet at least once each calendar month commencing from the Phase 1 Effective Date through the month in which the last Final Completion Date occurs, unless otherwise agreed to by the members of the Coordination Committee or the Parties, and from time to time as necessary.

2.2.7 Any member of the Coordination Committee may convene a meeting of the Coordination Committee at any time. Meetings of the Coordination Committee shall be convened on not less than three (3) Business Days' written notice to all members of the Coordination Committee identifying the agenda items to be discussed at the meeting, provided that in emergencies a meeting may be called at any time on such notice as may be reasonable in the circumstances.

2.2.8 Unless otherwise agreed to by the members of the Coordination Committee, the Coordination Committee shall meet at the Concessionaire's offices located at the Site or at a mutually agreed location in the City of Denver, Colorado.

2.2.9 If a representative of a Party is unavailable for a meeting of the Coordination Committee:

1. an alternate representative of such Party who has been authorized by such Party to attend and participate in the meeting may attend such meeting and shall have the same rights and powers as the representative; and

2. the other Parties' representatives may rely on the alternate representative's statement that the representative is unavailable.

2.3 RTD's rights

The Contractors acknowledges that RTD is entitled under the Concession Agreement to order the suspension of any part of the Work pursuant to Section 23.2 of the Concession Agreement and to take certain other actions in the event a "Concessionaire Termination Event" under the Concession Agreement occurs and is continuing pursuant to Section 41.2(b)(iii) of the Concession Agreement. The Contractors shall fully cooperate with RTD in its exercise of the foregoing rights.

ARTICLE 3
PROJECT DESIGN; CHANGES

3.1 Review and Involvement in Design Work

3.1.1

1. O&M Contractor shall have a consultative role in respect of engineering and design work required to be undertaken to complete the Work (the "**Design Work**"), as set forth in this Section 3.1. DB Contractor shall provide copies of the Design Documents to O&M Contractor no later than such time as the Design Documents are required to be provided to Concessionaire for Concessionaire's Approval or Concessionaire's Review, as applicable, pursuant to the Design-Build Contract (and shall provide them to O&M at least five (5) days in advance of such time where reasonably possible). O&M Contractor may provide comments and feedback on a Design Document (or a proposed DBC Change thereto) in accordance with the procedure set out in Section 3.2 if, in the opinion of O&M Contractor, such Design Document has or is reasonably likely to have an impact upon the cost, implementation or other aspect of the Services or where there is a potential value engineering benefit.

2. Notwithstanding the foregoing, O&M Contractor shall be obligated to provide comments on a Design Document (or a proposed DBC Change in respect thereof) within the time period required if O&M Contractor is of the opinion that such Design Document (or proposed DBC Change) is wholly or partially inconsistent with the O&M Specifications, other O&M Standards or Parts B, C, D or E of the Design, Construction and Rolling Stock Requirements (the **"Requirements"**) (a "**Non-Compliant Design Document**").

3.1.2 To facilitate the drafting and review of Design Documents, a protocol shall be established by the Coordination Committee for ongoing consultation during the Design Work process. Such protocol shall provide for the following:

1. a representative of O&M Contractor may attend all scheduled design meetings, in accordance with a meeting schedule delivered by DB Contractor to O&M Contractor from time to time (such that O&M Contractor will know when such meetings are scheduled reasonably in advance of such meetings);

2. DB Contractor shall consult with O&M Contractor when scheduling design meetings; and

3. at least two (2) Business Days' notice shall be provided by the requesting Party when a change in a scheduled design meeting is required.

3.2 Procedure for Design Review

3.2.1 O&M Contractor shall make all comments and provide all feedback on the Design Documents (or proposed DBC Change thereto), as permitted or required in accordance with Section 3.1:

1. by notice in writing to DB Contractor and Concessionaire; and

2. no later than five (5) Business Days' prior to the timelines and periods set out in the Design-Build Contract for the review and delivery of Concessionaire's comments to the same Design Documents.

3.2.2 Within two (2) Business Days of receipt of comments from O&M Contractor, O&M Contractor, DB Contractor and Concessionaire shall convene to discuss the comments, and DB Contractor shall exercise its good faith efforts to address O&M Contractor's concerns in the final Design Document submitted to RTD. In the event that O&M Contractor's comments identify any non-compliance of the Design Documents with the requirements of the Concession Agreement, DB Contractor shall be obliged to amend such Design Documents to make them compliant. Subject to that, DB Contractor is under no obligation to implement (but may agree with O&M Contractor to implement) O&M Contractor's comments if they would reasonably be expected to result in a material increase in the cost of performing the Work or a material delay to the Project Schedule or to the achievement of any milestone dates. The failure of O&M Contractor to provide comments on any Design Document by the time period set forth in Section 3.2.1 shall be deemed an acceptance by O&M Contractor thereof, and a waiver by O&M Contractor of its right to raise comments on the contents of such Design Document at a later time.

3.2.3 Notwithstanding O&M Contractor's right to assert that a Design Document (or proposed DBC Change thereto) is a Non-Compliant Design Document pursuant to Section 3.1, subject to Section 3.2.2, if DB Contractor rejects O&M Contractor's assertion that a Design Document is a Non-Compliant Design Document, and it is later determined or agreed that the Design Document in question was in fact a Non-Compliant Design Document and such fact resulted in O&M Contractor incurring increased costs (including costs of delay), DB Contractor shall be responsible to O&M Contractor for such increased costs.

3.2.4 If (a) RTD approves the Design Document (or is deemed to have accepted the Design Document pursuant to the Concession Agreement) or agrees to a modified Design Document (which modifications may be incorporated by DB Contractor at its discretion to reflect O&M Contractor's comments), or (b) a determination is made under the Dispute Resolution Procedure under the Concession Agreement with respect to such Design Document, then such approval or determination, as the case may be, shall be determinative of any

matter relating to such Design Document among DB Contractor, Concessionaire and O&M Contractor under Sections 3.1 and 3.2.

3.3 Changes

3.3.1 The rights and obligations of DB Contractor and O&M Contractor in respect of Change or CA Change will be governed by the provisions of the Design-Build Contract and the O&M Agreement, respectively. Concessionaire shall deliver concurrently with delivery thereof (i) to DB Contractor any Proposal Request for a Concessionaire Proposed Change under (and as defined in) the Design-Build Contract, to O&M Contractor, and (ii) to O&M Contractor any Proposal Request for a Concessionaire Proposed Change under (and as defined in) the O&M Agreement, to DB Contractor. If DB Contractor reasonably believes that a Proposal Request under (and as defined in) the O&M Agreement will result in a Change being required under the Design-Build Contract, or if O&M Contractor reasonably believes that a Proposal Request under (and as defined in) the Design-Build Contract, will result in a Change being required under the O&M Agreement (any such Change a "**Resulting Change**"), it shall submit promptly to the other Contractor and to Concessionaire a notice (a "**Change Notice**") describing such Resulting Change, which Concessionaire may take into account when negotiating the Scope Change under the Design-Build Contract or the Modification under the O&M Agreement.

3.3.2 Prior to DB Contractor's submitting a proposed Scope Change under the Design-Build Contract or O&M Contractor's submitting a proposed Modification under the O&M Agreement, the Contractors and Concessionaire shall coordinate with each other to determine whether the act, event or condition necessitating such requested Scope Change or Modification, as applicable, will need to be addressed with a corresponding change or adjustment to the other Contract. Notwithstanding the foregoing, if in the opinion of the submitting Contractor, coordination with the other Contractor and Concessionaire will or is reasonably likely to prejudice such Contractor's rights, or adversely impact its performance, under its Contract, such Contractor may defer its coordination efforts until after the submittal (*provided* that such coordination shall occur at the earliest possible time after such submittal) provided that it delivers a copy of its submittal to the other Contractor concurrently with the delivery thereof to Concessionaire and subject to DB Contractor's and O&M Contractor's rights against each other under Section 3.3.1 hereof. The Contractors agree that all requested Scope Changes or Modifications arising out of the same act, event or condition that affect both Contractors shall be negotiated substantially contemporaneously by the Contractors and Concessionaire to the extent practicable.

3.3.3 Each of DB Contractor and O&M Contractor shall provide such assistance as the other may reasonably request in respect of the delivery of any response or

information required to be provided in connection with a Concessionaire Proposed Change, an RTD Proposed Change, proposed Changes by either contractor, or a Directive Letter. Concessionaire shall deliver a copy of any Directive Letter or Work Order issued pursuant to Section 12.5 or Section 12.11, respectively, of the Design-Build Contract to O&M Contractor contemporaneously with Concessionaire's delivery of the original to DB Contractor, and shall deliver a copy of any Directive Letter or Work Order issued pursuant to Section 13.5 or Section 13.10, respectively, of the O&M Agreement to DB Contractor contemporaneously with Concessionaire delivery of the original to O&M Contractor. The obligation of Concessionaire to deliver to DB Contractor any Directive Letter or Work Order issued under the O&M Agreement shall no longer apply upon the expiry or earlier termination of the Design-Build Contract.

ARTICLE 4
DESIGN-BUILD PERIOD

4.1 Access Rights

4.1.1 Subject to the provisions of this Section 4.1, and unless Concessionaire otherwise directs, DB Contractor shall grant to authorized personnel of O&M Contractor such access to the Sites and the Work as is reasonable in the circumstances for the purposes of carrying out O&M Contractor's obligations under the O&M Agreement or this Agreement to be undertaken prior to the commencement of the Operating Period (including the Pre-Operations Services and the operations and maintenance activities described in Section 3.28 of the O&M Agreement) or as required by Applicable Requirements; *provided* that O&M Contractor shall use (and shall cause its Subcontractors to use) Reasonable Efforts to avoid any material impairment, interference or disruption to the carrying out of the Work and shall pay for any required flagging protection that is in addition to that already being provided by DB Contractor as part of DB Contractor's performance of its obligations at the site. In this regard, DB Contractor shall, acting reasonably, accommodate requests from O&M Contractor to enter upon the Sites or any applicable portion thereof at any time upon reasonable prior notice and subject to the provisions of this Section 4.1, for purposes of inspecting and monitoring the Work, in order that O&M Contractor may sufficiently discharge its obligations under the O&M Agreement.

4.1.2 While on the Sites or any other location under the control of DB Contractor (or its Subcontrators) prior to the commencement of the Operating Period, O&M Contractor and its authorized personnel shall (and shall cause its Subcontractors and their respective personnel to):

1. at all times adhere to the health, safety and security directions, procedures and guidelines established by DB Contractor (or its Subcontrators); and

2. if required by DB Contractor, acting reasonably, confine their activities to a specified location on the Sites or remove itself from the Sites if DB Contractor reasonably determines that the presence of O&M Contractor and/or its activities is materially interfering with the performance of the Work (including interfering with the ability of DB Contractor to achieve any scheduled construction milestones or delaying the ability of DB Contractor to achieve any Revenue Service Commencement Date or Final Completion) or creating an immediate and serious threat to public health, safety, security or the Environment. In the event that DB Contractor so confines or removes O&M Contractor, it shall provide O&M Contractor with a reasonable, alternate time to conduct such activities unless doing so would materially interfere with the carrying out of the Work.

4.2 Commissioning and System Demonstration of Project

4.2.1 Review of Commissioning Documents

1. O&M Contractor shall comply with its obligations with respect to reviewing and commenting on the Commissioning Documents in accordance with Section 3.3.2 of the O&M Agreement. Within two (2) Business Days of receipt from O&M Contractor of comments on any Commissioning Document, O&M Contractor, DB Contractor and Concessionaire shall convene to discuss the comments, and DB Contractor shall exercise its good faith efforts to address O&M Contractor's concerns in the final Commissioning Document submitted to RTD. In the event that O&M Contractor's comments identify any non-compliance of the Commissioning Documents with the requirements of the Concession Agreement, DB Contractor shall be obliged to amend such Design Documents to make them compliant. Subject to that, DB Contractor is under no obligation to implement (but may agree with O&M Contractor to implement) O&M Contractor's comments if they would reasonably be expected to result in a material increase in the cost of performing the Work or a material delay to the Project Schedule or to the achievement of any milestone dates. The failure of O&M Contractor to provide feedback on any Commissioning Document by the time period set forth in Section 4.2.1.1 shall be deemed an acceptance by O&M Contractor thereof, and a waiver by O&M Contractor of its right to raise comments on the contents of such Commissioning Document at a later time.

4.2.2 DB Contractor shall deliver to O&M Contractor written notice no later than 90 days prior to the date on which DB Contractor reasonably expects to achieve the Revenue Service Commencement Dates for each Commuter Rail Project, so as to provide O&M Contractor sufficient time to satisfy any of its obligations

arising under the O&M Agreement with respect to providing services in relation to systems performance demonstration testing. O&M Contractor shall comply with its obligations with respect to participating in and cooperating with DB Contractor in the Commissioning, testing, verification, start-up and demonstration of each Commuter Rail Project in accordance with Section 3.3.2 of the O&M Agreement. DB Contractor and O&M Contractor each shall be given sufficient opportunity to witness, verify and review and comment on all Commissioning and testing results, and the Contractors shall cooperate to rectify any discrepancies in the test results or any failures or deficiencies that arise from the Commissioning and demonstration process, with the cost and expense of any such rectification to be borne by DB Contractor unless the discrepancy, failure or deficiency was directly caused by the acts or omissions of O&M Contractor. Any discrepancy, failure or deficiency of a minor nature that is not rectified prior to the applicable Revenue Service Commencement Date shall be identified in writing between the Contractors as a punch-list item for purposes of achieving Final Completion, and the Contractors agree to cooperate to remedy such discrepancy, failure or deficiency in an expedited manner.

4.2.3 The Contractors recognize that failure by them (either themselves or by their Subcontractors) to comply with their respective obligations under this Agreement and under the Contracts could cause delay to the Revenue Service Commencement Dates. Subject to the resolution of any related dispute under Section 4.2.4, O&M Contractor shall reimburse DB Contractor for liquidated damages paid by DB Contractor under the first paragraph of Section 7.2 of the Design-Build Contract and for increases in DB Contractor's direct costs, in each case to the extent that any failure by O&M Contractor to perform its obligations under the O&M Agreement or this Agreement has caused or contributed to a delay in the achievement of any Revenue Service Commencement Date for any Commuter Rail Project. Subject to the resolution of any related dispute under Section 4.2.4, DB Contractor shall reimburse O&M Contractor for increases in O&M Contractor's direct costs to the extent that any action or inaction of DB Contractor or any failure by DB Contractor to perform its obligations under the Design-Build Contract or this Agreement has caused or contributed to a delay in the achievement of any Revenue Service Commencement Date for any Commuter Rail Project. In addition, the Contractors acknowledge O&M Contractor's pricing assumptions as set out in Exhibit C hereto and agree that, subject to the resolution of any related dispute under Section 4.2.4, and subject to Operator's duty to take all reasonable steps to mitigate the consequence of any such schedule changes, Operator shall be entitled to recover from Design-Build Contractor its increased direct costs incurred prior to the actual achievement of any Revenue Service Commencement Date for any Commuter Rail Project to the extent that Design-

Build Contractor is responsible for a material change in the schedules and time frames identified in Exhibit C.

4.2.4 Any dispute arising in connection with the Commissioning, testing and System Performance Demonstration, including the nature or extent of any alleged failure or breach by any Contractor to perform its respective obligations relating thereto, shall be referred to the IA Dispute Resolution Procedure and resolved thereunder.

4.3 Availability Ratio Testing

4.3.1 4.3.1 O&M Contractor shall use all diligent efforts to operate the Project in a manner that will satisfy the Availability Ratio tests required as a condition to achieving Final Completion for each Commuter Rail Project under Section 6.5.1 of the Design-Build Contract, within the project schedules and by the applicable Revenue Service Target Date. O&M Contractor shall notify DB Contractor and Concessionaire as far in advance as possible if it has reasonably determined that the Availability Ratio tests will not likely be satisfied for purposes of Final Completion, and the Parties shall cooperate and endeavor to rectify this condition in an expedited manner, with the cost and expense of any such rectification to be borne by O&M Contractor except to the extent caused or contributed to by the acts or omissions of DB Contractor under the Design-Build Contract.

4.3.2 Subject to the resolution of any related dispute under Section 4.3.3, O&M Contractor shall indemnify DB Contractor from and against any liability of DB Contractor to Concessionaire to the extent any act or omission of O&M Contractor in the performance of the Services has caused or contributed to the Design-Build Contract being terminated for DB Contractor's default.

4.3.3 Any dispute between the Contractors arising in connection with the Availability Ratio testing for Final Completion, including the nature or extent of any alleged failure or breach by any Contractor to perform its respective obligations relating thereto, shall be referred to the IA Dispute Resolution Procedure and resolved thereunder.

4.4 Asset Registers

O&M Contractor shall cooperate with and assist DB Contractor with the preparation of an Asset Register for each Commuter Rail Project and the Commuter Rail Maintenance Facility in compliance with the Design-Build Contract.

4.5 Spares

O&M Operator shall allow DB Contractor to use any Commissioning Spare Parts transferred to Concessionaire under the Design-Build Contract for the purpose of achieving Final Completion for any Commuter Rail Project or fulfilling its warranty obligations under the Design-Build Contract, but DB Contractor shall promptly replace any so used at no cost to Concessionaire or O&M Contractor.

4.6 Training

The Contractors shall cooperate and coordinate their efforts to complete the Training Program in accordance with the O&M Specifications for the purposes of achieving the Revenue Service Commencement Dates for each of the Commuter Rail Projects and ensure that O&M Contractor's personnel are capable of meeting the standards for performance of the Services set forth in the O&M Agreement.

4.7 Amendments to Design-Build Contract

DB Contractor and Concessionaire represent to O&M Contractor that attached hereto as Exhibit A is a true and complete copy of the Design-Build Contract as at the date of execution of this Agreement. Except to the extent required to comply with the Concession Agreement or applicable Law, DB Contractor and Concessionaire agree that they shall not, without the prior written consent of O&M Contractor (such consent not to be unreasonably withheld or delayed), agree to any amendments, supplements, Scope Changes or other modifications to the Design-Build Contract that are reasonably expected to have a material adverse impact on the rights or obligations of O&M Contractor under the O&M Agreement and this Agreement; *provided* that the foregoing shall not preclude DB Contractor and Concessionaire's right to enter into any such amendments, supplements, Scope Changes or other modifications to the extent any material adverse impact on O&M Contractor's rights and obligations have been compensated for or otherwise remedied by a Modification or similar adjustment to the O&M Agreement, and provided that the foregoing is without prejudice to O&M Contractor's rights under the O&M Agreement in relation to non-material adverse impacts.

ARTICLE 5
OPERATING PERIOD

5.1 Defects

5.1.1 Until the end of the applicable Warranty Period under the Design-Build Contract, on discovering or otherwise becoming aware of a DB Contractor Defect or a condition that could reasonably likely be or become a DB Contractor Defect, O&M Contractor shall immediately notify DB Warrantor, DB Contractor and Concessionaire and:

1. in the case of a DB Contractor Defect or condition for which DB Warrantor is responsible that creates an emergency resulting in an immediate need and serious threat to public health, safety, security or the Environment, promptly take or require DB Warrantor to take all corrective measures and repair such DB Contractor Defect or condition. In the event that O&M Contractor is unable to self-perform such measures and repairs and DB Warrantor is unable to do so promptly, O&M Contractor may employ a third party contractor to do so. DB Contractor shall be liable for costs incurred by O&M Contractor in taking such measures and repairs;

2. in the event that the DB Contractor Defect or condition for which DB Warrantor is responsible has not resulted in or is otherwise not part of an emergency described in Section 5.1.1(1) above, request that DB Warrantor immediately and diligently commence with and complete the correction and repair of such DB Contractor Defect or condition, and if (i) O&M Contractor has given the notice to DB Warrantor, DB Contractor and Concessionaire required under this Section 5.1.1, (ii) neither DB Warrantor nor DB Contractor has commenced the correction or repair of the DB Contractor Defect or condition within ten (10) Business Days of receipt of the request from O&M Contractor or is not diligently pursuing such correction or repair, and (iii) (A) O&M Contractor has reason to believe that DB Warrantor's and DB Contractor's ability to repair make such correction or repair may have an impact on O&M Contractor's ability to achieve Final Completion or (B) Performance Deductions have begun to accrue or the Availability Ratio has been impacted or the Project has begun to accumulate STOP Points (or would have begun to accrue or been impacted or begun to accumulate but for works or services having been undertaken by or on behalf of O&M Contractor as a result of the DB Contractor Defect or condition which works or services are beyond the scope of the Services in the ordinary course), in each case, resulting from such DB Contractor Defect or condition or from the correction or repair work thereof undertaken by DB Warrantor or DB Contractor, then O&M Contractor may take corrective measures and repair the DB Contractor Defect or condition in question, and DB Contractor shall be liable for the costs incurred by O&M Contractor in taking such corrective measures and repairs.

5.1.2 If DB Contractor disputes whether a DB Contractor Defect or condition exists or disputes the nature or extent of DB Contractor's liability with respect to any DB Contractor Defect or condition(a "**Defect Dispute**"), the matter shall be referred by either Party to the IA Dispute Resolution Procedure and resolved thereunder (the result of such resolution being a "**Determination**"). Notwithstanding the submission to the IA Dispute Resolution Procedure of any dispute relating to a DB Contractor Defect or condition (including any dispute as to whether a DB Contractor Defect or condition exists or whether DB Contractor is obligated to correct or repair an alleged DB Contractor Defect or

condition), O&M Contractor shall diligently commence and complete (or employ other contractors to commence and complete) the correction and repair of such DB Contractor Defect or condition, pending resolution of the dispute.

5.2 Access Rights

5.2.1 Subject to the provisions of this Section 5.2, and unless Concessionaire otherwise directs, O&M Contractor shall grant to authorized personnel of DB Contractor and Warrantor such access to the Sites and Project as is reasonable in the circumstances for the purposes of facilitating DB Contractor's obligations with respect to the rectification of DB Contractor Defects and/or Punch-List Items after the commencement of the Operating Period or as required by Applicable Requirements; *provided* that DB Contractor shall use (and shall cause its Subcontractors to use) Reasonable Efforts to avoid any material impairment, interference or disruption to the carrying out of the Services and shall pay for any additional flagging protection required to perform such rectification.

5.2.2 While on the Sites or any other location under the control of O&M Contractor (or its Subcontrators) after the commencement of the Operating Period, DB Contractor and its authorized personnel shall (and shall cause its Subcontractors and their respective personnel to):

1. at all times adhere to the health, safety and security directions, procedures and guidelines established by DB Contractor (or its Subcontrators); and

2. if required by O&M Contractor, acting reasonably, confine their activities to a specified location on the Sites or remove itself from the Sites if O&M Contractor's reasonably determines that the presence of DB Contractor and/or its activities, is materially interfering with the performance of the Services or creating an immediate and serious threat to public health, safety, security or the Environment. In the event that O&M Contractor so confines or removes DB Contractor, it shall provide DB Contractor with a reasonable, alternate time to conduct such activities provided that any alternate proposal must be reasonable with reference to the magnitude of the DB Contractor Defect or other activity in question.

5.3 Records

5.3.1 DB Contractor acknowledges and agrees that it shall, within 60 days of achieving Final Completion for each Commuter Rail Project, provide notice thereof to O&M Contractor and transfer a copy of all records relevant to the needs of O&M Contractor it has been required to maintain under the Design-Build Contract (the "**DB Contractor Records**") to O&M Contractor, including, without limitation, the Design Documents. With regard to, and

without limiting the generality of, the foregoing, DB Contractor shall deliver to O&M Contractor (at the same time as such documents are delivered to Concessionaire and RTD) a complete set of the as-built drawings and related documentation for the entire Project. In addition, DB Contractor shall ensure that there is a marked set of signal plans in each signal house by the time that the Revenue Service Commencement Certificate relating to applicable Commuter Rail Network is issued.

5.3.2 DB Contractor further acknowledges and agrees that it shall, in connection with the transfer of DB Contractor Records, provide to O&M Contractor during the period prior to the expiry of the Warranty Period:

1. such general assistance as required by O&M Contractor, acting reasonably, and

2. answer any reasonable questions raised by O&M Contractor,

with respect to any of the DB Contractor Records in order to enable O&M Contractor to fulfill its obligations under the O&M Agreement.

5.4 Amendments to O&M Agreement

O&M Contractor and Concessionaire represent to DB Contractor that attached hereto as Exhibit B is a true and complete copy of the O&M Agreement as at the date of execution of this Agreement. Except to the extent required to comply with the Concession Agreement or applicable Law, O&M Contractor and Concessionaire agree that they shall not, without the prior written consent of DB Contractor (such consent not to be unreasonably withheld or delayed), agree to any amendments, supplements, Modifications or other adjustments to the O&M Agreement that are reasonably expected to have a material adverse impact on the rights or obligations of DB Contractor under the Design-Build Contract and this Agreement; *provided* that the foregoing shall not preclude O&M Contractor and Concessionaire's right to enter into any such amendments, supplements, Modifications or other adjustments to the extent any material adverse impact on DB Contractor's rights and obligations have been compensated for or otherwise remedied by a Scope Change or similar adjustment to the Design-Build Contract, and provided that the foregoing is without prejudice to DB Contractor's rights under the Design-Build Contract in relation to non-material adverse impacts.

ARTICLE 6
PROPRIETARY WORK PRODUCTS

6.1 Proprietary Work Products

DB Contractor and O&M Contractor each represents and warrants that it possesses and shall hold in confidence any proprietary Work Products relating to the Work or Services of the Project; *provided* that the provisions of this Section 6.1 shall not restrict either Party from

passing such information to its professional advisors, to the extent necessary, to enable such Party to perform (or cause to be performed) or to enforce its rights or obligations under the Design-Build Contract or the O&M Agreement, as applicable, or to such other persons as may be expressly required by the Design-Build Contract or the O&M Agreement, as applicable.

6.2 Exceptions

The obligation to maintain the confidentiality of proprietary Work Products does not apply to proprietary Work Products:

6.2.1 which the disclosing Party confirms in writing is not required to be treated as proprietary Work Products;

6.2.2 which is or comes into the public domain otherwise than through any disclosure prohibited by this Agreement; or

6.2.3 to the extent any Party is required to disclose such proprietary Work Products by law or any regulatory or government authority (but only to that extent).

ARTICLE 7
DISPUTE RESOLUTION PROCEDURE

7.1 Dispute Resolution Procedures

7.1.1 Any Dispute between a Contractor and the Concessionaire shall be resolved pursuant to the applicable Contract. Any dispute between the Contractors shall be resolved in accordance with the IA Dispute Resolution Procedures set out in Section 7.2.

7.2 IA Dispute Resolution

7.2.1 IA Dispute Resolution Procedures

1. In the event of a Dispute between the Contractors arising out of or relating to this Agreement, they agree to use reasonable efforts to resolve such Dispute under this Section 7.2 as expeditiously as possible. To that end, the Contractors may agree to omit any of the procedures or shorten any or all of the time periods prescribed in this Section 7.2. The Contractors and their representatives shall make all reasonable efforts to resolve the Dispute amicably and shall provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate such resolution.

2. In the event of a Dispute, a Contractor shall deliver a Dispute Notice to the other Contractor, stating clearly and in detail its position with respect to the Dispute, including the amount involved and remedy sought.

3. Promptly after receipt by the other Contractor of any such Dispute Notice, the Project Manager and General Manager of DB Contractor and O&M Contractor respectively shall meet and use Reasonable Efforts to resolve the Dispute for a period of at least 15 days. Statements made by representatives of the Contractors during any such meetings and documents specifically prepared for such meetings shall be considered part of settlement negotiations and shall not be admissible as evidence in any proceeding between the Contractors of any kind without the mutual written consent of the Contractors.

4. If the Contractors succeed in resolving a Dispute through their designated representatives pursuant to Section 7.2.1.3, they shall memorialize the resolution in writing, and promptly perform their respective obligations in accordance therewith.

5. If the designated representatives of the Contractors are unable to resolve the Dispute within such 15-day period, unless they agree to extend the period for negotiation between or among the designated representatives, any Contractor may refer the matter to a settlement meeting of senior executives (a "**Settlement Meeting**") in accordance with Section 7.2.4, which the other Contractor shall be obligated to attend.

7.2.2 Settlement Meetings

1. A Settlement Meeting may be commenced by written notice (the "**Settlement Meeting Notice**") to the other Contractor. Each Contractor will designate a senior executive to represent it at the Settlement Meeting. The senior executive designated by each Contractor as its representative will be an individual who has authority to settle the Dispute and, if possible, who has not previously been involved directly with the matter in Dispute. Within five (5) Business Days after receipt of the Settlement Meeting Notice, the Settlement Meeting shall be held in person at one of the Sites or at another mutually acceptable location (or by any other means as the Contractors may agree) at a mutually acceptable time to attempt in good faith to settle the Dispute.

2. If the Dispute is not resolved through the negotiations of the senior executives at the Settlement Meeting or within two (2) Business Days thereafter, then any Contractor may, within the following 15 Business Days, refer the Dispute to binding arbitration in accordance with Section 7.2.5 or Section 7.2.6 (as the case may be).

7.2.3 High-speed resolution

In the event that a dispute arises between the Contractors that has not been resolved pursuant to Sections 7.2.1 or 7.2.2 hereof and in the event that the failure to resolve such dispute could impact upon the timing of the fulfillment of either Contractor's obligations to

Concessionaire, either Contractor may seek a fast-track interim resolution of such dispute pursuant to this Section 7.2.3:

(i) A Contractor may submit the claim to a qualified independent third-party arbitrator with substantial experience in rail construction contracts; the Parties agree that any of the Persons named on Exhibit D hereto will be acceptable arbitrators unless a Contractor sends a notice objecting to such Person's inclusion on Exhibit D prior to the commencement of the adjudication process. The other Contractor shall submit its response to the arbitrator within ten (10) days of submission of the claim to the arbitrator by the initiating Contractor;

(ii) Such independent arbitrator will have fifteen (15) calendar days to make an interim determination in relation to the dispute between the Contractors;

(iii) The Contractors agree that such interim determination shall require the Contractors to proceed in accordance with it. The costs of the Contractors in relation to the dispute shall be borne initially as determined by the arbitrator.

In the event that either Contractor wishes to contest the determination of the arbitrator under this Section 7.2.3, such Contractor may submit the dispute for final determination pursuant to Section 7.2.4 but in the interim shall abide by the deterimination under this Section 7.2.3.

7.2.4 Right to Arbitrate

1. A Dispute may be submitted to arbitration by delivery of a written notice by one Contractor to the other Contractors. A Dispute submitted to arbitration shall be finally settled under the American Arbitration Association Construction Arbitration Industry Rules by a sole arbitrator appointed in accordance with the AAA Rules.

2. Unless otherwise agreed to by both Contractors, the place of the arbitration shall be the City of Denver, Colorado and the arbitration shall be governed by the laws of the State of Colorado.

3. The language of the arbitration shall be English.

7.2.5 Awards

1. The award of an arbitrator or panel of arbitrators under Section 7.2.4 shall be final and binding upon the Contractors with no right of appeal.

2. An arbitrator shall not award compensation for any Damages that are excluded by the terms of this Agreement, the Design-Build Contract or the O&M Agreement.

7.2.6 Confidentiality of Arbitral Proceedings

Each Party undertakes to keep confidential all information regarding any arbitration, including the identity of the arbitrator(s), all disclosures made during the arbitration, all materials created or used for the purpose of the arbitration, all documents, materials and information produced during the arbitration and all awards and orders made by the arbitrator(s), except to the extent that disclosure may be required by applicable law (including to protect or pursue a legal right or to enforce an award in *bona fide* legal proceedings before a court).

7.3 Performance of Obligations

Notwithstanding the existence of any Dispute, DB Contractor and O&M Contractor shall, to the extent not precluded by the matter in Dispute, continue without interruption and perform their respective obligations in accordance with the provisions of this Agreement and under the Design-Build Contract and O&M Agreement, as the case may be, without prejudice to the right to contest, dispute and challenge the relevant matter in accordance with the provisions of this Agreement. No Dispute between the Contractors shall alter either Contractor's rights or obligations under its respective Contract.

ARTICLE 8

CLAIMS BETWEEN DB CONTRACTOR AND O&M CONTRACTOR

8.1 Prohibition Against Claims

8.1.1 Save and except as set out in Section 8.2, DB Contractor hereby agrees that it shall not bring against O&M Contractor or any O&M Contractor-Related Entity any action, cause of action, suit, proceeding, claim, demand or complaint, whether at law or in equity, which DB Contractor may have, have had or may hereafter have (collectively, an "**O&M Contractor Claim**") with respect to any matter, issue, cause or thing whatsoever arising from or relating to any breach by O&M Contractor or any O&M Contractor-Related Entity of this Agreement or any Loss suffered or incurred by DB Contractor by reason of or relating to any act or omission of O&M Contractor or any O&M Subcontractor under or relating to this Agreement.

Any O&M Contractor Claim relating to the matters referred to in Section 8.2 may only be made by DB Contractor against O&M Contractor and only pursuant to the terms of Section 8.2.

8.1.2 Save and except as set out in Section 8.3, O&M Contractor hereby agrees that it shall not bring against DB Contractor or any DB Contractor-Related Entity any action, cause of action, suit, proceeding, claim, demand or complaint, whether at law or in equity, which O&M Contractor or any O&M Contractor-Related

Entity may have, have had or may hereafter have (collectively, a "**DB Contractor Claim**") with respect to any matter, issue, cause or thing whatsoever arising from or relating to any breach by DB Contractor or any DB Contractor-Related Entity of this Agreement or any Loss suffered or incurred by O&M Contractor or any O&M Contractor-Related Entity by reason of or relating to any act or omission of DB Contractor or any DB Contractor-Related Entity under or relating to this Agreement or the Design-Build Contract or for any other reason whatsoever.

Any DB Contractor Claim relating to the matters referred to in Section 8.3 may only be made by O&M Contractor against DB Contractor and only pursuant to the terms of Section 8.3.

8.1.3 The Contractors acknowledge that the conduct of either of them could increase the cost to the other of achieving the Revenue Service Commencement Dates (as defined in the Concession Agreement). The Contractors acknowledge that, subject to express rights in the Contracts arising in relation to Concessionaire-Caused Events, neither has the right to make any claim against the Concessionaire in respect of such costs.

8.2 O&M Contractor Indemnity

O&M Contractor shall indemnify and hold harmless:

8.2.1 DB Contractor and DB Contractor-Related Entities from and against any and all Damages arising, directly or indirectly, out of, or in consequence of Losses (including defense costs) to the extent covered by the proceeds of insurance carried by or insuring O&M Contractor under policies with respect to the Project and the O&M Work;

8.2.2 DB Contractor and DB Contractor-Related Entities from and against any and all Damages arising, directly or indirectly, out of, or in consequence of Losses arising out of fraud, criminal conduct, intentional misconduct, recklessness or bad faith on the part of any O&M Contractor-Related Entity;

8.2.3 DB Contractor from and against any liability of DB Contractor to Concessionaire for Liquidated Damages or failure to obtain Revenue Service Commencement Certificates by the applicable Target Date to the extent caused by breach by O&M Contractor of its obligations under the O&M Contract or hereunder; and

8.2.4 DB Contractor from and against any liability of DB Contractor to Concessionaire arising out of termination of the Design-Build Contract to the extent caused by breach by O&M Contractor of its obligations under the O&M Contract or hereunder.

except, in each case, to the extent caused, or contributed to, by any act or omission of DB Contractor or a DB Contractor-Related Entity.

O&M Contractor is liable to DB Contractor for direct costs incurred by DB Contractor as a result of breach of O&M Contractor's obligations under this Agreement.

This indemnity shall be subject to all of the limitations, defenses and other rights of O&M Contractor under the O&M Agreement (which shall be applicable herein *mutatis mutandis*). Any amount recovered under the indemnity in this Section 7.4 shall not be subject to or subtracted from the maximum liability of O&M Contractor set out in the O&M Agreement.

8.3 DB Contractor Indemnity

DB Contractor shall indemnify and hold harmless the O&M Contractor-Related Entities from and against any and all Losses (including Indirect Losses) arising, directly or indirectly, out of, or in consequence of:

8.3.1 Losses (including defense costs) to the extent covered by the proceeds of insurance carried by or insuring DB Contractor under policies with respect to the Project and the Work, and

8.3.2 Losses arising out of fraud, criminal conduct, intentional misconduct, recklessness or bad faith on the part of any DB Contractor-Related Entity,

except, in each case, to the extent caused, or contributed to, by any act or omission of an O&M Contractor-Related Entity.

DB Contractor is liable to O&M for costs in relation to DB Contractor Defects to the extent provided for in Section 5.1 hereof. DB Contractor is liable to O&M Contractor for direct costs incurred by DB Contractor as a result of breach of DB Contractor's obligations under this Agreement

This indemnity and liability shall be subject to all of the limitations, defenses and other rights of DB Contractor under the Design-Build Contract (which shall be applicable herein *mutatis mutandis*). Any amount recovered under this Section 8.3 shall not be subject to or subtracted from the maximum liability of DB Contractor set out in the Design-Build Contract.

8.4 Indemnity Notice

In connection with any claim of indemnity under this Agreement by either DB Contractor, O&M Contractor or any other person claiming through either of them, the claiming Party shall provide duplicate notices to Concessionaire of any such claim of indemnity.

8.5 Consequential Damages

No Party shall be liable to the others for any consequential, special, indirect, incidental, punitive or exemplary damages (including loss of use, loss of profit and loss of revenue) and each Party releases the other Parties and its contractors and agents from any such liability. The foregoing exclusion shall not preclude recovery, where applicable, of liquidated damages pursuant to the terms of the applicable Contract, and shall not be construed to limit recovery under any indemnity under the applicable Contract for third party claims for damage to or destruction of property of, or death of or bodily injury to, any Person.

8.6 Amounts Not Subject to Maximum Liability

No amounts paid under this Agreement by DB Contractor or O&M Contractor shall apply to the limitation of liability applicable to the relevant Contractor under its respective Contract, nor shall any such amounts be paid out of any security provided by the relevant Contractor under its respective Contract.

ARTICLE 9
GENERAL

9.1 Assignment

9.1.1 Subject to Section 9.1.3, and other than in conjunction with a permitted assignment of the Design-Build Contract in accordance with its terms, DB Contractor may assign this Agreement only with the prior written consent of O&M Contractor, which consent may be given or withheld in O&M Contractor's sole discretion.

9.1.2 Subject to Section 9.1.3, and other than in conjunction with a permitted assignment of the O&M Agreement in accordance with its terms, O&M Contractor may assign this Agreement only with the prior written consent of DB Contractor, which consent may be given or withheld in DB Contractor's sole discretion.

9.1.3 Concessionaire may assign all of its rights and interests in and under this Agreement to the Financing Parties as collateral security for its obligations under the Designated Credit Agreements. Upon request by Concessionaire, DB Contractor and O&M Contractor shall enter into a consent to assignment that assigns any or all of Concessionaire's rights under this Agreement to the Financing Parties and to agree to certain step-in and other rights customarily provided in a project of this nature, all in form and substance reasonably satisfactory to the Financing Parties, and the Financing Parties may further assign such rights without DB Contrator's or O&M Contractor's consent thereto in connection with the exercise of remedies against Concessionaire.

9.1.4 Concessionaire also may assign to RTD any or all of its rights under this Agreement to the extent required under the Concession Agreement. Neither DB Contractor nor O&M Contractor shall have any consent rights in connection with the foregoing.

9.2 Enurement

This Agreement enures to the benefit of and binds the Parties and their respective successors and permitted assigns.

9.3 Termination

9.3.1 In the event the Design-Build Contract is terminated but the Concession Agreement has not been terminated:

1. this Agreement shall terminate and be of no further force and effect as regards DB Contractor, subject to liability for breach by DB Contractor that has accrued under this Agreement prior to such termination and subject to Section 8.3; and

2. if Concessionaire enters into a new contract with another contractor for any aspect of the design, build and commissioning of the Project, Concessionaire shall cause such contractor to enter into an agreement on terms substantially similar to the terms of this Agreement.

9.3.2 In the event the O&M Agreement is terminated but the Concession Agreement has not been terminated:

1. this Agreement shall terminate and be of no further force and effect as regards O&M Contractor, subject to any liability for breach by O&M Contractor that has accrued under this Agreement prior to such termination; and

2. if Concessionaire enters into a new agreement with another contractor for any aspect of the operations and maintenance of the Project, Concessionaire shall cause such contractor to enter into an agreement on terms substantially similar to the terms of this Agreement.

9.3.3 In the event the Concession Agreement is terminated, this Agreement shall automatically terminate and be of no further force and effect; *provided* that if RTD, in the exercise of its "step-in" rights under the Concession Agreement, directs the Contractors to enter into a new interface agreement on terms substantially similar to this Agreement, the Contractors shall promptly do so.

9.4 Amendments

This Agreement may be amended only by a written instrument duly executed by the Parties or their respective successors or permitted assigns.

9.5 Waiver

A Party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of this Agreement at any time shall not in any way limit or waive that Party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision, any course of dealing or custom of the trade notwithstanding. Furthermore, if the Parties make and implement any interpretation of this Agreement without documenting such interpretation by an instrument in writing signed by each of the Parties, such interpretation and implementation thereof will not be binding in the event of any future Disputes.

9.6 Independent Contractor

Nothing in this Agreement shall be construed as creating a partnership, joint venture or similar relationship between the Parties or as constituting DB Contractor as an agent of O&M Contractor, or as constituting O&M Contractor as an agent of DB Contractor. No Party to this Agreement shall hold itself out as having any authority or power to bind any other Party to this Agreement in any way.

9.7 Conflicting Agreements

If there is any conflict or inconsistency between the provisions of this Agreement and the Design-Build Contract, then, as between DB Contractor and Concessionaire, the provisions of the Design-Build Contract shall prevail. If there is any conflict or inconsistency between the provisions of this Agreement and the O&M Agreement, then, as between O&M Contractor and Concessionaire, the provisions of the O&M Agreement shall prevail. If there is any conflict or inconsistency between any provisions of the Design-Build Contract and the O&M Agreement the subject matter of which is addressed in this Agreement, the provisions of this Agreement shall prevail.

9.8 Remedies Cumulative

The rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a Party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that Party may be entitled.

9.9 Survival

The Parties' representations and warranties, the IA Dispute Resolution Procedure contained in Article 7, the indemnifications contained in this Agreement, and all other provisions

which by their inherent character should survive expiration or earlier termination of this Agreement, shall survive the expiration or earlier termination of this Agreement.

9.10 Notices and Communications

9.10.1 Notices under this Agreement shall be in writing and: (a) delivered personally; (b) sent by certified mail, return receipt requested; (c) sent by a recognized overnight mail or courier service, with delivery receipt requested, or (d) sent by facsimile or email communication followed by a hard copy and with receipt confirmed by telephone, to the following addresses (or to such other address as may from time to time be specified in writing by such Person):

All notices, correspondence and other communications to DB Contractor shall be delivered to the following address or as otherwise directed by DB Contractor:

[Address]
[Address]
Attn: [_____]
Telephone: [_____]
Facsimile: [_____]
E-mail: [_____]

- with a copy to -

[Address]
[Address]
Attn: [_____]
Telephone: [_____]
Facsimile: [_____]
E-mail: [_____]

All notices, correspondence and other communications to O&M Contractor shall be delivered to the following address or as otherwise directed by O&M Contractor:

[Address]
[Address]
Attn: [_____]
Telephone: [_____]
Facsimile: [_____]
E-mail: [_____]

- with a copy to -

[Address]
[Address]

Attn: [_____]
Telephone: [_____]
Facsimile: [_____]
E-mail: [_____]

All notices, correspondence and other communications to Concessionaire shall be delivered to the following address or as otherwise directed by Concessionaire:

[Address]
[Address]

Attn: [_____]
Telephone: [_____]
Facsimile: [_____]
E-mail: [_____]

- with a copy to -

[Address]
[Address]

Attn: [_____]
Telephone: [_____]
Facsimile: [_____]
E-mail: [_____]

9.10.2 Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U.S. Postal Service, private carrier or other Person making the delivery. Notwithstanding the foregoing, notices sent by facsimile after 4:00 p.m., Eastern Standard or Daylight Time (as applicable), and all other notices received after 5:00 p.m. shall be deemed received on the first business day following delivery (that is, in order for a fax to be deemed received on the same day, at least the first page of the fax must have been received before 4:00 p.m.).

9.11 Governing Law

THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER AND/OR ARISING FROM OR RELATING IN ANY WAY TO THE TRANSACTIONS EVIDENCED BY THE CONTRACT DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF COLORADO, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW RULES THEREOF WHICH MAY DIRECT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

9.12 Severability

In the event that any of the provisions, or portions or applications thereof, of any of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the Parties shall negotiate an equitable adjustment in affected provisions with a view toward effecting the purpose of this Agreement, and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby.

9.13 Entire Agreement

This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersede all prior agreements, understandings, statements, representations and negotiations among the Parties with respect to the subject matter.

9.14 Counterparts

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

[*Signatures on following pages*.]

IN WITNESS WHEREOF each of the Parties has executed this Agreement as of the day and year first above written.

DENVER TRANSIT SYSTEMS, LLC

By _____
Name:
Title:

DENVER TRANSIT OPERATORS, LLC

By _____
Name:
Title:

DENVER TRANSIT PARTNERS, LLC

By _____
Name:
Title:

V.S. Salama
Exhibit A
Exhibit B - Copy of O&M Agreement

Exhibit C - Division of responsibility between Contractors prior to the start of revenue service and pricing basis in relation thereto

The division of responsibility between the Contractors prior to the start of revenue service is in accordance with Part 3 of Exhibit A to the O&M Contract (including the Attachments thereto), which is incorporated into this Exhibit C to this Agreement.

The Contractors acknowledge that O&M Contractor has used the following assumptions in pricing for the Pre-Operations Services:

Start of revenue service date for East Corridor = January 29, 2016;

Start of revenue service for the NWES = March 31, 2016;

Start of revenue servcie for the Gold Line = July 1, 2016;

O&M Contractor will gain access to corridors, where they will enjoy priority access, however if DB Contractor requires access to the track during that period, O&M Contractor will not unreasonably deny (all associated flagging costs to support DB Contractor's work at that time to be paid by DB Contractor), for operator training and burn-in of rolling stock - East Corridor - August 31, 2015;

O&M Contractor will gain access to corridors, where they will enjoy priority access, however if DB Contractor requires access to the track during that period, O&M Contractor will not unreasonably deny (all associated flagging costs to support DB Contractor's work at that time to be paid by DB Contractor), for operator training and burn-in of rolling stock - NWES - November 1, 2015; and

O&M Contractor will gain access to corridors, where they will enjoy priority access, however if DB Contractor requires access to the track during that period, O&M Contractor will not unreasonably deny (all associated flagging costs to support DB Contractor's work at that time to be paid by DB Contractor), for operator training and burn-in of rolling stock - Gold Line - February 1, 2016.

Exhibit D – List of acceptable arbitrators

[to be agreed]

Exhibit I

Operator's Fee

Part 1

Pre-Operations Fees

The Concessionaire will pay the Operator the following fixed amounts over the term identified below as compensation for Pre-Operations services:

Pre-Operations Fees[1]

Month Ending	East Corridor	Gold Line	Northwest Electrified Segment	Total O&M Scheduled Payment
30-Jun-10	-	-	-	-
31-Jul-10	-	-	-	-
31-Aug-10	-	-	-	-
30-Sep-10	100,632	-	-	100,632
31-Oct-10	100,036	-	-	100,036
30-Nov-10	104,800	-	-	104,800
31-Dec-10	109,564	-	-	109,564
31-Jan-11	126,216	-	-	126,216
28-Feb-11	120,205	-	-	120,205
31-Mar-11	138,236	-	-	138,236
30-Apr-11	126,216	-	-	126,216
31-May-11	132,226	-	-	132,226
30-Jun-11	132,226	-	-	132,226
31-Jul-11	126,216	-	-	126,216
31-Aug-11	138,236	-	-	138,236
30-Sep-11	132,226	-	-	132,226
31-Oct-11	126,216	-	-	126,216
30-Nov-11	132,226	-	-	132,226
31-Dec-11	132,226	-	-	132,226
31-Jan-12	133,497	19,310	12,458	165,265
29-Feb-12	127,429	18,432	11,891	157,752
31-Mar-12	133,497	19,310	12,458	165,265
30-Apr-12	127,429	18,433	11,891	157,753
31-May-12	139,565	20,188	13,024	172,777
30-Jun-12	127,429	18,432	11,891	157,752
31-Jul-12	133,497	19,310	12,458	165,265

[1] Values are provided in nominal dollars.

31-Aug-12	139,565	20,188	13,025	172,778
30-Sep-12	121,361	17,555	11,325	150,241
31-Oct-12	139,565	20,188	13,024	172,777
30-Nov-12	133,497	19,310	12,458	165,265
31-Dec-12	127,429	17,904	11,551	156,884
31-Jan-13	125,744	8,057	5,198	138,999
28-Feb-13	109,343	7,006	4,520	120,869
31-Mar-13	114,810	7,357	4,746	126,913
30-Apr-13	120,277	7,707	4,973	132,957
31-May-13	125,744	8,057	5,198	138,999
30-Jun-13	109,343	7,006	4,520	120,869
31-Jul-13	125,744	8,057	5,198	138,999
31-Aug-13	120,277	7,707	4,972	132,956
30-Sep-13	114,810	7,357	4,746	126,913
31-Oct-13	125,744	8,057	5,198	138,999
30-Nov-13	114,810	7,357	4,747	126,914
31-Dec-13	120,277	8,829	5,692	134,798
31-Jan-14	449,628	33,819	21,748	505,195
28-Feb-14	390,981	29,408	18,911	439,300
31-Mar-14	410,530	30,878	19,857	461,265
30-Apr-14	430,079	32,349	20,802	483,230
31-May-14	430,079	32,349	20,802	483,230
30-Jun-14	410,530	30,878	19,857	461,265
31-Jul-14	449,628	33,819	21,749	505,196
31-Aug-14	410,530	30,878	19,857	461,265
30-Sep-14	430,079	32,349	20,802	483,230
31-Oct-14	449,628	33,819	21,748	505,195
30-Nov-14	390,981	29,408	18,911	439,300
31-Dec-14	449,628	36,014	23,164	508,806
31-Jan-15	1,175,107	80,640	51,950	1,307,697
28-Feb-15	1,068,279	73,309	47,227	1,188,815
31-Mar-15	1,175,107	80,640	51,950	1,307,697
30-Apr-15	1,175,107	80,640	51,950	1,307,697
31-May-15	1,121,693	76,974	49,588	1,248,255
30-Jun-15	1,175,107	80,640	51,950	1,307,697
31-Jul-15	1,228,521	84,305	54,311	1,367,137
31-Aug-15	1,121,693	76,974	49,588	1,248,255
30-Sep-15	1,175,107	80,640	51,950	1,307,697
31-Oct-15	1,175,107	80,640	51,950	1,307,697
30-Nov-15	1,121,693	76,974	49,588	1,248,255
31-Dec-15	1,228,521	83,590	54,489	1,366,600
31-Jan-16	1,577,749	61,952	53,331	1,693,032

29-Feb-16	1,577,749	61,952	53,331	1,693,032
31-Mar-16	1,728,011	67,854	58,410	1,854,275
30-Apr-16	1,577,749	61,952	53,331	1,693,032
31-May-16	1,652,880	64,903	55,871	1,773,654
30-Jun-16	1,652,880	64,903	55,871	1,773,654
31-Jul-16	1,577,744	61,952	53,331	1,693,027
31-Aug-16	-	67,853	58,410	126,263
30-Sep-16	-	64,903	53,328	118,231
31-Oct-16	-	61,952	-	61,952
30-Nov-16	-	64,903	-	64,903
31-Dec-16	-	64,902	-	64,902
Total	**35,376,491**	**2,433,029**	**1,567,075**	**39,376,595**

Part 2
Operator's Fee

The Operator Fee shall be payable in respect of each month m of Contract Year n during the Operating Period. The Operator Fee payable in month m of Contract Year n shall be determined in accordance with the following formula:

$Operator\ Fee_{mn} = OPFEESCH_{mn} + (SP_{mn} - SPEXPECTED_{mn})$

$OPFEESCH_{mn} = OMSCH_n \times (D_m / 365) \times Escalation\ Factor$

SP_{mn} = The Service Payment payable in month m of Contract Year n, as defined in Attachment 11 in the Concession Agreement

$SPEXPECTED_{mn} = (ABAISP_n \times Escalation\ Factor + ABANISP_n) \times (D_m / 365)$

$Escalation\ Factor = CPI_{weight} \times (CPI_n / CPI_{base}) + Labor_{weight} \times (Labor_n / Labor_{base}) + MI_{weight} \times (MI_n / MI_{base})$, as calculated in Attachment 11 Part G to the Concession Agreement

D_m the number of days in month m of Contract Year n as defined in the Concession Agreement, Attachment 11 Part C2

O&M Scheduled Payments ($OMSCH_n$) in Real 2010$[2]

Year	East Corridor	Gold Line	Northwest Electrified Segment	Total O&M Scheduled Payment
2015	-	-	-	-
2016	27,146,297	4,778,925	2,166,947	34,092,169
2017	27,146,297	4,778,925	2,166,947	34,092,169
2018	27,146,297	4,778,925	2,166,947	34,092,169
2019	29,464,657	5,500,751	2,205,483	37,170,891
2020	29,736,217	5,549,544	2,236,862	37,522,623
2021	29,736,217	5,549,544	2,236,862	37,522,623
2022	29,736,217	5,549,544	2,236,862	37,522,623
2023	29,736,217	5,549,544	2,236,862	37,522,623
2024	29,808,272	5,562,491	2,245,189	37,615,952
2025	29,880,328	5,575,438	2,253,515	37,709,281
2026	29,952,384	5,588,384	2,261,841	37,802,610
2027	30,024,440	5,601,331	2,270,167	37,895,939
2028	30,024,440	5,601,331	2,270,167	37,895,939
2029	30,024,440	5,601,331	2,270,167	37,895,939
2030	30,024,440	5,601,331	2,270,167	37,895,939
2031	29,777,811	5,501,138	2,231,631	37,510,581
2032	29,777,811	5,501,138	2,231,631	37,510,581
2033	30,024,440	5,601,331	2,270,167	37,895,939
2034	30,024,440	5,601,331	2,270,167	37,895,939
2035	30,024,440	5,601,331	2,270,167	37,895,939
2036	30,024,440	5,601,331	2,270,167	37,895,939
2037	30,024,440	5,601,331	2,270,167	37,895,939
2038	30,024,440	5,601,331	2,270,167	37,895,939
2039	30,024,440	5,601,331	2,270,167	37,895,939
2040	30,024,440	5,601,331	2,270,167	37,895,939
2041	30,024,440	5,601,331	2,270,167	37,895,939
2042	30,024,440	5,601,331	2,270,167	37,895,939
2043	30,024,440	5,601,331	2,270,167	37,895,939
2044	30,024,440	5,601,331	2,270,167	37,895,939
2045	30,024,440	5,601,331	2,270,167	37,895,939
2046	29,777,811	5,501,138	2,231,631	37,510,581

[2] $OMSCH_n$ includes the cost of contractor's insurance in the East Corridor amounts. Operator's component of Insurance Cost Sharing provided under CA Section 34.5 is intended to be captured through the SP_{mn} payable.

2047	29,777,811	5,501,138	2,231,631	37,510,581
2048	29,777,811	5,501,138	2,231,631	37,510,581
2049	30,024,440	5,601,331	2,270,167	37,895,939
2050	30,024,440	5,601,331	2,270,167	37,895,939
2051	30,024,440	5,601,331	2,270,167	37,895,939
2052	30,024,440	5,601,331	2,270,167	37,895,939
2053	30,024,440	5,601,331	2,270,167	37,895,939
2054	30,024,440	5,601,331	2,270,167	37,895,939
2055	30,931,628	5,873,537	2,270,167	39,075,332
2056	30,931,628	5,873,537	2,270,167	39,075,332
Total	**1,220,803,835**	**226,845,398**	**92,326,657**	**1,539,975,890**

Annex 1 – Form of Operator Invoice

To: [DTP]
[ ]
[ ]
[ ]
[ ]
Email: [ ]

With a copy to: [ ]
[ ]
[ ]
[ ]
[ ]
Email: [ ]

Ladies and Gentlemen:

Reference is made to the Operations and Maintenance Agreement, dated as of July [1], 2010 (as amended, amended and restated, supplemented or otherwise modified from time to time, the ***Agreement***) between the Denver Transit Parnters, LLC (***DTP***) and Denver Transit Operators, LLC (the ***Operator***). Capitalized terms defined in the Agreement and not otherwise defined herein are used herein as defined in the Agreement.

Pursuant to Section 5.2.3 (*Operator's' Invoice*) of the Agreement, we hereby submit this Invoice to DTP with supporting documents and data attached hereto (including the Monthly Operating Report for the calendar month immediately preceding the date of this Invoice) and request that payment be remitted to [*insert relevant information*].

Invoice Number:	
Invoice Date:	
Terms:	
Payment Due Date:	
Contract Number:	
Service Payment for [*mm/dd/yy*]:	
TABOR Secured Service Payment:	NOT REQUIRED FROM OPERATOR
Appropriated Service Payment:	NOT REQUIRED FROM OPERATOR
Adjustable Base Service Payment for [*mm/dd/yy*]:	
Fixed Base Service Payment for [*mm/dd/yy*]:	

Base Annual Service Payment	
Aggregate Base Annual Indexed Service Payments:	
$BAISP_{ECBASE}$:	
$BAISP_{GLBASE}$:	
$BAISP_{NWESBASE}$:	
Average Aggregate Base Annual Indexed Service Payments:	
Aggregate Base Annual Non-Indexed Service Payments:	
$BANISP_{ECBASE}$:	
$BANISP_{GLBASE}$:	
$BANISP_{NWESBASE}$:	
Average Aggregate Base Annual Non-Indexed Service Payments:	
Base Annual Service Payment (BASP):	
Adjustable Base Annual Service Payment ($BASP_{adj}$):	
Fixed Base Annual Service Payment ($BASP_{fix}$):	
Indexes:	
CPI_{base}:	
CPI_n:	
$Labor_{base}$:	
$Labor_n$:	
MI_{base}:	
MI_n:	
Days:	
D_m:	

Availability Adjusted Base Service Payment	
Rolling Stock Availability:	
Compliant Car Miles Operated:	
Scheduled Car Miles:	
Rolling Stock Availability (RSA):	
On Time Availability:	
Average Base Annual Service Payment:	
Total Number of Missed Times (TMT):	
Total Number of Extended Missed Times (TEMT):	
On Time Availability (OTA):	
Station Availability:	
Scheduled Station Hours (SSH):	
Station Downtime Hours (SDH):	
Station Availability (SA):	
Availability Factor:	
Availability Adjusted Base Service Payment:	
Performance Deduction:	
Total STOP Points:	
Performance Deduction Percentage (PDP):	
Special Events Adjustment:	
Incremental Compliant Car Hours (H_{actual}):	
Scheduled Car Hours ($H_{scheduled}$):	
Special Events Adjustment (SEA):	
Service Hour Price for [*mm/dd/yy*]:	

(A) SP = Total Amount Due from RTD to DTP (including TABOR Portion payable under Section 30.2(b) of the Concession Agreement):	
(B) SPEXPECTED: Total Amount Expected from RTD to DTP	
(C) OPFEESCH: Escalated monthly amount scheduled to be paid to operator	
Operator Fee: OPFEESCH minus SP minus SPEXPECTED	
Date:	
Prepared by:	

Yours faithfully,

Denver Transit Operators, LLC

Exhibit J

Renewal Work Budget and Schedule

[See attached]

	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R
1																	
2	**DTP**		1/1/2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
3	Cost Descriptions	Total for all Years	1	2	3	4	5	6	1	2	3	4	5	6	7	8	9
6	Renewals Matrix	**An "x" indicates that a renewal expenditure is planned during the year**															
7	Total Annually	$318,113,599	0	0	0	0	0	0	$174,089	$174,089	$179,600	$5,699,121	$10,560,252	$179,600	$174,089	$1,603,430	$8,773,290
8	Civil Incl Parking lots																
9	Track																
10	Stations																
11	CRMF Building																
12	CRMF Equipment															x	
13	CRMF Furniture																
14	Non Revenue Vehicles												x				
15	Traction Power & OCS								x	x	x	x	x	x	x	x	x
16	Train Control & Signaling								x	x	x	x	x	x	x	x	x
17	Communications								x	x	x	x	x	x	x	x	x
18	OCC								x	x	x	x	x	x	x	x	x
19	Rotem Cars											x	x			x	x

V.S. Salama
Exhibit A

	B	S	T	U	V	W	X	Y	Z	AA	AB	AC	AD	AE	AF	AG	AH
1																	
2	**DTP**	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040
3	Cost Descriptions	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25
6	Renewals Matrix																
7	Total Annually	$24,272,508	$2,113,804	$666,341	$3,790,677	$9,312,098	$29,003,533	$1,667,530	$174,089	$183,459	$8,767,778	$31,441,915	$8,750,242	$5,241,336	$6,955,204	$14,098,116	$27,456,352
8	Civil Incl Parking lots														x	x	x
9	Track	x					x					x		x	x	x	x
10	Stations	x					x					x					x
11	CRMF Building	x						x					x				
12	CRMF Equipment	x		x			x	x		x		x	x	x		x	x
13	CRMF Furniture												x				
14	Non Revenue Vehicles	x	x				x					x	x				x
15	Traction Power & OCS	xx	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
16	Train Control & Signaling	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
17	Communications	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
18	OCC	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
19	Rotem Cars	x				x	x				x	x			x	x	x

V.S Salama
Exhibit A

	B	AI	AJ	AK	AL	AM	AN	AO	AP	AQ	AR	AS	AT	AU	AV	AW	AX
1																	
2	**DTP**	2041	2042	2043	2044	2045	2046	2047	2048	2049	2050	2051	2052	2053	2054	2055	2056
3	Cost Descriptions	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41
6	Renewals Matrix																
7	Total Annually	$9,897,269	$3,341,806	$3,336,294	$174,089	$23,938,233	$10,204,421	$832,675	$179,600	$5,699,121	$11,009,900	$3,305,806	$174,089	$956,959	$9,926,252	$33,724,542	$0
8	Civil Incl Parking lots											x					
9	Track	x	x	x		x	x									x	
10	Stations					x					x					x	
11	CRMF Building	x					x					x				x	
12	CRMF Equipment					x		x			x	x				x	
13	CRMF Furniture																
14	Non Revenue Vehicles					x	x				x					x	
15	Traction Power & OCS	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	
16	Train Control & Signaling	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	
17	Communications	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	
18	OCC	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	
19	Rotem Cars									x	x			x	x	x	

V.S. Salama
Exhibit A

Exhibit K

Form of Account Control Agreement

ACCOUNT CONTROL AGREEMENT

This Account Control Agreement, dated as of [_____], 2010 (this "Agreement"), by and among DENVER TRANSIT OPERATORS, LLC (the "Operator"), DENVER TRANSIT PARTNERS, LLC (the "Concessionaire") and [*NAME OF ACCOUNT BANK*], in its capacity as a "bank" as defined in Section 9-102 of Article 9 of the UCC (in such capacity, the "Account Bank"). Capitalized terms used but not defined herein shall have the meanings assigned thereto in the Operation and Maintenance Agreement for the Regional Transportation District FasTracks Rail Project, dated as of [_____], 2010, by and between the Operator and the Concessionaire (the "O&M Agreement"). All references herein to the "UCC" are the references to the Uniform Commercial Code as in effect from time to time in the State of New York.

WHEREAS, pursuant to the O&M Agreement, the Operator and the Concessionaire have agreed that the Operator will perform Renewal Work in accordance with the O&M Agreement; and

WHEREAS, in connection therewith, the Operator and the Concessionaire have also agreed in the O&M Agreement that (1) the Operator will establish a "Renewal Work Account" and (2) they will enter into an account control agreement pursuant to which the Concessionaire will hold a first priority security interest in amounts held in such account.

NOW THEREFORE, the parties hereto hereby agree, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, as follows:

Section 1. Establishment of the Renewal Work Account. The Account Bank hereby confirms and agrees that:

(a) the Account Bank has established the "Renewal Work Account, number [_____]" in the name of the Operator (such account and any successor account, the "Renewal Work Account") and the Account Bank shall not change the name or account number of the Renewable Work Account without the prior written consent of the Concessionaire; and

(b) the Renewal Work Account is a "deposit account" within the meaning of Section 9-102(a)(29) of Article 9 of the UCC.

Section 2. Grant of the Security Interest. The Operator, as security for the performance of its obligations under the O&M Agreement hereby assigns, mortgages, pledges and grants to the Concessionaire a continuing, first priority security interest in, all of its rights, title and interest in, to and under the Renewal Work Account. The Account Bank hereby acknowledges that it is on notice of the first priority security interest of the Concessionaire in the Renewal Work Account and hereby consents to such lien. The Operator will not permit the

Renewal Work Account to become subject to any other pledge, assignment, lien, charge or encumbrance of any kind, other than pursuant to the terms hereof.

Section 3. Subordination of Lien; Waiver of Set-Off. In the event that the Account Bank has or subsequently obtains by agreement, operation of law or otherwise a security interest in the Renewal Work Account or any funds credited thereto, the Account Bank hereby agrees that such security interest shall be subordinate to the security interest of the Concessionaire. Funds credited to the Renewal Work Account will not be subject to deduction, set-off, banker's lien or any other right in favor of any person, other than the Concessionaire pursuant to the terms hereof**.**

Section 4. Control of the Renewal Work Account. Prior to the Effective Time (as defined below), the Account Bank shall honor all withdrawal, payment, transfer or other fund disposition or other instructions received from the Operator (but not those from the Concessionaire) with respect to the Renewal Work Account that the Operator is entitled to give concerning the Renewal Work Account. On and after the Effective Time, (i) the Account Bank shall, without further consent by the Operator or any other person, comply with all instructions received from the Concessionaire (but not those from the Operator) with respect to the Renewal Work Account and (ii) the Operator shall have no right or ability to access or withdraw or transfer funds from the Renewal Work Account. The Account Bank agrees that it has not entered into, and will not enter into, any agreement with any third party pursuant to which it agrees to comply with instructions for disposition of funds in the Renewal Work Account originated by such third party or any other person or enter into any other agreement that conflicts with this Agreement. For the avoidance of doubt, the Operator shall have the exclusive right to direct withdrawals, payments or other dispositions of funds from the Renewal Work Account prior to the Effective Time, subject to the terms and conditions of this Agreement.

Section 5. Effective Time. For the purposes hereof, the "Effective Time" shall be the opening of business on the first (1st) Business Day next succeeding the Business Day on which a notice signed by the Concessionaire substantially in the form set forth in Exhibit A attached hereto, with a copy of this Agreement attached thereto (a "Shifting Control Notice"), is received by the Account Bank. For the purposes hereof, a "Business Day" is any day other than a Saturday, Sunday or other day on which the Account Bank is or is authorized or required by law to be closed.

Section 6. Duties and Rights of the Account Bank. The Account Bank shall have only the duties and responsibilities with respect to the matters set forth herein as is expressly set forth herein and shall not be deemed to be an agent, bailee or fiduciary for any party hereto. On or after the Effective Time, the Concessionaire may request the Account Bank to provide other related services (such as automatic daily transfers) with respect to the Renewal Work Account and the Account Bank hereby agrees to provide such services subject to the payment by the Concessionaire to the Account Bank of additional fees related thereto. It is hereby acknowledged that the Account Bank has no knowledge of (and is not required to know) the terms and provisions of the O&M Agreement or any other related documentation or whether any actions by the Concessionaire (including without limitation the sending of a Shifting Control Notice), the Operator or any other person or entity are permitted or a breach thereunder or consistent or inconsistent therewith. The Operator shall compensate the Account Bank for the

opening and administration of the Renewal Work Account and services provided hereunder in accordance with the Account Bank's fee schedules from time to time in effect. Such payments by the Operator to the Account Bank will not be effected by a direct debit to the Renewal Work Account but the Operator shall make such payments to the Account Bank separately.

Section 7. Choice of Law. This Agreement and the Renewal Work Account shall each be governed by the laws of the State of New York. Regardless of any provision in any other agreement, for purposes of the UCC, the State of New York shall be deemed to be the Account Bank's jurisdiction (within the meaning of Section 9-304 of Article 9 of the UCC) and the Renewal Work Account shall be governed by the laws of the State of New York.

Section 8. Conflict with Other Agreements; Amendments.

(a) In the event of any conflict between this Agreement (or any portion thereof) and any other agreement now existing or hereafter entered into, the terms of this Agreement shall prevail;

(b) No amendment or modification of this Agreement or waiver of any right hereunder shall be binding on any party hereto unless it is in writing and is signed by all of the parties hereto; and

(c) The Account Bank hereby confirms and agrees that:

(i) there are no other agreements entered into between the Account Bank and the Operator with respect to the Renewal Work Account; and

(ii) it has not entered into, and until the termination of this Agreement, will not enter into, any agreement with any other person relating to the Renewal Work Account and/or any funds credited thereto pursuant to which it has agreed to comply with instructions originated by such persons as contemplated by Section 9-104 of Article 9 of the UCC.

Section 9. Adverse Claims. The Account Bank does not know of any liens, claims or encumbrances relating to the Renewal Work Account. If any person asserts any lien, encumbrance or adverse claim (including any writ, garnishment, judgment, warrant of attachment, execution or similar process) against the Renewal Work Account, the Account Bank will promptly notify the Operator and the Concessionaire thereof in writing.

Section 10. Maintenance of Renewal Work Account. In addition to, and not in lieu of the obligation of the Account Bank to honor instructions as set forth in Section 4 hereof, the Account Bank agrees to maintain the Renewal Work Account as follows:

(a) Statements and Confirmations. The Account Bank will promptly send copies of all statements, confirmations and other correspondence concerning the Renewal Work Account simultaneously to each of the Operator and the Concessionaire at the address for each set forth in Section 14 of this Agreement; and

(b) Tax Reporting. All interest, if any, relating to the Renewal Work Account, shall be reported to the Internal Revenue Service and all state and local taxing authorities under the name and taxpayer identification number of the Operator.

Section 11. Representations, Warranties and Covenants of the Account Bank. The Account Bank hereby makes the following representations, warranties and covenants:

(a) the Renewal Work Account has been established as set forth in Section 1 and such Renewal Work Account will be maintained in the manner set forth herein until termination of this Agreement; and

(b) this Agreement has been duly authorized, executed and delivered by the Account Bank and constitutes a valid and legally binding obligation of the Account Bank enforceable against it in accordance with its terms, and the execution, delivery and performance by the Account Bank of its obligations hereunder does not and will not result in any violation of the provisions of any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Account Bank.

Section 12. Indemnification of the Account Bank. The Operator, its successors and assigns shall at all times indemnify, defend and save harmless the Account Bank from and against any and all claims, actions, suits of others, losses or charges arising out of the terms of this Agreement or the compliance of the Account Bank with the terms hereof, except to the extent due to the Account Bank's willful or intentional misconduct or negligence.

Section 13. Successors; Assignment. The terms of this Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective corporate successors or heirs and personal representatives who obtain such rights solely by operation of law or in accordance with this Section 13. The Concessionaire may assign its rights hereunder by sending written notice of such assignment to the Account Bank and the Operator. The Operator may assign this Agreement with the prior written consent of the Concessionaire and upon written notice to the Account Bank. The Account Bank may assign this Agreement with the prior written consent of the Concessionaire and the Operator.

Section 14. Notices. Any notice, request or other communication required or permitted to be given under this Agreement shall be in writing and deemed to have been properly given when delivered in person, or when sent by telecopy or other electronic means and electronic confirmation of error-free receipt is received or two (2) Business Days after being sent by certified or registered United States mail, return receipt requested, postage prepaid, addressed to the party at the address set forth below.

Operator: [_____]
[_____]
[_____]

Concessionaire: [_____]
[_____]
[_____]

Account Bank: [_____]
[_____]
[_____]

Any party may change its address for notices in the manner set forth above.

Section 15. Termination. The Concessionaire may terminate this Agreement in its discretion by sending a written advance notice thereof to the Operator and the Account Bank at least two (2) Business Days prior to the termination date. The Operator may terminate this Agreement only with the prior written consent of the Concessionaire and upon written notice to the Account Bank. The Account Bank may terminate this Agreement if its fees have not been paid thirty (30) days after the written notice of non-payment has been sent to the Concessionaire and the Operator. Any other termination or waiver of this Agreement shall be effected solely by an instrument in writing executed by all the parties hereto.

Section 16. Counterparts. This Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Agreement by signing and delivering one or more counterparts.

[Signatures follow on the next page]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written by their respective officers thereunto duly authorized.

DENVER TRANSIT OPERATORS, LLC

as Operator

By:_____
Name:
Title:

DENVER TRANSIT PARTNERS, LLC
as Concessionaire

By:_____
Name:
Title:

[*NAME OF ACCOUNT BANK*],

as Account Bank

By:_____
Name:
Title:

EXHIBIT A
TO ACCOUNT CONTROL AGREEMENT

[Letterhead of Concessionaire]

SHIFTING CONTROL NOTICE

[*Date*]

[*Name and Address of the Account Bank*]

Attention:

Re: Account Control Agreement, dated as of [____], 2010, by and among Denver Transit Partners, LLC, Denver Transit Operators, LLC and [*name of Account Bank]* (the "Agreement")

Ladies and Gentlemen:

This notice constitutes a Shifting Control Notice as referred to in Section 5 of the Agreement, a copy of which is attached hereto.

Very truly yours,

Denver Transit Partners, LLC, as Concessionaire

By: _____

Name:
Title:

Exhibit L-1

Form of Guaranty of Fluor Corporation and Balfour Beatty, LLC

GUARANTY

This **GUARANTY** (this "Guaranty") is made as of July [___], 2010, by **FLUOR CORPORATION,** a Delaware corporation and **BALFOUR BEATTY, LLC**, a Delaware limited liability company (each a "Guarantor" and collectively the "Guarantors"), to **DENVER TRANSIT PARTNERS, LLC**, a Delaware limited liability company (the "Concessionaire"), with respect to the obligations of Denver Transit Operators, LLC, a Delaware limited liability company (the "Operator"), pursuant to that certain Operation and Maintenance Agreement for the Regional Transportation District FasTracks Rail Project, dated as of [June 30], 2010, by and between the Concessionaire and the Operator (together, as amended, altered, varied or supplemented, the "O&M Agreement"). The O&M Agreement is hereby incorporated by reference herein, and capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the O&M Agreement. The Guarantors are each an Affiliate of the Operator. The Guarantors acknowledge that financial and direct benefits will accrue to the Guarantors by virtue of entering into this Guaranty and that such benefits constitute adequate consideration therefor.

This Guaranty is provided pursuant to Section 5.13 of the O&M Agreement.

ARTICLE I

GUARANTY

Section 1.01 Guaranty. The Guarantors jointly and severally guarantee to the Concessionaire, absolutely, unconditionally and irrevocably, that each and every payment and performance obligation and other liability of the Operator now or hereafter arising under the O&M Agreement, including but not limited to all obligations and liabilities of the Operator under any and all representations and warranties made or given by the Operator under the O&M Agreement, under any and all liquidated or stipulated damage provisions of the O&M Agreement and under any and all indemnities given by the Operator under the O&M Agreement (collectively the "Guaranteed Obligations") will be promptly paid and satisfied in full when due and without offset, and performed and completed when required. This is a continuing guaranty of payment and performance of the Guaranteed Obligations.

Section 1.02 Obligations. Except as otherwise provided in Section 4.06, the obligations of the Guarantors hereunder are absolute and unconditional and independent of the Guaranteed Obligations and shall remain in full force and effect until all the Guaranteed Obligations have been paid, performed and completed in full, irrespective of any assignment, amendment, modification or termination of the O&M Agreement.

Section 1.03 No Exoneration. Except as otherwise provided in Section 4.06 below, the obligations of the Guarantors hereunder shall not be released, discharged, exonerated or impaired

in any way by reason of:

(a) any failure of the Concessionaire to retain or preserve any rights against any person, except to the extent the Concessionaire is required to do so under the terms of the O&M Agreement;

(b) the lack of prior enforcement by the Concessionaire of any rights against any person and the lack of exhaustion of any bond, letter of credit or other security held by the Concessionaire, except to the extent the Concessionaire is required to do so under the terms of the O&M Agreement;

(c) the lack of authority or standing of the Operator or the dissolution of either Guarantor, the Operator or the Concessionaire;

(d) with or without notice to the Guarantors, the amendment, alteration, acceleration, extension, waiver, retirement, suspension, surrender, compromise, settlement, release, revocation or termination of, or failure to assert, any portion of the Guaranteed Obligations, the O&M Agreement, any rights or remedies of the Concessionaire (including rights of offset) against the Operator, or any bond, letter of credit, other guaranty, instrument, document, collateral security or other property given or available to the Concessionaire to secure all or any part of the Guaranteed Obligations; *provided* that, notwithstanding the foregoing, the Guarantors shall have available to them any and all defenses relating to the Guaranteed Obligations that may be available to the Operator based on any such amendment, alteration, acceleration, extension, waiver, retirement, suspension, surrender, compromise, settlement, release, revocation or termination or failure to assert voluntarily made by the Concessionaire, except defenses available to the Operator under any federal or state law respecting bankruptcy, arrangement, reorganization or similar relief of debtors;

(e) the extension of the time for payment of any amount owing or payable under the O&M Agreement or of the time for performance or completion of any Guaranteed Obligation; *provided, however,* that to the extent the Concessionaire grants the Operator an extension of time under the O&M Agreement for performance of any of the obligations of the Operator thereunder, such extension of time shall likewise extend the time for performance by the Guarantors;

(f) [reserved];

(g) the existence now or hereafter of any other guaranty or endorsement by either Guarantor or anyone else of all or any portion of the Guaranteed Obligations;

(h) the acceptance, release, exchange or subordination of additional or substituted security for all or any portion of the Guaranteed Obligations;

(i) the taking of any action or the failure to take any action simply because it would constitute a legal or equitable defense, release or discharge of a surety;

(j) any bankruptcy, arrangement, reorganization or similar proceeding for relief of debtors under federal or state law hereinafter initiated by or against the Operator or any of its members or the Concessionaire;

(k) any full or partial payment or performance of any Guaranteed Obligation which is required to be returned as a result of or in connection with the insolvency, reorganization or bankruptcy of the Operator or any of its members or otherwise;

(l) the rejection of the O&M Agreement in connection with the insolvency, reorganization or bankruptcy of the Operator or any of its members;

(m) an impairment of or limitation on damages otherwise due from the Operator by operation of law as a result of any insolvency, reorganization or bankruptcy proceeding by or against the Operator or any of its members;

(n) failure by the Concessionaire to file or enforce a claim against the estate (either in administration, bankruptcy or other proceedings) of the Operator, any of its members, either Guarantor or any other guarantor;

(o) any merger, consolidation or other reorganization to which the Operator, the Concessionaire (except to the extent prohibited by the O&M Agreement), or either Guarantor is a party;

(p) any sale or disposition of all or any portion of either of the Guarantors' direct or indirect ownership in the Operator, or action by either Guarantor or its Affiliates) which results in discontinuation or interruption in the business relations of the Operator with either Guarantor;

(q) [reserved]; or

(r) the failure of the Concessionaire to assert any claim or demand, bring any action or exhaust its remedies against the Operator or any security before proceeding against the Guarantors hereunder after the expiration of applicable notice and cure periods.

Section 1.04 Enforcement of the O&M Agreement and Guaranteed Obligations.

(a) Nothing contained herein shall prevent or limit the Concessionaire from pursuing any of its respective rights and remedies under the O&M Agreement. The Concessionaire may apply any available moneys, property or security in such manner and amounts and at such times to the payment or reduction or performance of any Guaranteed Obligation as it may elect, and may generally deal with the Operator, the Guaranteed Obligations, such security and property as the Concessionaire may see fit. Notwithstanding the foregoing, the Guarantors shall remain bound by this Guaranty.

(b) The Guarantors shall be obligated to undertake all curative action which may be agreed upon between the Concessionaire, the Guarantors and the Operator. If following

notice under Section 4.06 below (to the extent required thereunder) the Guarantors do not use commercially reasonable efforts to proceed promptly to effectuate such curative action within a reasonable time after the Concessionaire notifies the Operator and the Guarantors of the need for curative action (or immediately, in the case of emergency conditions), the Concessionaire, without further notice to the Guarantors, shall have the right to perform or have performed by third parties the necessary curative action, and the costs thereof shall be borne by the Guarantors.

(c) The Concessionaire may bring and prosecute a separate action or actions against the Guarantors or either of them to enforce their liabilities hereunder, regardless of whether any action is brought against the Operator and regardless of whether any other person is joined in any such action or actions. Nothing shall prohibit the Concessionaire from exercising its rights against any of the Guarantors, the Operator, any other guarantor of the Guaranteed Obligations, a performance bond or other security, if any, which insures the payment of the Guaranteed Obligations, or any other person simultaneously, or any combination thereof jointly and/or severally. Concessionaire may proceed against none, one or both of the Guarantors at one time or from time to time as it sees fit in its sole and absolute discretion.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.01 Representations and Warranties. Each of the Guarantors hereby represents and warrants, which shall be continuing representations and warranties until the expiration of the Guarantors' obligations under this Guaranty, that:

(a) Consents. The Operator is a limited liability company duly organized, validly existing and in good standing under the laws of its state of formation. Consent of the Operator to any modification or amendment of the O&M Agreement to which it is a party constitutes knowledge thereof and consent thereto by the Guarantors;

(b) Organization and Existence. (i) in the case of Fluor Corporation, it is a corporation duly organized, validly existing and in good standing under the laws of Delaware; and (ii) in the case of Balfour Beatty, LLC, it is a limited liability company duly organized, validly existing and in good standing under the laws of Delaware;

(c) Power and Authority. Such Guarantor has the full power and authority to execute, deliver and perform this Guaranty, and to own and lease its properties and to carry on its business as now conducted and as contemplated hereby;

(d) Authorization and Enforceability. This Guaranty has been duly authorized, executed and delivered by such Guarantor and constitutes the legal, valid and binding obligation of such Guarantor, enforceable against it in accordance with the terms hereof, subject as to enforceability of remedies to limitations imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating, to or affecting the enforcement of creditors' rights generally, as applicable to such Guarantor, and to general principles of equity;

(e) No Governmental Consents. No authorization, consent or approval of, notice to or filing with, any governmental authority, is required for the execution, delivery and performance by such Guarantor of this Guaranty;

(f) No Conflict or Breach. Neither the execution, delivery or performance by such Guarantor of this Guaranty, nor compliance with the terms and provisions hereof, conflicts or will conflict with or will result in a breach or violation of any material terms, conditions, or provisions of any Laws, regulations and ordinances applicable to such Guarantor or the charter documents, as amended, or bylaws or equivalent governing documents, as amended, of such Guarantor, or any order, writ, injunction or decree of any court or governmental authority against such Guarantor or by which it or any of its properties are bound, or any indenture, mortgage or contract or other agreement or instrument to which such Guarantor is a party or by which it or any of its properties are bound, or constitutes or will constitute a default thereunder or will result in the imposition of any lien upon any of its properties;

(g) No Proceedings. There are no suits or proceedings pending, or, to the knowledge of such Guarantor, threatened in any court or before any regulatory commission, board or other governmental administrative agency against such Guarantor which could reasonably be expected to have a material adverse affect on the business or operations of such Guarantor, financial or otherwise, or on its ability to fulfill its obligations hereunder; and

(h) Contract. Such Guarantor is fully aware of and consents to the terms and conditions of the O&M Agreement.

(i) Financial Statements. All financial statements and data that have been given to the Concessionaire by such Guarantor with respect to such Guarantor: (A) are complete and correct in all material respects as of the date given; (B) accurately present in all material respects the financial condition of such Guarantor as of the date thereof; and (C) have been prepared in accordance with generally accepted accounting principles consistently applied throughout the periods covered thereby.

(j) No Adverse Change. There has been no material adverse change in the financial condition of such Guarantor since the date of the most recent financial statements given to the Concessionaire with respect to such Guarantor.

(k) No Default. Such Guarantor is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions set forth in any agreement or instrument to which such Guarantor is a party, which default may materially and adversely affect such Guarantor's ability to fulfill its obligations hereunder.

(l) Accuracy of Information. All other reports, papers and written data and information given to the Concessionaire by such Guarantor with respect to such Guarantor are accurate and correct in all material respects and complete.

(m) Notice of Change. Such Guarantor shall advise the Concessionaire in writing of any material adverse change in the respective business or financial condition of such Guarantor and promptly furnish to the Concessionaire such information about the financial condition of such Guarantor as the Concessionaire shall reasonably request.

ARTICLE III

WAIVERS, SUBROGATION AND SUBORDINATION

Section 3.01 Waivers.

(a) The Guarantors hereby unconditionally waive:

(i) notice of acceptance of this Guaranty or of the intention to act in reliance hereon and of reliance hereon;

(ii) notice of the incurring, contracting, amendment, alteration, acceleration, extension, waiver, retirement, suspension, surrender, compromise, settlement, release, revocation or termination of, or of the failure to assert, any Guaranteed Obligation or any contract;

(iii) demand on each Guarantor in the event of default (but not the giving of notice to the extent required in Section 4.06 below);

(iv) any invalidity of the O&M Agreement due to lack of proper authorization of or a defect in execution thereof by the Operator, its purported representatives or agents;

(v) demand for payment or performance, presentment, protest and notice of nonpayment or dishonor to the Guarantors respecting any Guaranteed Obligation;

(vi) any right of the Guarantors to receive notices to the Operator to which the Guarantors might otherwise be entitled except notice to the extent required in Section 4.06 below;

(vii) any demand for payment hereunder (but not the giving of notice to the extent required in Section 4.06 below); and

(viii) any duty on the part of the Concessionaire to disclose to the Guarantors any facts the Concessionaire may now or hereafter know with regard to the Operator.

(b) The Guarantors also hereby waive any right to require, and the benefit of all laws now or hereafter in effect giving the Guarantors the right to require, any prior

enforcement as referred to in Section 1.03(b) above, and the Guarantors agree that any delay in enforcing or failure to enforce any such rights or in making demand on the Guarantors for the performance of the obligations of the Guarantors under this Guaranty shall not in any way affect the liability of the Guarantors hereunder.

(c) The Guarantors hereby waive, as against the Concessionaire or any person claiming under the Concessionaire, all rights and benefits which might accrue to the Guarantors by reason of any bankruptcy, arrangement, reorganization or similar proceedings by or against a Contractor and agree that their obligations and liabilities hereunder shall not be affected by any modification, limitation or discharge of the obligations of the Operator that may result from any such proceedings.

(d) Until the Operator shall have fully and satisfactorily paid, performed, completed and discharged all the Guaranteed Obligations, the Guarantors hereby agree not to file, or solicit the filing by others of, any involuntary petition in bankruptcy against the Operator.

Section 3.02 Subrogation. Until the Operator shall have fully and satisfactorily paid, performed, completed and discharged all the Guaranteed Obligations, the Guarantors shall not claim or enforce any right of subrogation, reimbursement or indemnity against the Operator, or any other right or remedy which might otherwise arise on account of any payment made by the Guarantors or any act or thing done by the Guarantors on account of or in accordance with this Guaranty.

Section 3.03 Subordination.

(a) All existing or future indebtedness of the Operator to the Guarantors is subordinated to all of the Guaranteed Obligations. Whenever and for so long as the Operator shall be in default in the performance or payment of any Guaranteed Obligation, no payments with respect to any such indebtedness shall be made by the Operator to either Guarantor without prior written notice to the Concessionaire.

(b) The Guarantors shall file all claims against the Operator in any bankruptcy or other proceedings in which the filing of claims is required or permitted by law upon any obligation or indebtedness of the Operator to the Guarantors, and shall have assigned to the Concessionaire all of the Guarantors' rights thereunder to the extent of outstanding and unsatisfied Guaranteed Obligations. If the Guarantors do not file any such claim, the Concessionaire is authorized as the Guarantors' attorney-in-fact to do so in the Guarantors' name, or in the discretion of the Concessionaire, the Concessionaire is authorized to assign the claim to, and cause proof of claim to be filed in the name of the Concessionaire or its nominee. In all such cases, whether in administration, bankruptcy, or otherwise, the person or persons authorized to pay such claim shall pay to the Concessionaire or its nominee the full amount payable on the claim in the proceeding before making any payment to the Guarantors, and to the full extent necessary for that purpose, the Guarantors assign to the Concessionaire all of their respective rights to any payments or distributions to which they otherwise would be entitled. If the amount so paid is in excess of the Guaranteed Obligations covered hereby, the Concessionaire shall pay the amount of the excess to the party determined by it to be entitled thereto.

ARTICLE IV

MISCELLANEOUS

Section 4.01 Enforcement of Guaranty.

(a) The terms and provisions of this Guaranty shall be governed by and interpreted in accordance with the laws of the State of New York.

(b) No supplement, amendment, modification, waiver or termination of this Guaranty shall be binding unless executed in writing and duly signed by the Guarantors and the Concessionaire. No waiver of any of the provisions of this Guaranty shall be deemed or shall constitute a waiver of any other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided. No failure on the part of the Concessionaire to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise of any other right.

(c) All disputes between the Concessionaire and the Guarantors arising under or relating to this Guaranty or its breach shall be filed, heard and decided in the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, which shall have exclusive jurisdiction and venue. The Guarantors hereby irrevocably waive, to the fullest extent it may effectively do so, the defense of an inconvenient forum to the maintenance of any action or proceedings in such court arising out of or relating to this Guaranty. The Guarantors agree that a final non-appealable judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. The Guarantors agree and consent to service of process by delivery in the manner and to the address set forth in Section 4.02 below. Nothing in this section shall affect the right of the Concessionaire or to serve legal process in any other manner permitted by law.

(d) The rights of the Concessionaire hereunder are cumulative and shall not be exhausted by any one or more exercises of said rights against the Guarantors or other guarantors or by any number of successive actions until and unless all Guaranteed Obligations have been fully paid or performed.

(e) The Guarantors shall pay to the Concessionaire all reasonable out-of-pocket legal fees and other reasonable out-of-pocket costs and expenses (including fees and costs on appeal) they incur by reason of any permitted enforcement by of their rights hereunder, *provided* that they are the prevailing party with respect to a substantial portion of its claim.

(f) THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION OR CLAIM WHICH IS BASED ON, OR ARISES OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTY OR THE TRANSACTIONS

CONTEMPLATED BY THIS GUARANTY.

Section 4.02 Notices. All notices, demands or other communications under this Guaranty shall be in writing and shall be sent to each other party, at its address specified below (or such other address as a party may from time to time specify to the other parties by notice given in accordance with this Guaranty), and shall be deemed to have been duly given when actually received by the addressee or when served:

(a) personally;

(b) by independent, reputable, overnight commercial courier; or

(c) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested, addressed as follows

If to the Concessionaire:

Denver Transit Partners, LLC
c/o Gregory J. Amparano
General Manager
Denver Transit Holdings, LLC
999 18th Street, Suite 1201 North
Denver, Colorado 80202

With a copy to:

Nicholas Hann
Executive Director
Macquarie Capital Advisors
Suite 2400, Bentall 5
550 Burrard Street
Vancouver, BC V6C 2B5
Canada

If to the Guarantors:

Fluor Corporation
100 Fluor Daniel Drive
Greenville, SC 29607-2762
Attn: Tim Howard, Controller

With a copy to:

Fluor Corporation
100 Fluor Daniel Drive
Greenville, SC 29602-2762
Attn: Spencer Weiss, General Counsel

and

Balfour Beatty, LLC
[_____]
[_____]
Attention: [_____]

With a copy to:

Balfour Beatty plc
130 Wilton Road
London SW1V 1LQ
UK
Attention: Company Secretary
Fax: +44 20 7216 6940

Section 4.03 Severability. If any provision of this Guaranty shall for any reason be held invalid or unenforceable, to the fullest extent permitted by law, such invalidity or unenforceability shall not affect any other provisions hereof, but this Guaranty shall be construed as if such invalid or unenforceable provision had never been contained herein.

Section 4.04 Assignment. Neither this Guaranty nor any of the rights, interest or obligations hereunder shall be assigned or delegated by the Guarantors without the prior written consent of the Concessionaire. This Guaranty and all of the provisions hereof shall be binding upon the Guarantors and their respective successors and permitted assigns and shall inure to the benefit of the Concessionaire and its respective successors and assigns.

Section 4.05 No Third Party Beneficiaries. Nothing in this Guaranty shall entitle any person other than the Concessionaire and its successors and assigns to any claim, cause or action, remedy or right of any kind.

Section 4.06 Certain Rights, Duties, Obligations and Defenses. Notwithstanding Sections 1.01, 1.02, 1.03, 3.01 and 4.08 hereof, the Guarantors shall have all rights, duties, obligations and defenses available to the Operator under the O&M Agreement relating to waiver, surrender, compromise, settlement, release or termination voluntarily made by the Concessionaire, failure to give notice of default to the Operator to the extent required by the O&M Agreement (except to the extent the giving of notice is precluded by bankruptcy or other applicable law), interpretation or performance of terms and conditions of the O&M Agreement, or other defenses available to the Operator under the O&M Agreement except those expressly waived (otherwise than in Section 1.02) in this Guaranty and defenses available to the Operator as a result of any federal or state law respecting bankruptcy, arrangement, reorganization or similar relief of debtors. Action against the Guarantors shall be subject to no prior notice or demand except for 14 days' prior written notice to Guarantors (except to the extent the giving of notice to an individual Guarantor is precluded by bankruptcy or other applicable law affecting such Guarantor, but notice to the other Guarantor shall nevertheless be provided) in the case of

any demand relative to any Guaranteed Obligation not paid or performed when due under the O&M Agreement setting forth the default of the Operator.

Section 4.07 Mergers, etc. Each Guarantor shall not, in a single transaction or through a series of related transactions, consolidate with or merge with or into any other person or sell, assign, convey, transfer, lease or otherwise dispose of any material portion of its properties and assets to any person or group of affiliated persons, unless:

(a) in case of a merger, such Guarantor shall be the continuing corporation; or

(b) the person (if other than such Guarantor) formed by such consolidation or into which such Guarantor merges or the person (or group of affiliated persons) that acquires by sale, assignment, conveyance, transfer, lease or other disposition a material portion of the properties and assets of such Guarantor shall expressly agree to perform all of the obligations of such Guarantor hereunder, as a joint and several obligor with such Guarantor if such Guarantor continues to exist after such transaction, by a writing in form and substance reasonably satisfactory to the Concessionaire.

Notwithstanding the agreement by any such person to perform the obligation of such Guarantor hereunder, such Guarantor shall not be released from its obligations hereunder unless released by operation of law or by consent.

Section 4.08 Survival. The obligations and liabilities of the Guarantors hereunder shall survive termination of any or all of the O&M Agreement or the Operator's rights thereunder due to default by the Operator thereunder; provided, however, that for the avoidance of doubt, such obligations and liabilities are only in respect of the Guaranteed Obligations.

Section 4.09 Headings. The Article and Section headings in this Guaranty are for convenience of reference only and shall not be deemed to alter or affect the meaning or interpretation of any provisions hereof.

Section 4.10 Counterparts. This Guaranty may be executed in one or more counterparts, all of which shall constitute one and the same instrument.

Section 4.11 Entire Agreement. This Guaranty constitutes the entire agreement of the parties hereto with respect to the subject matter hereof. The Guarantors agree to execute, have acknowledged and delivered to the Concessionaire such other and further instruments as may be reasonably required by the Concessionaire to effectuate the intent and purpose hereof.

IN WITNESS WHEREOF, the Guarantors have caused this Guaranty to be executed as of the day and year first above written by its duly authorized officer.

FLUOR CORPORATION,
a Delaware corporation

By:
Name: _____

Title: _____

BALFOUR BEATTY, LLC,
a Delaware limited liability company

By:
Name: _____

Title: _____

Receipt of this Guaranty is hereby acknowledged and accepted effective as of the day of _____, 2010.

DENVER TRANSIT PARTNERS, LLC
a Delaware limited liability company

By: _____
Name: David Parker
Title: Authorized Signatory

By: _____
Name: Chris Voyce
Title: Authorized Signatory

By: _____
Name: Charles Nuttall-Smith
Title: Authorized Signatory

Exhibit L-2

Form of Guaranty of Balfour Beatty, plc

DEED OF FINANCIAL GUARANTEE

THIS DEED OF FINANCIAL GUARANTEE (this "Financial Guarantee") is made as of _____ __, 2010, by **BALFOUR BEATTY plc**, a public limited company organized under the laws of England (a "Guarantor"), to **DENVER TRANSIT PARTNERS, LLC**, a Delaware limited liability company (the "Concessionaire"), with respect to the obligations of Balfour Beatty, LLC, a Delaware limited liability company ("BB LLC"), pursuant to that certain Guaranty , dated as of _____ __, 2010, made by Fluor Corporation and BB LLC in favor of the Concessionaire (the "Underlying Guaranty"). The Guarantor is an affiliate of BB LLC. Guarantor acknowledges that financial and direct benefits will accrue to the Guarantor by virtue of entering into this Guaranty and that such benefits constitute adequate consideration therefor.

WITNESSETH

Guarantor has agreed to provide a financial guarantee specifically applicable to BB LLC's obligations and liabilities arising under the Underlying Guaranty.

NOW, THEREFORE, in consideration of the premises, covenants and agreements herein contained, and other valuable consideration, the adequacy and receipt of which are hereby acknowledged, Guarantor agrees as follows:

1. Concessionaire and Guarantor hereby agree and acknowledge that this financial agreement is applicable only to the obligations and liabilities of BB LLC under the Underlying Guaranty.

2. Guarantor hereby irrevocably guarantees to Concessionaire that BB LLC has sufficient financial resource to satisfy its obligations and liabilities under the Underlying Guaranty, whenever accruing, and that it will provide such funding support to BB LLC as may be required for BB LLC to satisfy in full such obligations and liabilities. Guarantor further agrees that should it fail to provide such funding support to BB LLC such that Concessionaire does not receive the full amount due under the Underlying Guaranty, it will pay directly to Concessionaire any amounts payable by BB LLC to Concessionaire under the Underlying Guaranty that are not paid when due by BB LLC. The parties expressly acknowledge and agree that the scope of Guarantor's obligations hereunder is limited to any necessary funding support of the obligations of D-B Contractor (or payment directly to Concessionaire as provided in the immediately preceding sentence), plus payment of all costs and reasonable attorneys fees incurred by Concessionaire to enforce this Financial Guarantee. This Financial Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment made by BB LLC pursuant to the Underlying Guaranty is annulled, set aside, invalidated, declared to be fraudulent or preferential, rescinded or must otherwise be returned, refunded or repaid by Concessionaire upon the insolvency,

bankruptcy, dissolution, liquidation or reorganization of BB LLC, or upon or as a result of the appointment of a receiver or conservator of, or trustee for BB LLC or any substantial part of its property or otherwise, all as though such payment or payments had not been made.

3. Nothing in this Financial Guarantee shall create any greater liability on Guarantor to Concessionaire as to quantum, specie or duration of liability than BB LLC has under the Underlying Guarantee except for the payment of costs and reasonable attorneys fees incurred by Concessionaire to enforce this Financial Guarantee.

4. Guarantor agrees that it shall not be released from its obligations hereunder by reason of any amendment to or alteration of the terms and conditions of the Underlying Guaranty; nor shall its obligations hereunder be altered or impaired by any delay by any party in enforcing the terms and obligations of the Underlying Guaranty, it being the intention that Guarantor shall remain fully liable hereunder, notwithstanding any such event.

5. Concessionaire acknowledges and agrees that Guarantor's sole obligation under this Financial Guarantee is the payment of money as provided in Paragraph 2 above, and that nothing in this Financial Guarantee is intended to or shall be construed as requiring Guarantor to take any action outside of the United Kingdom other than the payment of money to BB LLC or Concessionaire, as applicable, pursuant to Paragraph 2 above.

6. Any communication, notice or demand of any kind whatsoever under this Financial Guarantee shall be in writing and delivered by personal service (including express or courier service), by electronic communication, whether by telex, telegram or telecopying (if confirmed in writing sent by registered or certified mail, postage prepaid, return receipt requested), or by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to the Concessionaire:

Denver Transit Partners, LLC
c/o Gregory J. Amparano
General Manager
Denver Transit Holdings, LLC
999 18th Street, Suite 1201 North
Denver, Colorado 80202
Fax: (303) 297-7553

With a copy to:

Nicholas Hann
Executive Director
Macquarie Capital Advisors
Suite 2400, Bentall 5
550 Burrard Street
Vancouver, BC V6C 2B5
Canada;
Fax: (604) 605-1634

and

Spencer C. Weiss
General Counsel
Fluor Corporation
100 Fluor Daniel Dr.
Greenville, SC 29607
Office: (864)281-8088
Fax: (864)281-6868

If to the Guarantor:

Balfour Beatty plc
130 Wilton Road
London SW1V 1LQ
UK
Attention: Company Secretary
Fax: +44 20 7216 6940

With a copy to:

Balfour Beatty plc
130 Wilton Road
London SW1V 1LQ
UK
Attention: Finance Director
Fax: +44 20 7216 6940

Either Guarantor or Concessionaire may from time to time change its address for the purpose of notices by a similar notice specifying a new address, but no such change is effective until it is actually received by the party sought to be charged with its contents.

7. This Financial Guarantee is binding upon and inures to the benefit of the successors and assigns of Guarantor and Concessionaire, but is not assignable by Guarantor without the prior written consent of Concessionaire, which consent may be granted or withheld in Concessionaire's sole discretion. Any assignment by Guarantor affected in accordance with this paragraph will not relieve Guarantor of its obligations and liabilities under this Financial Guarantee.

8. Ambiguities or uncertainties in the wording of this Financial Guarantee will not be construed for or against any party, but will be construed in the manner that most accurately reflects the parties' intent as of the date hereof. If any provision of this Financial Guarantee is held to be void or unenforceable, all other provisions shall remain unaffected and be enforceable

9. Any forbearance or failure to exercise, and any delay by either party in exercising, any right, power or remedy hereunder will not impair any such right, power or remedy or be construed to be a waiver thereof, nor will it preclude the further exercise of any such right, power or remedy.

10. Guarantor waives notice of acceptance of this Financial Guarantee and notice of any obligation or liability to which it may apply, and waives presentment, demand for payment, protest, notice of dishonor or non-payment of any such obligation or liability, suit or the taking of other action by Concessionaire against, and any other notice to, BB LLC or others (except with respect to BB LLC as provided in this paragraph), as well as all other defenses available to guarantors or sureties. Notwithstanding the foregoing, before submitting any demand for payment to Guarantor under this Financial Guarantee, Counterparty shall first submit a demand for payment to BB LLC under the Underlying Guaranty; provided, however, that Concessionaire shall not be required to submit a demand to BB LLC before submitting a demand to Guarantor under this Financial Guarantee if the giving of any such demand or other notice to BB LLC is precluded by any bankruptcy, insolvency, reorganization or other law or judicial order. If Concessionaire has not received payment in full of the amount specified in the demand submitted to BB LLC within fourteen (14) days after the date on which Concessionaire submits a written demand to BB LLC under the Underlying Guaranty (except where demand is excused pursuant to the preceding sentence), Counterparty shall have the right to submit a written demand to Guarantor under this Financial Guaranty. Thereafter, Concessionaire shall have the right to pursue all of its rights and remedies against Guarantor, BB LLC, or both, subject in each case to the terms and conditions of the applicable guaranty. Guarantor shall be entitled to the benefit of all defenses available to BB LLC under the Underlying Guaranty except for those expressly waived therein or in this Financial Guarantee.

11. No benefits or rights under this Financial Guarantee are intended to be given to any third party, except that any lenders to whom Concessionaire has collaterally assigned its rights under the Underlying Guaranty and this Financial Guarantee shall have the right to enforce and receive the benefits of the same. There are no other third party beneficiaries to the Financial Guarantee.

12. This Financial Guarantee shall be construed and governed in accordance with English law and the parties agree to submit to the jurisdiction of the English courts.

13. Notwithstanding any express or implied obligation of Guarantor as described above, it is expressly understood and agreed by the parties hereto that no payment shall be due from Guarantor under this Financial Guarantee unless and until BB LLC fails to satisfy its obligations and liabilities under the Underlying Guaranty as provided therein.

14. This Financial Guarantee shall remain in full force and effect with respect to the obligations of BB LLC under the Underlying Guaranty.

IN WITNESS WHEREOF, Guarantor has executed this Financial Guarantee as of the date first written above.

BALFOUR BEATTY plc,
A public limited company

By:_____
Name:_____
Title:_____

By:_____
Name:_____
Title:_____

Exhibit M

Form of O&M Letter of Credit

[FINAL LANGUAGE TO BE AGREED]

[*The Issuing Bank Letterhead*]

[Issuance Date]

IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER: [_____]

Beneficiary:
Denver Transit Partners, LLC
c/o General Manager,
Denver Transit Holdings, LLC
999 18th Street, Suite 1201 North
Denver, Colorado 80202

Applicant:
[_____] on behalf of
Denver Transit Operators, LLC

_____
_____

Amount:
[_____ United States Dollars]
[*See Section 5.14.1 of the Agreement*]

Credit Available With:
[*Issuing Bank*], [____] Branch
by Sight Payment

Ladies and Gentlemen:

At the request and for the account of our customer, [_____] on behalf of Denver Transit Operators, LLC (the "Account Party"), we hereby issue in your favor, and on behalf of the Account Party, our Irrevocable Standby Letter of Credit No. [_____] (this "Letter of Credit") available to be drawn in an amount not to exceed [_____] United States Dollars (US $[_____]) (the "Stated Amount"). This Letter of Credit is issued to you in respect of the obligations of the Account Party pursuant to Section 5.14.1 of that certain Operation and Maintenance Agreement for the Regional Transportation District FasTracks Rail Project, dated as of July 9, 2010 (the "Agreement"), entered into by and between the Account Party and Denver Transit Partners, LLC (the "Beneficiary"). This Letter of Credit is effective immediately.

This Letter of Credit shall terminate upon the first to occur of (a) _____ __, ____, as the same may be modified pursuant to the terms of this Letter of Credit (the "Stated Expiration

Date"), (b) the date on which drawings hereunder total the Stated Amount at such time, or (c) the date on which this Letter of Credit is surrendered to us by you. The earliest to occur of the dates described in the previous sentence shall constitute the "LOC Expiration Date". This Letter of Credit shall be surrendered to us by you on the LOC Expiration Date.

It is a condition of this Letter of Credit that the Stated Expiration Date shall be deemed automatically extended without amendment for an additional period(s) of one (1) year from then effective Stated Expiration Date, unless at or before sixty (60) days prior to any such expiration date we shall notify the Beneficiary by registered mail or overnight courier at the above address that we elect not to consider this Letter of Credit extended for any such additional one year period. However, the final Stated Expiration Date will be _____ __, ____.

Subject to the provisions herein, we shall make funds available to you under this Letter of Credit against presentation to us of a sight draft substantially in the form of Annex A attached hereto (the "Sight Draft") and a drawing certificate substantially in the form of Annex B attached hereto (the "Drawing Certificate"), each purportedly signed by an authorized officer of the Beneficiary.

Only you or an agent or trustee acting on behalf of the financial institutions or bondholders providing debt financing to you with respect to the Regional Transportation District FasTracks Rail Project and to whom you have collaterally assigned your rights under this Letter of Credit (as set forth in a written notice you have provided to us) are permitted to make a drawing under this Letter of Credit. Subject to the provisions herein, we hereby authorize you to make drawings hereunder in an aggregate amount not in excess of the Stated Amount from the date hereof through our close of business on the LOC Expiration Date. Partial drawings are permitted under this Letter of Credit and each partial drawing shall reduce the amount thereafter available hereunder for drawings under this Letter of Credit. Upon payment of drawings in an aggregate amount equal to the Stated Amount, we shall be fully discharged of our obligations under this Letter of Credit and we shall not thereafter be obligated to make any further payments under this Letter of Credit.

Presentation of the Sight Draft and the Drawing Certificate (which shall each be dated the date of presentation) shall be made to our office located at [_____] Attention: [_____], (or any such address and contact information provided by us in writing to you (i) by physical delivery of such documents to such office, or (ii) by facsimile transmission of such documents to such office at facsimile number [_____] followed by physical delivery of such documents by courier. Our only obligation with regard to a drawing under this Letter of Credit shall be to examine the documents submitted to us and to pay in accordance therewith if the terms and conditions of this Letter of Credit have been satisfied.

A presentation under this Letter of Credit may be made only on a Business Day. If any request for payment hereunder is presented in compliance with the terms of this Letter of Credit to us at the address mentioned above on any Business Day, payment will be made on the next Business Day. As used herein, a "Business Day" shall mean any day on which commercial banks are not authorized or required by law to close in New York, New York.

If a demand for payment made hereunder does not conform to the terms and conditions of this Letter of Credit, we shall give you notice (in writing) that your demand for payment was not effected in accordance with the terms and conditions of this Letter of Credit, as it may be amended, stating the reasons therefor and that we will upon your instructions hold any documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effected in conformity with this Letter of Credit, you may attempt to correct any such non-conforming demand to the extent you are able to do so; provided, however, that any documents presented to correct such nonconforming demand must be presented on or prior to the LOC Expiration Date.

Communications to us with respect to this Letter of Credit shall be in writing and shall be addressed to us at [_____], Attention: [_____] and physically delivered in person or facsimile transmission, provided that the original of any Sight Draft or Drawing Certificate or any other communications shall be sent to us at such address by overnight courier for our receipt on the next Business Day after the date of any such facsimile transmission.

This Letter of Credit sets forth in full the terms of our undertaking and this undertaking shall not in any way be modified, amended, limited or amplified by reference to any document, instrument or agreement referred to herein, except for Annex A and Annex B; and any such reference shall not be deemed to incorporate herein by reference any document, instrument, or agreement. This Letter of Credit may not be amended except in writing signed by the Beneficiary and us.

All banking charges, including any advising and negotiating bank charges, are for the account of the Account Party.

This Letter of Credit and the attached Annexes are subject to the Uniform Customs and Practice for Documentary Credits (2007 revisions), International Chamber of Commerce Publication Number 600, as amended from time to time (the "UCP"). To the extent that provisions of this Letter of Credit are not covered by the UCP, this Letter of Credit shall be governed by, and enforced and construed in accordance with, the laws of the State of New York.

Very Truly Yours,

[*Issuing Bank*]

[*Issuing Bank*]

By: _____
Name:
Title:

Annex A

FORM OF SIGHT DRAFT

[*Letterhead of Beneficiary*]

[*Date*]

[*next Business Day succeeding
date of presentation*]

The undersigned hereby demands payment under the [*Issuing Bank*], [_____] Branch Irrevocable Standby Letter of Credit Number [_____], dated [_____] of USD $ [_____].

U.S. $ [_____][*amount not to exceed amount available under the Irrevocable Standby Letter of Credit*].

[INSERT WIRE INSTRUCTIONS]

FOR VALUE RECEIVED AND DRAWN UNDER THE [*ISSUING BANK*] IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER [_____]

Denver Transit Partners, LLC

By: _____
Name:
Title:

Annex B

FORM OF DRAWING CERTIFICATE

[*Letterhead of Beneficiary*]

[*Date*]

[*Issuing Bank*]
[*address*]

Attention: [_____]

Re: Drawing Certificate

Ladies and Gentlemen:

The undersigned, an authorized officer of Denver Transit Partners, LLC (the "Beneficiary") hereby certifies to [*Issuing Bank*], [_____] Branch with reference to its Irrevocable Standby Letter of Credit No. [____] (the "Letter of Credit"; the terms the Account Party, the Agreement, the Stated Expiration Date, the Business Day and the LOC Expiration Date, as used herein, have their respective meanings ser forth in the Letter of Credit, unless otherwise provided herein), that:

1. The Account Party has breached the Agreement or is otherwise in default thereunder, and as a result thereof the Beneficiary is entitled to draw on the Letter of Credit in an amount at least equal to the amount specified in the accompanying site draft.

2. Except where Beneficiary has been precluded by applicable law from delivering same to the Account Party, attached is a copy of the letter dated at least five (5) Business Days prior to the drawing under this Letter of Credit addressed to Denver Transit Operators, LLC reading as follows: "We hereby indicate our intention to draw under Irrevocable Standby Letter of Credit No. [____] and we hereby state that Denver Transit Operators, LLC has failed to perform its obligations set forth in the Operation and Maintenance Agreement for the Regional Transportation District FasTracks Rail Project, dated as of July 9, 2010, entered into with Denver Transit Partners, LLC."

IN WITNESS WHEREOF, the undersigned has executed and delivered this Certificate on behalf of the Beneficiary as of the _____ day of _____, 20____.

Denver Transit Partners, LLC

By: _____
Name:
Title:

Exhibit N

Acceptable Arbitrators

[To be agreed post-execution]

Exhibit O

Form of Direct Agreement

DIRECT AGREEMENT

O&M AGREEMENT AND INTERFACE AGREEMENT)

THIS DIRECT AGREEMENT (this "Agreement"), dated as of August [__], 2010, is made by and among DENVER TRANSIT OPERATORS, LLC, a Delaware limited liability company (the "Consenting Party"), DENVER TRANSIT PARTNERS, LLC, a Delaware limited liability company (the "Assignor"), and THE BANK OF NEW YORK MELLON TRUST COMPANY N.A., a banking association organized and existing under and by virtue of the laws of the United States of America, as trustee for the benefit of the Secured Parties (the "Trustee").

A. The Assignor entered into the Concession and Lease Agreement, dated as of July [___], 2010 (the "Concession Agreement"), with RTD for the design, engineering, procurement, construction, operation, maintenance and related services of certain commuter rail lines constituting the Eagle Project as defined and as set forth more fully in the Concession Agreement (the "Project").

B. The Assignor and the Consenting Party have entered into the Operation and Maintenance Agreement for the Regional Transportation District FasTrack Rail Project, dated as of [_____], 2010 (the "O&M Agreement"), pursuant to which the Consenting Party agreed to operate and maintain the Project and provide other related services for the Project. The Assignor has also entered into the Design-Build Contract with the Design-Build Contractor for the design, engineering, procurement and construction of the Project.

C. In connection therewith, the Assignor, the Consenting Party and the Design-Build Contractor have entered into the Interface Agreement, dated as of [_____], 2010 (the "Interface Agreement," and together with the O&M Agreement, the "Assigned Agreements"), to coordinate their respective obligations in connection with the Project.

D. Pursuant to an Indenture of Trust, dated as of August [___], 2010 (the "Indenture"), by and between the Regional Transportation District, a public body corporate and politic and a political subdivision of the State of Colorado duly organized and existing under the laws of the state of Colorado (the "Issuer") and the Trustee, the Issuer has authorized the issuance of the "Regional Transportation District (Colorado) Tax-Exempt Private Activity Revenue Bonds, Series 2010 (Denver Transit Partners Eagle P3 Project)" (the "Series 2010 Bonds"), the proceeds of which will be loaned to the Assignor pursuant to the terms of a Loan Agreement, dated as of August [__], 2010, by and between the Issuer and the Assignor (the "Loan Agreement") to be used to finance a portion of certain costs of the Project. Pursuant to the Indenture, the Issuer may also

issue the Additional PABs Bonds (as defined in the Indenture) pursuant to the terms and conditions therein.

E. A certain Lockbox Account Agreement, dated as of August [__], 2010 (the "Lockbox Account Agreement"), has been entered into among the Assignor, the Trustee and The Bank of New York Mellon Trust Company, N.A., as the Account Bank and Securities Intermediary thereunder, to provide for the management of certain revenues and funds related to the Project. The Indenture, the Loan Agreement and related note, any supplement to the Indenture and related loan agreement pertaining to any Additional PABs Bonds, and the Lockbox Account Agreement are collectively referred to herein as the "Financing Documents."

F. In order to provide collateral security for the Secured Parties (as such term is defined in the Security Agreement, and hereinafter referred to as the "Secured Parties") for the Assignor's obligations under the Financing Documents, the Assignor and the Trustee have entered into the Security Agreement, dated as of August [___], 2010 (the "Security Agreement"), pursuant to which, for the benefit of the Secured Parties, the Assignor has pledged and assigned to the Trustee, and granted to the Trustee a lien on and a security interest in, among other things, all of the Assignor's right, title and interest in, to and under the Assigned Agreements.

G. The Consenting Party is willing to consent to such pledge and assignment of, and the granting of a lien on and security interest in, to and under all of the Assignor's right, title and interest in the Assigned Agreements on the terms and conditions of this Agreement.

In consideration of the foregoing and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Definitions. Each capitalized term used and not otherwise defined herein shall have the meaning assigned to such term (whether directly or by reference to another document or agreement) in the O&M Agreement.

2. Consent to Assignment.

(a) The Consenting Party hereby irrevocably consents to the assignment by the Assignor of all its right, title and interest in, to and under the Assigned Agreements to the Trustee as collateral security for the Bond Obligations (as such term is defined in the Security Agreement, and hereinafter referred to as the "Bond Obligations") as and to the extent provided in the Security Agreement and any subsequent assignments by the Trustee upon and after the exercise by the Trustee of the Trustee's rights and enforcement of its remedies under the Financing Documents and the Security Agreement, at law, in equity, or otherwise.

(b) The Assignor agrees that it shall remain liable to the Consenting Party for all obligations of the Assignor under each of the Assigned Agreements. The Consenting Party agrees that (i) except as otherwise provided herein, it shall look only to the

Assignor for the performance of such obligations and (ii) it shall be and remain obligated to the Assignor to perform all of the Consenting Party's obligations under each of the Assigned Agreements in accordance with their respective terms and conditions, provided that the Consenting Party's obligations under the Assigned Agreements shall in all cases be subject to the Consenting Party's rights and defenses under the Assigned Agreements, except to the extent expressly modified by this Agreement.

(c) The Consenting Party acknowledges and agrees, notwithstanding anything to the contrary contained in the Assigned Agreements, that none of the following (to the extent not inconsistent with the terms of this Agreement) shall constitute, in and of itself, a default by the Assignor under the Assigned Agreements or shall result in a termination thereof: (i) the assignment of each of the Assigned Agreements pursuant to the Security Agreement; (ii) the development or operation and maintenance of the Project by the Trustee following the occurrence and continuance of an event of default under the Financing Documents and the Security Agreement; (iii) foreclosure or any other enforcement of the Security Agreement by the Trustee; (iv) acquisition of the rights of the Assignor under the Assigned Agreements in foreclosure by the Trustee or any third party (or acceptance of an absolute assignment of the Assigned Agreements in lieu of foreclosure); or (v) assignment of the Assigned Agreements by the Trustee following a purchase in foreclosure or following an absolute assignment thereof in lieu of foreclosure.

3. Representations and Warranties. The Consenting Party hereby represents and warrants to the Trustee and each of the Secured Parties that:

(a) The Consenting Party is a limited liability company duly formed and validly existing under the laws of the State of Delaware and in good standing and qualified in all other jurisdictions where failure to so qualify or be in good standing could materially adversely affect the ability of the Consenting Party to perform its obligations under this Agreement and the Assigned Agreements and has all requisite power and authority as a joint venture to conduct its business, to own its properties, and to execute and deliver, and to perform its obligations under, this Agreement and the Assigned Agreements.

(b) The execution and delivery by the Consenting Party of each of the Assigned Agreements and this Agreement and the performance by the Consenting Party of each of the Assigned Agreements and this Agreement and the consummation of the transactions contemplated hereby and thereby (i) have been duly authorized by all necessary limited liability company action on the part of the Consenting Party, (ii) do not and will not require any consent or approval of any member of, or holder of interests in, the Consenting Party or any other Person which has not been obtained, (iii) do not and will not result in any violation of, breach of or default under any term of its formation or governance documents, or of any contract or agreement to which it is a party or by which it or its property is bound, or of any license, permit, franchise, judgment, writ, injunction, decree, order, charter, law, ordinance, rule or regulation applicable to it, the Project, the Assigned Agreements or this Agreement, except for any such violations which, individually or in the aggregate, would not adversely affect the performance by the Consenting Party of its obligations under each of the Assigned Agreements and this

Agreement and (iv) do not and will not result in, or require, the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest or other charge or encumbrance of any nature (other than as is contemplated by this Agreement) upon or with respect to any of the properties now owned or hereafter acquired by the Consenting Party.

(c) All authorizations, permits, approvals, consents, orders and waivers or any other action by, registration, declaration or filing with, any governmental or other official agency or any third party (collectively, the "Approvals"), necessary or desirable for the due execution, delivery and performance by the Consenting Party of this Agreement and the due execution, delivery and (to the extent required by the Assigned Agreements to be obtained prior to the date hereof) performance of the Assigned Agreements, have been obtained and are in full force and effect.

(d) This Agreement and each of the Assigned Agreements have been duly executed and delivered on behalf of the Consenting Party, are in full force and effect and are legal, valid and binding obligations of the Consenting Party, enforceable against the Consenting Party in accordance with their respective terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other similar laws relating to or affecting the enforcement of creditors' rights generally and by general principles of equity.

(e) There is no legislation, litigation, action, suit, proceeding or investigation pending or, to the best of the Consenting Party's knowledge after due inquiry, threatened against the Consenting Party before or by any court, administrative agency, arbitrator or governmental authority, body or agency which, if adversely determined, individually or in the aggregate, (a) could adversely affect the Approvals, or (b) could have a material adverse effect on the ability of the Consenting Party to perform its respective obligations under each of the Assigned Agreements or this Agreement.

(f) The Consenting Party is not in default of any of its respective obligations under the Assigned Agreements. The Consenting Party has complied with all conditions precedent to its obligations to perform under each of the Assigned Agreements. To the best of Consenting Party's knowledge, no event or condition exists which would, either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either the Consenting Party or the Assignor to terminate or suspend any of its respective obligations under the Assigned Agreements. The Assigned Agreements have not been amended, modified or supplemented in any manner.

(g) The Consenting Party has no notice of, and has not consented to, any previous assignment of the Assignor's interest in the Assigned Agreements to any other person or entity, and the Assignor is not in default under any material covenant or obligation under the Assigned Agreements, and no such default has occurred prior to the date hereof. After giving effect to the assignment by the Assignor of each of the Assigned Agreements to the Trustee pursuant to the Security Agreement, and after giving effect to the acknowledgment of and consent to such assignment by the Consenting Party, there exists no event or condition which would constitute a default, or which would, with the giving of notice or lapse of time or both, constitute a default under the Assigned

Agreements. The Consenting Party has no present claim against the Assignor or lien upon the Project arising out of the Consenting Party's performance of any work or service under the Assigned Agreements.

(h) The Consenting Party has duly performed and complied with all covenants, agreements and conditions contained in each of the Assigned Agreements and this Agreement required to be performed or complied with by it on or before the date hereof, and none of the Assignor's rights under the Assigned Agreements have been waived.

4. Rights of the Secured Parties. The Consenting Party hereby agrees as follows:

(a) Exercise of Rights. The Trustee and any designee or assignee thereof shall be entitled, to the extent permitted by the Security Agreement, to exercise on behalf of the Secured Parties any and all rights of the Assignor under each of the Assigned Agreements in accordance with their respective terms, and the Consenting Party shall comply in all respects with such exercise. Without limiting the generality of the foregoing, the Trustee and any designee or assignee thereof shall have the full right and power, to the extent permitted by the Security Agreement, to enforce directly against the Consenting Party all obligations of the Consenting Party under each of the Assigned Agreements and otherwise to exercise all remedies thereunder and to make all demands and give all notices and make all requests and take all actions required or permitted to be made by the Assignor under the Assigned Agreements; *provided*, (1) that nothing herein shall require the Trustee or such designee or assignee to cure any default of the Assignor under any of the Assigned Agreements or to perform any act, duty or obligation of the Assignor under any of the Assigned Agreements, and, (2) the Consenting Party's obligations under the Assigned Agreements shall in all cases be subject to the Consenting Party's rights and defenses under the Assigned Agreements, except to the extent expressly modified by this Agreement.

(b) Right to Cure. The Consenting Party shall not cancel or terminate any of the Assigned Agreements, or suspend its performance or any of its obligations thereunder, on account of any failure, default or breach of the Assignor, or any other event or condition, without first giving written notice of such default to the Trustee or its assignee or designee pursuant to the applicable provisions of the Assigned Agreements and affording such party the same period of time afforded the Assignor under the Assigned Agreements to perform any obligation required of the Assignor or necessary and proper to cure such default; *provided* that if such default is a non-monetary default and the nature of the default is such that the same cannot be cured within such time period, the Consenting Party shall allow such longer time period as is required (not to exceed thirty (30) additional days) beyond the time period in the Assigned Agreements so long as Trustee or its designee of assignee has commenced and is diligently pursuing a cure to such default. If possession of the Project is necessary to cure any non-monetary default, failure, breach or other event or condition, and so long as there are no uncured monetary defaults, and the Trustee has commenced foreclosure or other appropriate proceedings to obtain possession of the Project, the Trustee shall be allowed a reasonable time (not to

exceed a total of sixty (60) additional days beyond the time period in the Assigned Agreements) to complete such proceedings before the time periods specified herein for curing a failure, default, breach or other event or condition commences. If the Trustee is prohibited from curing any non-monetary failure, default, breach or other event or condition by any process, stay or injunction issued by any governmental authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving the Assignor, and there are no uncured monetary defaults, then the time periods specified in the Assigned Agreements for curing such failure, default, breach or other event or condition shall be extended a reasonable time (not to exceed a total of one hundred eighty (180) additional days beyond the time period in the Assigned Agreements) during the pendency of such prohibition, provided, however, that Trustee shall reimburse Consenting Party for any additional costs resulting from the additional days allowed beyond the time period in the Assigned Agreements."

(c) Substitute. In the event that the Trustee (or its designee or assignee pursuant to Section 4(e)) succeeds to the Assignor's interest under the Assigned Agreements, whether by foreclosure or otherwise, and the Trustee or its designee or assignee assumes liability for all of the Assignor's obligations under the Assigned Agreements, and cures any outstanding monetary defaults, the Trustee or its designee or assignee shall be substituted for the Assignor under each of the Assigned Agreements and the Consenting Party shall recognize the substitute and will continue to perform its obligations under the Assigned Agreements in favor of the substitute party. Upon the effective date of the substitution, the Assignor shall be released from its obligations arising under the Assigned Agreements thereafter, and cease to be a party to, the Assigned Agreements to the extent of such assignment.

(d) New Assigned Agreement(s). In the event that (i) any of the Assigned Agreements is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding involving the Assignor or (ii) any of the Assigned Agreements is terminated as a result of any bankruptcy or insolvency proceeding involving the Assignor, and if within sixty (60) days after such rejection or termination, the Trustee (or its designee or assignee pursuant to Section 4(e)) shall so request and shall certify in writing to the Consenting Party that it intends to perform the obligations of the Assignor as and to the extent required under the respective Assigned Agreement and cure any outstanding monetary defaults, the Consenting Party shall execute and deliver to the Trustee or such designee or assignee such a new agreement ("new Assigned Agreement"), pursuant to which the Consenting Party shall agree to perform the obligations contemplated to be performed by the Consenting Party under the respective original Assigned Agreement and which shall be for the balance of the remaining term and for the obligations and services remaining to be performed under such original Assigned Agreement before giving effect to such rejection or termination and shall contain the same conditions, agreements, terms, provisions and limitations as such original Assigned Agreement, provided that the rights and obligations of the Consenting Party under the new Assigned Agreement shall be equitably adjusted to reflect the effects of the rejection or termination (including any passage of time between the rejection or termination and the effectiveness of the new Assigned Agreement).

(e) Right to Assignment. The Trustee or its assignee or designee may assign any rights and interests it may have as substitute party pursuant to Section 4(c) hereof or as a party to a new Assigned Agreement or new Assigned Agreements, as applicable, pursuant to Section 4(d) hereof to any purchaser or transferee of the Project, if such purchaser or transferee shall assume all of the obligations of the Assignor under the Assigned Agreements in writing, and the Trustee or its assignee or designee shall be relieved of all its obligations arising under the Assigned Agreements upon such assignment and assumption; *provided however*, that the Consenting Party shall have reasonably determined that the purchaser or transferee has the technical and financial capability to perform the Assignor's obligations under the Assigned Agreements, or if a proposed purchaser or transferee lacks such technical capability, such purchaser or transferee shall have contracted with advisers who possess such capability. The Consenting Party hereby agrees to be bound by any such assignment and assumption.

(f) No Obligations. Nothing herein shall require the Trustee or its assignee or designee to perform any of the Assignor's obligations or cure any default under any of the Assigned Agreements except during any period in which the Trustee or its assignee or designee is a substitute party pursuant to Section 4(c) hereof or has entered into a replacement agreement or agreements pursuant to Section 4(d) hereof, in which case the obligations of such party shall be those of the Assignor under the applicable Assigned Agreement. In the event that the Trustee or its assignee or designee so elects to perform any such obligations, other than in connection with Section 4(c) or 4(d), it shall not have any personal liability to the Consenting Party for the performance of the Assignor's obligations under the relevant Assigned Agreement, it being understood that the sole recourse of the Consenting Party shall be limited to the entire interest of the Assignor and its assets.

(g) No Consent Required. A foreclosure or other exercise of remedies under the Security Agreement or any sale thereunder by the Trustee or its assignee or designee, whether by judicial proceedings or under any power of sale contained therein, or any conveyance from the Assignor to the Trustee or such assignee or designee, in lieu thereof, shall not in any event require the consent of the Consenting Party.

(h) Limitation on Amendments. The Consenting Party shall not, without the prior written consent of the Trustee, enter into any amendment, supplement or other modification of any of the Assigned Agreements except as expressly contemplated by such Assigned Agreement.

(i) Notices. The Consenting Party shall deliver to the Trustee at the addresses set forth on the signature pages hereof, or at such other address as the Trustee may designate in writing from time to time to the Consenting Party, concurrently with the delivery thereof to the Assignor, a copy of each notice of default and each other similar material notice or demand or request given by the Consenting Party pursuant to the applicable Assigned Agreement, and the applicable time periods under Section 4(b) hereof shall commence to run against the Trustee only from the date such notice is provided.

5. Payments Under the Assigned Agreements. If instructed to do so by the Trustee in writing, the Consenting Party will pay all amounts thereafter payable by it under the Assigned Agreements directly to the Trustee, on behalf of the Secured Parties, pursuant to the payment provisions in the Assigned Agreements to such person or account as shall be specified from time to time by the Trustee to the Consenting Party in writing. By its acceptance and agreement to this Agreement, the Assignor, for itself and its successors and permitted assigns, consents to the making by the Consenting Party of payments as provided in the previous sentence.

6. Miscellaneous.

(a) Notices. All notices to be given under this Agreement shall be in writing and shall be delivered personally, sent by certified or registered first-class mail, postage prepaid, or dispatched by facsimile or courier to the intended recipient at its address as set forth on the signature pages below. All payments to be made under this Agreement shall be made by wire transfer of immediately available funds or check representing immediately collectible funds to the account or address of the intended recipient as set forth on the signature pages hereto, unless the recipient has given notice of another address or account for receipt of notices or payments.

(b) Governing Law; Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of New York. The Consenting Party and the Trustee, on its own behalf and on the behalf of any assignee or designee and their respective permitted successors and assigns hereunder, hereby irrevocably waive all right of trial by jury in any action, proceeding or counterclaim arising out of or in connection with this Agreement or any matter arising hereunder.

(c) Headings. The headings of the several sections and subsections of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

(d) Severability. In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

(e) Amendment, Waiver. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by the Consenting Party and the Trustee (at the direction of the Secured Parties).

(f) Successors and Assigns. This Agreement shall be binding upon the Consenting Party and its permitted successors and assigns and shall inure to the benefit of the Trustee, on behalf of the Secured Parties, its permitted assignees, designees and their respective permitted successors and assigns, and any holder of any debt that amends, restates or refinances the debt of the Assignor relating to the Financing Documents. Nothing contained in this Agreement is intended to limit the right of any Secured Party to

assign, transfer, or grant participations in its rights in its respective Bond Obligations and the Financing Documents.

(g) Further Assurances. The Consenting Party hereby agrees to execute and deliver all such instruments and take all such action as may be necessary to effectuate fully the purposes of this Agreement.

(h) Counterparts. This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.

[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the undersigned by its officer duly authorized has caused this Agreement to be duly executed and delivered as of the first date written above.

DENVER TRANSIT OPERATORS, LLC

By: _____
Name: _____
Title: _____

Address for Notices:

With a copy to:

DENVER TRANSIT PARTNERS, LLC

By: _____
Name: David Parker
Title: Authorized Signatory

By: _____
Name: Chris Voyce
Title: Authorized Signatory

By: _____
Name: Charles Nuttall-Smith
Title: Authorized Signatory

Address for Notices:
Denver Transit Partners, LLC
c/o Gregory J. Amparano
General Manager
Denver Transit Holdings, LLC
999 18th Street, Suite 1201 North
Denver, Colorado 80202

with a copy to:

Nicholas Hann
Executive Director

Macquarie Capital Advisors
Suite 2400, Bentall 5
550 Burrard Street
Vancouver, BC V6C 2B5
Canada

THE BANK OF NEW YORK MELLON TRUST COMPANY N.A.

By: _____
Name: _____
Title: _____

Address for Notices:

With a copy to:

Exhibit P

Specified Requirements

PART A

SPECIFIED REQUIREMENTS

The Eagle Project shall comply with, and Operator and its Subcontractors will perform their respective obligations under this Agreement and the Subcontracts in accordance with, the following applicable requirements. References in this Exhibit P to Concessionaire's obligation to perform, comply with or otherwise act in relation to the Specified Requirements shall be deemed to be the obligation of Operator to so perform, comply with or act (or to cause its Subcontractors to so perform, comply with or act).

1. SPECIFIED REQUIREMENTS APPLICABLE TO ALL PROJECT CONTRACTS

1.1 Protection of Security Sensitive Information and Critical Infrastructure Information

All applicable provisions of 49 CFR Part 1520 and 6 CFR Part 29 and all applicable FTA guidance, including FTA Resource Document for Transit Agencies, "Sensitive Security Information (SSI): Designation, Markings, and Control, Resource Document for Transit Agencies" (March 2009), as may be amended, and all Department of Homeland Security (DHS) directives, including DHS Management Directive System MD Number: 11042.1, "Safeguarding Sensitive but Unclassified (For Official Use Only) Information" (January 6, 2005) as may be amended.

2. SPECIFIED REQUIREMENTS APPLICABLE TO ALL DESIGN/BUILD AND ROLLING STOCK SUPPLY CONTRACTS AND SUBCONTRACTS

2.1 FTA terms

All contractual provisions required by the U.S. Department of Transportation (***USDOT***), as set forth in FTA Circular 4220.1F.

2.2 FTA regulations and policies

All applicable FTA regulations, policies, procedures and directives, including those listed directly in or referred to in the current FTA Master Agreement, from time to time during the term of this Agreement.

2.3 Debarment

(i) Federal Executive Order no. 12549 (Feb. 18, 1986), (ii) Federal Executive Order no. 12689 (Aug. 16, 1989), (iii) 31 U.S.C. § 6101 note (Section 2455, Pub. L. 103-355, 108 Stat. 3327) and (iv) 49 CFR Part 29 "Governmentwide Debarment and Suspension (Nonprocurement)".

2.4 Lobbying

31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995) and 31 U.S.C. 3801, *et seq.*

2.5 **Program Fraud and False or Fraudulent Statements and Related Acts**

The provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and USDOT regulations, "Program Fraud Civil Remedies", 49 CFR Part 31.

2.6 **Civil Rights**

(a) 49 U.S.C. § 5332 (Nondiscrimination in Federal Public Transportation Programs);

(b) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d *et seq.*, and with USDOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act", 49 CFR Part 21;

(c) All applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 *et seq.*, and any Federal regulations that prohibit discrimination on the basis of sex that may be applicable;

(d) The Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 *et seq.*, and any U.S. Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance", 45 CFR Part 90;

(e) The Age Discrimination in Employment Act, 29 U.S.C. §§ 621 through 634 and any U.S. Equal Employment Opportunity Commission implementing regulations, "Age Discrimination in Employment Act", 29 CFR Part 1625;

(f) All equal employment opportunity provisions of 49 U.S.C. § 5332, with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Federal implementing regulations and any subsequent amendments thereto, except to the extent FTA determines otherwise in writing, and any applicable Federal equal employment opportunity directives that may be issued from time to time; and

(g) All applicable equal employment opportunity requirements of U.S. Department of Labor regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor", 41 CFR Parts 60 *et seq.*, which implement Executive Order No. 11246, "Equal Employment Opportunity", as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity", 42 U.S.C. § 2000e, and also with any Federal laws, regulations, and directives that may in the future affect construction undertaken as part of the Eagle Project.

2.7 **Fly America Requirements**

49 U.S.C. § 40118 (the ***Fly America Act***) and the General Services Administration's regulations at 41 CFR Part 301-10.

2.8 **Access Requirements For Persons With Disabilities**

(a) 49 U.S.C. § 5301(d);

(b) All applicable provisions of Section 504 of the Rehabilitation Act of 1973, as amended by 29 U.S.C. § 794;

(c) The Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101 *et seq.*; and

(d) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*.

2.9 **Energy Conservation Requirements**

(a) All applicable mandatory energy efficiency standards and policies within applicable State energy conservation plans issued in accordance with the Energy Policy and Conservation Act, 42 U.S.C. §§ 6321 *et seq.*; and

(b) The Requirements of FTA regulations, "Requirements for Energy Assessments", 49 CFR Part 622, Subpart C.

2.10 **Clean Water Requirements**

All applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 *et seq.*

The Concessionaire shall report all violations thereof to RTD, to FTA and to the appropriate Environmental Protection Agency Regional Office.

2.11 **Clean Air Requirements**

All applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.*

The Concessionaire shall report all violations to RTD, to FTA and to the appropriate Environmental Protection Agency Regional Office.

2.12 **Contract Work Hours and Safety Standards Act**

All applicable requirements of the Contract Work Hours and Safety Standards Act 40 U.S.C. 3702 *et seq.*, and all applicable implementing regulations.

2.13 **Seismic Safety Requirements**

The standards for Seismic Safety required in USDOT Seismic Safety Regulations, 49 CFR Part 41j.

2.14 **Davis-Bacon and Copeland Anti-Kickback Acts**

The provisions of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 and any rulings and interpretations issued by the Secretary of the United Stated Department of Labor.

2.15 **Compliance with Copeland Act requirements**

The requirements of 29 CFR Part 3.

2.16 **Recycled Products**

All requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended by 42 U.S.C. 6962, including the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

2.17 **Buy America**

49 U.S.C. 5323(j) and 49 CFR Part 661.

2.18 **Cargo Preference Requirements**

All applicable requirements of 42 U.S.C. 1241 and 46 CFR 381.

2.19 **Pre-Award and Post-Delivery Audit Requirements**

49 U.S.C. § 5323(m) and FTA regulations "Pre-Award and Post Delivery Audits of Rolling Stock Purchases" at 49 CFR Part 663.

3. SPECIFIED REQUIREMENTS APPLICABLE TO THE O&M CONTRACTOR AND THE O&M SUBCONTRACTORS

3.1 **Privacy Act**

The information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a.

3.2 **Background Checks, Redress and Immigration Status**

All applicable provisions contained in 49 C.F.R. Parts 1570, 1572, and 1580, as well as all relevant FTA, Department of Homeland Security (DHS) and Transportation Security Administration (TSA) guidance, including FTA guidance, "Transit Agency Security and Emergency Management Protective Measures" (November 2006), and joint FTA/TSA guidance, "TSA/FTA Security and Emergency Management Action Items for Transit Agencies" (December 2006), each as supplemented by TSA guidance "Additional Guidance on Background Checks, Redress and Immigration Status".

PART B

DISADVANTAGED AND SMALL BUSINESS ENTERPRISES PROGRAMS

1. DEFINITIONS

Unless the context requires otherwise, capitalized terms used in this Part B of Exhibit P shall have the meanings given to them in Section 1.1 (*Definitions*) of the Concession Agreement. In addition, the following capitalized terms shall have the meanings set out below:

DBE Goals has the meaning given to it in Section 3.1(c)(i) of this Part B of Exhibit P.

DBE/SBE Enclosures means the certificates and forms attached to this Exhibit P at Annex 2 (*DBE/SBE Enclosures*).

DBE/SBE Liaison Officer means a representative of the Concessionaire having management responsibility for implementing, managing and reporting on achievement of the DBE Goals and the SBE Goals, communicating subcontracting, business development and supportive services activity at all tiers, ensuring compliance with the non-discrimination provisions and the affirmative action and equal employment opportunity provisions.

DBE/SBE Participation Report has the meaning given to it in Section 3.4(a) of this Part B of Exhibit P.

Design/Build DBE/SBE Plan means a plan, prepared by or on behalf of the Concessionaire, that:

(a) identifies the Concessionaire's proposed DBE/SBE Liaison Officer;

(b) describes how the Concessionaire plans to satisfy the requirements of Sections 2 and 3 of this Part B of Exhibit P, including achievement of the DBE Goals and the SBE Design/Build Goals, including a description of:

(i) the DBE Qualifying Work that will be subcontracted out to DBEs and the total Dollar value of such DBE Qualifying Work;

(ii) the SBE Qualifying Work that will be subcontracted out to SBEs and the total Dollar value of such SBE Qualifying Work;

(iii) how such Subcontracts will be procured;

(iv) all business development initiatives, support services, mentoring programs, outreach and recruitment strategies and other similar initiatives relating to the DBE and SBE communities; and

(v) strategies to implement and enforce compliance by Prime Contractors with the DBE Goals and the SBE Design/Build Goals; and

(c) identifies those transit vehicle manufacturers with whom the Rolling Stock Supplier intends to contract which are DBEs;

(d) identifies those DBEs and SBEs the Concessionaire intends to utilize during the relevant period and the Dollar value of each proposed DBE and SBE contract; and

(e) includes DBE/SBE Enclosures in respect of each of the DBEs and SBEs identified in the plan (to the extent not already submitted with a previous version of the plan).

DBE Qualifying Work means:

(a) 100% of the design and construction of Early Work;

(b) 100% of the design and construction of the East Corridor Project;

(c) 100% of the design and construction of the Gold Line Project;

(d) 100% of the design and construction of 41st/Fox Street and Pecos Street stations; and

(e) 100% of the design and construction of the Commuter Rail Maintenance Facility.

Disadvantaged Business Enterprise or ***DBE*** means a Small Business Enterprise:

(a) that is at least 51% owned by one or more individuals who are Socially and Economically Disadvantaged or, in the case of a corporation, in which 51% of the stock is owned by one or more Socially and Economically Disadvantaged individuals;

(b) whose management and daily operations are controlled by one or more of the Socially and Economically Disadvantaged individuals who owns it; and

(c) that is:

(i) certified as a "Disadvantaged Business Enterprise" by either the Office of Certification of the Colorado Department of Certification (***CDOT-OC***) or the City and County of Denver Office of Economic Development (***CCD-OED***);

(ii) certified as a "Small Disadvantaged Business" or accepted into the HUBZone Program or the 8(a) Business Development Program, in each case by the United States Small Business Administration (the ***SBA***) and certified as a "Disadvantaged Business Enterprise" by CDOT-OC or CCD-OED; or

(iii) certified as a "Disadvantaged Business Enterprise" in any state other than the State of Colorado; provided that a DBE application has been submitted to and is pending with either CDOT-OC or CCD-OED and such application is subsequently approved.

Initial Design/Build DBE/SBE Plan means the Design/Build DBE/SBE Plan submitted as part of the Concessionaire's Technical Proposal.

O&M SBE Plan means a plan, prepared by or on behalf of the Concessionaire, that:

(a) describes how the Concessionaire plans to satisfy the requirements of Sections 2 and 4 of this Part B of Exhibit P, including achieving the SBE O&M Goal, including a description of:

(i) the services under the Agreement that will be subcontracted out to SBEs during the Operating Period and the total Dollar value of such services;

(ii) how such Subcontracts will be procured;

(iii) all business development initiatives, support services, mentoring programs, outreach and recruitment strategies and other similar initiatives relating to the SBE communities; and

(iv) strategies to implement and enforce compliance by Prime Contractors with the SBE O&M Goal; and

(b) identifies those SBEs the Concessionaire intends to utilize during the relevant period and the Dollar value of each proposed SBE contract; and

(c) includes DBE/SBE Enclosures in respect of each of the SBEs identified in the plan (to the extent not already submitted with a previous version of the plan).

Prime Contractor means any Project Contractor or Subcontractor that contracts with a DBE or SBE for performance of the DBE Qualifying Work, the SBE Qualifying Work or the services to be provided during the Operating Period, as applicable.

SBE Category means each of the following:

(a) SBE Category 1: SBEs with gross receipts less than $1 Million;

(b) SBE Category 2: SBEs with gross receipts between $1 Million and $5 Million;

(c) SBE Category 3: SBEs with gross receipts between $5 Million and $10 Million; and

(d) SBE Category 4: SBEs with gross receipts in excess of $10 Million.

SBE Design/Build Goals has the meaning given to it in Section 3.1(c)(ii) of this Part B of Exhibit P.

SBE Goals means, collectively, the SBE Design/Build Goals and the SBE O&M Goal.

SBE O&M Goal has the meaning given to it in Section 4.1 of this Part B of Exhibit P.

SBE Participation Report has the meaning given to it in Section 4.4(a) of this Part B of Exhibit P.

SBE Qualifying Work means:

(a) 100% of the design and construction of the NWES;

(b) 100% of the design and construction of the DUS to CRMF; and

(c) 100% of the installation of the DUS Systems, including the integration of the DUS Systems with the DUS Rail Segment.

Small Business Enterprise or ***SBE*** means a for-profit small business enterprise, as defined pursuant to section 3 of the Small Business Act and the Small Business Administration

implementing regulations (13 CFR Part 121) that does not exceed the cap on average annual gross receipts specified in 49 CFR §26.65(b) and that is certified as a "Small Business Enterprise" by RTD.

Small Business Opportunity Office or ***SBOO*** means the RTD department responsible for administering the DBE and SBE programs.

Socially and Economically Disadvantaged has the meaning given to it by 49 CFR 26.67.

2. GENERAL REQUIREMENTS

2.1 DBE and SBE Policy

(a) The Concessionaire shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement.

(b) The Concessionaire shall comply with and implement applicable requirements of 49 CFR Part 26 in the award and administration of contracts and Subcontracts under this Agreement.

(c) Failure by the Concessionaire to comply with or implement these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as RTD deems appropriate.

(d) RTD's commitment to the DBE Goals and the SBE Goals is not intended to, and shall not be used as a justification to, discriminate against any qualified company or group of companies.

2.2 DBE/SBE Liaison Officer

The Concessionaire shall designate a DBE/SBE Liaison Officer who shall be responsible for the following:

(a) day-to-day operational components of the DBE Program and the SBE Program:

(b) effectively responding to and reporting to the SBOO any DBE and SBE inquiries;

(c) submitting executed DBE and SBE Subcontracts and any subsequent material amendments thereto to the SBOO;

(d) interfacing with the SBOO regarding DBEs and SBEs issues and approvals; and

(e) carrying out or implementing technical assistance activities so that the playing field is level for DBEs and SBEs.

The DBE/SBE Liaison Officer shall submit a written monthly report detailing the activities and documentation of good faith efforts of the previous month as well as submitting DBE Participation Reports and SBE Participation Reports and shall schedule monthly meetings with the SBOO to address any issues or concerns.

2.3 **Prompt Payment of DBE and SBE Subcontractors**

The Concessionaire shall ensure that:

(a) each Prime Contractor shall pay its respective DBE and SBE Subcontractors any undisputed amount owed to such Subcontractor within 30 days of receipt by such Prime Contractor of a duly submitted invoice for payment, regardless of whether such Prime Contractor has been paid for such invoice;

(b) approval of invoices is not unreasonably delayed and that invoices shall be either approved or rejected with written notice of deficiency or dispute to the payee Subcontractor within ten days of receipt of invoice by the Prime Contractor; and

(c) each Prime Contractor makes prompt and full payment of any retainage kept by such Prime Contractor to its respective DBE or SBE Subcontractors within 30 days after such DBE's or SBE's work has been completed.

2.4 **Defaulting DBE or SBE Subcontractors/Termination of Subcontracts**

(a) The Concessionaire shall notify the SBOO immediately of a DBE's or SBE's inability to perform and/or of the intent to obtain a substitute DBE or SBE, as applicable. The Concessionaire shall provide the SBOO with reasonable documentation of the defaulting DBE's or SBE's inability to perform or the basis for the request for substitution, as well as any good faith efforts to avoid such termination or substitution.

(b) The Concessionaire shall make good faith efforts to engage another DBE or SBE, as applicable, to perform at least the equivalent amount of work. The proposed substitute DBE or SBE must receive prior approval from the SBOO prior to entering into a Subcontract with a Prime Contractor. The Concessionaire shall not and shall procure that no Prime Contractor shall perform the work of a substituted DBE or SBE without prior approval of the SBOO unless that Prime Contractor is itself a DBE or SBE Subcontractor.

(c) The Concessionaire shall provide the relevant DBE/SBE Enclosures for each new DBE or SBE.

2.5 **Good Faith Efforts**

RTD will follow the procedures set forth in 49 CFR. 26.53 and Appendix A to 49 CFR Part 26 in determining whether the Concessionaire has demonstrated good faith efforts in meeting the DBE Goals and the SBE Goals.

2.6 **Changes**

The DBE Goals and the SBE Goals shall apply to the performance of all relevant obligations under this Agreement, including any Changes implemented pursuant to Section 36 (*Changes*) of the Agreement.

3. DESIGN/BUILD PERIOD REQUIREMENTS

3.1 **Design Build Period Goals**

During the Design/Build Period, the Concessionaire shall:

(a) comply, and require that the Design/Build Contractor and the Design/Build Subcontractors (excluding the Rolling Stock Supplier and its Subcontractors) comply, with the requirements of 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs";

(b) ensure that the Rolling Stock Supplier and its Subcontractors comply with the requirements of Section 23.67 of Subpart D to 49 CFR Part 26, "Participation by Minority Business Enterprises in Department of Transportation Programs", provide RTD with copies of all documentation transmitted to FTA in accordance therewith, and promptly notify RTD if the goals proposed by the Rolling Stock Supplier have been disapproved by FTA; and

(c) meet:

(i) the following goals for DBE participation in the DBE Qualifying Work (the ***DBE Goals***):

(A) that at least 19% (calculated by Dollar value) of the DBE Qualifying Work (less the Dollar amount to be paid under the Rolling Stock Supply Contract) relating to design services and/or supplies, be performed by DBEs; and

(B) that at least 20% (calculated by Dollar value) of DBE Qualifying Work (less the Dollar amount to be paid under the Rolling Stock Supply Contract) relating to construction services and/or supplies, be performed by DBEs.

(ii) the following goals for SBE participation in the SBE Qualifying Work (the ***SBE Design/Build Goals***):

(A) that at least 19% (calculated by Dollar value) of the SBE Qualifying Work relating to design services and/or supplies, be performed by SBEs; and

(B) that at least 18% (calculated by Dollar value) of SBE Qualifying Work relating to construction services and/or supplies, be performed by SBEs; or

(d) demonstrate that it has made good faith efforts to meet the DBE Goals or the SBE Design/Build Goals, as applicable.

3.2 **Design/Build DBE/SBE Plan**

(a) The Concessionaire shall:

(i) upon occurrence of the earlier of the Early Work Effective Date or the Phase 1 Effective Date, implement the Initial Design/Build DBE/SBE Plan;

(ii) no later than 30 days after the earlier of the Early Work Effective Date or the Phase 1 Effective Date, enter into, and/or ensure that each Prime Contractor enters into Subcontracts or issues purchase orders to all DBEs and SBEs identified in the Initial Design/Build DBE/SBE Plan; and

(iii) within 30 days after their execution, forward electronic copies of any DBE or SBE Subcontracts or purchase orders entered into during the Design/Build Period to the SBOO.

(b) No later than October 1 of each year during the Design/Build Period, the Concessionaire shall prepare and submit to RTD an updated Design/Build DBE/SBE Plan for the following period of two calendar years.

3.3 **Distribution of SBE Design/Build Goals**

The Concessionaire shall make good faith efforts to distribute:

(a) the SBE Design/Build Goal referred to in Section 3.1(c)(ii)(A) among SBEs in the different SBE Categories as follows:

(i) SBE Category 1: 7%;

(ii) SBE Category 2: 5%;

(iii) SBE Category 3: 4%; and

(iv) SBE Category 4: 3%; and

(b) the SBE Design/Build Goal referred to in Section 3.1(c)(ii)(B) among the SBE Categories as follows:

(i) SBE Category 1: 5%;

(ii) SBE Category 2: 5%;

(iii) SBE Category 3: 5%; and

(iv) SBE Category 4: 3%.

(c) The Concessionaire may utilize a lower-value SBE Category firm to meet the requirement of a higher value SBE Category, but not vice versa. However, the Concessionaire may submit to the SBOO a proposal to meet the SBE Design/Build Goal

for a lower value SBE Category through the use of a joint venture comprising multiple lower-value SBE Category firms, notwithstanding that such joint venture may meet the criteria for a higher-value SBE Category. All such proposals are subject to the approval of the SBOO.

3.4 **Reporting Requirements**

(a) The Concessionaire shall submit, and shall ensure that each Prime Contractor submits, at least monthly a participation report (a ***DBE/SBE Participation Report***) in the form set out in Annex 1 (*Form of DBE/SBE Participation Report*) to this Exhibit P. The Concessionaire shall submit each completed DBE/SBE Participation Report to RTD with its corresponding Monthly Progress Report.

(b) The Concessionaire acknowledges that the SBOO has the right to independently confirm the information contained in the submitted DBE/SBE Participation Reports by soliciting such information from each DBE and SBE Subcontractor. The Concessionaire shall not attempt to dissuade any such DBE/SBE Subcontractor from disclosing any such information to the SBOO.

(c) At the end of the Design/Build Period, the Concessionaire shall submit to RTD a summary of payments made to all DBEs and SBEs.

4. OPERATING PERIOD REQUIREMENTS

4.1 **Operating Period Goals**

During the Operating Period, the Concessionaire shall meet, or demonstrate that it has made good faith efforts to meet, the goal (the ***SBE O&M Goal***) that at least 17% (calculated by Dollar value) of the services to be performed under the Agreement during the Operating Period be performed by SBEs.

4.2 **O&M SBE Plan**

No later than October 1, 2014, and thereafter no later than October 1 of each year until the end of the Operating Period, the Concessionaire shall prepare and submit to RTD an O&M SBE Plan for the following period of two calendar years. The Concessionaire shall forward to the SBOO electronic copies of any DBE or SBE Subcontracts or purchase orders entered into during the Operating Period within 30 days after their execution.

4.3 **Distribution of SBE O&M Goal**

(a) The Concessionaire shall make good faith efforts to distribute the SBE O&M Goal referred to in Section 4.1 among SBEs in the different SBE Categories as follows:

(i) SBE Category 1: 5%;

(ii) SBE Category 2: 5%;

(iii) SBE Category 3: 4%; and

(iv) SBE Category 4: 3%.

(b) The Concessionaire may utilize a lower-value SBE Category firm to meet the requirement of a higher value SBE Category, but not vice versa. However, the Concessionaire may submit to the SBOO a proposal to meet the SBE O&M Goal for a lower value SBE Category through the use of a joint venture comprising multiple lower-value SBE Category firms, notwithstanding that such joint venture may meet the criteria for a higher-value SBE Category. All such proposals are subject to the approval of the SBOO.

4.4 **Reporting Requirements**

(a) The Concessionaire shall submit, and shall ensure that each Prime Contractor submits, at least monthly a participation report (an ***SBE Participation Report***) in the form set out in Annex 1 (*Form of DBE/SBE Participation Report*) to this Exhibit P. The Concessionaire shall submit each completed SBE Participation Report to RTD with its corresponding Monthly Operating Report.

(b) The Concessionaire acknowledges that the SBOO has the right to independently confirm the information contained in the submitted SBE Participation Reports by soliciting such information from each SBE Subcontractor. The Concessionaire shall not attempt to dissuade any such SBE Subcontractor from disclosing any such information to the SBOO.

(c) Upon expiry of the Concession Period, the Concessionaire shall submit to RTD a summary of payments made to all SBEs.

ANNEX 1

FORM OF DBE/SBE PARTICIPATION REPORT

DENVER REGIONAL TRANSPORTATION DISTRICT

PRIME CONTRACTOR MONTHLY REPORT OF DBE/SBE PARTICIPATION
Form E Report

CONTRACT INFORMATION:

Original Contract Value:
Change Orders Values:
Final Contract Value:
Total Payments Received To Date:
Payments Received This Month:
Start Date:
Completion Date:

Contract Duration:
Project Ref. No.:
Report for Month of:
Name and Location of Project:
Name and Address of Prime Contractor:

Respond "Yes" or "No" to the Questions Below:

Did your firm or an affiliate rent or lease equipment to a DBE/SBE? _____
Did any DBE/SBE utilize employees(or former employees) of your firm or an affiliate? _____
Did any DBE/SBE subcontract any portion of its work to a non-DBE/SBE since the last report firm? _____
Has the scope of work or subcontract amount changed for any DBE/SBE since the last report? _____

Name of Subcontractor	Project Task	CERT #	Original Contract Amount	Original Contract +/- Amount C.O.	Payment This Month	Previous Payments	Total Payments	Pending C.O.'s Amount and Date	Overall Work Completed %	Contract P.O. Submitted
TOTAL			$ -	$ -	$ -	$ -	$ -	$ -		

COMMENTS:

Prime Contractor

Compliance Officer: _____ Telephone: _____

Signature: _____ Date: _____

By signing this form, I personally and on behalf of the contractor affirm that the information presented in this document is truthful, accurate, complete and not misleading.

SEND COMPLETED FORM TO:
Regional Transportation District - 1600 Blake Street, Denver, Colorado 80202
If You Need Assistance In Filling Out This Form, Please Contact Kenn Hardin
at (303) 299-2111

ANNEX 2 – DBE/SBE ENCLOSURES

PART I – SCHEDULE OF DBE/SBE SUBCONTRACTOR PARTICIPATION

NAME OF CONCESSIONAIRE: Denver Transit Partners, LLC

Regarding: RTD FasTracks Contract No. 18FH012 for the design, construction, financing, operation and maintenance of the Eagle Project.

Total cost of the DBE/SBE Qualifying Work: US$_____

NAME AND ADDRESS OF [DBE/SBE]	TYPE OF WORK (ELECTRICAL, PAVING, ETC.) AND CONTRACT ITEMS OR PART THEREOF TO BE PERFORMED BY [DBE/SBE]	PROJECTED START & COMPLETION DATES FOR [DBE/SBE]	AGREED PRICE TO BE PAID TO [DBE/SBE]

1. A current [DBE/SBE] certification for each listed [DBE/SBE] must accompany this enclosure. Failure to provide proof of current [DBE/SBE] certification for any or all listed [DBEs/SBEs] will eliminate such listed [DBE/SBE]'s participation, and work performed by such DBE/SBE will not count towards satisfaction of the [DBE/SBE] Goals. If additional pages are required to list all contracted [DBE/SBE], photocopy this enclosure as required to make a complete list.

2. Contracts with DBEs for materials or supplies will be counted toward the DBE Goals as follows:

(i) materials or supplies obtained from a DBE manufacturer will be counted at 100% toward the DBE Goals; and

(ii) materials or supplies obtained from a DBE regular dealer will be counted at 60% toward the DBE Goals. Please refer to 49 CFR §26.55 for specifics with respect to how DBE participation is counted toward DBE Goals.

PART II – LETTER OF INTENT TO PERFORM AS A SUBCONTRACTOR

Regarding: Contract No. 18FH012 for the design, construction, financing, operation and maintenance of the Eagle Project.

The undersigned Denver Transit Partners, LLC (the ***Contractor***) intends to engage the undersigned [DBE/SBE] to perform work in connection with the Eagle Project pursuant to a contract (the [***DBE/SBE***] ***Contract***) between the Contractor and the [DBE/SBE] as [*check one*]:

_____ an individual _____ a corporation

_____ a partnership _____ a joint venture

The [DBE/SBE] status of the undersigned [DBE/SBE] is confirmed on the attached schedule of [DBE/SBE] participation and represents a company that is certified as of the date on which the [DBE/SBE] Contract is executed.

Item	Projected Commencement Date	Projected Completion Date	COST

_____% of the Dollar value of the [DBE/SBE] Contract will be sublet and/or awarded to non-[DBE/SBE] contractors and/or non-[DBE/SBE] suppliers.

_____ _____
NAME OF CONTRACTOR NAME OF [DBE/SBE]

_____ _____
SIGNATURE SIGNATURE

_____ _____
TITLE DATE TITLE DATE

PART III – SOLICITATION STATISTICS

RTD is required to create and maintain bidder statistics for all firms bidding on prime contracts and bidding or quoting Subcontracts on USDOT-assisted projects per 49 CFR Part 26.11. The Concessionaire is required to make copies of this form, send a copy with their initial contact to each Subcontractor (both DBEs and SBEs and non-DBEs and non-SBEs) and require each Subcontractor to return a completed form with their Subcontract bid to the Concessionaire. The Concessionaire must include these completed forms with each submission of the DBE/SBE Design/Build Plan and the O&M SBE Plan, as applicable.

Firm Name:

Firm Address (Office Reporting):

Status as a DBE or Non-DBE (check one):

DBE_____ Non-DBE SBE_____ Neither DBE nor SBE_____

Annual Gross Receipts of the Firm: (check one):

U.S.$0 to U.S.$500,000_____ U.S.$500,000 to U.S.$1,000,000_____ U.S.$1 Million to U.S.$5 Million_____

U.S.$5 Million to U.S.$10 Million_____U.S.$10 Million to U.S.$20.41 Million_____ Above U.S.$20.41 Million_____

Age of the firm: _____

Signature: _____
Name:
Title:
Date: _____

EMPLOYER CERTIFICATION OF WORKFORCE

The undersigned certifies that he/she is legally authorized to make the statements and representations contained in this report and that the statements and representations contained herein are true and correct to the best of his/her knowledge and belief.

Firm Name:

Signature: _____
Name:
Title:

Date of Execution: _____

Please note that this data may be obtained by visual survey or post-employment records. Neither visual surveys nor post-employment records are prohibited by Federal, State or local law. All specified data are required to be filled in by law. Current utilization as of _____:

Job Categories	*Total Employees in Establishment*			M = Male								F = Female			
	Total Employees Including Minorities	Total Male Employees Including Minorities	Total Female Employees Including Minorities	Black Americans		Hispanic Americans		Native Americans		Asian-Pacific Americans		Subcontinent Asian Americans		Other	
				M	F	M	F	M	F	M	F	M	F	M	F
Officials & Managers															
Professionals															
Technicians															
Sales															
Office & Clerical															
Craft Workers (skilled)															
Operatives (semi-skilled)															
Laborers (unskilled)															
Service Workers															
TOTAL															

DESCRIPTION OF JOB CATEGORIES

Officials and Managers – Occupations requiring administrative personnel who set board policies, exercise full responsibility for execution of these policies, and individual departments or special phases of the operations.

Professionals – Occupations requiring either college education or experience of such kind and amount as to provide a comparable background.

Technicians – Occupations requiring a combination of specific scientific knowledge and manual skill which can be obtained through about 2 years of post high school education, such as is offered in many technical institutes and junior colleges, or through equivalent on-the-job training.

Sales – Occupations engaging wholly or primarily in selling.

Office and clerical – Includes all clerical-type work, regardless of level of difficulty, where the activities are predominately non-manual though some manual work directly involved with altering or transporting the products is included.

Craft Worker (skilled) – Manual workers of relatively high skill level having a thorough and comprehensive knowledge of the processes involved in their work. Exercises considerable independent judgment and usually requires an extensive period of training.

Operatives (semi-skilled) – Workers who operate machines or processing equipment or perform other factory-related duties of intermediate skill level which can be mastered in a few weeks and require only limited training.

Laborers (unskilled) – Workers in manual occupations which generally require no special training perform rudimentary duties that may be learned in a few days and require the application of little or no independent judgment.

Service Workers – Workers in both protective and unprotective service occupations.

RACE/ETHNIC IDENTIFICATION

White (not Hispanic origin) – All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East

Black Americans (not Hispanic origin) – All persons having origins in any of the Black racial groups of Africa

Hispanic Americans – All persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race

Asian-Pacific Americans – All persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong

Subcontinent Asian Americans – All persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka

Native American – All persons having origins in any of the original peoples of North America, including American Indians, Eskimos, Aleuts, or Native Hawaiians

PART IV – SMALL BUSINESS OUTREACH

As part of RTD's ongoing outreach activities to the Denver metro small business community, it is our goal to identify and to establish a relationship with the small business outreach programs sponsored by the prime and subcontractors we partner with.

The prime and all contracted subcontractors are requested to provide the following information pertaining to their current SBE and DBE outreach efforts – additional sheets may be used if necessary:

RTD Contract Name and Number:

Contract No. 18FH012 for the design, construction, financing, operation and maintenance of the Eagle Project (the *Contract*).

Proposer:

_____

Subcontractor – if applicable:

_____

Small Business Outreach Contact (if none, list contact for the Contract):

_____

Phone: _____ Fax: _____

Email: _____

Website: _____

Currently Sponsored Small Business Outreach Activities:

_____

_____

_____

How can RTD assist you in your current small business outreach efforts?

_____

_____

Would you be interested becoming involved in current and future RTD-sponsored outreach activities and committees: [ ] Yes [ ] No

If so, how? _____

_____

PART V – DBE/SBE UNAVAILABILITY CERTIFICATION

I,_____, _____,
Name Title

of _____, certify that Denver Transit Partners, LLC made the following efforts to meet the [DBE/SBE] Goals on Regional Transportation District Contract No. 18FH012 for the design, construction, financing, operation and maintenance of the Eagle Project:

[please attach any additional efforts that do not fit on this form]

- A Concessionaire representative attended the pre-bid meeting. Yes _____ No _____

- Newspaper Advertisement Log: (attach copies of ads)

Newspaper/Publication	Type of Publication Minority/General/Trade	Dates of Advertisement

- Selected portions of the work to be performed by [DBEs/SBEs]

Work Categories	Type of Bid (Subcontractor or Supplier)	Concessionaire's Estimated Budget	Additional Comments

- Made efforts to assist interested [DBEs/SBEs] in obtaining bonding, lines of credit, insurance or any necessary equipment, supplies, materials, etc.
- [*List any specific offers made by Concessionaire*]

- Solicited the following [DBEs/SBEs]

Date Contacted	Name of DBE/ SBE Firm	Contact Person	Phone #	Work Category

- Followed up with initial contacts

Date	Name of [DBE/SBE]	Phone #	Bidding (Yes or No)	Additional Comments

- Contacted the following other agencies, organizations in recruitment of [DBEs/SBEs] including RTD:

Date	Organization	Phone #

As shown by the documentation provided to RTD, we feel that we have made good faith effort to attain the [DBE/SBE] Goals.

Signature: _____

Date: _____

Exhibit Q

Form of Modification

[To be agreed post-execution]

Exhibit R

Office Space and Facilities

[See attached]

Exhibit R __ Office Space and Facilities

1.1 OFFICES AND OFFICE FACILITIES

A minimum of 60 days prior to the start of the Operating Period, or earlier if available, the Operator shall provide space and facilities to allow Concessionaire staff, including LTA staff, to share the CRMF office space with the Operator's staff (Concessionaire Office Facilities) (the ***Concessionaire Offices***)

The Operator shall maintain the Concessionaire Offices throughout the duration of the Operating Period. .

The Operator shall provide and maintain for Concessionaire::

(a) telephone service for the Concessionaire Office Facilities. The Concessionaire shall be responsible for its own staff receptionist/operator;

(b) office space not less than the size indicated below, each with telephone and network connections for Concessionaire:

(i) 4 private offices: 150 square feet of enclosed office space (with door) per office for Concessionaire;

(ii) 5 partitioned offices: 80 square feet enclosed office space per office (cubicles/partitions are acceptable) for Concessionaire;

(c) one enclosed conference room with doors capable of accommodating a 12 person meeting, with a 10 person seating capacity at the conference table. The conference room can be shared with Operator;

(d) one reception area, with common access to the Concessionaire's and Operator's offices;

(e) break room: 150 square feet with sink, counter, dishwasher, microwave, and 20 cubic foot refrigerator. The break room can be shared with Operator;

(f) filing space for Concessionaire: 100 square feet, enclosed, with lockable door and 4 steel, 5-drawer, locking, cabinets;

(g) restrooms;

(h) hard-surfaced (paved) parking, sufficient for 4 Concessionaire vehicles, including LTA vehicles;;

(i) daily janitorial service (except weekends and holidays); include recycling to support sustainability plan;

(j) maintenance of the exterior area of the Concessionaire Office Facilities, including access to parking and snow removal;

(k) facilities that meet Americans with Disabilities Act (ADA) access requirements and meet all local code requirements for office space;

(l) heating, ventilation and air conditioning/cooling systems adequate for office use; and

(m) 24-hour/7-days a week access with security after normal working hours.

(n) Operator shall provide Concessionaire with access to a T1 line (or equivalent).

Operator is not responsible for providing workstations and associated furnishings for the Concessionaire Offices and conference room.

V.S. Salama
Exhibit B

OPERATING AGREEMENT

BETWEEN

NATIONAL RAILROAD PASSENGER CORPORATION

AND

REGIONAL TRANSPORTATION DISTRICT

DATED AS OF: February 1, 2014

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OPERATING AGREEMENT

BETWEEN

NATIONAL RAILROAD PASSENGER CORPORATION

AND

REGIONAL TRANSPORTATION DISTRICT

THIS AGREEMENT (the "Agreement"), dated as of February 1, 2014, is by and between the National Railroad Passenger Corporation, a corporation organized under the Rail Passenger Service Act now codified at Title 49 US Code Section 24101 *et seq.* (hereafter referred to as the "Act"), and the laws of the District of Columbia, having offices at 60 Massachusetts Avenue, N.E., Washington, DC 20002 (hereafter referred to as "Amtrak"), and Regional Transportation District, a political subdivision of the State of Colorado whose enabling act is found at C.R.S. 32-9-101 *et seq.*, having principal offices at 1600 Blake Street, Denver, CO 80202 (hereafter referred to as "RTD").

WHEREAS, RTD owns or controls and operates certain trackage and facilities including the Rail Lines (as defined in Article I) within or adjacent to Denver Union Station located at 1701 Wynkoop Street, Denver, CO 80202 (hereafter referred to as "DUS"); and

WHEREAS, by separate instrument RTD and Amtrak may negotiate a lease agreement for space within the historic station building located on the Property at 1701 Wynkoop Street, Denver, Colorado 80202 (hereinafter referred to as "Station Building"); and

Whereas, Amtrak and RTD each have certain statutory rights, obligations, and limitations according to their enabling legislation described above, none of which are waived or abrogated by this Agreement unless such waiver or abrogation is specifically identified or stated herein; and

WHEREAS, this Agreement addresses Amtrak's use of the Rail Lines and Ancillary Facilities (as defined in Article I)

NOW THEREFORE, intending to be legally bound, the parties agree as follows:

ARTICLE I DEFINITIONS.

1. **Amtrak Trains** has the meaning set forth in Article I, Section 7 below.
2. **Amtrak Tracks and Facilities** means tracks 4 and 5, Amtrak Storage & Runaround Tracks, signals and Ancillary Facilities normally exclusively used for Intercity Rail Passenger Service as generally depicted on **Exhibit A** as "Amtrak Tracks and Facilities".
3. **Ancillary Facilities** means passenger platforms, mini-highs, canopies, water cabinets, 480 power hook-ups, storage shed, fuel storage tanks and associated piping, signs and other facilities appurtenant to the Rail Lines that are; 1) owned by RTD, 2) used in connection with the operations of Amtrak Trains generally depicted on **Exhibit A**. The Station Building is not an Ancillary Facility.

4. **Declaration of Commencement** means that declaration of commencement of the Lease and Operating Agreement at Denver Union Station attached hereto as **Appendix V**.

5. **Incremental Costs** means all costs that RTD would not incur but for the operation of Amtrak Trains (as defined below) over the Rail Lines pursuant to this Agreement and/or the Act.

6. **Intercity Rail Passenger Service** means all passenger service operated by Amtrak over the Rail Lines.

7. **Intercity Rail Passenger Trains or "Amtrak Trains"** means all trains operated in Intercity Rail Passenger Service by Amtrak.

8. **Mixed Use Tracks** means tracks and signals owned by RTD and used by Amtrak as well as others (including RTD as generally depicted on **Exhibit A**).

9. **Monthly Flat Rate** means an Incremental Cost that is calculated and paid on a per-month basis, each of which is set forth in **Appendix IV, Table 1,** where the "Unit of Cost" recorded in Column 5 is "per month".

10. **Non-Routine Services** shall be as defined in Section 5.1 B.

11. **Rail Lines** means the Amtrak Tracks and Facilities and the Mixed Use Tracks together with the non-publicly dedicated rights-of-way, appurtenant real properties, roadway structures, and signal systems located on RTD property as generally depicted on **Exhibit A**. The Rail Lines do not include the Station Building.

12. **RTD Charging Window** means the time RTD is moving equipment into DUS for the purpose of starting each day's operations in accordance with a schedule to be determined by RTD or its contract operator.

13. **RTD Routine Maintenance** means programmed Rail Lines and Ancillary Facility maintenance work that RTD or its contract operator will schedule in such a fashion in order to minimize interference or disruption to scheduled Amtrak service while allowing maximum production by maintenance personnel forces. RTD or contract operator will give Amtrak at least fifteen business (15) days advance notice of non-emergency programmed maintenance work that may interfere with Amtrak's scheduled operations and cannot reasonably be scheduled at another time that will permit Amtrak to issue modified schedules when appropriate, and notifying Amtrak passengers in advance of potential delays.

14. **Special Trains** means any non-regularly scheduled Amtrak Train operated on the Rail Lines.

ARTICLE II INCORPORATION OF RECITALS

The Whereas clauses and Recitals set forth above are incorporated herein and made a part of this Agreement.

ARTICLE III THE SERVICES

Section 3.1 Right to Services

Subject to and in accordance with the terms and conditions of this Agreement, RTD agrees to provide Amtrak with the use of the Rail Lines and Ancillary Facilities generally depicted in **Exhibit A** for the operation of Amtrak Trains to and from DUS, including the carrying of mail and express on Amtrak Trains to the extent authorized by the Act. The routes, schedules, and consists of Amtrak Trains shall be compatible with the physical capabilities of the Rail Lines and Ancillary Facilities.

Amtrak acknowledges that it has reviewed the design and construction of the Rail Lines and Ancillary Facilities and has accepted the same for its use as of the date of the Declaration of Commencement, which is attached to this Agreement as Appendix V. RTD shall be responsible for enforcing all construction warranties.

Section 3.2A Initial Services

Amtrak shall have the right to operate Amtrak Trains on the Rail Lines. RTD will dispatch and control all tracks owned by RTD.

Section 3.2B Modification of the Services

Amtrak shall have the right from time to time to request, and, subject to and in accordance with the terms and conditions of this Agreement, including Section 3.3, RTD hereby agrees to provide to the best of its reasonable ability, modified or additional services, including Special Trains. Such modified or additional services

(except emergency services as set forth in subsection 3.2C below) shall be provided by RTD upon the filing by Amtrak with RTD of a request on a date sufficiently in advance of the date upon which any such request is to become effective to permit adequate joint planning and joint preparation for the modified or additional services provided for in such request. RTD's response to the request for additional services shall be subject to the physical limitations of the Rail Lines and shall give due regard to RTD's speed, weight, and other operating restrictions and rules and safety standards and to the avoidance of unreasonable interference with the adequacy, safety, and efficiency of RTD's other railroad operations. In applying the foregoing, recognition shall be given to the importance of fast and convenient schedules and passenger comfort and convenience to the success of Intercity Rail Passenger Service, and to the importance of preserving the safety and reliability of RTD's commuter rail and rail transit operations.

Section 3.2C Emergency Use and Service

In the event of an emergency, Amtrak shall have the right to request and, subject to and in accordance with the terms and conditions of this Agreement and the physical limitations of the tracks and other facilities at DUS, RTD hereby agrees:

1. To allow Amtrak to use the tracks at DUS (other than the Rail Lines and/or Ancillary Facilities), subject to RTD's direction and control; and
2. To use its best efforts to provide emergency services requested under this Agreement in an expeditious and efficient manner.

Section 3.3 Standards of Performance

A. RTD agrees to provide and furnish all labor, materials, equipment, facilities, permits and licenses necessary to perform the services to be provided by it under this Agreement.

B. RTD shall provide services hereunder in an economic and efficient manner and shall make every reasonable effort to:

1. Deliver and dispatch Amtrak Trains to and from DUS by the scheduled time; and

2. Avoid delays to Amtrak Trains.

C. The Parties acknowledge and agree that:

1. An Amtrak Train arriving at the applicable controlled signal and requesting permission to move into DUS or depart from DUS at or before its scheduled time will be handled (i.e. permitted to move) as soon as practicable by RTD, but in no event shall the train be handled into or out of DUS later than its scheduled arrival or departure time.

2. An Amtrak Train arriving at the applicable controlled signal and requesting permission to move into, or depart from, DUS after its scheduled time and when outside the RTD Charging Window, and outside the time RTD Routine Maintenance is being performed,

will be handled to the best of RTD's ability, generally within 30 minutes of such request.

3. An Amtrak Train arriving at the applicable controlled signal and requesting permission to move into, or depart from DUS after its scheduled time and during the RTD Charging Window or during the time RTD Routine Maintenance is being performed will be handled to the best of RTD's ability, generally within 60 minutes of such request.

.RTD and Amtrak shall cooperate in good faith to ensure the success of Intercity Rail Passenger Service and RTD's commuter rail service.

Section 3.4 [Reserved]

Section 3.5 No Violation of Labor Agreements

Each party agrees that it will not require the performance of services hereunder by the other in a manner which would cause the other to violate the terms of or incur penalties, unless reimbursed, in connection with any then-current labor agreements between that other party and any organization representing any of its employees.

Section 3.6 [Reserved]

Section 3.7 Control and Supervision

In the performance of services referred to in this Agreement, RTD shall have the sole right to direct the movement of Amtrak Trains while on the Rail Lines, although Amtrak shall operate such trains in accordance with RTD's dispatcher's instructions. All personnel rendering services which involve responsibility for RTD's operating facilities or for the handling or movement of any Amtrak Train shall be subject to the direction, supervision and control of RTD, and such services performed by or for Amtrak shall be governed by and subject to all then current operating and safety rules, orders, procedures and standards of RTD with respect thereto.

Amtrak agrees that it will comply with all speed restrictions that are set forth in RTD's Employee Timetable or equivalent document that sets out the track speeds on RTD owned or controlled track.

RTD may, for cause, require that any person performing services pursuant to this Agreement be prohibited or removed from performance of such services, subject to the requirement that RTD shall support any action defending such prohibition or removal and be responsible for any claims (other than from proceedings conducted pursuant to 49 CFR part 240) growing out of any action determined to be improper by a court or labor board.

Section 3.8 Americans With Disabilities Act

RTD has agreed to construct passenger platforms, including mini high blocks, at DUS for use by Amtrak in accordance with design specifications from Amtrak. RTD makes no representation as to the adequacy of these facilities or their compliance with requirements of the Americans with Disabilities Act as that Act may be applicable to Amtrak at DUS. RTD is responsible for the construction of these facilities in accordance with designs approved by Amtrak and for the enforcement of all contractor warranties for these facilities.

ARTICLE IV RAIL LINES

Section 4.1 Rail Lines

RTD shall retain and not voluntarily dispose of or abandon any of the Rail Lines, including reasonable access thereto, used in the operation of Amtrak Trains without Amtrak's prior written approval, which shall not unreasonably be withheld, for as long as such use continues or for the term of this Agreement, whichever period is the shorter. Nothing herein shall prevent RTD from modifying, changing, or relocating any facility or any segment of its tracks, provided that the rights of Amtrak under this Agreement are not substantially modified or abridged. In the event RTD voluntarily wishes to dispose of, remodel or renovate any part of the Rail Lines or Ancillary Facilities, RTD will promptly notify Amtrak, and on request of Amtrak, RTD shall furnish a substitute reasonably equivalent in utility at no additional cost to Amtrak. RTD shall give notice to Amtrak thirty (30) days prior to disposing of any of the Rail Lines or Ancillary Facilities

or other RTD facilities necessary for the operation of Amtrak Trains. In the event RTD is required by an event outside the control of RTD to remove from service or dispose of any part of the Rail Lines or Ancillary Facilities, RTD will provide all reasonable assistance to Amtrak in finding a substitute facility, but RTD does not guarantee it will be able to identify a substitute facility for Amtrak's use.

The Rail Lines and Ancillary Facilities are the sole property of RTD and except for personal property stored thereon or which RTD has permitted Amtrak to place on the Rail Lines and Ancillary Facilities (including, but not limited to, signage), Amtrak shall have no right to remove any property or fixtures in or on the Rail Lines and Ancillary Facilities without the express written authorization of RTD.

RTD retains the sole and exclusive right to lease or license the Rail Lines for use by third parties. If such lease or license includes any Amtrak Tracks and Facilities it will be subject to coordination with, and approval by Amtrak according to Section 8.11. Payments for any third party use of the Amtrak Tracks and Facilities, shall be credited against Amtrak payments owed to RTD per Section 5.1 Basis of Payment

Section 4.2 Maintenance of Rail Lines

Except with respect to the replacement of the Amtrak Tracks and Facilities, the Rail Lines shall be repaired, maintained and renewed by RTD. Tracks within the Rail Lines shall be maintained by RTD at not less than FRA Track Class III specifications ("Level of Utility"). Changes made by the Federal Railroad Administration ("FRA") to the

specifications for FRA Class of Track shall not necessarily result in a change to the Level of Utility obligation pursuant to this Section 4.2.

Section 4.3 Additional Maintenance and Improvements

A. Upon request of Amtrak for a modification of the Rail Lines or Ancillary Facilities, and except where such modification in RTD's reasonable discretion will materially interfere with DUS or RTD operations, RTD shall as promptly as feasible modify the Rail Lines and Ancillary Facilities in accordance with such request at the sole expense of Amtrak to the extent such additional expense is not reimbursed under **Appendix IV**. RTD will notify Amtrak within 30 days if it will or will not perform such modification. If RTD denies the request, it shall state the reasons in writing why Amtrak's request would materially interfere with DUS or RTD operations and shall work with Amtrak to develop mutually acceptable modifications to accommodate Amtrak's needs.

B. Amtrak shall have the right to post signage on the Ancillary Facilities, which signage shall be the property of Amtrak. Any electrical or other connections to Ancillary Facilities shall remain the property of RTD and be reimbursed as set forth below.

ARTICLE V ACCOUNTS AND PAYMENTS

Section 5.1 Basis of Payment

As full and complete compensation for the services, facilities and activities performed or made available by RTD for Amtrak under this Agreement, and for RTD's provision of management and corporate resources necessary to enable RTD to provide such services, activities, and facilities in an efficient manner on the Rail Lines, Amtrak will pay RTD as set forth and calculated in accordance with Subsections A and B below, subject to other adjustments as provided in Subsection C, below. **Appendix IV**, which provides detail on the payments to be made, shall be amended as appropriate to reflect changes in the payments made pursuant to this Section 5.1.

RTD will provide Amtrak with a copy of any third-party licenses or leases RTD grants for use of any of the Amtrak Tracks and Facilities which will be issued only pursuant to Section 8.11. RTD will notify Amtrak of any payment amounts negotiated for such third party use of the Amtrak Track and Facilities which shall be credited to Amtrak on the next monthly invoice after payment is received, or three (3) months following such use, whichever is earlier. Notwithstanding the foregoing, payments received for third party use of the Mixed Use Tracks shall not be credited to Amtrak as described in the foregoing sentence.

A. Services Provided

With respect to the operation of Amtrak Trains, and the services and facilities initially provided by RTD in connection therewith, Amtrak shall pay RTD the

amounts specified in **Appendix IV**. The parties agree that such amounts represent reimbursement of RTD's Incremental Costs resulting from the operation of Amtrak Trains over the Rail Lines and the use of Ancillary Facilities, and the services provided by RTD in connection therewith. RTD's Incremental Costs specifically do not include the cost of the following services incurred in connection with the operation of Amtrak Trains, which Amtrak will provide for separately:

1. Removal of trash from Service Platform 3 as identified in **Exhibit A**. Trash shall be removed to an RTD designated dumpster.

2. Maintenance and repair of storage area used solely by Amtrak, near the north end of Service Platform 3 as identified in **Exhibit A**.

3. Electrical power for the 480 power on Amtrak Track and Facilities.

4. Payment of utilities that are solely used and separately metered to Amtrak.

5. Fuel for and fueling of Amtrak locomotives. (This does not include the fuel system which will be the responsibility of RTD pursuant to Section 7.1).

6. Required monthly and quarterly US Food and Drug Administration inspections of water cabinets on Amtrak Track and Facilities.

7. Any track pan cleaning on Amtrak Track and Facilities requested by Amtrak in addition to the one per year provided by RTD.

8. Replacement of major capital items on Amtrak Tracks and Facilities which may include track, switches, ties, switch heaters, rods and switch machines, insulated joints, tactile warning strips, water cabinets, canopies, or storage sheds.

9. Any needed repair and replacement of mini-high platforms (installed by RTD at Amtrak's request) two or more years after the date of the Declaration of Commencement.

10. Snow removal on the Amtrak Storage & Runaround Tracks, and switches 9 and 10 as shown on **Exhibit A**, as well as snow removal on any necessary walkways to access these track and switches.

11. Any other service Amtrak may agree to provide in connection with the operation of Amtrak Trains to and from DUS.

12. Painting and repair of the Amtrak Canopy shown on **Exhibit A**.

If any of the items listed in 1 through 11 above are provided by RTD at Amtrak's request, they will be considered Non-Routine Services under this Agreement as provided for in Section 5.1 B. below.

B. Non-Routine Services

If services not specified in **Appendix IV**, are rendered for Amtrak by RTD ("Non-Routine Services"), with prior approval by Amtrak, Amtrak will pay RTD the actual incremental costs incurred by RTD in performing such services. Actual incremental

costs for Non-Routine Services may include but are not limited to material, direct labor, wages for supervisory personnel for the period they are exclusively involved in supervising the service and small tools and supplies as may be required solely for the services requested.

C. Major Capital Repair and Replacements for Shared Facilities and Equipment

Major capital items for the Rail Lines and Ancillary Facilities may include track, switch and tie renewals along with switch heaters, rods and switch machines, insulated joints, and other features used or necessitated by operations at DUS. If RTD determines that repair or replacement of the Rail Lines and Ancillary Facilities is necessary RTD shall confer with Amtrak regarding the need and Amtrak may contribute to such repair or replacement. If Amtrak and RTD agree on an Amtrak contribution, the parties shall negotiate the terms for the approval and billing of the Amtrak share, and the billings for such costs shall be subject to audit by Amtrak. If the parties do not agree, the disputes regarding such repair or replacement may be resolved by any remedies available to the parties.

D. Payment Adjustment

Amounts payable by Amtrak to RTD under Section A of this Section 5.1 are set out in **Appendix IV** Table 1 and shall be adjusted annually according to **Appendix IV** Table 2.

The basis or the amounts of payment shall be appropriately adjusted whenever:

1. Amtrak notifies RTD that it no longer desires RTD to perform or furnish specific services, activities, or facilities for which Amtrak compensates RTD. Such notice shall include a schedule of the services, activities, or facilities to be terminated, and an effective date for the requested termination of performance, after which Amtrak shall no longer be required to make payment to RTD with respect to such services, activities or facilities.

2. RTD, without direction from Amtrak, ceases or fails to commence performing or providing any service, activity or facility;

3. The provision of any service, activity, or facility hereunder, is changed in accordance with this Agreement or otherwise by agreement of the parties.

Section 5.2 Billing and Payment

A. Payment of Monthly Billing

Within thirty (30) days after the last day of each calendar month, RTD shall submit a statement of charges to Amtrak calculated for the prior month in accordance with the provisions of Section 5.1 (the "Statement of Charges"). The Statement of Charges shall clearly and separately set forth all charges -- defined as all amounts owed to RTD pursuant to Section 5.1 and set forth in **Appendix IV**, Table 1.

Within thirty (30) days after receipt of such Statement of Charges, Amtrak shall wire transfer the net amount due RTD, in accordance with Section 5.1 and according to such instructions as RTD shall have provided for such payment (or with RTD's concurrence mail its payment or make checks available at the Controller's office of Amtrak for RTD's authorized agent). Payments made more than 30 days after Amtrak's receipt of the Statement of Charges shall incur interest at the US Treasury rate in effect on the date payment was due until the date paid. Interest payments shall be invoiced to Amtrak on the next monthly Statement of Charges after the original payment was received.

B. Revision of Forms and Methods

Amtrak may request revisions in the forms and methods of billing. If a requested revision would significantly change the amount of work required by RTD in connection with billing Amtrak, then, prior to the implementation of that revision, the Parties will negotiate and determine what, if any, new basis of compensation is appropriate for such revision.

C. Right of Review and Audit

Any payment by Amtrak or settlement between Amtrak and RTD shall be subject to an audit and evaluation of operations, performance, and costs. The scope of such audit and evaluation may be both financial and operational, and may include, in addition to costs and wages paid, RTD's controls, practices, and procedures and their effect upon the efficiency and quality of performance provided by RTD.

Amtrak or its designated agents shall have the right, upon reasonable conditions and notice, to examine the Rail Lines and Ancillary Facilities. RTD shall furnish, when reasonably requested by Amtrak, existing information pertaining to the Rail Lines and Ancillary Facilities, which information shall set forth the speed and load capacity of each track, the condition of the platforms and other facilities, and current maintenance procedures.

D. Revision of Monthly Flat Rate

If the amount specified in **Appendix IV** for a Monthly Flat Rate item varies substantially from the actual Incremental Costs incurred by RTD in connection with such Monthly Flat Rate item, or if the Monthly Flat Rate item amount is inaccurate because of the existence of a material mistake of fact, the parties agree to negotiate in good faith to adjust such amount to be effective prospectively (from the date upon which notice of such variance or mistake is given) in order that it will reasonably reflect the Incremental Costs incurred by RTD which are covered by that Monthly Flat Rate item. For purposes of this provision, a material mistake of fact will be deemed to have occurred when there has been significant factual understanding which was incorrect and which: (1) was relied upon by both parties without knowledge of its error, or (2) was relied upon by one party, where that party could not reasonably have known that it was incorrect, while the other party either knew it was incorrect or failed to take reasonable steps to determine its accuracy. For purposes of this provision, a variance between actual Incremental Costs and the agreed upon Monthly Flat Rate amount for that item

which is less than 20% of the flat rate amount (unless such variance exceeds $25,000 per year for the item) will not be deemed to be substantial.

Section 5.3 Wire Instructions.

RTD's initial wire instructions are:

Bank: Wells Fargo

Routing Number: 121000248

Account Name: RTD

Account Number: 1010824234

Changes to these instructions will be noticed according to Article VIII Section 8.5.

ARTICLE VI DISPUTE RESOLUTION

If either party fails to undertake any obligation as required by this Agreement, the other party shall provide written notice of such failure. The obligated party shall provide a written response to the notifying party stating its corrective action plan, which response shall be provided not more than 30 days from its receipt of such notice. If the notifying party disputes the corrective action plan, or if the obligated party disputes its obligation to undertake corrective action, or if the obligated party fails to provide a corrective action plan within such 30 days, the notifying party may refer the matter to dispute resolution as described below, provided that either party may file for injunctive relief in the U.S. District Court for the District of Colorado as to any matter where the

governmental or statutory powers of either party are at issue or there is immediate threat to public health or safety regarding which an award of money damages and/or adjustment to payments will not provide an adequate remedy.

Disputes shall be finally resolved by binding arbitration in accordance with the following provisions and the American Arbitration Association ("AAA") Commercial Arbitration Rules (AAA-CAR) in effect at the time arbitration is demanded (even if the matter is not submitted to the AAA). The parties may submit (but shall not be required to submit unless consensus over the selection of the arbitrator(s) is not reached), disputes to the AAA for administrative purposes. In the event that any provisions in this Agreement differ from the AAA-CAR, this Agreement shall govern.

A. Commencement of the Arbitration

A party may initiate arbitration only after receipt and rejection of a corrective action plan or if the other party fails to provide such a plan within 30 days after receipt of notice. Arbitration shall be initiated by serving a written demand for arbitration. Such written demand shall include a short and plain statement identifying the provisions of this Agreement which are in dispute, a summary of the facts or circumstances giving rise to the dispute, and describing the relief requested. Any party served with an arbitration demand may respond by serving upon the other party a written answer and/or a written counterclaim identifying additional claims to be considered in the arbitration, with a short and plain statement identifying the provisions of this Agreement which are in dispute, a summary of the facts or circumstances giving rise to the dispute, and describing the relief requested.

B. Selection of Arbitrators

Unless the parties agree to submit the dispute to a single arbitrator, each party shall designate an arbitrator within ten (10) business days after the initial written demand has been served, and the two arbitrators shall have an additional ten (10) business days to designate a third. Failure of a party to timely designate an arbitrator shall result in only one arbitrator hearing the dispute and making any award. Each party's selected arbitrator must have no present employment with either party, and may not presently serve or ever have served on either party's board of directors. The third arbitrator must be a retired Colorado state or federal judge or magistrate or someone of similar stature with experience in interpreting and enforcing complex commercial contracts, or someone with knowledge or experience of the railroad industry, commuter rail, or the type of matters at issue in the arbitration. The arbitration shall take place in Colorado. Governing law for all disputes shall be the law of the State of Colorado notwithstanding choice of law rules, and jurisdiction and venue shall be in Denver, Colorado.

C. Authority to Grant Comprehensive Relief

The arbitrator(s) shall have all legal and equitable powers necessary to interpret and to enforce the terms of this Agreement, but not to modify or vary its terms. The parties expressly agree that the arbitrator(s) may fashion all necessary and appropriate relief, including money damages and/or injunctive relief, so long as any equitable remedy is consistent with the obligations of the parties under this Agreement.

D. Award

Notwithstanding any AAA-CAR to the contrary, the arbitrator's(s') award shall be in writing and include findings of fact and conclusions of law supporting that written award. Any action to compel arbitration under this Agreement, to enforce an arbitration award, or to vacate an arbitration award, must be brought in federal court in the District of Colorado. In actions seeking to vacate an award, the standard of review to be applied to the arbitrator's(s') findings of fact and conclusions of law will be the same as that applied by an appellate court reviewing a decision of a trial court sitting without a jury.

E. Payment of Fees and Costs of Arbitrator(s)

Each party shall pay the fees and costs of its designated arbitrator. The parties shall split and pay in equal shares the fees and costs of the third arbitrator. Otherwise, the parties expressly reject any fee shifting, and each party shall pay all its own expenses associated with the arbitration, including all fees and costs relating to its own witnesses, exhibits, and counsel.

F. Correcting Safety Issues During Pendency of Arbitration

If arbitration has been initiated and is pending, and if either party reasonably believes failure to perform any required maintenance will result in a threat to the safe use and operation of the Rail Lines and Ancillary Facilities, such party may in its sole discretion perform the maintenance that is the other party's responsibility and seek cost recovery.

ARTICLE VII GENERAL

Section 7.1 Fuel Tank

A. Installation

At its sole cost and expense, RTD shall furnish, install and maintain a tank fueling system consisting of a twelve thousand (12,000) gallon double-walled fuel storage tank, associated pressurized piping and equipment, and dispensers (collectively, "Tank System") for Amtrak's exclusive use for fueling locomotives during the term of this Agreement. In the event all or any portion of the Tank System is taken out of service for planned maintenance, repair or replacement or in the event of an emergency, RTD will notify Amtrak as soon as practicable and the parties will work cooperatively to find a reasonable alternate fuel source or mechanism that will meet state and federal regulations and fueling requirements of Amtrak until the Tank System is returned to service.

RTD, as the owner and Class A, and B, and C operator of the Tank System, shall be solely responsible for complying with all applicable City and County of Denver, Fire and Building Code, State of Colorado, and Federal regulatory requirements related to the installation, ownership and operation of the Tank System including, but not limited to, Tank System notifications, applications, registrations, registration fees, training, maintenance, testing, release detection, inspections, record-keeping, release reporting, corrective action, financial responsibility, and both temporary and permanent closure activities. Operation of the Tank System does not include dispensing fuel into or

out of the tank. RTD shall apply for a stormwater permit covering applicable industrial activities, and will work together with Amtrak to develop a stormwater management plan (which will include spill notification and response measures related to fuel dispensing and delivery operations), that describes the respective rights and responsibilities of RTD and Amtrak under that plan. Amtrak shall have the right to review all permit applications related to the Tank System, and to stormwater discharge related to the Rail Lines and Ancillary Facilities, and audit RTD's records related to the Tank System and stormwater permit. Amtrak, as a Class C operator, will be responsible for complying with any applicable City and County of Denver, Fire and Building Code, State of Colorado, and Federal regulatory requirements related to the fueling of locomotives, fuel delivery operations, and notification of any fuel spills in the fuel dispensing area and fuel delivery area. RTD and Amtrak shall provide to each other proof of training for the respective Class A, B, and C Operators of the Tank System, a copy of the training materials, and a list of the Tank System operators. RTD and Amtrak shall also jointly prepare and maintain a hazard communication plan.

RTD shall be responsible for the management of immediate spill response activities for all spills regardless of the cause or location and, shall select and oversee an emergency response contractor as necessary for immediate response activities. RTD shall promptly inform Amtrak of all such immediate spill response activities. With respect to spills caused by Amtrak personnel, agents, or contractors which are not caused or contributed to, directly or indirectly, by any Tank System equipment failure or malfunction or by RTD personnel, agents, or contractors, Amtrak will have the right to

approve of long-term (i.e., other than immediate) spill response activities. RTD shall be solely responsible for selecting and overseeing emergency and spill response contractors for spills in any area caused by RTD personnel, agents, or contractors. As between RTD and Amtrak, the costs of spill response shall be paid by Amtrak if such costs are in response to a fuel spill caused by Amtrak personnel, agents, or contractors, and are not caused by any Tank System equipment failure or malfunction. The costs of spill response shall be paid by RTD if the costs are in response to a fuel spill within any area caused by any Tank System equipment failure or malfunction or caused by RTD personnel, agents, or contractors.

B. Risk of Liability

Except as provided in Subsection (a) above, RTD will be solely responsible for and shall maintain, repair, monitor and (as necessary) replace the Tank System. If RTD retains a contractor to maintain, repair, monitor and/or replace all or a portion of the Tank System, RTD shall require such contractor to provide insurance and indemnification in favor of Amtrak to the same extent RTD requires insurance and indemnification in favor of RTD.

C. Financial Responsibility/Insurance

RTD shall provide and maintain, throughout the term of this Agreement, financial responsibility for the Tank System in a form that complies with the requirements of Colorado and Federal Law.

Any insurance coverages, permits, licenses and other forms of documentation required by the U. S. Department of Transportation, the U.S. Environmental Protection

Agency and/or related state and local laws, rules and regulations shall be obtained and maintained: (1) by RTD or its contractors for matters relating to Tank System maintenance, repair, monitoring, and replacement; and, (2) by Amtrak or its contractors for fueling operations to the extent coverage in addition to that required by a contractor's right of entry permit is required.

Section 7.2 Risk of Liability/Insurance

At Amtrak's request, RTD shall: (1) name or cause its operator and/or contractor to name Amtrak as an additional insured on any liability policy of insurance covering activities on or about the Rail Lines and Ancillary Facilities, and Amtrak shall be responsible for and bear the cost of any additional premium attributable solely to Amtrak being named as such an additional insured; (2) obtain or cause its operator and/or contractor to obtain a Blanket Waiver of Subrogation endorsement on any workers compensation or property policy of insurance covering activities on or about the Rail Lines and Ancillary Facilities, and Amtrak shall be responsible for and bear the cost of any additional premium attributable solely to such Blanket Waiver of Subrogation endorsement. RTD does not guarantee that any insurance covering activities on or about the Rail Lines and Ancillary Facilities or operations over the Rail Lines and Ancillary Facilities will be obtained by it or, its operator and/or contractor, or that any insurance provided will be adequate to meet any liability which may be imposed on Amtrak under state or federal law, or to cover any Amtrak losses. Amtrak shall be

solely responsible for any self-insured retention with respect to its liability under any policies obtained by RTD or its operator and/or contractor.

On or before January 1 of each year this agreement is in effect, RTD will provide certificates of coverage to Amtrak. RTD will provide Amtrak with at least thirty (30) days' prior written notice, any time a change in coverage is to be made on any liability policy of insurance covering activities on or about the Rail Lines or on or about the Ancillary Facilities, and, within thirty (30) days after such change, RTD will provide certificates of coverage to Amtrak.

Section 7.3 [Reserved]

Section 7.4 Designated Operations Officers

RTD and Amtrak will each designate representatives to coordinate service and schedule issues. All notifications for train delays, requests for emergency services, and requests for additional unscheduled emergency maintenance shall be provided to the following designated representatives initially by phone at the following numbers.

If for Amtrak:

CNOC Operations Desk West
Tel: (302) 683-2310

If for RTD:

Senior Manager, Facilities
1600 Blake Street
Denver, CO 80202
Tel: (303) 299--2287

ARTICLE VIII MISCELLANEOUS

Section 8.1 Force Majeure

The obligations of the parties hereunder, other than payment, shall be subject to force majeure (which shall include strikes, riots, floods, accidents, Acts of God, acts of terrorism, and other causes or circumstances beyond the reasonable control of the party claiming such force majeure as an excuse for nonperformance), but only as long as, and to the extent that, such force majeure shall prevent performance of such obligations.

Section 8.2 Successors and Assigns

All the covenants and obligations of the parties hereunder shall bind their successors and assigns whether or not expressly assumed by such successors and assigns. The rights and obligations pursuant to this Agreement shall not be assigned,

in whole or in part, by either party without the prior written approval of the other party; provided, however, that either party may upon notice to other party, assign when required to do so by any judicial or legislative requirement.

Section 8.3 Interpretation

The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof. This Agreement shall be construed in accordance with and governed by the laws of the state of Colorado. All appendices attached hereto are integral parts of this Agreement and the provisions set forth in the appendices shall bind the parties hereto to the same extent as if such provisions had been set forth in their entirety in the main body of this Agreement. Nothing expressed or implied herein shall give or be construed to give to any person, firm or corporation other than Amtrak or RTD any legal or equitable right, remedy or claim under or in respect of this Agreement. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing signed by Amtrak and RTD, unless a provision hereof expressly permits either of said parties to effect termination, amendment, supplementation, waiver or modification hereunder, in which event such action shall be taken in accordance with the terms of such provision.

Section 8.4 Severability

If any part of this Agreement is determined to be invalid, illegal or unenforceable, such determination shall not affect the validity, legality, or enforceability of any other

part of this Agreement, and the remaining parts of this Agreement shall be enforced as if such invalid, illegal, or unenforceable part were not contained herein.

Section 8.5 Notices

Any request, demand, authorization, direction, notice, consent, waiver, or other document provided for or permitted by this Agreement to be made upon, given or furnished to, or filed with one party by the other party, shall be in writing and shall be delivered by hand or by deposit in the mails of the United States postage prepaid, or by electronic mail if acknowledged personally by the recipient. If to Amtrak, in an envelope addressed as follows:

National Railroad Passenger Corporation
2955 Market Street
30th Street Station-4 North
Philadelphia, PA 19104
Attention: Senior Director Host Railroads

With a copy to: General Counsel
National Railroad Passenger Corporation
60 Massachusetts Avenue, N.E.
Washington, DC 20002

and if to RTD, in an envelope addressed as follows:

Name	RTD
Address	1600 Blake Street
City, State Zip	Denver, CO 80202
Attention:	Real Property
With a copy to:	General Counsel
	RTD
	1600 Blake Street
	Denver, CO 80202

Each party may change the address at which it shall receive notification hereunder by notifying the other of such change.

Section 8.6 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be an original.

Section 8.7 Office of Inspector General

Nothing in this Agreement is intended to derogate any right, duty, or obligation of Amtrak's Office of Inspector General under the Inspector General Act of 1978, as amended.

Section 8.8 Term

Unless otherwise agreed by the parties, this Agreement shall become effective on the date that Amtrak commences using the Station Building as a passenger terminal

(anticipated to be February 18, 2014) as evidenced by the Declaration of Commencement and remain in effect at least through January 31, 2034, and thereafter until terminated by at least 12 months written notice by one party to the other party. Such notice of termination may be given at any time after January 30, 2033 or by mutual agreement of the parties. Either (a) the filing of a voluntary petition under 11 USC §§105, et seq. ("Bankruptcy Code"), unless subsequently dismissed, or (b) the appointment of a trustee in the event of a successful involuntary petition under the Bankruptcy Code against Amtrak, unless subsequently dismissed, shall constitute an "Event of Default (Bankruptcy)" under this Agreement. Upon the occurrence of an "Event of Default (Bankruptcy)," RTD shall have the option to terminate this Agreement upon 30 days written notice to Amtrak. Such option shall be subject to any rights of Amtrak or its trustee under the Bankruptcy Code. The Terminal Agreement between the National Railroad Passenger Corporation and Denver Union Terminal Railway Company dated July 8, 1976, as amended, and the Memoranda of Agreement between Amtrak and RTD numbered I through IV dated February 26, 2009, November 3, 2009, April 23, 2010, and April 9, 2012, shall be terminated as of the effective date of this Agreement.

Section 8.9 Equal Employment Opportunity

RTD and Amtrak shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. RTD and Amtrak will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or

national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

Section 8.10 Vehicle Access

Use of the Emergency Vehicle Access Lane ("EVA Lane") shown on **Exhibit A** is subject to the following terms:

A. Amtrak vehicles (e.g. baggage and service vehicles) will, at all times as reasonably required to provide service to passengers and arriving or departing Amtrak trains, have access between the Amtrak baggage area in the Station Building and the train platforms. Such access may include use of the EVA Lane immediately west of the Station Building.

B. Amtrak will endeavor to schedule all truck deliveries to arrive at the Station Building between 9:00 am and 4:00 pm; however, RTD recognizes and agrees that deliveries may arrive at any time, and Amtrak recognizes and agrees that deliveries that arrive during the hours of 6:00 AM – 9:00 AM and 4:00 PM – 7:00 PM may be reasonably required for safety purposes to wait until the conclusion of those peak commuter passenger traffic periods; and RTD shall designate an individual or individuals who will be available during the above-referenced peak commuter hours to receive and address requests to

permit deliveries during those hours if safety permits, and such individual's decision shall be reasonably based on the safety of passengers using the EVA Lane during that period.

C. Vehicles or equipment may not be left unattended in the EVA Lane.

Section 8.11 RTD's Use of Amtrak Tracks and Facilities

In the event RTD would like to use or permit the use of any of the Amtrak Tracks and Facilities, RTD shall work with Amtrak Special Operations Group to determine the following:

1. Timing and nature of such use;

2. Liability arrangements as between Amtrak, RTD, and the user;

3. Any Amtrak services to be provided;

4. Compensation for use and services;

5. Any other information as may be reasonably requested by Amtrak.

Such use will not be permitted until all parties have agreed to the terms of such use.

Section 8.12 Amtrak Contractors

Any contractor retained by Amtrak who requires physical access to DUS shall, except in an emergency, be required to obtain a right of entry permit from RTD substantially in the form attached hereto as **Exhibit B**. In the event of an emergency

an Amtrak contractor must contact RTD dispatch for authorization to enter DUS and abide by all terms and conditions imposed.

Section 8.13 RTD Expenditures Subject to Appropriation

RTD is a political subdivision of the State of Colorado. In accord with Article X section 20 and Article XI of the Colorado Constitution nothing herein shall be construed as a multi-fiscal year obligation on the part of RTD. Any expenditures permitted or that may otherwise be required by this Agreement shall be subject to appropriation in a budget lawfully adopted by the RTD Board of Directors. If at any time funds are not appropriated for RTD to comply with the terms of this Agreement, Amtrak shall have the option to terminate this Agreement or to perform any obligation of RTD under this Agreement (Amtrak shall have the right to perform such obligation but not the obligation to do such). If Amtrak performs any such obligation of RTD, Amtrak shall have the right to offset the cost plus interest of said performance at the US Treasury Rate, against any amounts otherwise owed to RTD.

Section 8.14 Rights

Nothing in this Agreement shall qualify or limit either party's right to seek relief under the Act or the availability of such relief to the party.

IN WITNESS WHEREOF, Amtrak and RTD have caused this Agreement to be duly executed by their respective representatives thereunto duly authorized.

NATIONAL RAILROAD PASSENGER CORPORATION

By _____

NAME: Joseph H. Boardman

TITLE: President and Chief Executive Officer

Approved as to form for Amtrak

_____

Counsel

REGIONAL TRANSPORTATION DISTRICT

By _____

NAME: Phillip A. Washington

TITLE: General Manager / CEO

Approved as to form for RTD

_____

General Counsel

APPENDIX I MAXIMUM PASSENGER TRAIN SPEEDS

The Parties agree that prior to commencement of regularly scheduled Amtrak Trains over the Rail Lines, copies of the appropriate RTD Employee Timetable pages shall be inserted into this document, and that such pages shall show maximum authorized passenger train speeds on the Rail Lines as of the start of such service.

APPENDIX II AMTRAK PASSENGER TRAIN SCHEDULES

The Amtrak passenger train schedules shall be as set forth in Amtrak's public timetables from time to time. Changes to such timetables shall not require an amendment to this Agreement. RTD shall be notified of proposed schedule changes at least 14 days in advance of such change. Notwithstanding the foregoing, RTD shall have the opportunity and the right to review and approve any modifications to the schedules for operation of Amtrak Trains at DUS, which approval shall not unreasonably be withheld, delayed or conditioned.

APPENDIX III [RESERVED]

APPENDIX IV COST DETAIL

Current Cost Summary

The Current Cost Summary provided as Table 1 to this **Appendix IV** lists in summary form the authorized cost elements which comprise charges to Amtrak from the RTD under this Agreement.

- **Column 1** lists the reference to the item in **Appendix IV**, Section III, where the provision governing the cost element is found.
- **Column 2** describes the item (as described herein).
- **Column 3** shows the latest Amendment Agreement Change ("AAC") number which affects the cost item.
- **Column 4** shows the current cost, or indicates that an item is to be compensated on an actual basis.
- **Column 5** shows the unit of cost for each item.
- **Column 6** shows the method (from Table 2) to be used to adjust individual cost items in order to keep the cost provisions at current price levels.

Appendix IV shall constitute the authority for RTD to send a Statement of Charges to Amtrak for the amounts shown in Table 1, under Column 4 as of the date of

the latest revision of this **Appendix IV**. Unit of cost is based on an annual dollar amount evenly divided over the course of 12 months.

APPENDIX IV (Cont'd)

Table 1

(1)	(2)	(3)	(4)	(5)	(6)
Item No.	Description	Agreement Change No.	Current Amount	Unit of Cost	Price Level Adj. Method
1	Track Maintenance & Inspections	Original	$1,621	Per Month	Table 2
2	Track Surfacing	Original	$916	Per Month	Table 2
3	Track Pan & Oil Water Separator Cleaning	Original	$618	Per Month	Table 2
4	Signal Maintenance, Testing & Inspections	Original	$3,680	Per Month	Table 2
5	Platform Cleaning	Original	$709	Per Month	Table 2
6	Lighting Maintenance	Original	$1,342	Per Month	Table 2
7	Snow Removal	Original	$4,433	Per Month	Table 2
8	Sign Replacement	Original	$57	Per Month	Table 2
9	Water Cabinet	Original	$114	Per Month	Table 2
10	Trash Dumpster	Original	$823	Per Month	Table 2
11	Utilities - Water	Original	$446	Per Month	Table 2
12	Utilities - Electric	Original	$1,422	Per Month	Table 2
13	Dispatching	Original	$0	Per Month	Table 2
14	Non-Routine Services	Original	Actual	Actual	N/A

Price Level Adjustment Method

Unless in conflict with the terms of the Agreement, Table 2 of this **Appendix IV** defines the method for adjusting all cost items that are identified in Table 1.

Table 2 **Price Level Adjustment Method**	**Base**
Each item's Current Amount in Appendix IV Table 1 (Column 4) will be adjusted annually, to the nearest whole dollar amount, by the CPI-U for the Denver-Boulder-Greeley area which shall be obtained from the Bureau of Labor Statistics, U.S. Department of Labor (currently found at http://www.bls.gov/ro7/cpiden.pdf) beginning on January 1, 2015, and on January 1 of each year thereafter, based on the relationship of the most recent First Half index (beginning First Half 2014) to the First Half 2013 index, provided that no annual increase in the Current Amount shall exceed 3% of the prior year's Current Amount.	First Half 2013 229.142

APPENDIX IV (Cont'd)

Cost Description Detail.

The following describes in further detail the Incremental Cost items listed in **Appendix IV**, Table I.

Item 1: Track Maintenance & Inspections:

Amtrak shall pay RTD the amount identified in Table 1 of this Appendix IV for track maintenance and inspections. RTD will inspect and provide maintenance of all switches and tracks on the Rail Lines used in connection with Intercity Rail Passenger Service in accordance with Section 4.2 of this Agreement as well as compliance with 49 CFR 213 Track Safety Standards. Maintenance of switches and tracks shall include, but not be limited to: (1) adjusting turnouts and; (2) vegetation control to ensure track areas including areas within the track clearance envelope shall be kept free of vegetation. Track maintenance and inspection shall include all labor, materials, equipment usage and tools necessary to perform this work.

Item 2: Track Surfacing:

Amtrak shall pay RTD the amount identified in Table 1 of this Appendix IV for track surfacing. RTD will, at a minimum, annually surface all tracks on the Rail Lines in order to maintain the track in accordance with Section 4.2 of this Agreement. Track surfacing includes all labor, materials, equipment usage and tools necessary to perform this work.

Item 3: Track Pan & Oil Water Separator Cleaning:

Amtrak will pay RTD the amount identified in Table 1 of this Appendix IV for track pan and oil-water separator cleaning. RTD will clean the track pans and oil water separator once annually. The track pan and oil-water separator cleaning will include the proper disposal of all waste in compliance with the applicable Federal and State of Colorado regulations. Track pan and oil-water separator cleaning includes all labor, materials, equipment usage and tools necessary to perform this work.

Item 4: Signal Maintenance, Testing & Inspections:

Amtrak will pay RTD the amount identified in Table 1 of this Appendix IV for signal maintenance, testing and inspections. RTD will inspect, test (along with preparing and submitting any required documentation) and provide maintenance of all signals on the Rail Lines used in connection with Intercity Rail Passenger Service. Signal maintenance, testing and inspection will be undertaken, as appropriate and in strict compliance with FRA requirements, including those set forth in Figure 1 below. Routine signal inspections will be conducted on the Rail Lines by qualified railroad signal technicians. RTD's signal maintenance, testing and inspection program will address the daily requirements for supplying safe, service ready, and reliable signal apparatus.

Signal inspections will include:

- Interlocking inspections to ensure that all the signal appliances—including wires, cables, switches, signal lamps, vital and non-vital processors, relays, etc.—are working properly.

- Wayside signal inspections to ensure that all LED units are operational, properly aligned and visible to approaching train drivers.

- Routine signal inspections by qualified railroad signal technicians

All inspections and tests will be documented, and testing records retained in accordance with applicable Federal and State of Colorado regulations.

Signal Maintenance will include:

Qualified railroad signal technicians will maintain signals and respond to signal trouble calls for the signal system on the Rail Lines. All such technicians will be trained and qualified in FRA rules and guidelines, and other pertinent rules and guidelines. Routine maintenance will be undertaken as set forth in Figure 1 below and as maybe otherwise required.

FIGURE 1 - SIGNAL MAINTENANCE TESTING

Equipment	Description
Wires and Cables	Each cable will be tested every 10 years as a minimum, more often if necessary, by performing Insulation Resistance Testing, FRA 234.267, FRA 236.108.
Relays and other Electro Magnetic Apparatus	All relays and other electromagnetic apparatus will be tested at a minimum every four years, more often if necessary, in accordance with FRA 236.106. AC Vane Relays will be tested every two years.
Approach, Time, Route, Indication Locking	Each signal sub-system will be tested at a minimum every two years, more often if necessary, in accordance with FRA 236.377, 236.378, 236.379, 236.380.
Timing Devices	Each timing device will be tested at a minimum every year, more often if necessary, in accordance with FRA 236.109,
Switch Obstruction and Overload Inspection	Switches will be inspected and tested at a minimum every month, more often if necessary, in accordance with FRA 236.382.
Traffic Locking	Traffic locking will be tested at a minimum every two years, more often if necessary, in accordance with FRA 236.381.
Ground Readings	Each interlocking will be tested for grounds daily, in accordance with FRA 236.107. Ground readings will be taken monthly at Grade Crossings per FRA 234.249, and every three months elsewhere.
Fouling Circuits	Each fouling circuit will be tested at a minimum every three months, more often if necessary, in accordance with FRA 236.104.
Switch Circuit Controllers or Point Detector	Switch circuit controllers/point detector will be tested at a minimum every three months, more often if necessary, in accordance with FRA 234.237 & 236.103.
Electric Lock	Each electrically locked switch will be tested in accordance with FRA 236.105.
Track Circuits	Each track circuit will be tested at a minimum every two years, more often if necessary, in accordance with FRA 236.56.

Audio-Frequency Overlay Devices	Train detection devices will be tested at a minimum every year, more often if necessary.
Presence Detectors	
Electronic Track Circuits	
Switch Maintenance	Will be performed monthly, more often if warranted.
Signal Maintenance	Signal maintenance of incandescent lamps will be in accordance with AAR Signal Manual, Part 14.7.1 and inspected monthly from on-board a train.
Batteries	All batteries will be inspected and tested at least once every month for proper charging and to monitor capacity.
Additional Responsibilities	All FRA documentation, track support, housekeeping, and troubleshooting

Item 5: Platform Cleaning:

Amtrak will pay RTD the amount identified in Table 1 of this Appendix IV for platform cleaning. RTD will regularly clean all the platforms on the Amtrak Track and Facilities. Platforms shall be cleaned to the same standard as RTD maintains for its own platforms, all platform cleaning shall include: 1) removal of all litter from the Amtrak Track and Facilities, except for platform 3 and Amtrak shed area identified in **Exhibit A**; 2) emptying of trash and recycling bins before they are 100% full, 3) prompt removal of graffiti from all surfaces. Platform cleaning includes all labor, materials, equipment usage and tools necessary to perform this work.

Item 6: Lighting Maintenance:

Amtrak will pay RTD the amount identified in Table 1 of this Appendix IV for lighting maintenance. RTD will maintain all lighting on the Amtrak Track and Facilities. Lights will be maintained in good working condition but in no event shall a light remain out or flickering for longer than 24 hours from the time Amtrak notifies RTD of such a condition. Lighting maintenance includes all the labor (including but not limited to ordering, stocking, and replacement), material

(including but not limited to blubs, ballast and starters), equipment usage and tools necessary to perform this work.

Item 7: Snow Removal:

Amtrak will pay RTD the amount identified in Table 1 of this Appendix IV for snow removal. RTD will provide for removal of all snow and ice as needed from track and switches on the Rail lines (except for snow removal on the Amtrak storage and runaround tracks as identified on **Exhibit A**, which will be provided by Amtrak or its contractor) to allow for the safe and unimpeded passage of Amtrak Trains. In addition, all snow and ice shall be removed from all platforms and the Amtrak storage area as identified in **Exhibit A** as "Snow Removal Limits for Amtrak", within the hour prior to the arrival of any Amtrak Train to DUS. Snow removal includes all labor, materials, equipment usage and tools necessary to perform this work.

Item 8: Sign Replacement:

RTD will provide for and maintain all way-finding and message board signs between DUS and the Amtrak platforms other than those placed by Amtrak, if any. Sign replacement includes all labor, materials, equipment usage and tools necessary to perform this work.

Item 9: Water Cabinets:

RTD will perform the annual backflow testing of the water cabinets on the Amtrak Track and Facilities. This includes all labor, materials, equipment usage and tools necessary to perform this work.

Item 10: Trash Dumpster:

RTD will provide for and regularly empty a trash dumpster that will be used by Amtrak in connection with Intercity Rail Passenger Service.

Item 11: Utilities - Water:

RTD will provide all water, not separately metered to Amtrak, used in connection with Intercity Rail Passenger Service.

Item 12: Utilities - Electric:

RTD will provide all electricity, not separately metered to Amtrak (such as the 480 power), used in connection with Intercity Rail Passenger Service. This includes the electric power for switches, switch heaters, signals, platform electrical outlets and lighting on the Rail Lines and Ancillary Facilities

Item 13: Dispatching:

RTD shall operate a rail dispatch center 24 hours a day to regulate all Amtrak train movements to and from DUS. Dispatching includes all labor, materials and equipment necessary to perform this work.

Item 14: Non-Routine Services:

If Non-Routine Services are rendered for Amtrak by RTD, with prior approval by Amtrak, Amtrak shall pay RTD the actual Incremental Costs in accordance with Section 5.1 B. of the Agreement.

APPENDIX V Declaration of Commencement

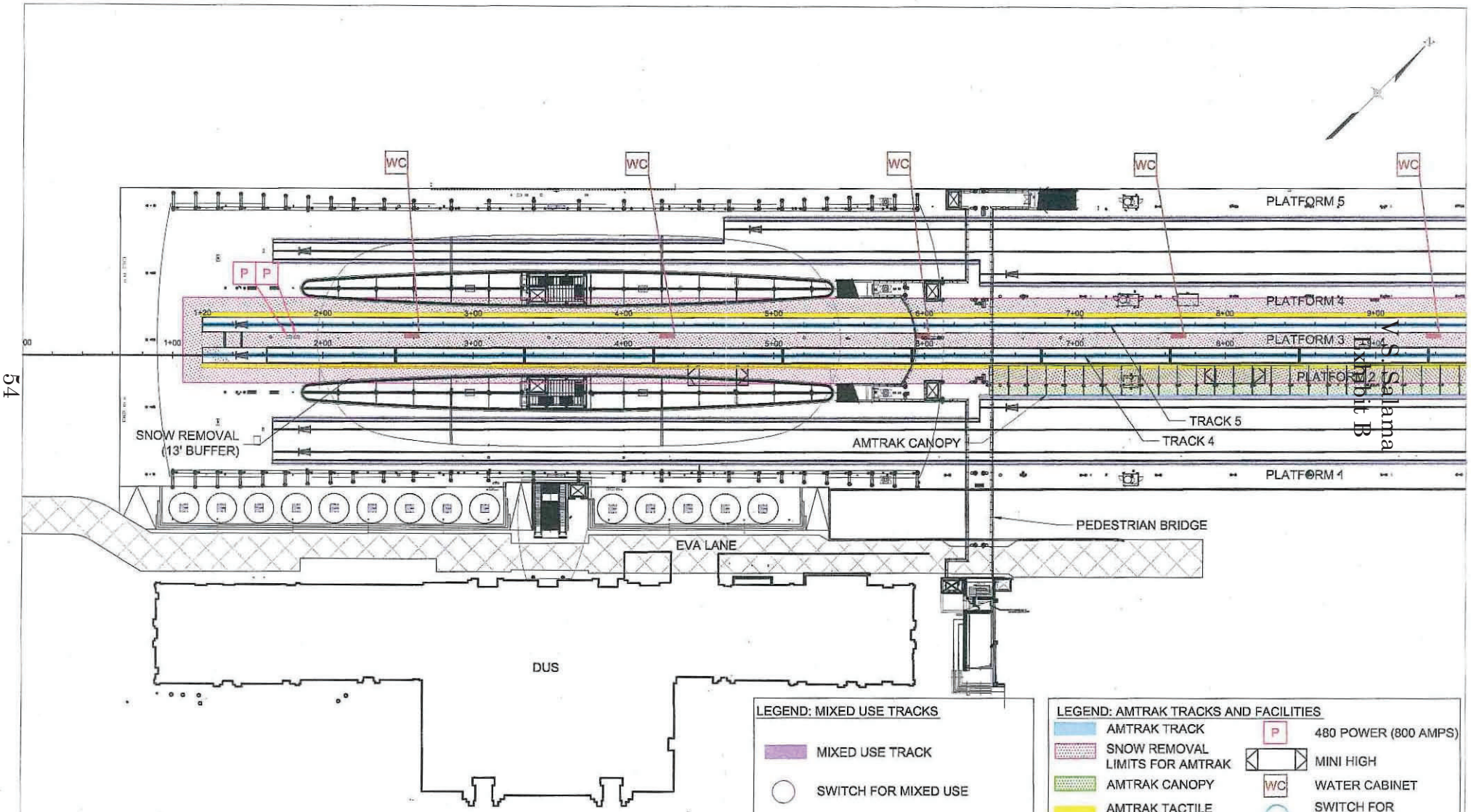
The National Railroad Passenger Corporation (NRPC) by and through its undersigned representative duly authorized to execute this Declaration of Commencement hereby declares and acknowledges that NRPC has taken possession of the premises at 1701 Wynkoop Street Denver, Colorado designated on **Exhibit B** of the Lease Agreement dated _____, 2013 between NRPC and the Regional Transportation District of and accepts the same as the Building Premises described therein.

National Railroad Passenger Corporation

By: _____

Its: _____

Date: _____



NO.	REVISIONS	BY	DATE

DESIGNED BY: DATE:
DRAWN BY: MCM DATE: 12/11/2013
CHECKED BY: KVS DATE: 12/11/2013
APPROVED BY: DATE:
HORZ. SCALE: 30
VERT. SCALE: N/A

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HALF SIZE - Double The Scale

FASTTRACKS
1500 BROADWAY, SUITE 700
DENVER, COLORADO 80202
(303) 299-6899

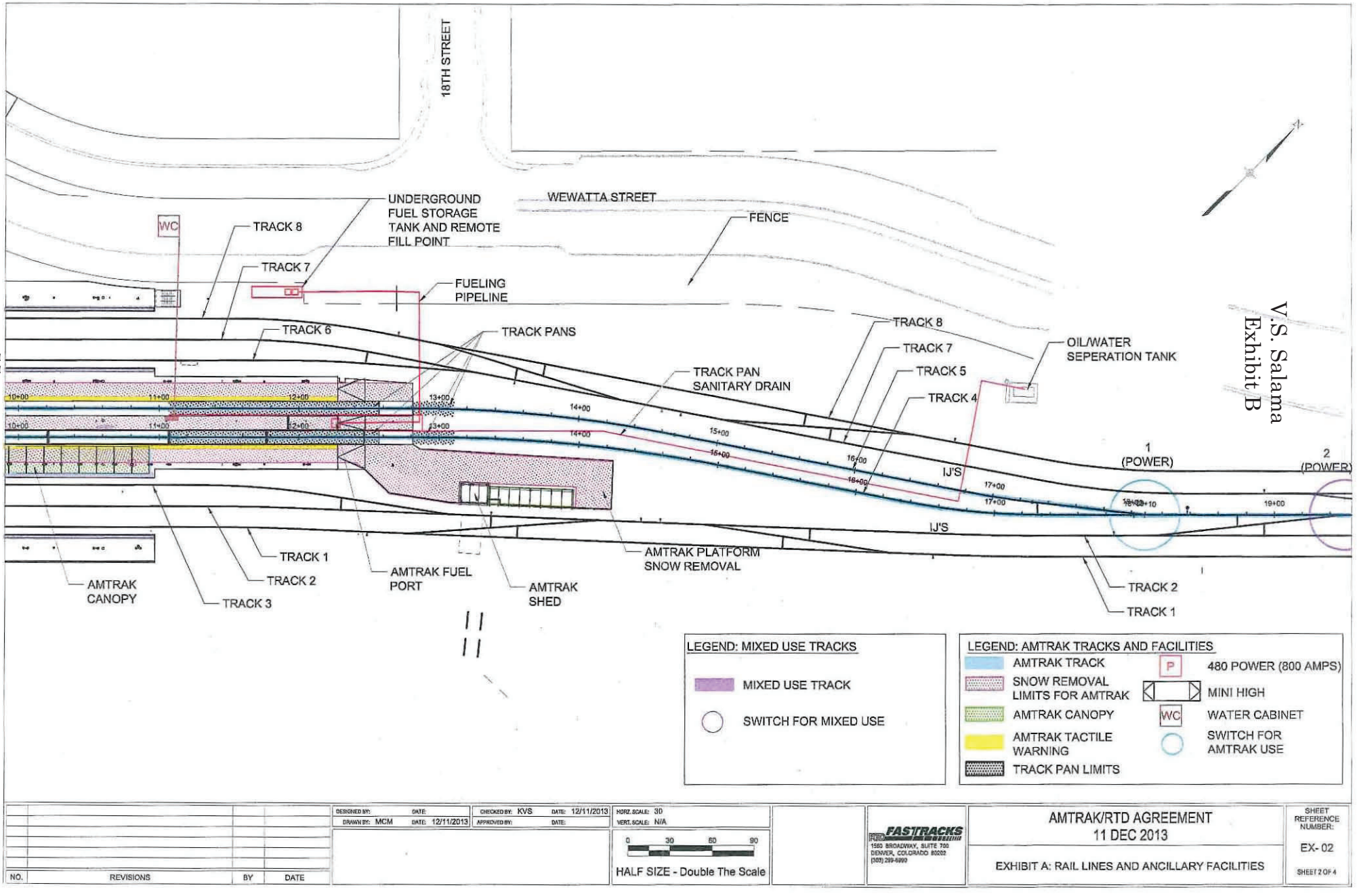
AMTRAK/RTD AGREEMENT
11 DEC 2013

EXHIBIT A: RAIL LINES AND ANCILLARY FACILITIES

SHEET REFERENCE NUMBER: EX-01

SHEET 1 OF 4

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NO.	REVISIONS	BY	DATE

DESIGNED BY: DATE:
DRAWN BY: MCM DATE: 12/11/2013
CHECKED BY: KVS DATE: 12/11/2013
APPROVED BY: DATE:
HORZ. SCALE: 30
VERT. SCALE: N/A

0 30 60 90
HALF SIZE - Double The Scale

FASTRACKS
1560 BROADWAY, SUITE 700
DENVER, COLORADO 80202
(303) 299-6999

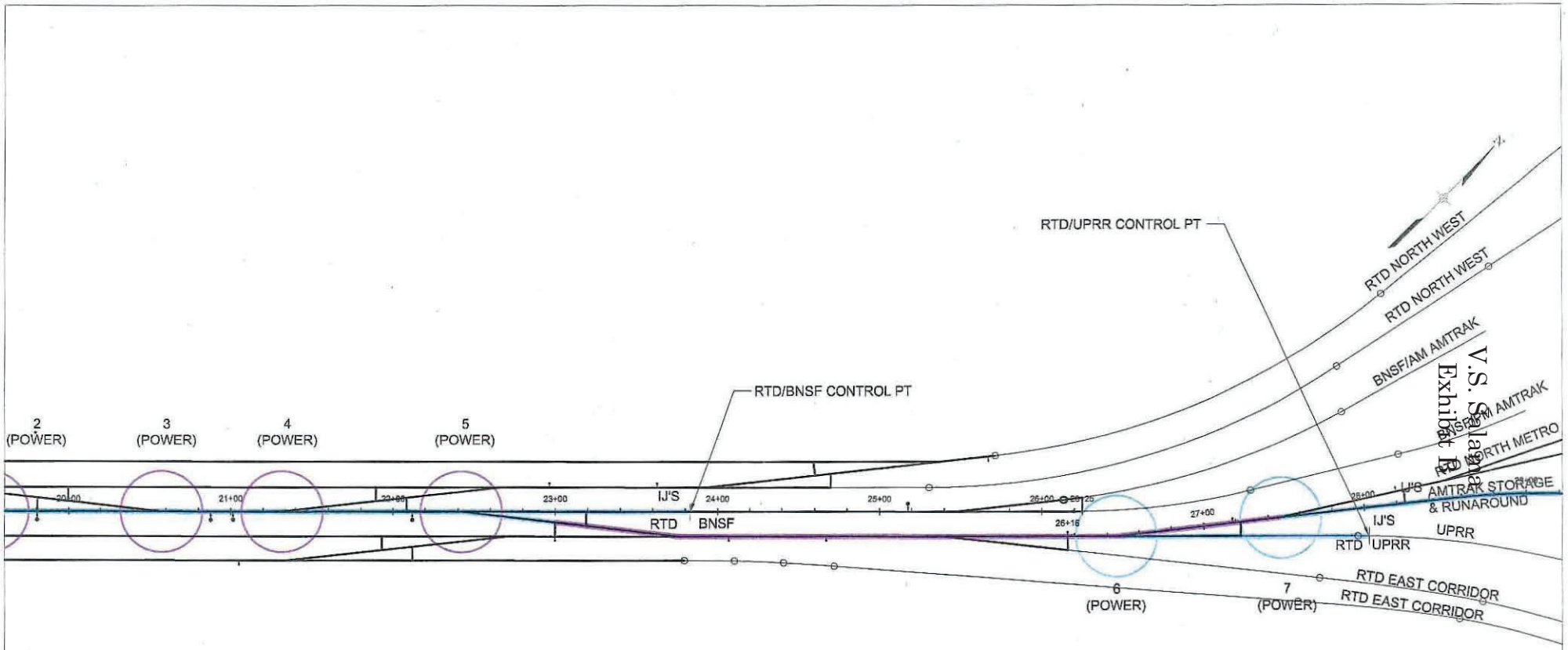
AMTRAK/RTD AGREEMENT
11 DEC 2013

EXHIBIT A: RAIL LINES AND ANCILLARY FACILITIES

SHEET REFERENCE NUMBER: EX- 02

SHEET 2 OF 4

C:\Planning And Development\Engineering\Drawings\2015\CAD\dwg\MISCELLANEOUS\EX-AMTRAK-PLATFORM-EXHIBIT-9-26-2013_KS.dwg, 12/11/2013 5:54:09 AM, Bluebeam PDF



LEGEND: MIXED USE TRACKS

- MIXED USE TRACK
- SWITCH FOR MIXED USE

LEGEND: AMTRAK TRACKS AND FACILITIES

- AMTRAK TRACK
- SNOW REMOVAL LIMITS FOR AMTRAK
- AMTRAK CANOPY
- AMTRAK TACTILE WARNING
- TRACK PAN LIMITS
- P — 480 POWER (800 AMPS)
- MINI HIGH
- WC — WATER CABINET
- SWITCH FOR AMTRAK USE

NO.	REVISIONS	BY	DATE

DESIGNED BY: DATE:
DRAWN BY: MCM DATE: 12/11/2013
CHECKED BY: KVS DATE: 12/11/2013
APPROVED BY: DATE:

HORZ. SCALE: 30
VERT. SCALE: N/A

0 30 60 90
HALF SIZE - Double The Scale

FASTRACKS
1580 BROADWAY, SUITE 700
DENVER, COLORADO 80202
(303) 299-4999

AMTRAK/RTD AGREEMENT
11 DEC 2013

EXHIBIT A: RAIL LINES AND ANCILLARY FACILITIES

SHEET REFERENCE NUMBER: EX - 03

SHEET 3 OF 4

V.S. Salazar
Exhibit B

J:\Planning And Development\Engineering\Drawings\10\05\DAD\dwg\MISCELLANEOUS\10\05-AMTRAK-PLATFORM-EXHIBIT-9-26-2013_KN.dwg, 12/11/2013 9:54:33 AM, Bluebeam PDF

V.S. Salama
Exhibit B

LEGEND: MIXED USE TRACKS

- MIXED USE TRACK
- SWITCH FOR MIXED USE

LEGEND: AMTRAK TRACKS AND FACILITIES

- AMTRAK TRACK
- SNOW REMOVAL LIMITS FOR AMTRAK
- AMTRAK CANOPY
- AMTRAK TACTILE WARNING
- TRACK PAN LIMITS
- P — 480 POWER (800 AMPS)
- MINI HIGH
- WC — WATER CABINET
- SWITCH FOR AMTRAK USE

NO.	REVISIONS	BY	DATE

DESIGNED BY: DATE:
DRAWN BY: MCM DATE: 12/11/2013
CHECKED BY: KVS DATE: 12/11/2013
APPROVED BY: DATE:
HORZ. SCALE: 30
VERT. SCALE: N/A

0 30 60 90
HALF SIZE - Double The Scale

FASTRACKS
1560 BROADWAY, SUITE 700
DENVER, COLORADO 80202
(303) 259-6960

AMTRAK/RTD AGREEMENT
11 DEC 2013

EXHIBIT A: RAIL LINES AND ANCILLARY FACILITIES

SHEET REFERENCE NUMBER: EX - 04

SHEET 4 OF 4

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Exhibit B

CONTRACTOR'S
RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made and entered into as of the _____ day of _____, 20_____, by and between The Regional Transportation District (RTD) a political subdivision of the State of Colorado ("RTD"); and_____ _____, a _____ corporation ("Contractor").

RECITALS:

Contractor has been hired by the National Railroad Passenger Corporation ("Amtrak") to perform work relating to _____ _____ _____(the "work"), with all or a portion of such work to be performed on property of RTD at or in the vicinity of Denver Union Station (DUS) located at or near Denver Union Station_____, in the City and County of Denver, State of Colorado, as such location is in the general location shown on the print marked **Exhibit A**, attached hereto and hereby made a part hereof.

RTD 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 RTD 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.

RTD 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 RTD's property specifically described herein, or as designated by the RTD 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; RTD 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 RTD relating to this Agreement.

B. Contractor shall coordinate all of its work with the following RTD representative or his or her duly authorized representative (the "RTD 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 RTD's approval of plans and specifications involving the work, or by RTD's collaboration in performance of any work, or by the presence at the work site of a RTD Representative, or by compliance by Contractor with any requests or recommendations made by RTD 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 RTD's property, whichever is earlier. Contractor agrees to notify the RTD Representative in writing when it has completed its work on RTD'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 RTD with the (i) insurance binders, policies, certificates and endorsements set forth in **Exhibit C** of this Agreement except as to those requirements waived in writing by RTD's Risk Manager, 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:

Regional Transportation District
1600 Blake Street
Denver,CO 80202

Attn: Risk Manager

ARTICLE 7 - DISMISSAL OF CONTRACTOR'S EMPLOYEE.

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

ARTICLE 8 – [RESERVED]

ARTICLE 9 - CROSSINGS.

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

ARTICLE 10.- EXPLOSIVES.

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

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

Regional Transportation District

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 RTD 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 RTD's track(s) at any time, for any reason, unless and until a RTD flagman is provided to watch for trains. Upon receipt of such ten (10)-day notice, the RTD 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 RTD, RTD will bill Contractor for such expenses incurred by RTD, unless RTD and a federal, state or local governmental entity have agreed that RTD is to bill such expenses to the federal, state or local governmental entity. If RTD will be sending the bills to Contractor, Contractor shall pay such bills within thirty (30) days of Contractor's receipt of billing. If RTD performs any flagging, or other special protective or safety measures are performed by RTD, Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this Agreement.

(1) RTD may waive requirements for a flagman when in its sole discretion it determines that control of access to tracks within DUS may be implemented through dispatch, when applicable rules or regulations permit such waiver.

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 RTD's 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 (if applicable) 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 RTD 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 RTD will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other RTD 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 RTD 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 RTD is required to pay the flagman and which could not reasonably be avoided by RTD by assignment of such flagman to other work , even though Contractor may not be working during such time. When it becomes necessary for RTD to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Contractor must provide RTD 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 RTD if flagging services are needed again after such five day cessation notice has been given to RTD.

Section 2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.

The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the RTD to use and maintain its entire property and Contractor may not interfere with the RTD's use of the Premises except at the locations and for the periods specified herein or otherwise agreed upon by RTD and Amtrak and/or Contractor.

Section 3. NO INTERFERENCE WITH OPERATIONS OF RTD AND ITS TENANTS.

A. Contractor shall conduct its operations so as not to interfere with the continuous and uninterrupted use and operation of DUS 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 RTD's nearest track, and there shall be no vehicular crossings of RTDs tracks except at existing open public crossings.

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

RTD for any such work performed. Contractor shall indemnify and hold harmless RTD 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, RTD may, at its election, discharge the lien or claim of lien at Contractor's expense.

Section 5. **[RESERVED.]**

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 RTD 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 RTD's safety standards listed in **Exhibit D**, hereto attached, to ensure uniformity with the safety standards followed by RTD's own forces. As a part of Contractor's safety responsibilities, Contractor shall notify RTD if Contractor determines that any of RTD'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 RTD 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 RTD, 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 RTD, Contractor shall deliver to RTD a copy of Contractor's safety plan for conducting the work (the "Safety Plan"). RTD 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. Contractor shall indemnify, defend and hold harmless RTD, its affiliates, its station operator, Denver Transit Operators, 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 of any Indemnified Party, except where the Loss is caused by the sole active negligence, gross negligence, or willful and wanton conduct 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 RTD authorizes Contractor to take down any fence of RTD or in any manner move or disturb any of the other property of RTD 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 RTD's property promptly upon completion of the work, restoring RTD's property to the same state and condition as when Contractor entered thereon.

Section 10. WAIVER OF DEFAULT.

Waiver by RTD 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 RTD 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 RTD. This Agreement and the exhibits attached hereto and made a part hereof constitute the entire understanding between Contractor and RTD and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work to be performed by Contractor.

Section 12. ASSIGNMENT - SUBCONTRACTING.

Contractor shall not assign or subcontract this Agreement, or any interest therein, without the written consent of the RTD. 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 RTDs" 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 RTDs" ISO Form CA 20 70 10 01 (or a substitute form providing equivalent coverage) for the job site except as to any policies the requirements for which have been waived pursuant to Article 6.

EXHIBIT C
TO
CONTRACTOR'S
RIGHT OF ENTRY AGREEMENT

RTD 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 RTD's property has been completed and the Contractor has removed all equipment and materials from RTD's property and has cleaned and restored RTD's property to RTD'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 RTDs ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "RTD 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 RTDs ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "RTD 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 RTD 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 RTD 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 RTD before the work may be commenced and until the original policy is forwarded to RTD.

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 RTD 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 RTD 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 RTD as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for RTD'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 RTD 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 RTD 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 RTD 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 RTD 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 RTD 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 RTD rules, regulations, or recommended or requested by the RTD 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 RTD Representative.

III. On Track Safety

Contractor is responsible for compliance with the Federal RTD Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and RTD's On-Track Safety rules. Under 49CFR214, Subpart C, RTD 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 RTD Representative is present to authorize movements.
(ii) Wear an orange, reflectorized workwear approved by the RTD 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 RTD Representative, any of Contractor's equipment is unsafe for use, Contractor shall remove such equipment from RTD'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 RTD'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 RTD 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 RTD Representative, if applicable. During this briefing, the RTD 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 RTD Administration's Track Safety Standards 49CFR213.

D. All employees comply with the following safety procedures when working around any RTD 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.

V.S. Salama
Exhibit C

LICENSE AND OPERATING AGREEMENT

FOR USE OF DENVER UNION STATION TRACK AND PLATFORM AREA

THIS LICENSE AGREEMENT ("**Agreement**") is made by and among the REGIONAL TRANSPORTATION DISTRICT, a political subdivision of the State of Colorado, whose address is 1660 Blake Street, Denver, Colorado 80202 ("**RTD**"), the NATIONAL RAILROAD PASSENGER CORPORATION, organized under the Rail Passenger Service Act now codified at Title 49 US Code Section 24101 *et seq*. (the "Act"), and the laws of the District of Columbia, having offices at 1 Massachusetts Avenue, N.W., Washington, DC 20001 ("**Amtrak**"), and American Rocky Mountaineer, LLC, a Colorado corporation, having a registered representative at c/o CT Corporation 7700 E. Arapahoe Rd, #220, Centennial, CO 80112 ("**Licensee**" or "**ARM**"). This Agreement shall become effective upon the last date of execution by the parties (the "**Effective Date**").

RECITALS

A. RTD owns, controls and operates certain trackage and facilities ("**RTD Property**") within or adjacent to Denver Union Station located at 1701 Wynkoop Street, Denver, CO 80202 ("**DUS**") as generally depicted in **Exhibit A** ("**Licensed Area**").

B. Pursuant to the Operating Agreement, dated February 1, 2014, as amended from time to time ("**Operating Agreement**"), between RTD and Amtrak, RTD agreed to provide Amtrak with the use of tracks 4 and 5, currently used exclusively by Amtrak ("**Rail Lines**"), passenger platforms, and such other facilities appurtenant to the Rail Lines (collectively with the Rail Lines, and as further defined in the Operating Agreement, the "**Amtrak Tracks and Facilities**").

C. Pursuant to the Operating Agreement, RTD retains the sole and exclusive right to lease or license the Rail Lines for use by third parties; provided that if such lease or license includes any Amtrak Tracks and Facilities, such lease or license is subject to coordination with, and approval by Amtrak according to Section 8.11 of the Operating Agreement.

D. Licensee desires access to the Rail Lines, passenger platforms and such other facilities appurtenant to the Rail Lines on the RTD Property to accommodate the luxury passenger train services operated by Licensee for picking up and dropping off Licensee's customers. The foregoing uses shall be referred to herein as the "**Permitted Uses**".

E. All recitals and attached exhibits are deemed incorporated into this Agreement. All references to days within this Agreement refer to calendar days unless otherwise stated.

In consideration of the mutual promises and terms contained in this Agreement, the parties agree as follows:

ARTICLE 1. LICENSE

A. Subject to all the terms and conditions of this Agreement, RTD grants to Licensee a non-exclusive, revocable license and permission to enter upon and have ingress to and egress from the RTD Property ("**License**") solely for the Permitted Uses (which shall be done in accordance with all applicable laws, rules and regulations) and for no other use or purpose within the Licensed Area. Without limiting the generality of the foregoing, the License does not include the right to conduct train servicing (including watering and fueling), storage, or construction in or modification to any facilities in the Licensed Area. Licensee shall use Track 5. If Track 5 is not available, as determined by Denver Transit Operators ("**DTO**"), then Licensee shall use Track 4.

B. RTD and Amtrak, in accordance with the Operating Agreement, shall retain all rights in and usage of the Licensed Area. For the avoidance of doubt, RTD acknowledges that Amtrak has not provided its approval for Licensee's use of the Amtrak Tracks and Facilities except as expressly provided herein. The License is subject to existing agreements, interests, easements, leases, licenses, and permits (if any) previously granted, reserved, or held by RTD, its predecessors in interest, or any other person or entity affecting any of the Licensed Area or RTD Property, whether of record or not. Licensee's use of the Licensed Area shall not knowingly or intentionally interfere with RTD's, Denver Transit Partners ("**DTP**"), any RTD contractor's ("**RTD Contractor**"), or Amtrak's use, operation, and/or RTD's, DTP's, or RTD Contractor's maintenance of the RTD Property, nor with the needs and requirements of RTD's agents, tenants, easement beneficiaries, licensees, or lien holders, nor with the use of their improvements on the RTD Property. DTO operates and maintains RTD commuter rail service.

C. Licensee is prohibited from installing any storage containers or constructing any fixtures or improvements on RTD Property without RTD's prior written approval, or on Amtrak Tracks and Facilities, without RTD's and Amtrak's prior written approval.

D. RTD will coordinate with Licensee to design, fabricate, erect, and/or install the appropriate wayfinding signage and signage designating rail platform locations (collectively, "**Signage**") at Licensee's cost.

E. Licensee shall require its agents, employees, contractors, and subcontractors (collectively, "**Licensee's Agents**") to comply with each of the terms and conditions of this Agreement and to acknowledge all rights reserved to RTD and/or Amtrak pursuant to this Agreement.

F. Notwithstanding any other provision of this Agreement, Licensee shall not use or permit anything to be done in or anything to be brought into or kept in or about the Licensed Area or the RTD Property or any part thereof: (i) which would violate any of the covenants, agreements, terms, provisions and conditions of this License or otherwise applicable to or binding upon the Licensed Area; (ii) for any unlawful purposes or in any unlawful manner; or (iii) which, in the reasonable judgment of Licensor or Amtrak (to the extent such use or action could impact the Amtrak Tracks and Facilities) shall in any way (a) impair the appearance or reputation of the RTD Property, or (b) impair, interfere with or otherwise diminish the quality of any RTD or Amtrak operations and services or the proper and economic heating, cleaning air conditioning or other servicing of the RTD Property or Licensed Area, or (c) impair of interfere with the use or occupancy of any of the other areas of the RTD Property, or (d) occasion discomfort, inconvenience or annoyance, or injury or damage to any occupants of the Licensed Area. Licensor shall enforce such standards upon all carriers and their employees and passengers in a fair and equitable manner so that each carrier is held to the same standard of conduct.

G. Licensee agrees to conduct its labor relations and its relations with its employees in such manner as to attempt to avoid all strikes, picketing and boycotts of, on or about the Licensed Area or the RTD Property. Licensee shall take any and all reasonable measures under the circumstances to ensure that its employees and contractors shall work in harmony with 'RTD's, DTP's, or Amtrak's contractors and employees.

H. This License is subject to the RTD Policies Listed on **Exhibit B** and the RTDC DUS Operating Procedures for American Rocky Mountaineer Crews ("**Operating Procedures**") in **Exhibit C** which are governed by RTDC Operating Rules/RTDC Employee Timetable, as amended from time to time, provided that RTD will give Licensee any such amendments 20 days before their effective date.

I. Licensee shall request prior review and written approval from RTD for any deviations from the equipment restrictions in DUS pursuant to the RTDC Employee Timetable, and from Amtrak for any deviation request concerning the Amtrak Tracks and Facilities. With such request, Licensee shall submit equipment information, cut sheets and weights for locomotive(s), passenger cars and all

consist cars. Licensee's request for additional deviations made throughout the Term of this Agreement such as an increased size and weight of equipment/locomotive(s)/cars shall follow the same process.

ARTICLE 2. TERM

This Agreement shall become effective upon the Effective Date and shall remain in effect for five (5) years from the Effective Date (the "**Initial Term**") unless or until terminated by a party hereto pursuant to the provisions of Article 6 or terminated by court order, whichever is earlier. The last day of the Initial Term is referred to herein as the "**Expiration Date**".

RTD may grant Licensee the option to renew this Agreement in RTD's sole discretion for up to two (2) additional five-year terms (each, an "**Additional Term**"). Licensee must request an Additional Term from RTD in writing no later than twelve (12) months prior to the Expiration Date. RTD shall obtain Amtrak's approval for any Additional Term in accordance with Section 8.11 of the Operating Agreement. Collectively, the Initial Term and any Additional Term are referred to herein as the "**Term**".

ARTICLE 3. FEES AND PAYMENT

A. License Fees. Collectively, the fees described in this subsection are referred to herein as "**License Fees**".

i. The price of the License for the first year of the Initial Term is $24,204.24[1] as such number is adjusted by the Consumer Price Index for All Urban Consumers for the Denver-Boulder-Greeley area which shall be obtained from the Bureau of Labor Statistics, U.S. Department of Labor (currently found at https://www.bls.gov/regions/mountain-plains/co_denver_cmsa.htm) (the "**CPI-U**") for 2023. Licensee will pay the License Fee in eight (8) consecutive monthly installments on the 10th day of each month, beginning March 10th of each year and ending on October 10th of each year for five (5) years. The License Fee for the Initial Term will be adjusted annually by the CPI-U using the CPI-U as of the Effective Date as the base and the then-current CPI-U for the adjustment.

ii. If RTD approves Licensee's request for a first Additional Term, the License Fee will be adjusted annually by using the CPI-U as of the last year of the Initial Term as the base and the then-current CPI-U for the adjustment. Payments will be made in accordance with the installments described for the Initial Term.

iii. If RTD approves Licensee's request for a second Additional Term, the License Fee will be adjusted annually by using the CPI-U as of the last year of the first Additional Term as the base and the then-current CPI-U for the adjustment. Payments will be made in accordance with the installments described for the Initial Term.

B. Additional License Fees.

i. Any additional charges owed by Licensee to RTD under this Agreement, including but not limited to those fees described in this subsection, overdue payment charges, and RTD's

[1] RTD will annually credit Amtrak a portion of the License Fee equal to the proportional share of Licensee's trains using the Amtrak Tracks and Facilities annually, to the total number of Amtrak and Licensee trains using the Amtrak Tracks and Facilities (on a calendar year basis).

expense in granting Licensee's request for approvals, consents or estoppel certificates, shall be payable to RTD.

ii. Licensee shall reimburse RTD for all reasonable out-of-pocket expenses, including reasonable legal and staff fees incurred by RTD in connection with all requests by Licensee for consents, approvals or execution of collateral documentation related to this License, including the execution by RTD of estoppel certificates requested by Licensee.

iii. Licensee shall reimburse RTD for all reasonable out-of-pocket expenses and staff time in connection with any design, review, fabrication, and installation of the Signage.

iv. Collectively, the charges, expenses and fees identified in Subsections B.i-iii above shall hereinafter be referred to as "**Additional License Fees**"

v. Licensee shall pay Additional License Fees to RTD within thirty (30) days of receiving an invoice from RTD.

C. Late Fees. If Licensee fails to pay any License Fees or Additional License Fees within ten (10) days from the date such License Fees or Additional License Fees are due, Licensee shall pay a late payment charge equal to Two Hundred Dollars ($200.00) within thirty (30) days of receiving an invoice from RTD to reimburse RTD for its additional administrative costs incurred as the result of such late payment (a "**Late Fee**").

D. Accrued Interest. Any License Fees and Additional License Fees not paid within ten (10) days after the date due shall bear interest for each month or fraction thereof from the due date until paid computed at the annual rate of two percentage points (2%) over the prime rate then currently from time to time published in the Wall Street Journal (collectively, "**Accrued Interest**").

E. License Fees, Additional License Fees, Late Fees, Accrued Interest, Delay Penalty, and the Delay Penalty Maximum are collectively referred to herein as "**Fees**". Delay Penalty and Delay Penalty Maximum are defined below in in Article 4.A.

ARTICLE 4. RAIL OPERATIONS

A. Track Access

i. Licensee's arriving trains will not occupy the Amtrak Tracks and Facilities within the Licensed Area for longer than the time related to boarding and alighting passengers and vacate the Rail Lines ("**Station Dwell**"). Licensee shall take all reasonable measures to ensure it will not occupy the Amtrak Tracks and Facilities in excess of the Station Dwell. If for any reason, Licensee's operation causes an Amtrak train to be delayed entering the Amtrak Tracks and Facilities, as determined by Amtrak's electronic delay reporting system (eDR), Licensee shall be required to pay RTD Seventy-five Dollars ($75.00) for each minute of such delay ("**Delay Penalty**"), up to a maximum of Thirteen-Thousand Five-Hundred Dollars ($13,500.00) per Amtrak train ("**Delay Penalty Maximum**").

ii. Licensee shall pay any Delay Penalty or Delay Penalty Maximum to RTD within thirty (30) days of receiving an invoice from RTD. RTD shall promptly credit Amtrak for such Delay Penalty or Delay Penalty Maximum only to the extent RTD receives such amounts from Licensee. Licensee acknowledges and understands that failure to pay such Delay Penalty or Delay Penalty Maximum shall represent a material violation of this Agreement and may precipitate issuance of a Default Notice pursuant to Article 6 below, and termination of Amtrak's approval for Licensee's use of the Amtrak Tracks and Facilities in accordance with the provisions of the Operating Agreement. Such Delay Penalty and Delay Penalty Maximum will be adjusted

annually effective on each anniversary of the Effective Date by the CPI-U using the CPI-U as of the Effective Date as the base and the then-current CPI-U for the adjustment.

iii. Licensee's departing trains may be permitted by RTD to arrive 45 minutes prior to their scheduled departure pursuant to the train schedule attached hereto as **Exhibit D** to help provide adequate time for loading of Licensee's passengers and luggage. RTD, in its sole discretion, may provide additional time to accommodate trips that regularly take longer to load.

iv. Licensee has agreed to and will abide by the Operating Procedures set forth in **Exhibit C**, as may be amended from time to time.

v. Licensee acknowledges and understands that the priority for DUS train operation and access is as follows: 1) RTD commuter rail service and Amtrak passenger service trains; 2) Licensee trains; 3) trains of any other parties. Such priorities will be implemented by RTD at RTD's sole direction.

B. Service Levels, Service Level Changes, and Schedule Changes

i. RTD will cap Licensee's service levels at the level in effect on the Effective Date in accordance with the train schedule attached hereto as **Exhibit D**. RTD may permit additional scheduled service by Licensee as described herein with prior coordination and written approval of RTD and Amtrak and Additional License Fees paid to RTD at least equivalent to the then-current fees calculated pursuant to Article 3, above. Amtrak's approval of such additional scheduled service shall not be unreasonably withheld, and Amtrak's notice of approval or rejection shall be provided to RTD within thirty (30) days of email receipt of a request for approval.

ii. Licensee shall obtain the approval of RTD and Amtrak for any temporary Licensee-requested schedule adjustments. Amtrak's approval of such temporary Licensee-requested schedule adjustments shall not be unreasonably withheld, and Amtrak's notice of approval or rejection shall be provided to RTD within ten (10) days of email receipt of Licensee's request.

iii. RTD may permit additional special event trains by Licensee with prior coordination and written approval of RTD and Additional License Fees paid to RTD; provided that prior coordination and written approval of Amtrak is required if such special event trains would utilize or impact the Amtrak Tracks and Facilities.

C. Law enforcement

i. RTD will provide law enforcement for the RTD Property at levels within RTD's sole discretion.

ii. Under certain circumstances, if RTD determines that the police (or security) presence in the RTD Property must be increased, RTD may charge Licensee an additional cost to be negotiated for such services.

D. RTD Property Maintenance

i. RTD will maintain the RTD Property in good repair and in full compliance with federal, state, and local laws.

ii. Under certain circumstances, if RTD determines that maintenance of the RTD Property must be increased, RTD may charge Licensee an additional cost to be negotiated for such services.

iii. Licensee shall obtain the approval of RTD and Amtrak on timing for various routine or ad hoc inspections or maintenance activities within the RTD Property.

E. Luggage. Licensee will not have space for luggage storage or checked luggage within the RTD Property.

F. Train Servicing and Maintenance. Licensee is prohibited from performing train servicing and maintenance within the RTD Property except in the case of an emergency, in which case Licensee shall provide notice of the emergency to RTD, Amtrak and DTO Operations Control Center (OCC) as soon as possible pursuant to section I below.

G. No Layover. Licensee's trains are prohibited from taking layover in the RTD Property. If RTD permits an emergency layover, no train idling is permitted overnight. RTD will notify Amtrak as soon as practicable in the case of such an emergency layover.

H. Vending and Food Service. RTD does not permit vending and food service within the RTD Property.

I. Licensee's train crews shall promptly notify the following parties if they observe any emergency, including any accident or injury to persons on RTD Property regardless of whether such accident involves Licensee's trains; provided, however that such notification requirement shall not itself create any additional liability to Licensee for any such accident or injury: 1) RTD Transit Police Communications Center (TPC2) at 303-299-2929; 2) DTO Emergency at 720-460-5959 or DTO OCC Supervisor at 720-460-5906; 3) RTD SR Manager, Commuter Rail Contract Services at 303-299-2897 (w) or 719-325-9888 (c), and Amtrak Police Department at 1-(800)-331-0008.

J. Licensee's train crews shall strictly adhere to all instructions communicated by RTD and DTO Operations Control Center (OCC) and Licensee and its employees agree to cooperate with RTD and Amtrak in any accident or injury investigations.

K. The Licensee shall not be entitled to any services from Amtrak under this License.

ARTICLE 5. RTD AND DTO SERVICES

A. DTP and RTD are parties to a Concession Agreement (the "**Concession Agreement**") for portions of RTD commuter rail service. Pursuant to the Concession Agreement, DTO provides dispatching for all trains at DUS and other services for the RTD Property.

B. Licensee agrees to reimburse RTD for any costs incurred by RTD related to Licensee's operations in addition to Fees.

C. Licensee agrees to reimburse RTD for any costs incurred by RTD pursuant to any DTP claims for relief related to Licensee's operations, including, but not limited to operational delay exclusions, repairs to damaged infrastructure caused by Licensee's operations, and any DTP relief claims pursuant to the Concession Agreement related to Licensee operations. Licensee will coordinate and negotiate in good faith with DTP to resolve reimbursement for any DTP incurred costs related to any such relief claims.

ARTICLE 6. TERMINATION AND DEFAULT

A. RTD may terminate this Agreement for convenience with respect to all or a portion of the Licensed Area. RTD shall provide notice of such termination for convenience to Licensee in writing three hundred and sixty-five (365) days prior to the effective date of termination and shall specify the scope and extent of such termination.

B. In the event of Licensee's failure to pay any Fees within ten (10) days from the date such Fees are due, Licensee shall pay such Fees promptly upon receipt of written notice from RTD (a "**Payment Default Notice**"). Unless otherwise agreed to in writing by RTD, if Licensee fails to pay RTD all Fees due within thirty (30) days after receipt of the Payment Default Notice, RTD may terminate this Agreement effective immediately, and Licensee shall immediately cease operating on the RTD property. In the

event of Licensee's material violation of its obligation to pay Fees, Amtrak shall have the right to cause RTD to issue a Payment Default Notice by requesting that RTD issue of a Payment Default Notice together with a description of the violation. RTD will issue such Payment Default Notice within ten (10) days of email receipt of Amtrak's request and description.

C. In the event of Licensee's material violation of any of the terms of this Agreement besides Licensee's obligation to pay Fees, Licensee shall correct such violation promptly upon receipt of written notice (a "**Default Notice**") from RTD independently or on behalf of Amtrak pursuant to subsection D. below at no cost to RTD or Amtrak. If the violation is not cured to the reasonable satisfaction of RTD within thirty (30) days after Licensee's receipt of the Default Notice, or such longer period as RTD may permit in writing, RTD may elect to correct or eliminate the violation at Licensee's expense, without prejudice to RTD's right to terminate this Agreement. If Licensee fails to timely reimburse RTD, RTD may terminate this Agreement effective immediately, and Licensee shall immediately cease operating on the RTD property.

D. In the event of Licensee's material violation of any of the terms of this Agreement besides Licensee's obligation to pay Fees (except as provided above), Amtrak may request that RTD issue a Default Notice by providing RTD with a description of such violation, and RTD shall promptly issue such Default Notice. If the violation is not cured to the reasonable satisfaction of Amtrak within thirty (30) days after Licensee's receipt of the Default Notice from RTD, or such longer period as Amtrak may permit in writing, Amtrak's approval of Licensee's use of the Amtrak Tracks and Facilities, pursuant to Section 8.11 of the Operating Agreement, shall be deemed rescinded, and RTD shall immediately terminate this Agreement, and Licensee shall cease operating on the RTD property within ninety (90) days' of such termination notice.

E. Licensee shall reimburse RTD under this Article within thirty (30) days of Licensee's receipt of a written invoice and supporting documentation.

ARTICLE 7. NOTICES

Unless otherwise prescribed in this Agreement, any notices required to be given shall be provided in writing and mailed by U.S. mail, first class postage prepaid, or by electronic mail and addressed as follows:

If to RTD:

Regional Transportation District
Attn: RTD SR Manager, Commuter Rail Contract Services
711 West 31st Avenue, Suite 30
Denver, CO 80211
(303) 299-2897

Regional Transportation District
Attn: Senior Manager, Real Property
1560 Broadway, Suite 650
Denver, Colorado 80202
(303) 299-2440

With a copy to:

Regional Transportation District
General Counsel
1660 Blake St, BLK-23
Denver, CO 80202

V.S. Salama
Exhibit C

If to Amtrak:	National Railroad Passenger Corporation 2955 Market Street 30th Street Station-4 North Philadelphia, PA 19104 Attention: Director Host Railroad Contracts
With a copy to:	National Railroad Passenger Corporation 1 Massachusetts Avenue, N.W. Washington, DC 20001 Attention: General Counsel
If to Licensee:	American Rocky Mountaineer LLC 3880 Wynkoop Street Denver, CO 80216
With a copy to:	Great Canadian Railtour Company Ltd. #1100-980 Howe Street Vancouver, BC V6Z OC8

Any such notice shall be deemed to have been provided three (3) days after such notice or communication is mailed. Each party will provide notice of any changes to its address, email address, or contact person.

ARTICLE 8. LIABILITY

A. Licensee shall be responsible for any damage to any property, including the Licensed Area, the RTD Property or other RTD property, Licensee's property, adjacent property, rail infrastructure, utilities, adjacent structures, Amtrak's property, and other third-party equipment, fixtures, real and personal property on or under the RTD Property that is caused by Licensee or Licensee's Agents. Licensee shall either promptly repair such damage or pay damages to the reasonable satisfaction of the owner of the damaged property, in either case at no cost to RTD or Amtrak. RTD or Amtrak and Licensee shall notify each other of any such damage and any potential claims arising out of such damage.

B. Licensee shall and shall require Licensee's Agents to indemnify, defend and hold harmless (1) RTD and its officers, directors, employees, agents, and contractors, including DTP/DTO, and (2) Amtrak and its officers, directors, employees, agents, and contractors against and from all claims (including without limitation actions, demands, expenses, costs, attorneys' fees, court costs, and judgments) arising out of or caused by Licensee's use of the Licensed Area and RTD Property under this Agreement or other Licensee activities on RTD Property. In the event of any claims made or suits filed, each party shall give the other prompt written notice, and RTD or Amtrak, as appropriate, shall have the option to defend or reasonably settle the same as to claims or suits made against it, without effect as to Licensee's obligations under this Agreement.

C. Nothing in this Agreement shall be deemed to waive any of RTD's privileges or immunities pursuant to the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq*.

D. Specifically, Licensee shall comply with Federal Railroad Administration ("**FRA**") rules and regulations and shall be solely responsible for any FRA violations or penalties arising from acts and omissions of Licensee related to the Permitted Uses on the RTD Property.

E. The provisions of this Article shall survive the expiration or termination, in whole or in part, of this Agreement.

ARTICLE 9. NO WARRANTY

A. RTD does not grant nor purport to grant any right not specifically set forth in this Agreement. Permission for Licensee or Licensee's Agents to traverse the property of any other property owners or interest-holders other than RTD is the sole responsibility of Licensee, as is the procurement of any applicable regulatory permission or consent.

B. The right to use the Licensed Area and RTD Property is granted subject to their "AS IS" physical condition without any warranty, express or implied; provided, however, that RTD shall be obligated to maintain and operate the RTD Property in compliance with all federal, state and local laws and regulations.

C. Licensee specifically assumes all risk of loss, damage, or destruction to any tools, equipment, or materials, if any, that Licensee or Licensee's Agents store on the Licensed Area or the RTD Property, whether the loss, damage, or destruction results from accident, act of God, the elements, severe weather, theft, or vandalism.

ARTICLE 10. INSURANCE

A. Licensee shall, throughout the Term of this Agreement, procure and maintain, and shall require that Licensee Partners and Licensee's Agents, with the exception of individual Licensee employees, procure and maintain, the following types of insurance, at a minimum, with an insurer or insurers and in a form satisfactory to RTD and with such policies (except for the Workers Compensation and Employers' Liability insurance) naming RTD, DTP and DTO as additional insureds:

1. Commercial General Liability Insurance with contractual liability endorsement, which shall provide coverage for limits of not less than $5,000,000 each occurrence and an aggregate limit of at least $10,000,000, and shall also include, but not be limited to, coverage for bodily injury, property damage, and products and completed operations; or equivalent coverage. Licensee intends to meet this requirement with the following coverage: Excursion Form Railroad Liability Claims Made policy carrying limits of not less than $5,000,000 per occurrence and an aggregate limit of not less than $10,000,000 and providing coverage for bodily injury, property damage and products and completed operations.

2. Umbrella/Excess Liability Insurance. An umbrella/excess liability policy may be procured to meet the requirements of the Commercial General Liability Insurance limits. Such excess insurance shall be at least as broad as the Licensee's Commercial General Liability, Automobile Liability, and Workers' Compensation and Employers' Liability Insurance.

3. Railroad Liability Insurance. Railroad Liability Insurance naming only RTD as the insured, with coverage of at least $5,000,000 per occurrence and $10,000,000 in the aggregate. The coverage obtained under this policy shall only be effective when the Contractor or Contractor's Agents are performing work on the Licensed Area. The policy shall be issued on a standard ISO form CG 00 35 04 13 and shall be endorsed to include the following: (i) the Pollution Exclusion Amendment, (ii) the Limited Seepage and Pollution Endorsement, (iii) Evacuation Expense Coverage Endorsement. In addition, (a) no other endorsements restricting coverage may be added, (b) the original policy must be provided to RTD prior to performing any work under this Agreement, and (c) the definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any

named insured's care, custody and control arising out of the acts or omissions of the contractor named on the Declarations."; or equivalent coverage. Licensee intends to meet this requirement with the following coverage: Excursion Form Railroad Liability Claims Made policy carrying limits of not less than $5,000,000 per occurrence and an aggregate limit of not less than $10,000,000, including coverage for Evacuation Expenses, Fire-Fighting Expenses and Pollution Clean-Up Expenses.

4. Automobile Liability Insurance with a combined single limit of at least $5,000,000 per occurrence, and including coverage for, but not limited to, bodily injury liability and property damage liability for any vehicles owned. Licensee will not deploy used or hired vehicles (i.e., vehicles not owned by Licensee) unless Licensee or a third-party providing services with its own vehicles has automobile liability insurance with a combined single limit of at least $5,000,000 per occurrence, and including coverage for, but not limited to, bodily injury liability and property damage liability for any such used or hired vehicles.

5. Workers' Compensation and Employers' Liability Insurance covering all employees of Licensee, wherever they may be in the United States of America so long as they are engaged in the work covered by this Agreement. The policy or policies shall cover the entire liability of Licensee as determined by the workers' compensation laws of the state or states under which such liability arises, and shall contain, so far as it is lawful to obtain, a waiver of insurer's right of subrogation against RTD for payments made to or on behalf of employees of Licensee. Employers' Liability Insurance shall provide coverage for limits of not less than $500,000. This insurance, when procured by Licensee's Agents, shall also cover Licensee's Agents' employees.

B. Prior to the first entry upon, above, or adjacent to the RTD Property and the Licensed Area and one per year thereafter, Licensee agrees to furnish RTD and Amtrak with a certificate of the required insurance for each of Licensee's and Licensee's Agents' policy(ies). Licensee shall provide thirty (30) days' advance notice of cancellation of such policy(ies) by registered or certified mail. Certificates of insurance shall be provided to the RTD Senior Manager of Real Property and Amtrak's Senior Director Host Railroads as provided in this Agreement.

C. Each insurance policy required above shall have the following endorsements attached:

1. An endorsement naming RTD, DTP, DTO and Amtrak as an additional insured (except for the Workers Compensation and Employers' Liability insurance) but only with respect to liability of the Licensee and Licensee's Agents under this Agreement;

2. An endorsement evidencing coverage for a liability assumed under an insured contract for liability assumed by Licensee and Licensee's Agents (except for the Workers Compensation and Employers' Liability insurance);

3. A Broad Form Property Damage endorsement if the policy does not provide for the equivalent coverage for Railroad Liability and Commercial General Liability insurance; and

4. Waiver of subrogation in favor of and acceptable to RTD, DTP and Amtrak.

D. The insurance shall apply separately to each insured and additional insured party against whom a claim is made, or suit is brought, except with respect to the limits of the insurer's liability.

E. Liability of Licensee under this Agreement shall not be limited to coverage provided under the required insurance policies or by any limitation on the amount or type of damages, compensation, or benefits payable by or for Licensee and Licensee's Agents.

F. Only those Licensee's Agents whose operations are covered by the required insurance will be authorized to work upon or about the Licensed Area or the RTD Property.

ARTICLE 11. HAZARDOUS MATERIALS

Licensee and Licensee's Agents shall not use, produce, treat, generate, release, discharge, store, transport, or cause to be transported, or dispose of any Hazardous Materials at, on, under, in, or about the Licensed Area or RTD Property in violation of applicable law. "**Hazardous Materials**" shall mean any and all substances, chemicals, wastes, or other materials now or from time to time defined or characterized as hazardous substances or hazardous wastes pursuant to laws or regulations of any government authority having jurisdiction over the RTD Property, the State of Colorado, or the United States, or otherwise posing a present or potential risk to human health, welfare, or the environment.

ARTICLE 12. SAMPLES AND REMOVAL

As between Licensee and RTD, Licensee shall be solely responsible for the lawful removal, manifesting, transport, testing, and disposal of any samples or other materials, including but not limited to Hazardous Materials, removed from the RTD Property or Licensed Area or generated as a result of work performed pursuant to this Agreement, and shall duly and properly perform or cause to be performed any such work that it undertakes or is required to undertake pursuant to federal, state, and local laws and applicable industry standards. As between Licensee and RTD, Licensee is the sole generator (as the term "generator" is used in applicable statutes and regulations concerning the removal, transport, and/or disposal of Hazardous Materials, substances, waste, or other contaminants) of any materials, including but not limited to Hazardous Materials, removed from the RTD Property or Licensed Area by Licensee or Licensee's Agents or generated as a result of sampling and/or testing undertaken by Licensee or Licensee's Agents.

ARTICLE 13. GENERAL

A. Assignment. Licensee may not assign this Agreement, or any part or interest in this Agreement, without the prior written consent of RTD and Amtrak. No RTD/Amtrak-approved assignment shall release Licensee from any liability under this Agreement. Any assignment in violation of this Agreement shall be null and void.

B. Agreement Binding. This Agreement and all of the covenants, terms, and conditions in this Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns.

C. Execution in Counterparts. This Agreement (and each amendment, modification, and waiver in respect of this Agreement) may be executed and delivered in counterparts, each of which will be deemed an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page to this Agreement shall be effective as delivery of a manually executed counterpart of this Agreement.

D. Governing Laws; Jurisdiction and Venue. The laws of the State of Colorado and applicable federal, state, and local laws, rules, regulations, and guidelines govern this Agreement. Jurisdiction and venue for all disputes shall be in the county in which the Licensed Area is located, and Licensee expressly submits itself to such jurisdiction.

E. Amendment. This Agreement may not be amended except in writing by mutual agreement of the parties, nor may rights be waived except by an instrument in writing signed by the party charged with such waiver.

F. No Agency. It is expressly understood and agreed that RTD and Licensee do not intend to be and shall not in any respect be deemed agents of each other.

G. Headings. The headings in this Agreement are inserted for reference purposes only and are not restrictive as to content.

H. Liens. Licensee shall not permit any lien, claim, or other charge to be placed on the RTD Property, and Licensee shall promptly cause any such lien, claim, or charge to be removed. If any mechanic's lien, claim, or other charge is filed against the RTD Property, Licensee shall discharge the same of record by a release or bond within 30 days after the filing of any notice of such lien, claim, or other charge. This provision shall survive termination, in whole or in part, of this Agreement.

I. Waiver; Severability. The failure of either party to exercise any right under this Agreement, or to insist upon strict compliance by the other party, shall not constitute a waiver of either party's right to demand strict compliance with the terms and conditions of this Agreement. If any provision of this Agreement is held to be unenforceable for any reason, its unenforceability shall not affect the remainder of this Agreement, which shall remain in full force and effect and enforceable in accordance with its terms.

J. Legal Authority. Licensee warrants that it possesses the legal authority to enter into this Agreement and that it has taken all actions required by its procedures, bylaws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Agreement and to bind Licensee to its terms. The person(s) executing this Agreement on behalf of Licensee warrant(s) that such person(s) have full authorization to execute this Agreement.

K. No Dedication; Third Parties. Nothing in this Agreement shall be deemed to be a gift or dedication of any portion of the Licensed Area or the RTD Property to the general public or for any public use or purpose whatsoever. Except as specifically provided in this Agreement, no rights, privileges, or immunities of either party shall inure to the benefit of any third party, nor shall any third party be deemed to be a beneficiary of any of the provisions contained in this Agreement.

L. Breach. Any failure of Licensee to fulfill any of Licensee's obligations under this Agreement shall constitute a breach of this Agreement and subject Licensee to immediate termination of the Agreement, as well as damages and costs, including attorneys' fees.

M. Applicable Laws; Violation. Licensee shall use the Licensed Area in a safe and careful manner and shall comply with all applicable ordinances and regulations of the jurisdiction in which the Licensed Area is located; federal, state, and local laws; and all other rules of governmental authorities as may be in force and effect during the Term of this Agreement. If at any time the use of the Licensed Area by Licensee violates applicable ordinances or laws, Licensee shall cease and desist from continuing such use upon demand by RTD.

N. Additional Uses. Licensee understands and agrees that the RTD Property may be used by Amtrak and/or the public or otherwise, and Licensee shall conduct its work so as not to unreasonably interfere with such other uses.

O. RTD Equipment. Licensee shall not use RTD, DTO or Amtrak equipment, tools, or furnishings located in or about the Licensed Area or RTD Property without prior written approval by RTD, DTO, or Amtrak, respectively.

P. Entire Agreement. This Agreement represents the entire agreement between the parties regarding the Licensed Area and the RTD Property.

Q. Electronic Signatures. This Agreement may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, "electronic signature" shall include faxed versions of an original signature, electronically scanned and transmitted versions of an original signature, and digital signatures.

Signature Page(s) to Follow

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the Effective Date.

REGIONAL TRANSPORTATION DISTRICT

By: _____
Debra A. Johnson, General Manager and CEO

Date: 08·17·2023

APPROVED AS TO LEGAL FORM FOR THE
REGIONAL TRANSPORTATION DISTRICT

By: Beckwith, Aimee - 22099 Digitally signed by Beckwith, Aimee - 22099 Date: 2023.08.15 15:06:57 -06'00'

Aimée Beckwith
Senior Associate General Counsel

Date: 8.15.2023

NATIONAL RAILROAD PASSENGER CORPORATION

By: _____

Name: Jim Blair

Title: AVP Host Railroads

Date: August 9, 2023

AMERICAN ROCKY MOUNTAINEER LLC

By: _____

Name: _____

Title: _____

Date: _____

V.S. Salama
Exhibit C

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the Effective Date.

REGIONAL TRANSPORTATION DISTRICT

By: _____
Debra A. Johnson, General Manager and CEO

Date: _____

APPROVED AS TO LEGAL FORM FOR THE
REGIONAL TRANSPORTATION DISTRICT

By: _____
Aimée Beckwith
Senior Associate General Counsel

Date: _____

NATIONAL RAILROAD PASSENGER CORPORATION

By: _____

Name: _____

Title: _____

Date: _____

AMERICAN ROCKY MOUNTAINEER LLC



By: _____

Name: David McKenna

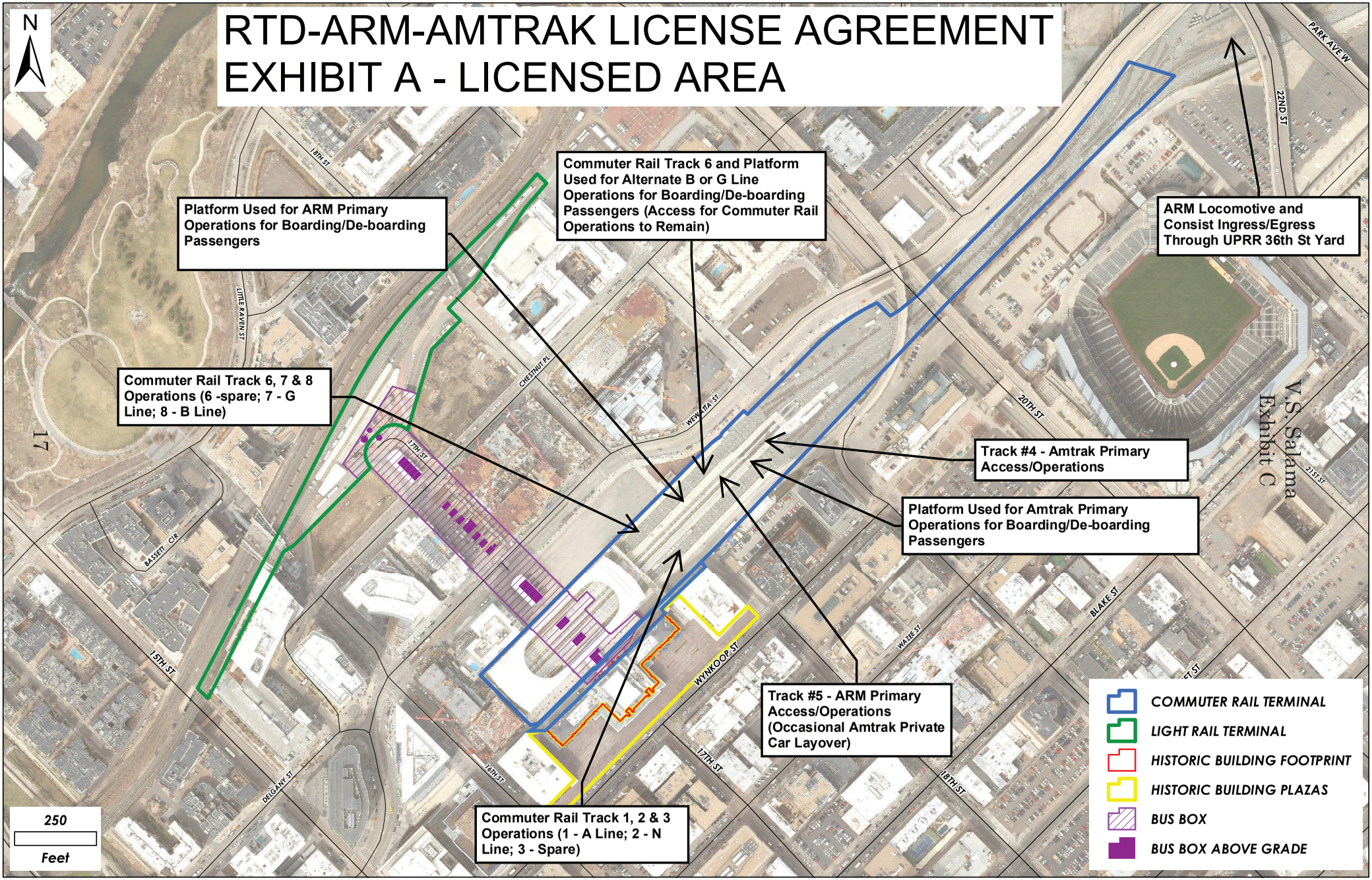
Title: President & CEO

Date: July 21, 2023

V.S. Salama
Exhibit C

EXHIBIT A

Licensed Area


RTD-ARM-AMTRAK LICENSE AGREEMENT
EXHIBIT A - LICENSED AREA
N
Platform Used for ARM Primary Operations for Boarding/De-boarding Passengers
Commuter Rail Track 6 and Platform Used for Alternate B or G Line Operations for Boarding/De-boarding Passengers (Access for Commuter Rail Operations to Remain)
ARM Locomotive and Consist Ingress/Egress Through UPRR 36th St Yard
Commuter Rail Track 6, 7 & 8 Operations (6 -spare; 7 - G Line; 8 - B Line)
Track #4 - Amtrak Primary Access/Operations
Platform Used for Amtrak Primary Operations for Boarding/De-boarding Passengers
Track #5 - ARM Primary Access/Operations (Occasional Amtrak Private Car Layover)
Commuter Rail Track 1, 2 & 3 Operations (1 - A Line; 2 - N Line; 3 - Spare)
V.S. Salama Exhibit C
COMMUTER RAIL TERMINAL
LIGHT RAIL TERMINAL
HISTORIC BUILDING FOOTPRINT
HISTORIC BUILDING PLAZAS
BUS BOX
BUS BOX ABOVE GRADE
250
Feet
PARK AVE W
22ND ST
18TH ST
LITTLE RAVEN ST
CHESTNUT PL
WEWATTA ST
20TH ST
21ST ST
17TH ST
BASSETT CIR
15TH ST
WYNKOOP ST
WAZEE ST
BLAKE ST
16TH ST
DELGANY ST
17TH ST
18TH ST

V.S. Salama
Exhibit C

EXHIBIT B

Applicable RTD Policies List

RTD Customer Code of Conduct Policy – passenger conduct on platform

RTD Filming on RTD Property Policy – filming on platform

RTD Filming on RTD Property Procedure – filming on platform

RTD Use of RTD Facilities Procedure – prohibited behavior on and use of RTD facilities

RTD Cybersecurity Incident Response Policy – reporting and investigating cybersecurity incidents in a timely consistent manner

RTD Cybersecurity Incident Response Plan Procedure – guide on how cybersecurity incidents are managed to minimize their impacts on RTD

DTO Row Access and Track Usage Request Plan – applicable for activities not part of ARM Rail Operations identified in the RTD-Amtrak-ARM License Agreement and have potential to foul track and OCS

V.S. Salama
Exhibit C

EXHIBIT C

RTDC DUS Operating Procedures for American Rocky Mountaineer Crews

RTDC

Operating Rules

49 CFR 217.7

Revision 11

Effective Date: July 01, 2023

Prepared by

Regional Transportation District

711 W. 31st Ave, 711-30 Denver, Colorado 80202 / 303-299-6000

and

Denver Transit Operators

5151 Fox Street, Denver, Colorado 80216 / 720-460-5800

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INTRODUCTION

The RTDC Railroad **Operations Manual** is the term applied to the binder that includes:

- Operating Rules (DTO-TR-03.1)
- Employee Timetable (DTO-TR-04)
- General Safety Instructions (DTO-SS-04)
- Customer Service Standards (DTO-TR-03.2)
- Airbrake and Train Handling Instructions (DTO-TR-07)

Each individual affected by these rules is responsible for ensuring that his copy of the Operations Manual is complete and up to date for all materials he is required to maintain, in accordance with the applicable section of Operating Rule 1.

The **Operating Rules** are divided into four sections:

- **Section I** Purpose and Scope, provides general information.
- **Section II** Employee Rules of Conduct, consists of Rules A through H.
- **Section III**, Definitions, Acronyms, Abbreviations, contains those terms used in the Operating Rules and in other operating documents.
- **Section IV** Operating Instructions (Rules 1 through 21) contains the numbered Operating Rules, 1 through 21. Each rule may have sub-sections.

  Rule 1 - Qualifications, Responsibilities, and Duties
  Rule 2 - General Orders, Bulletin Orders, General Notices, and Operations Notices
  Rule 3 - Reporting for Duty
  Rule 4 - Communicating Signals
  Rule 5 - Communications Devices
  Rule 6 - Headlight and Markers
  Rule 7 - Train Operation
  Rule 8 - Mandatory Directives
  Rule 9 - Signal Aspects and Indications
  Rule 10 - Operation Under Manual Block System Rules
  Rule 11 - Operation under Interlocking Rules
  Rule 12 - Operation under Centralized Traffic Control Rules
  Rule 13 - Operation under Cab Signal System Rules
  Rule 14 - Blue Signal Protection of Workers
  Rule 15 - Equipment
  Rule 16 - Highway Grade Crossings
  Rule 17 - Operation of Switches, Signals, and Interlocking Appliances
  Rule 18 - Rusty Rail Conditions
  Rule 19 - Removing Tracks from Service
  Rule 20 - Protection of Work Areas
  Rule 21 - Movement of Track Cars

SECTION I - PURPOSE AND SCOPE

NAME

The name of the commuter rail system serving the Denver Region is the Regional Transit District Commuter, hereinafter referred to as RTDC, the railroad, or the Company.

SCOPE

All Employees performing the following roles and responsibilities are governed by and must be qualified on the Operating Rules:

- Operators,
- Dispatchers,
- Roadway Workers in Charge,
- Operating Rules Qualified Roadway Workers
- Track Car Drivers, and
- Employees responsible for the supervision of workers performing these duties.

All Employees governed by these rules are subject to testing per the RTDC Operational Testing Plan (DTO-TR-11).

GENDER REFERENCES

In all rules and instructions issued by the Operating Division the masculine pronouns will be used for clarity and ease of reading and will apply equally to men and women.

EFFECTIVE DATE

These Operating Rules took effect on July 01, 2023.

SECTION II - EMPLOYEE RULES OF CONDUCT (RULES A THROUGH H)

NOTE TO EMPLOYEE RULES OF CONDUCT

In the application of Employee Rules of Conduct, A through E, G, and H, an Employee is considered *on duty* from the time he reports to begin his assignment until he is released from his assignment. An Employee is considered to be *performing service* when he is required to engage in activities directly associated with his job responsibilities. Assigned break periods, meal periods, and deadheading are, for the purposes of these rules, considered time on duty but not time performing service.

The definitions of on duty and off duty in these rules do not apply to hours of service reporting as contained in Rule F and applicable federal regulations.

RULE A - SAFETY

Safety is of first importance. In case of doubt or uncertainty, the safe course must always be taken.

When reporting for duty, Employees whose duties require coordination with other Employees must hold a job safety briefing to review operational and safety conditions. If these conditions change, Employees must hold an additional job safety briefing to discuss the new conditions.

Employees must keep work areas clean, neat, and free from clutter or any condition that could contribute to accidents or injuries.

Employees must take every precaution to prevent fires. When fires occur on or near RTDC property, the Dispatching Center must be notified immediately and the Dispatcher must request appropriate assistance. Employees should note the location of fire extinguishers and become familiar with their operation.

Employees must render immediate assistance to any Employee, customer, or other person injured or taken ill on railroad property. Proper authorities must be notified by the quickest means possible, and arrangements made to secure necessary medical attention.

Employees on the scene of any accident or incident involving railroad equipment will make themselves known to the senior official on the site and will assist in any way possible, under the direction of the Operator, emergency responders, or railroad officers.

Employees must notify the Dispatching Center immediately when accidents, incidents, or injuries occur on railroad property. Full written reports must be completed in accordance with Company policy. The names and addresses of all witnesses must be obtained. When appliances on EMUs, track cars, tools, or machinery cause injuries, such equipment must be immediately inspected and, if defective, properly identified, removed from service if possible, and persons must be protected against injury.

Employees involved in an accident or incident on railroad property or involving Company equipment must not leave the scene until authorized by a Supervisor, except:

a. when accompanied or transported by emergency service workers for immediate medical attention, or
b. as directed by the police, or
c. as authorized by the Dispatcher.

This rule also applies to employees of foreign railroads when involved in accidents or incidents on RTDC territory.

RULE B - APPLICATION OF RULES AND INSTRUCTIONS

Employees must comply with the Operating Rules, all printed rules and instructions related to their occupation and craft, and all instructions issued by the Chief Transportation Officer and other designated officers.

If in doubt as to the meaning of any rule or instruction, Employees must request an explanation from the proper authority.

Employees of other railroads while on duty on RTDC territory will be governed by RTDC rules.

RULE C - REQUIRED EMPLOYEE CONDUCT

At all times, Employees are required to:

Report by the quickest available means of communications any accidents, defects, vandalism, or other unusual conditions that may affect the movement of trains or the safety of Employees, customers, or the general public. Where appropriate, protection must be provided.

Make every effort to prohibit unauthorized persons from gaining access to trains, equipment, and other Company property. Unidentified persons or suspicious activity on or about Company equipment or property must be reported immediately to the Dispatching Center or Company officials.

Protect all Company property. Railroad-issued manuals, keys, access cards, and security codes entrusted to Employees remain Company property, and must be secured at all times and not given or divulged to persons not qualified or authorized to use them. The loss or theft of such items must be immediately reported to Employee's Supervisor.

Report for duty at the required time at the designated location.

Promptly report and care for any misplaced property found on Company premises. Articles left on trains or Company property by customers must be handled in accordance with applicable Lost and Found policies.

While on duty on Company property, Employees are required to:

Display their valid Employee Identification Card in a visible location on their person; and

Make every effort to see that all rules and instructions are carried out, and promptly report any violations to the proper official.

While performing service:

Employees must devote themselves exclusively to the railroad's service; and

Employees required to wear a uniform must present a neat appearance and wear all required parts of the uniform, including hat and badges. Uniforms must be kept clean and in good condition. Unauthorized pins, badges, and other adornment may not be worn with the uniform.

RULE D - PROHIBITED EMPLOYEE CONDUCT

At all times, Employees are prohibited from:

Engaging in any conduct that adversely affects the performance of their duties, or that discredits the Company;

Insubordination, hostility, or willful disregard of the Company's interests;

Abusing, misusing, defacing, or deliberately damaging or destroying Company property, tools, and equipment;

Unauthorized possession, removal, or disposal of any material from Company property;

Absenting themselves from duty or engaging a substitute to perform their duties without permission. Employees subject to call must not absent themselves from their usual calling place without notice to those required to call them;

Engaging in any type of work, business, or activity that interferes with proper rest or performance of their railroad duties;

Riding or walking on the roof of any moving equipment. Train and engine service Employees are prohibited from going on the roof of any engine or car at any time;

Altering, nullifying, or in any manner restricting or interfering with the normal intended function of any device or equipment on EMU, or other railroad property, unless done in accordance with the applicable rules due to equipment or other failure. Before such actions are taken proper permission must be requested from and granted by the Dispatcher or appropriate authority; or

Illegally possessing or selling a drug, narcotic, or other controlled substance.

While on duty, or at any time on Company property, Employees are prohibited from:

Possessing firearms and other dangerous weapons; or

Participating in gambling, fighting, or any other illegal, immoral, or unauthorized activity.

While on duty, or at any time in areas of Company property not accessible to the general public, Employees are prohibited from having alcoholic beverages or intoxicants in their possession.

While performing service, Employees are prohibited from:

Reading anything other than railroad authorized materials; or

Sleeping or assuming the attitude of sleep.

Smoking, vaping, or using other forms of tobacco, and carrying lighted smoking materials is prohibited at all times in all Company facilities, including buildings, offices, on rail equipment (including cab areas, and passenger cars in revenue or non-revenue service), in Company vehicles, and in any other area where tobacco use is prohibited by law, ordinance, or regulation. Smoking, carrying lighted smoking materials, or using other forms of tobacco is prohibited at all times while serving customers.

Use of electronic devices while on duty:

As used in this rule, an electronic device means any electronic or electrical device used to conduct a verbal communication; place or receive a telephone call; send or read an electronic mail message or text message; play a game; navigate the Internet; play, view, or listen to a video; play, view, or listen to a television broadcast; play or listen to a radio broadcast other than a radio broadcast by a railroad; play or listen to music; execute a computational function, or to perform any other function that is not necessary for the health or safety of the person and that entails the risk of distracting the Employee from a safety-critical task.

Personal electronic device means an electronic device that was not provided by the railroad. A device intended to accommodate a disability, such as a hearing aid, is not covered by this definition.

Employees are prohibited from use of an electronic device, including smart watches, when performing safety critical tasks. Earpieces or headphones from any such device must be removed from the ear. In particular, this includes, but is not limited to:

a. while operating on-track/off-track equipment,
b. when providing Roadway Worker Protection,
c. when fouling a track,
d. working near roadway workers or equipment, and/or
e. during job or on track safety briefings.

Employees must not use and must power off all personal electronic devices and Company provided mobile telephones when in the cab of any train at any time. Earpieces or headphones from any such device must be removed from the ear.

Train Service Operators must not use and must power off all personal electronic devices when engaged in or connected with the movement of a train or equipment (personal electronic devices must be powered off prior to boarding the train) or when engaged in or connected with switching operations. Earpieces or headphones from any such device must be removed from the ear. Personal electronic devices that fit into the storage compartment, on the back wall, must be turned off and stowed in the storage compartment. Devices not fitting in the storage compartment must be turned off and stowed off person.

Dispatchers must not use and must power off all personal electronic devices while performing the safety-critical functions of their jobs. Earpieces or headphones from any such device must be removed from the ear.

Exceptions to prohibitions:

Transportation Supervisors may use personal or railroad supplied electronic devices to send or receive work related information while in the passenger compartment of a train when not performing safety critical tasks.

Use of a railroad authorized radio.

Use of mobile telephones in the event of an emergency involving the operation of the railroad.

Engineering and Vehicle Maintaince Employees may use personal or railroad supplied electronic devices to send or receive work related information while performing safety-critical functions of their jobs.

RULE E - BUSINESS AFFAIRS OF THE COMPANY

The business affairs of the Company, information contained in its files, and privileged or confidential reports must not be divulged to persons outside the Company.

Nevertheless, Employees, other than managerial and supervisory Employees, have the right if they so choose under federal law to provide statements or information, other than copies of materials in the Company's files or materials marked *Privileged* or *Confidential,* to an injured Employee or his representative (or deceased Employee's representative) concerning the facts about that Employee's injury or death.

If an accident does not involve the injury to or death of an Employee, all Employees are prohibited from giving any statements or information to persons outside the Company concerning that accident unless they are directed or authorized by an appropriate official of the Company to provide that information.

When an Employee is served with a subpoena, summons, or other legal process in which the Company is, or may be, interested, requiring the Employee to report to any attorney, court, or officer, the Employee must immediately notify the head of the department in which employed, and the Employee will be governed by the instructions received.

Employees and authorized personnel of other railroads and organizations entrusted with Company publications such as the Operating Rules, Employee Timetable, Airbrake and Train Handling Instructions, or General Safety Instructions, or having access to other printed matter containing Company rules, regulations, instructions, procedures, policies, plans, specifications, statistics, revenues, car movement data, or other Company business, must not sell, loan or give away such materials, nor permit anyone except authorized persons to have access thereto, nor divulge, verbally or otherwise, without proper authority any of the information contained therein to anyone other than authorized individuals. Employees and authorized individuals in possession of Company materials must return such items to the proper authority upon leaving Company employment or when ceasing work on the railroad. When publications or materials become obsolete and are no longer in effect, they must be destroyed or turned in to the proper authority for disposal.

RULE F - HOURS OF SERVICE REQUIREMENTS

Employees subject to the Federal Hours of Service Act must familiarize themselves with this Act and comply with its requirements. They must not exceed the maximum hours permitted by law unless authorized by the Dispatcher or other designated official.

An Employee ordered to report for duty without the rest required by law must report this fact to the person ordering him to report.

An Employee must not accept an assignment if he cannot complete the assignment within the maximum hours permitted by law, unless the Dispatcher or other designated official authorizes such service.

Train Service Operators must notify the Dispatcher one hour before the expiration of their legal work time or before departing a terminal station if they have reason to believe that they will not be able to complete their assignment within their legal work time.

Train Service Operators and Servicing Operators must complete an hours of service report on a daily basis. Employees are responsible for the accuracy and completeness of such reports.

Employees other than Train Service Operators who are subject to hours of service reporting will maintain and submit such reports in accordance with their departmental instructions.

Train Service Operators may be required to work beyond their scheduled off duty time.

RULE G - DRUG AND ALCOHOL USE

Employees are prohibited from reporting for service, going on duty, or remaining on duty while under the influence of or when impaired by alcohol.

Employees are prohibited from using a controlled substance at any time, whether on or off duty, except as provided in paragraph 3 of this Rule.

Employees are prohibited from reporting for service, going on duty or remaining on duty while using or being under the influence of any prescription or over-the-counter drug or medication that can adversely affect their alertness, coordination, reaction, response, or safety. Employees must have the authorization of the Company Medical Review Officer prior to performing service while taking any drug or medication that is labeled with a warning related to adverse effects in any of the above areas.

Employees subject to drug and alcohol testing under Company policy or federal regulations who refuse to provide samples when required are in violation of this rule. Such violation may lead to disciplinary action and penalties up to and including dismissal.

RULE H - GOOD FAITH CHALLENGE

An Employee governed by the Operating Rules has the right to challenge, in good faith, any directive that would violate a RTDC rule or instruction in the following areas:

Operating Rules (DTO-TR-03.1)

Employee Timetable (DTO-TR-04)

Airbrake and Train Handling Instructions (DTO-TR-07)

General Safety Instructions (DTO-SS-04)

Container of Current Rail Operating Conditions, Bulletin Orders and General Notices

Roadway Worker Protection Manual (DTO-SS-05.2)

Once a good faith challenge is made, the Employee has the right to refuse to act on the directive until the challenge is resolved. The challenging Employee may be directed to perform other tasks unrelated to the challenge.

Another Qualified Employee may perform the challenged task, once this Employee is informed of the challenge and does not also make a good faith determination that the task would violate a rule.

Employee Responsibility

An Employee shall immediately inform the Supervisor whenever he makes a good faith determination that he has been directed to violate a rule.

An Employee may only challenge a rule on which he is qualified.

Good Faith Challenge Procedure

An Employee invoking a challenge must proceed in the following manner:

Inform the Supervisor who has issued the directive that complying with it would violate one or more rules and/or instructions. Whenever possible, identify the rule or instruction.

Inform the Supervisor of all pertinent conditions involved to ensure that he is aware of the basis of the challenge.

If the Employee making the challenge is working with one or more other Employees, the Supervisor, or when the Supervisor is not available the Employee making the challenge, must conduct a job safety briefing immediately with all involved parties, reviewing information provided in steps a. and b.

A challenge may be resolved without a second Supervisor review or completion of a good faith challenge form by one of the following:

A Supervisor's acceptance of the challenge. The Supervisor and Employee will determine safe procedures to complete the task.

The challenging Employee accepts the directive.

A compromise solution acceptable to both parties is reached.

Procedure When Being Ordered to Comply with a Directive

The challenging Employee(s) must request a second review by another Supervisor.

The following is a listing of Supervisors responsible for conducting a second review of a challenge:

Operations

Chief Transportation Officer

Transportation Manager

Transportation Operating Rules Trainer

Lead Transportation Supervisor

Transportation Supervisor

DTO OCC Manager

DTO OCC Supervisor

Vehicle Maintenance

Chief Mechanical Officer

Deputy Chief Mechanical Officer

Vehicle Maintenance Instructor

Vehicle Engineer

Vehicle Maintenance Supervisors

Engineering

Chief Engineer

Deputy Chief Engineer

Facilities Manager

Signals Maintenance Manager

IT and Communications Manager

Track Manager

Traction Power Manager

Communications Supervisor

Facilities Supervisor

Signals Supervisor

Traction Power Supervisor

Track Supervisor

NOTE: Personnel in the jobs listed above are listed by name in Employee Timetable Appendix 2 with contact information listed in Employee Timetable Appendix 3.

The second reviewing officer must not be the Supervisor who issued the challenged directive or that person's subordinate.

A Supervisor may only issue a directive or be a reviewing officer on rules on which he is qualified.

The second reviewing Supervisor may resolve the challenge by:

overruling the original Supervisor, or

suggesting an alternative acceptable to all parties, or

ordering the Employee(s) to comply with the original Supervisor's directive.

If a Dispatcher issued a directive that is being challenged, a Dispatching Center Manager or Supervisor may be the second reviewing officer.

The Employee will not be required to comply with the directive until completion of a second review.

An Employee who adheres to these procedures when making a Good Faith Challenge will not be subject to discipline for violation of the rule or instruction being challenged when being ordered to comply by a second reviewing Supervisor.

An Employee must document his challenge by completing the Good Faith Challenge Form (RTDC-GFC) whenever requesting a second review by another Supervisor, and must submit a copy to a Supervisor listed in Timetable Appendix 2, or other identified Supervisor, prior to completing his tour of duty. A written response from the applicable Department will be issued within 10 days of submission.

The good faith challenge is not intended to abridge any rights or remedies available to the Employee under a collective bargaining agreement or any other federal law.

SECTION III - DEFINITIONS, ACRONYMS, ABBREVIATIONS

The following definitions, acronyms and abbreviations are used in the Operating Rules and other official operating documents.

ABBREVIATIONS

TERM	DEFINITION
AC	Alternating Current
ADU	Aspect Display Unit
ATC	Automatic Train Control
AVE	Avenue
BDA	Blocking Device Applied
BDR	Blocking Device Removed
BLVD	Boulevard
BO	Bulletin Order
BSWIC	Blue Signal Worker in Charge
CAD	Computer Aided Dispatch
Cat	Catenary Pole
CCROC	Container of Current Rail Operating Conditions
CDU	Cab Display Unit
CML	Controlled Master Location
CMLI	Controlled Master Location Indicator
CP	Control Point
CRMF	Commuter Rail Maintenance Facility
CSS	Cab Signal System
CTC	Centralized Traffic Control
DH	Deadhead train
DIA	Denver International Airport
Directions	N – North E – East S – South W – West
DSLE	Designated Supervisor of Locomotive Engineers
DSP	Dispatcher

TERM	DEFINITION
DTO	Denver Transit Operators
DUS	Denver Union Station
ED	Engineering Department, including Track, Signals, and Traction Power.
EL	Electrical Operating Instruction
EMU	Electric Multiple Unit
Eng	Engine
GN	General Notice
GO	General Order
Hrs	Hours
IR	Interlocking Rules
Jct	Junction
lbs	pounds
Int	Interlocking
MAS	Maximum Authorized Speed
MBS	Manual Block System
MD	Mandatory Directive
ML	Master Location
MLI	Master Location Indicator
Months of the Year	Jan, Feb, Mar, Apr, May, Jun, Jul, Aug, Sep, Oct, Nov, Dec Where numerical representations are used for dates, it will be in the format "Month/Day/Year" (xx/xx/xxxx) or "Month/Day" (xx/xx).
MP	Milepost
MPH	Miles per hour
MU	Multiple Unit Car
No	Number
OCC	Operations Control Center
OHS	Occupational Health Services Department
ON	Operations Notice
OPR	Train Service Operator and Servicing Operator
PKWY	Parkway

TERM	DEFINITION
PTC	Positive Train Control
QMP	Qualified Maintenance Person
RTDC	Regional Transit District Commuter
RWIC	Roadway Worker In Charge
SBO	Summary Bulletin Order
ST	Street
TC	Track Car
TMDS	Train Management Dispatch System
TPMS	Traction Power Management System
TR	Train
TRK	Track
TT	Timetable
VM	Vehicle Maintenance Department

DEFINITIONS

TERM	DEFINITION
711 Building	Primary RTDC N Line Dispatching Center, as well the on-duty reporting location for operating crew. RTDC Commuter Rail personnel located in this building for administration purposes.
Absolute Block	A block established between controlled signals in which no train is permitted to enter while it is occupied by another train or equipment.
Alerter	A device which detects the frequency of the Operator's movements and initiates a penalty brake application when the required frequency of such movement is not maintained or acknowledged.
Aspect	The appearance of a fixed signal conveying an indication viewed from the direction of an approaching train; the appearance of a cab signal conveying an indication viewed in the engine control compartment.
Aspect Display Unit (ADU)	The device in the controlling cab on which cab signal aspects are shown.
Automatic Train Control (ATC)	The train control apparatus that initiates a penalty brake application if the operator fails to reduce speed in compliance with the cab signal indication.

TERM	DEFINITION
Block	A length of track of defined limits, the use of which is governed by cab signals, or Mandatory Directive.
Blocking Device	Blocking devices prevent the use of signals, switches, appliances or sections of track. They may be applied through the use of pins, pushbuttons, or computer keypads. Blocking devices shall not be considered effective until the appropriate confirmation on the respective model board or control device has verified that the blocking device is operative.
Blue Signal	A clearly distinguishable blue flag, blue light or blue tag by day, or a blue light or blue tag by night. When displayed, it signifies that a worker is on, under, or in between the equipment between two forms of locking devices on the track.
Blue Signal Worker in Charge (BSWIC)	Designated Vehicle Maintenance Department worker assigned to provide protection for a group of workers on rolling equipment.
Bulletin Order (BO)	Order issued by authority of the Chief Transportation Officer affecting the movement of trains.
Cab Display Unit (CDU)	The device in the controlling cab on which positive train control information is displayed.
Cab Flip	An un-intentional momentary change in cab signals that may or may not result in an acknowledgment by the Train Service Operator.
Cab Signal	A signal located in the engine control compartment indicating a permissible speed.
Centralized Traffic Control (CTC)	A method of operation, on tracks designated in the Timetable, where movements are authorized and governed by interlocking signals, cab signals, instructions issued by the Dispatcher, or a combination of the above.
Clearance Point	The location near a turnout beyond which it is unsafe for passage on an adjacent track.
Computer Aided Dispatch System (CAD)	A system by which the Dispatcher is assisted in functions of train movement including data recording, storage and retrieval.
Container of Current Rail Operating Conditions (CCROC)	Order containing Working Limits Stop Sign locations (Rule 20-A), temporary speed restrictions, and other safety critical instructions and information.
Control Point (CP)	A location denoted in the timetable where signals are remotely controlled from the Dispatching Center.
Controlled Block	The block, or series of consecutive blocks, between successive controlled signals in CTC territory.

TERM	DEFINITION
Controlled Master Location Indicator	Denotes location where cab signal changes may occur and where the Dispatcher may have control.
Controlled Siding	A siding within CTC or interlocking limits where a signal indication authorizes the siding's use. A Controlled Siding must be treated as main track.
Controlled Signal	A fixed signal capable of displaying a Stop indication that is controlled by the Dispatcher.
Controlled Track	A track under the control of a Dispatcher.
Crew Dispatcher	An employee whose responsibilities include but, are not limited to, dispatching and scheduling Train Service Operators.
Deadhead Train	A passenger train on which no revenue passengers are carried.
Derail	A track safety device designed to guide a car off the rails at a selected spot as a means of protection against collisions or other accidents.
Designated Maintenance Track	One or more tracks within an area in which the testing, servicing, repair, inspection, or rebuilding of EMU locomotives is under the exclusive control of the Vehicle Maintenance Department personnel. A listing of all Designated Maintenance Tracks is contained in the Timetable. Movements on Designated Maintenance Tracks may be made only with the permission of the designated Maintenance Department employee. Maximum authorized speed on all Designated Maintenance Tracks is Restricted Speed not exceeding 3 MPH.
Designated Repair Facility	A location identified in the Timetable Special Instructions that has the facilities, tools and qualified mechanical personnel to make necessary repairs.
Dispatcher	An Employee who, by the use of an electrical or mechanical device, dispatches, reports, transmits, receives, or delivers orders related to or affecting train movements that works in the Dispatching Center.
Dispatching Center	Central location with responsibility for: directing safe movement of trains, initiating an emergency response, making appropriate notifications, on-going communication with outside first responders, recording information relevant to incidents and coordinating service recovery.
DTO Operations Control Center (OCC)	Central dispatching location for the Eagle P3 A, B, G Lines at CRMF.
Dual-Control Switch	An interlocked switch also equipped for hand operation.

TERM	DEFINITION
Effective Locking Device	A locking device that is vandal and tamper resistant and can be unlocked only by the class, craft, or group of employees for whom protection is being provided.
Electrically Locked Switch	A hand-operated switch equipped with an electrically controlled device that restricts the movement of the switch.
EMU [Concession Agreement]	Electric multiple unit, a type of electric Rolling Stock arranged in train consists suitable for Passenger service for which propulsion power is derived from continuous contact with an overhead electrical distribution conductor.
Engine	A unit, other than a track car, propelled by any form of energy, or a combination of such units operated from a single control, used in train or yard service. Engines include electric multiple unit cars.
Engineering Department Daily Rail Operating Conditions	Order issued to Engineering Department Employees containing Working Limits Stop Sign locations (Rule 20-A), temporary speed restrictions, and other safety critical instructions and information.
Equipment	Railroad cars, engines, or track cars.
Extra Train	A train not designated by timetable schedule or bulletin order.
Field Side	The side of a train opposite the adjacent track.
Fixed Signal	A signal or sign of fixed location affecting the movement of trains or track cars.
Flagman	An employee designated to direct or restrict the movement of trains at a point on a track to provide on-track protection or will restrict movements for roadway workers. This employee may not perform any other duties.
Fouling a Track [49 CFR 214.7]	The placement of an individual or an item of equipment in such proximity to a track that the individual or equipment could be struck by a moving train or on-track equipment, or in any case is within four feet of the field side of the near running rail.
General Notice (GN)	Notice issued by authority of the Chief Transportation Officer that contains instructions that do not affect the movement or operation of trains.
General Order (GO)	Order issued by authority of the Chief Transportation Officer that contains permanent changes in Operating Rules, the Employee Timetable, or other Operating Manuals.
Hand-Operated Switch	A switch that can only be operated manually.
Inaccessible Track	A method of establishing working limits on non-controlled track by physically preventing the entry and movement of trains and equipment.

TERM	DEFINITION
Indication	The information conveyed by the aspect of a signal.
Interlocked Switch	A switch within interlocking limits, the control of which is interlocked with other functions of the interlocking.
Interlocking	An arrangement of signals and appliances so interconnected that their movements must succeed each other in proper sequence and for which interlocking rules are in effect.
Interlocking Appliance	A movable apparatus within an interlocking that either allows or prevents movements over designated routes, including switches and derails. An interlocking appliance is blocked when an approved device is applied to the TMDS that prevents the control for that appliance from being operated. An interlocking appliance is secured when an approved device is applied to the appliance itself that physically or mechanically prevents it from operating.
Interlocking Limits	The tracks between extreme opposing signals of an interlocking.
Interlocking Signals	The fixed signals of an interlocking.
Job Safety Briefing	A verbal or written process conducted by the person in charge that covers, at minimum, the hazards associated with the work, procedures to be used, any special precautions, control of energy sources, and personal protective equipment required.
Lead Unit	The first piece of equipment on a train in the direction of movement.
Line	That portion of the railroad designated by Timetable.
Main Track	A track designated in the Timetable where movements are governed by a signal system that must not be occupied without authority or protection.
Mandatory Directive	A written, printed, or displayed order issued by the Dispatcher in any of the following formats. • Form A – Authority to Occupy Track • Form B – Blanket Order • Form C – Crossing Stop Order • Form M – Substitution of Manual Block • Form O – Track Out of Service • Form R – Rescue Disabled Train • Form S – Speed Restriction Order • Form W – Working Limits Stop Sign

TERM	DEFINITION
Manual Block System (MBS)	A method of operation, on tracks designated in a Bulletin Order, where movements are authorized and manually controlled by the Dispatcher and governed by block limit signals and instructions issued in a Bulletin Order and on a Form M.
Marker	A reflector, flag, light, or highly visible end-of-train or marking device affixed to the rear of a train to indicate that the train is complete.
Master Location Indicator	A fixed signal that denotes location where cab signal changes may occur.
Maximum Authorized Speed	The maximum speed authorized by the Operating Rules and Timetable.
N-Line Dispatching Center	Central dispatching location for the N-Line at 711 Building.
Non-Controlled Track	A track not under the control of a Dispatcher.
Operating Schedule	That part of the Timetable that shows direction, train number, frequency, and times for the movement of scheduled trains.
Operations Notice (ON)	Notice issued by authority of Chief Transportation Officer that contains items of an advisory, explanatory, and/or cautionary nature related to Operating Rules, Timetable, and other instructions.
Order (OR)	Order issued by authority of the Chief Transportation Officer that contains temporary items affecting the movement of trains. (see: Bulletin Orders, Summary Bulletin Order, Container of Current Rail Operating Conditions, Engineering Department Daily Rail Operating Conditions, and Mandatory Directive.
Passenger Station	A place designated in the station pages of the Timetable where passengers are received and/or discharged.
Passenger Train	A train made up of cars designed to carry passengers.
Pilot	A Qualified Person assigned to a train or track car when the Operator, Engineer, or Track Car Driver is not qualified on the physical characteristics or rules of the railroad or portion of the railroad over which the movement is to be made.
Positive Train Control (PTC)	An “overlay” train control system that supplements the cab signal/speed control system by enforcing permanent speed restrictions, temporary speed restrictions, Work Zones, Crossing Stop Orders and a positive stop at interlocking and controlled point signals displaying Stop Signal.
Power Switch	A motor-powered, non-interlocked switch that can also be operated manually.
Proceed Interlocking Signal	An interlocking signal displaying other than Stop Signal.

TERM	DEFINITION
Qualified Employee	An Employee who has successfully completed all required training for, has demonstrated proficiency in, and has been authorized to perform the duties of a particular position or function.
Qualified Person	An employee instructed, qualified and designated by the railroad to operate trains and/or perform specific types of equipment inspection and tests, as defined in 49 CFR 213.7.
Repair Point	A yard, terminal, or other location, not a Designated Repair Facility, where Maintenance personnel are available to inspect and perform minor repairs to equipment.
Restricted Speed	A speed that would permit stopping within one half the range of vision short of a train, obstruction, switch improperly lined, applied derail, any signal requiring a stop, crossing protection out of order and looking out for broken rail, not exceeding 15 MPH. This restriction applies for the entire movement unless otherwise specified in the rule or instruction that requires Restricted Speed. ***[GO 4-02]***
Reverse Movement	A movement opposite the direction previously authorized.
Roadway Worker In Charge (RWIC)	A roadway worker trained and qualified to establish on-track safety for roadway work groups.
Rolling Equipment	EMUs, one or more EMUs coupled together, engines, railroad cars, track cars, or car movers.
Scheduled Train	A train designated by timetable schedule or bulletin order.
Servicing Operator	An employee certified under the Code of Federal Regulations (49CFR240), to operate passenger equipment within the confines of a yard.
Siding	An auxiliary track, adjacent and connected to a main track, used for meeting or passing trains.
Special Order	Non-routine activity scheduled by the Usage Coordinator to occur on the right-of-way during a specific period (date and time) including summary work plans, power system requirements, substitute transportation services or single rail diversions, and identifying project leads, employees in charge, limits of work, and on-track protections during the specified time. Special Orders are officially cancelled on orders of the Dispatcher.
Station	A place designated in the station pages of the Timetable by name.

TERM	DEFINITION
Student Operator	An Employee certified under the Code of Federal Regulations (49 CFR 240) to operate only under direct and immediate supervision of an Instructor Operator.
Summary Bulletin Order (SBO)	Order issued by authority of Chief Operating Officer that contains all information remaining in effect from previously issued Bulletin Orders.
Switch	Two movable rails and necessary connections designed to permit movement from one track to another.
Time Cancelled	The time at which a mandatory directive is no longer in effect.
Time Delivered	The time at which the mandatory directives C, S, and W are generated in TMDS. Time delivered allows for mandatory directives C, S, and W to be read and repeated when the Time Effective has a future date and time.
Time Effective	The time during which a mandatory directive is in effect and must be complied with, typically announced in advance as future time and date.
Time Fulfilled	The time in which mandatory directives (R,B) work has been completed.
Timetable (TT)	The document containing line and system special instructions that affect the movement of trains and equipment, plus the Emergency Instructions.
Track Car	Specialized equipment, including highway rail vehicles, operated on track for inspection or maintenance purposes.
Train	An engine or engines coupled, with or without cars, displaying markers.
Train Control Apparatus	The equipment on a cab car that receives and displays cab signals and controls the speed of the train in accordance with that signal. Train control apparatus includes the cab signal unit, the aspect display unit, the automatic train control system, and the positive train control system.
Train Service Operator	An employee certified under the Code of Federal Regulations (49CFR240) to operate passenger equipment.
Worker/Group of Workers	One or more employees assigned to inspect, test, repair and service rolling equipment.
Working Limits	A segment of track with definite boundaries upon which trains and engines may move only as authorized by the roadway worker having control over that defined segment of track.
Yard	An area consisting of one or more yard tracks, designated in the Timetable, under the control of a specified employee.

TERM	DEFINITION
Yard Track	A track, other than main track or controlled siding, used for making up trains, storing cars and other purposes.

SECTION IV - OPERATING INSTRUCTIONS (RULES 1 THROUGH 21)

RULE 1 - QUALIFICATIONS, RESPONSIBILITIES AND DUTIES

1-A Employees whose duties are governed by the Operating Rules must attend Operating Rules Class annually.

Employees will be given a written examination on the Operating Rules and must obtain a score of at least 85%. When reporting for the examination, they must present their Operating Rules books, Timetables, and other instructions for inspection. Employees who fail this examination must take a second examination within 30 days.

1-B Employees covered by the Operating Rules who have not performed service on RTDC for over 30 days must report to a Rules Examiner, Supervisor of Train Service Operators, or other designated Supervisor prior to accepting assignment for the purpose of:

1. reviewing the Employee's qualifications,
2. reviewing any changes in rules, instructions, or physical characteristics, and
3. inspecting and updating the Employee's Operations Manual.

Train Service Operators returning to service must report to a Supervisor of Train Service Operators prior to accepting assignment.

1-C *THIS SECTION RESERVED*

1-D VISION REQUIREMENTS

1-D(1) Employees who require the use of corrective lenses to meet the vision standards for their position must:

a. wear such approved corrective lenses at all times while performing service,
b. wear such corrective lenses when reporting for and during examinations required for their position, and
c. have a secondary pair of corrective lenses while on duty.

1-D(2) Goggles with rigid frames and corrective lenses will be considered eyeglasses under this rule.

1-D(3) Tinted or colored lenses must not distort the color of signal aspects.

1-E DISPATCHERS (DSP)

1-E(1) Dispatchers are in charge of the movement of trains and equipment on main and other tracks specified in the timetable, and issue instructions to Employees connected with these movements.

1-E(2) Dispatchers report to the Dispatching Center Supervisor.

1-E(3) Dispatchers are governed by the following operating instructions. They must maintain these documents and have them when reporting for duty and while performing service:

a. Operating Rules (DTO-TR-03.1)
b. Employee Timetable (DTO-TR-04)
c. Customer Service Standards (DTO-TR-03.2)
d. Airbrake and Train Handling Instructions (DTO-TR-07)
e. General Safety Instructions (DTO-SS-04)
f. Passenger Train Emergency Preparedness Plan (DTO-TR-06)

1-E(4) Dispatchers must be qualified on a dispatching district, including physical characteristics and the operation of all signals and interlocking appliances associated with that district, before accepting assignment to that district. A Dispatcher who has not performed service on a dispatching district during the previous twelve months must not accept assignment to that position without approval of the Dispatching Center Manager.

1-E(5) The duties of the Dispatcher are:

To ensure the safe and efficient movement of trains and track cars, in accordance with schedules and special instructions;

To control the movement of trains and track cars and the use of controlled tracks, in accordance with the rules, by operation of TMDS and issuance of authorities and other instructions, either written, verbal, or through electronic means;

To maintain records of all train and track car movements and blocking devices applied and removed.

To be aware of weather and other unusual conditions that may affect movements, and to notify the Dispatching Center Supervisor of any situation that may impact train operations;

To determine the cause of train delays and report this information as required; and

To ensure, to the extent possible, that the operating rules are observed for all movements being controlled, and to report violations and irregularities related to the movement of trains and track cars or the handling of Mandatory Directives;

To ensure the safe efficient distribution of the Traction Power System on TMDS and TPMS, to remove power in emergency situations, and to remove power for maintenance requests.

When making a transfer to relieving Dispatchers the transfer must include:

a. the number of the last General Order, Bulletin Order, General Notice and Operations Notice;
b. all outstanding Mandatory Directives, authorities, and messages;
c. all traction power outages still in effect; and
d. any other information relevant to current train operations and any conditions that may affect the safe movement of trains.

The relieving Dispatcher must understand all the information contained in the transfer, and must sign or electronically acknowledge the transfer in the presence of the Dispatcher being relieved.

1-F TRAIN SERVICE OPERATOR (OPERATOR)

1-F(1) Operators are responsible for operating trains.

1-F(2) Operators report to the RTDC Supervisor of Train Service Operators, and obey instructions of Supervisors and Dispatchers within their jurisdiction.

1-F(3) Operators are governed by the following operating instructions. They must maintain these documents and have them when reporting for duty and while performing service:

a. Operating Rules (DTO-TR-03.1)
b. Employee Timetable (DTO-TR-04)
c. Customer Service Standards (DTO-TR-03.2)
d. Airbrake and Train Handling Instructions (DTO-TR-07)
e. General Safety Instructions (DTO-SS-04)
f. Passenger Train Emergency Preparedness Plan (DTO-TR-06)

1-F(4) Operators must be qualified on the physical characteristics of the portion of the railroad over which they operate.

1-F(5) The duties of the Operator are:

To operate the train safely and in accordance with all rules and instructions;

To observe and comply with the indications of all fixed signals, and all other signals affecting movement of their train;

When required by rule, to see that switches and derails immediately ahead of their train in the direction of movement are properly lined;

To operate their train at MAS, unless unable to do so because of conditions along the right-of-way or equipment malfunction;

To maintain a constant lookout ahead and not allow distractions to interfere with the operation of the train;

To inspect their train and passing trains in accordance with **[Rule 15-C]**, when conditions permit;

To complete such forms and reports as may be required;

To conduct a briefing with the second crew member at the beginning of the shift and when conditions substantially change, new tasks are started or there are unanticipated developments that may affect safety; and

i. To verify the second crew member is on board before departing terminal stations.

1-F(6) Supervision of Student Operators

Operators will allow student Operators to operate their train only when this can be done safely and without causing train delay.

Student Operators will operate only under the direct, personal supervision of the Operator.

The Operator is responsible for the proper operation of the train, in accordance with all rules and instructions, while the student Operator is operating.

Operators must complete all required forms associated with the operation by the student Operator.

1-F(7) Certification

Only a certified Train Service Operator, or a Student Operator under the direct supervision of a certified Operator, is permitted to operate a train.

All Operators must have in their possession a valid Train Service Operator certificate issued by the railroad while on duty. Operators who are dual certified under Part 240 and Part 242 must have a dual certificate in their possession while on duty.

Operators are responsible for ensuring the accuracy of information on the certificate.

Certificates may not be laminated.

Certificates must be displayed to Supervisors of Train Service Operators, Rules Examiners, or Federal Railroad Administration inspectors when requested.

Damaged or illegible certificates must be replaced. Operators must make arrangements with a Crew Dispatcher for a temporary certificate prior to their next assignment if a permanent replacement cannot be secured. Only the Crew Dispatcher or Supervisor of Train Service Operators may issue permanent replacement certificates. Temporary certificates are valid for 30 days from issuance.

Operators must notify the Dispatcher immediately if they discover that they do not have their certificate in their possession while operating a train. When authorized by the Dispatcher, the Operator may then complete his assignment for that day.

Certificates are valid for a period of 36 months from the date issued. Operators are responsible for notifying a Supervisor of Train Service Operators sixty days before expiration of their certificate.

Operators must be tested annually, while operating a train, by a Supervisor of Train Service Operators (DSLE).

Operators must report to a Supervisor of Train Service Operators within 48 hours of being convicted for, or a completed state action to cancel, revoke, suspend, or deny a motor vehicle driver license for:

operating a motor vehicle while under the influence of or impaired by alcohol controlled substance; or

refusal to undergo such testing as is required by State law when a law enforcement official seeks to determine whether a person is operating a vehicle while under the influence of alcohol or a controlled substance

1-G TRACK CAR DRIVERS AND ENGINEERING DEPARTMENT FOREMEN

1-G(1) Track Car Drivers and Engineering Department Foremen are responsible for the movement, safety, and care of track cars and Employees in their charge. Engineering Department Foremen and Supervisors are responsible for the maintenance of the various components of the right-of-way in their assigned territories.

1-G(2) In those duties involving the movement of track cars and other equipment, or the use of tracks, signals, or interlocking appliances, Track Car Drivers and Engineering Department Foremen must obey the instructions of Supervisors and Dispatchers within their jurisdiction. In all other matters, Track Car Drivers and Engineering Department Foremen report to and obey the instructions of Engineering Department Supervision.

1-G(3) Track Car Drivers and Engineering Department Foremen are governed by the following operating instructions. They must maintain these documents and have them when reporting for duty and while performing service:

a. Operating Rules (DTO-TR-03.1)
b. Employee Timetable (DTO-TR-04)
c. General Safety Instructions (DTO-SS-04)
d. Roadway Worker Protection Manual (DTO-SS-05.2)

1-G(4) Track Car Drivers and Engineering Department Foremen will be governed by the same physical characteristics qualification requirements as apply to Operators.

1-G(5) The duties of the Track Car Driver and Engineering Department Foreman, as related to train operations, are:

To ensure the safe operation of track cars and other Engineering Department equipment in their charge, in accordance with the rules and instructions and movement authorities. When track car drivers and Engineering Department foremen are piloting equipment, they are responsible for ensuring the safe operation of such equipment;

To ensure that railroad operations are not endangered by the operation of their equipment, and to immediately report to the Dispatcher any condition that may affect train movements; and

To inspect passing trains in accordance with **[Rule 15-B]**, when conditions permit.

1-G(6) In addition to **[Rule 1-G(5)]**, the duties of the Engineering Department Foreman are:

To ensure that time limits shown on Bulletin Orders and Mandatory Directives for track car movements, track outages, and work areas are met to the maximum extent possible, and that the Dispatcher is notified immediately of any condition that may prevent adherence to these time limits;

To ensure that necessary signs for speed restrictions, work areas, and other Engineering Department related activities are placed in accordance with the rules and instructions; and

To ensure that there is no unnecessary train delay as a result of Engineering Department activities.

RULE 2 - GENERAL ORDERS, CONTAINER OF CURRENT RAIL OPERATING CONDITIONS, ENGINEERING DEPARTMENT DAILY RAIL OPERATING CONDITIONS, BULLETIN ORDERS, GENERAL NOTICES, AND OPERATIONS NOTICES

2-A General Orders are numbered consecutively, with the first digit representing the Timetable number and the second and third digits representing the sequence number.

2-B Container of Current Rail Operating Conditions (CCROC) are individually numbered and contain the first and last name of the Operator who is being issued the CCROC.

The CCROC will contain the day, date, and time issued, and the number of each General Order, Bulletin Order, General Notice, and Operations Notice in effect at the time of issuance.

2-C Engineering Department Daily Rail Operating Conditions are issued on a daily basis and are numbered by date in effect; month-day-year.

The number of the last General Order, Bulletin Order, General Notice, and Operations Notice made effective prior to 2400 hours on the day of the Engineering Department Daily Road Operating Conditions will be listed.

The Engineering Department Daily Rail Operating Conditions Order is in effect for 24 hours from 0001 hours to 2400 hours on the date indicated.

2-D All Bulletin Orders are numbered consecutively by line, with the first digit indicating the Timetable number and subsequent digits indicating the sequence number. For Summary Bulletin Orders, an “S” prefixes the sequence number.

2-E General Notices and Operations Notices are numbered consecutively, with the first digit representing the Timetable number and subsequent digits representing the sequence number.

2-F All General Orders, Bulletin Orders, General Notices, and Operations Notices expire with the Timetable, unless previously canceled.

RULE 3 - REPORTING FOR DUTY

3-A In addition to those items listed under Rule 1 for each occupation, Employees must carry those other manuals and documents pertinent to their specific job description specified by their Department Head.

3-B Those Employees whose duties involve the movement of trains or whose duties are affected by train movements must, when reporting for duty and prior to performing service, familiarize themselves with the CCROC or Engineering Department Daily Rail Operating Conditions Order and all General Orders, Bulletin Orders, General Notices, Operations Notices, and other instructions issued for their craft and applicable to the territory on which they will perform their duties. They must carry a copy of the CCROC or the Engineering Department Daily Rail

Operating Conditions Order and all General Orders and Bulletin Orders in effect for the territory on which they will perform their duties.

3-C If copies of all applicable General Orders, Bulletin Orders, Engineering Department Daily Operating Conditions Order, General Notices, and Operations Notices are not posted or available when reporting, or if reporting for duty at a point that is not a specified Bulletin Board location, Employees will contact the Dispatcher for instructions.

3-D When reporting for duty, Operators must log onto the designated electronic report screen and print and review the Container of Current Rail Operating Conditions (CCROC) and any updated bulletins listed in the CCROC. In case of failure of the electronic report system, Operators must contact the Crew Dispatcher for instructions and must contact the Dispatcher to verify or obtain the current CCROC. Operators who take charge of a train at other than their initial terminal must contact the Dispatcher to verify that they have a current CCROC. The Operator must also contact the Dispatcher to verify their CCROC prior to switching from one Line to another Line.

3-E Employees required to be qualified on physical characteristics who are ordered to perform service over any portion of the railroad for which they are not qualified must immediately inform the Dispatcher.

3-F While performing service, Employees whose duties involve or are affected by the movement of trains must have a reliable watch, in good working order, which simultaneously shows hours, minutes, and seconds. Smart watches are considered electronic devices.

Watches must be set to a standard clock before starting each tour of duty. If a standard clock is not available, the Employee will check his watch with another Employee who has the correct time or call the Dispatching Center for a time check.

3-G While performing service, Operators must carry a railroad issued flashlight in good working order.

3-H When required by rule, Operators and other Employees whose duties may require them to give hand signals must carry flagging equipment consisting of a red flag, white light, and 6 fusees.

RULE 4 - COMMUNICATING SIGNALS

4-A Any object waved violently by any person on or near the tracks will be considered a signal to stop.

4-B Trains and track cars must not be operated from their origination point without a minimum of one red flag and 6 fusees on board for the purpose of giving signals. Supplies depleted en-route will be replenished at the first opportunity.

When multiple track cars are operated under one Mandatory Directive, only the leading and trailing track cars are required to carry flagging equipment.

4-C HAND SIGNALS

4-C(1) Hand signals given to direct the movement of a train or track car must be given from a point where they will be clearly seen and in a manner that can be understood and sufficiently ahead of time to permit compliance.

4-C(2) Movements directed by hand signals must stop immediately if:

a. There is doubt concerning the meaning of the signal;
b. There is doubt for whom the signal is intended; or
c. The signal disappears from view.

4-C(3) Prior to starting any series of movements directed by hand signals, Employees must establish which direction will be signified by *proceed* and *back-up* signals.

4-C(4) Between sunrise and sunset, when visibility permits, hand signals may be given as shown in Rule 4-C(5), with or without a flag.

When visibility is limited, and at all times between sunset and sunrise, hand signals will be given by a white light.

4-C(5) Hand signals will be given as follows:

	Illustration	Description	Indication
a.		Hand, red flag, or light swung horizontally at right angle to the track. The hand, flag, or light movement may be above the shoulder.	**Stop**
b.		Hand or light held horizontally at arm's length.	**Reduce Speed**
c.		Hand or light raised and lowered vertically.	**Proceed**
d.		Hand or light swung vertically in a circle at half arm's length, at right angle to the track.	**Back Up**
e.		When train is standing, hand or light swung horizontally above the head.	**Apply Air Brakes**
f.		When train is standing, hand or light held at arm's length above the head.	**Release Air Brakes**

4-D FUSEES

4-D(1) Fusees will be placed on or near the right of way, as required by the rules, when it is necessary to signal approaching trains and track cars.

4-D(2) A train or track car finding a fusee burning on or near the right-of-way must stop. After stopping, the train or track car will notify the Dispatcher and must proceed for a distance of one mile at Restricted Speed.

4-D(3) Fusees must not be placed on bridges or other structures susceptible to fire.

4-E ENGINE HORN

4-E(1) Engine horn must be tested and in working order prior to departure from initial terminal.

4-E(2) Quiet zones are designated in the timetable. Engine horn is not to be sounded at highway grade crossings listed as a quiet zone unless sounding is required by Operating Rule or to avoid an emergency situation.

Sounding Horn in a Quiet Zone that is designated in the Timetable:
Horn may be sounded in a quiet zone that is designated in the Timetable to provide a warning to animals, vehicle operators, pedestrians, trespassers, or crews on other trains in an emergency situation when Operator believes such action is appropriate in order to prevent injury, death, or property damage.

Horn signal 4-E(6)c must be sounded at any crossing when any of the following events occur:

a. Notified that automatic warning devices are malfunctioning, disabled, or crossings require additional precautions;
b. Form C protection has been established at the crossing; or
c. When train has PTC cut-out.

4-E(3) If the engine horn fails en route, the train may continue to the nearest Designated Repair Facility or Repair Point. The Operator must:

a. Notify the Dispatcher as soon as possible;
b. Ring the engine bell continuously;
c. Approach locations where roadway workers are known to be on or near the tracks not exceeding 25 MPH; and
d. Approach highway grade crossings prepared to stop until Operator observes crossing warning devices are working as intended and the crossing is clear.

4-E(4) The unnecessary use of the engine horn is prohibited.

4-E(5) The intensity and duration of engine horn signals must be proportionate to the distance the signal is to be conveyed.

4-E(6) Engine horn signals will be given as follows. The "**o**" indicates a short sound and the "__" indicates a long sound.

	Sound	Indication
a.	o o	Acknowledgement for any stop signal other than a fixed signal except at passenger station stops.
b.	o o o	When standing, prior to commencing back-up movement;
c.	_ _ o _	At other than crossings designated as quiet zones in the Timetable, horn must begin to be sounded ¼ mile before the crossing unless the train speed is not more than 60 MPH or a stop will be made before the crossing. If a stop is made, the horn must begin sounding no less than 15 but no more than 20 seconds before entering the crossing. If the stop is in close proximity to the crossing, horn may be sounded for less than 15 seconds before entering crossing if the crossing is not obstructed and is equipped with gates and flashers and the gates are fully lowered and there is no highway traffic approaching the crossing. Repeat the horn signal until the train occupies the crossing, or for multiple crossings, until the train occupies the last crossing. When notified of a warning system malfunction at a crossing designated as a quiet zone, the horn must be sounded in compliance with this rule.
d.	_ o	Approaching roadway workers; regardless of any whistle prohibitions: Approaching and passing men or equipment or other individuals on or near the track. After this initial warning, sound whistle signal (a) intermittently until the head end of the train has passed the men or equipment. Whistle warning is not required: • When there is an adjacent track and men or equipment or other individuals are beyond the farthest rail of the adjacent track. • For members of the same crew associated with movement of their EMU unless necessary to warn or alert a crew member.
e.	ooooo	Alarm for person or animal on or near tracks.

4-F BELL

4-F(1) The bell on the EMU must be sounded:

a. While approaching a passenger station. The bell must be sounded until stopped in the station. If the train is not stopping at the station, the bell must be sounded until the head end is through the station;
b. When the train is about to move;
c. While passing a train standing on an adjacent track;
d. While approaching and passing roadway workers on or near the tracks; and
e. In an emergency.

4-F(2) While switching, momentary stop and start, forward and reverse movements do not require the use of the engine bell unless operating over a public highway grade crossing.

4-F(3) In the event of an en route failure of the EMU bell, the Dispatcher must be notified, and the train may proceed to its destination.

RULE 5 - COMMUNICATIONS DEVICES

5-A Company-issued radios, telephones, and other communications devices must be used exclusively for railroad business. Employees using communications devices must exercise care to avoid loss

or damage to the equipment. Employees assigned portable radios, cellular telephones, or other similar devices are responsible for their care and protection.

5-B Only Company-issued communications devices may be used to communicate over railroad-assigned radio frequencies.

5-C Radio and telephone communications associated with train movements are recorded, including Dispatcher telephone and direct communication lines. Other telephone lines that may be recorded will be indicated by the presence of a *beep* tone on the line approximately every 15 seconds.

5-D RADIO RULES

5-D(1) Employees are prohibited from:

a. knowingly transmitting false distress communications;
b. making unnecessary, irrelevant, profane, obscene, or frivolous transmissions;
c. making transmissions without identifying themselves in accordance with **[Rule 5-E(1)]**.

5-D(2) Employees will permit inspection of radio equipment in their charge and all pertinent documents at any reasonable time by authorized representatives of the Federal Communications Commission (FCC).

5-D(3) Employees, unless specifically authorized, are prohibited from making technical adjustments to Company radio equipment.

5-D(4) Radio frequencies in use and the location of fixed base stations will be designated in the Timetable.

5-D(5) If radio communications fail, other means of communications must be used to ensure safety and avoid delay.

5-D(6) Employees must ensure that communications are with the intended persons or stations.

5-D(7) Communications must be as brief as possible.

5-D(8) When departing the initial terminal, each occupied controlling car of a train must have a working radio, and, for redundancy, each train must also have a second working radio or other means of wireless communication.

5-D(9) Portable radios must be tested prior to the start of the work assignment The test will consist of an exchange of voice transmissions with another radio station. The Employee receiving the transmission will advise the Employee conducting the test of the clarity of the transmission.

a. On trains, the test will be conducted with a radio not on the same set of equipment.
b. Radios not working as intended must not be used and must be reported to the proper authority.

5-D(10) When the radio fails, alternate means of communication must be established until the radio can be repaired or replaced. If the radio is on the head-end of a train or is used in any aspect of train operations on main tracks, the Dispatcher must be notified.

5-D(11) When their duties involve the use of a radio, Employees must have the radio on and tuned to the appropriate channel at all times. The volume must be set so that all transmissions can be clearly heard.

5-D(12) Interference between radio stations must be reported to the Dispatcher.

5-D(13) When radio communications are used to direct backing, pushing (as allowed per **[Rule 7-M**]), or switching movements;

a. The Employee directing the movement must maintain continuous communications with the Employee receiving the instructions, or must provide complete information on the movement;
b. If communications are lost or interrupted in the course of a movement, or if the means of communication are to be changed, or if there is doubt as to the meaning of a transmission, the movement must be stopped until positive communication is re-established;
c. When pushing or backing a train, the distance of the movement must be specified, and the movement must stop within one-half the specified distance if no additional transmissions are received;
d. The name of the fixed signals affecting the movement must be communicated to the Operator.

5-E PROCEDURE FOR USE OF RADIOS

5-E(1) To originate a radio call, Employees must:

listen to ensure that the channel is clear;

identify their employing railroad; and

identify themselves, as follows:

1) For trains, the schedule number of scheduled trains, or the symbol (if any) and the EMU number for extra trains. If communication is with other than the Operator of the train, the Employee must also identify themselves by title or unique designation;
2) For track cars, "TC" and the track car number;
3) For fixed stations, the approved base, wayside, or yard station name;
4) For Dispatching Center Employees, “DUS Dispatcher”, “East Dispatcher”, “Gold Dispatcher”, or “ N Line Dispatcher”;
5) For other persons and portable units, the Employee's title, unique designation or last name, and location.

5-E(2) When radio communication is used for switching operations within a yard, and once positive identification has been established, a short radio identification consisting of EMU or assignment number may be used.

5-E(3) The following key words must be used in communications:

a. *OVER* is used at the end of each transmission for which a response is expected;
b. *OUT*, preceded by the sending party's identification, is used at the end of the transmission when no response is expected.
c. *THAT IS CORRECT* is used when a directive or instruction has been repeated back correctly.

5-E(4) *EMERGENCY,* repeated three times, will be used for initial reports of hazardous conditions which could result in death or injury, damage to property, or serious disruption of railroad operations such as:

a. Derailments;
b. Collisions;
c. Storms;
d. Washouts;
e. Fires;
f. Track obstructions; or
g. Emergency brake applications (see **[Rule 7-J]**).

In addition, emergency calls must be made for the following:

a. Overrunning limits of authority; and
b. Overrunning Stop indications.

Emergency calls must contain as much complete information on the incident as possible. All Employees must give absolute priority to an emergency communication. Unless they are answering or aiding the emergency call, Employees must not transmit until they are certain no interference will result.

5-E(5) For all radio transmissions that are used to give instructions regarding movement of trains and track cars, or to transmit safety-sensitive information, the receiving Employee must repeat the instructions or information to the transmitting Employee, who will verify the accuracy of the transmission.

5-E(6) An Employee who does not understand a radio communication or who receives a communication that is incomplete must not act on the communication and must treat it as if it was not sent. EXCEPTION: An Employee who receives information that may affect the safety of Employees or the public or cause damage to property must take the safe course. When necessary, stop movement until the communication is understood.

5-E(7) When available and operative, radio must be used for communications involving:

a. Granting main track authority;
b. Authorization to pass a Stop Signal or Working Limits Stop Sign; and
c. Permission from the Dispatcher to make a reverse movement.

5-E(8) All numerals must be pronounced digit-by-digit.

a. 4001 will be pronounced; four-zero-zero-one
b. T210 will be pronounced; T-two-one-zero

5-F RADIO REQUIREMENTS FOR ENGINEERING DEPARTMENT EQUIPMENT AND ROADWAY WORKERS

5-F(1) A single track car or piece of Engineering Department equipment operated on the right-of-way must be equipped with a working radio.

5-F(2) When multiple track cars or pieces of Engineering Department equipment are operated under a single Mandatory Directive, at least one unit must have a working radio.

5-F(3) Individual roadway workers and Employees assigned to protect groups of roadway workers shall be provided with and maintain access to a working radio.

5-G TELEPHONE RULES

5-G(1) Company telephones must be yielded at once for calls pertaining to emergencies and train movements.

5-G(2) When telephones are used to give instructions regarding movement of trains and track cars, or to transmit safety-sensitive information, the receiving Employee must repeat the instructions or information to the transmitting Employee, who will verify the accuracy of the transmission.

RULE 6 - HEADLIGHT AND MARKERS

6-A HEADLIGHT

6-A(1) The headlights and auxiliary lights must be displayed in the direction of movement on their brightest setting on every train, day and night. Headlights will not be dimmed approaching a highway grade crossing or pedestrian crossing at any time.

6-A(2) The headlight may be dimmed:

a. at night, when standing or approaching another train operating in the opposite direction in multiple track territory, or
b. at anytime, while standing in or entering yards, yard tracks or sidings.

6-A(3) When headlights or auxiliary lights fail en route:

If one auxiliary or headlight light fails, the Dispatcher must be notified immediately, and the train may operate without restriction until its next calendar day maintenance inspection.

If both auxiliary lights fail, the Dispatcher must be notified immediately, and the train may operate without restriction only to the next forward location where repairs can be made. Train must not exceed **20 MPH** over all highway grade crossings.

If both of the headlight fails and at least one auxiliary light is operational, the Dispatcher must be notified immediately, and the train may operate only to the next forward location where repairs can be made and:

Engine bell must be sounded continuously, and the engine horn must be sounded frequently.

Approach all public highway crossings at grade prepared to stop. Train may proceed over crossings not exceeding 20 MPH. Speed applies to head end only.

If the headlights and all auxiliary lights fail, the train may operate only to the next forward location where repairs can be made. The Dispatcher must be notified immediately, and:

A white light must be substituted in the cab window; the engine bell must be sounded continuously; and the engine horn must be sounded frequently.

Approach all highway crossings at grade prepared to stop. Train may proceed over crossings not exceeding Restricted Speed. Speed applies to head end only.

6-A(4) When cars are being shoved (as allowed per **[Rule 7-M]**), a headlight must be displayed at night on the front end of the leading car.

6-B MARKERS

6-B(1) Except on yard tracks, the rear of all trains must be identified by a marker.

6-B(2) An illuminated marking device must be used on all EMUs and the marker must be observed to be illuminated before departure from an initial terminal.

6-B(3) If the marker fails en route, the Dispatcher must be notified immediately and the headlight on the rear end of the train should be displayed on low beam, or a flashlight, other illuminated device, or flag, if available, displayed in place of a marker. The train may continue to the next location where the marker can be repaired or replaced.

6-C If a train is observed operating without the proper headlight or marker displayed, the Operator of the train will be notified as soon as possible. If unable to contact the Operator of the train, the Dispatcher will be notified.

RULE 7 - TRAIN OPERATION

7-A The 24-hour clock will be used for all operations, including Mandatory Directives and Employee operating schedules. Each day begins at 0001 hours (12:01 a.m.) and ends at 2400 hours (12:00 midnight).

7-B The Operator and pilot are equally responsible for the safety of the train and observance of all applicable rules and special instructions. Under conditions not provided for under the rules, or should there be any doubt as to the authority for operation or safety of proceeding, the Operator and pilot must take every precaution. This rule does not relieve other Employees of their responsibilities under the rules.

7-C Operating Rules Qualified Employees located in the control compartment will observe and communicate to each other, in a clear and audible manner, any signal affecting train movement, by its name, as soon as the signal becomes clearly visible. A wayside signal must be observed until passed.

7-D If a train is not being operated in accordance with the requirements of any signal indication or restriction, Operating Rules Qualified Employees must immediately communicate with the Operator and, if necessary, stop the train.

7-E If a stop signal is disregarded, the Dispatcher must immediately attempt to stop the train, track car, or any other trains that may be affected. The Dispatcher must also notify the person in control of adjoining territory in the direction of movement.

7-F Trains must be fully protected against any known condition that may interfere with safe passage. Any work on or adjacent to tracks that may interfere with the safe movement of trains or equipment must not be attempted without permission of the Employee in Charge of the track.

7-G If an event occurs or conditions are observed that could interfere with the safe passage of trains or equipment, and protection is not being provided by the Dispatcher, Employees must immediately attempt to stop approaching trains and inform the Dispatcher. Flag protection must be provided in both directions, as shown below, until the unsafe condition has been corrected or until informed by the Dispatcher that other protection has been provided.

MAS for Passenger Trains	Distance for Flag Protection
20 MPH or less	¼ mile
21 – 30 MPH	½ mile
31 – 40 MPH	1 mile
41 – 79 MPH	1½ miles

7-G(1) When a train is seen or heard approaching before the flagman has reached the prescribed distance, he will display a lighted fusee and continue toward the approaching train, giving a signal to stop.

7-G(2) On reaching the prescribed distance, the flagman will display a lighted fusee and will give hand, red flag, or light signal to stop approaching trains. Flagman will remain at this location until recalled or until an approaching train has been stopped.

7-H Trains must not be stopped over fusees or open flames if it can be avoided. If stopped over a flame, the fire must be extinguished.

7-I *THIS SECTION RESERVED*

7-J EMERGENCY APPLICATION OF BRAKES

When a train is moving and emergency application of the brakes occurs, the Operator must immediately determine the cause of the brake application. A radio transmission to the Dispatcher and approaching trains must be made.

7-J(1) If the cause can be immediately determined, and there is no danger to other trains operating on adjacent tracks, the Operator will:

a. Notify the Dispatcher that the train is stopped, providing the location, cause, and expected duration of the delay.
b. Notify the Dispatcher when the train is ready to proceed.

7-J(2) If the cause cannot be immediately determined, but it can be determined that the train is not fouling and is not a danger to other trains operating on adjacent tracks, the Operator will:

a. Notify the Dispatcher that the train is in emergency but not fouling adjacent tracks. The Dispatcher will notify all approaching trains of the situation, including identity, location, track, and direction of the train in emergency.
b. Inspect the entire train to determine the cause of the train going into emergency and to ensure that no other condition exists that affect the safe movement of trains.
c. Notify the Dispatcher when the cause is determined, the expected duration of the delay, and whether assistance is needed.

7-J(3) If the cause cannot be immediately determined, and the Operator cannot immediately determine whether the train is fouling other tracks:

a. The Operator will:
    1) Make an immediate radio transmission to other trains and the Dispatcher, using the phrase “EMERGENCY, EMERGENCY, EMERGENCY”, giving the identity of the train, location, track, and direction of the train, and any other pertinent information that may be available.
    2) After the train has stopped, provide flag protection in both directions on adjacent tracks. This protection must be maintained until it is known that the tracks are not obstructed, or until protection is provided by the Dispatcher.
    3) Notify the Dispatcher when the cause is determined, the expected duration of the delay, and whether assistance is needed.
    4) Notify the Dispatcher when the train is ready to proceed.

b. The Dispatcher will:

1) Until it is known that there is no obstruction to adjacent tracks, notify all other trains approaching the location of the situation, including the identity, location, track, and direction of the disabled train.

2) As soon as possible, block adjacent tracks and not permit train movements past the disabled train until the nature of the situation is determined. The Operator of the disabled train must be notified by radio once the adjacent tracks are protected and there are no trains in the block.

7-J(4) All trains receiving the EMERGENCY call will operate at Restricted Speed from one mile before the reported location until one mile past the standing train.

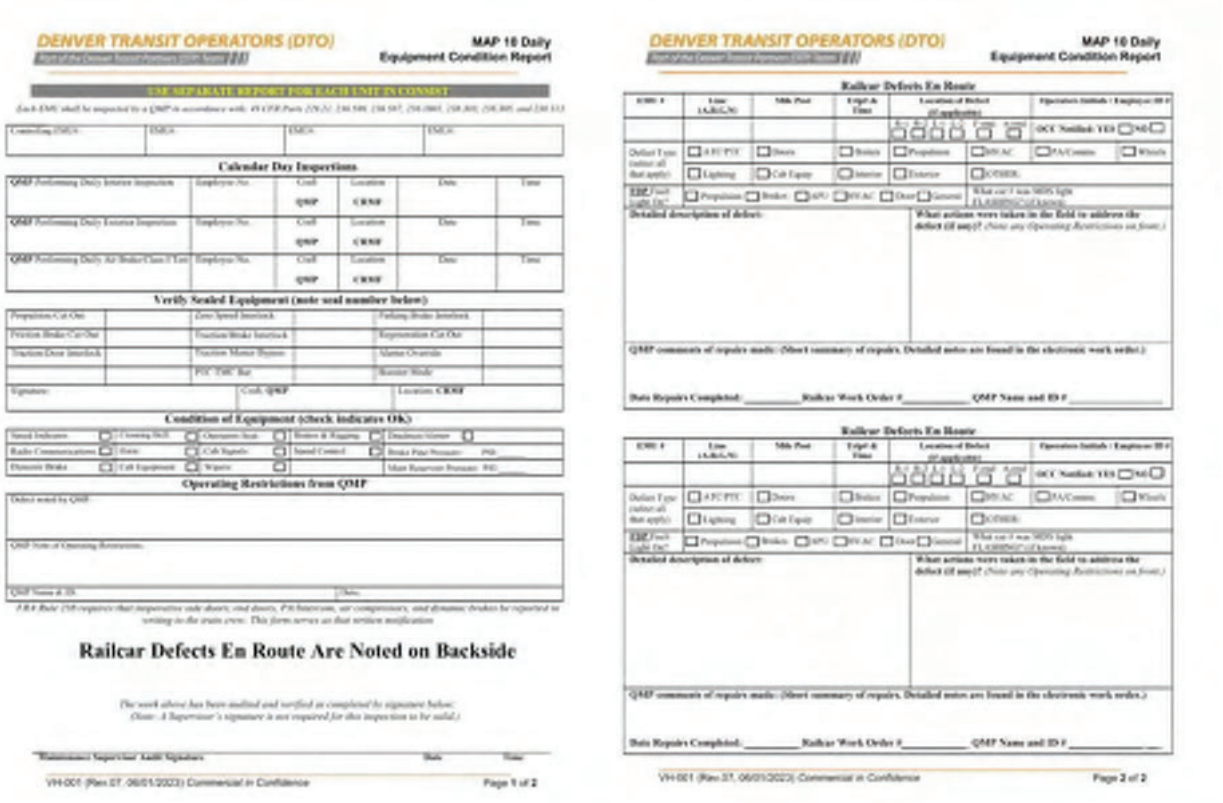
7-K SPEEDS

7-K(1) RESTRICTED SPEED – A speed that would permit stopping, within one half the range of vision, short of a train, obstruction, switch improperly lined, applied derail, any signal requiring a stop, crossing protection out of order, and looking out for broken rail, not exceeding 15 MPH. This restriction applies for the entire movement, unless otherwise specified in the rule or instruction that requires Restricted Speed.

7-K(2) All equipment must not exceed the maximum authorized speeds shown in the Operating Rules and Timetable for a train, type of equipment, and track on which they are operating.

7-K(3) As soon as possible after starting each trip, the Operator must verify the accuracy of the speedometer on the lead car, using his watch, mileposts, and the speed tables (Timetable Appendix 1). If the speedometer is found to be inaccurate within three miles per hour at actual speeds of 10 to 30 miles per hour or inaccurate within 5 miles per hour at actual speeds above 30 miles per hour, the Dispatcher must be notified and the Operator must make additional speed checks en route to ensure that authorized speeds are not exceeded. All inaccuracies must be noted on the (Maintenance Analysis Program) MAP 10 Daily Equipment Condition Report.

7-K(4) If the speedometer fails en route, reading 0 MPH when the train is moving, the Dispatcher must be notified immediately. On trains with a working secondary or redundant speedometer, the train may be operated normally to its final destination. On trains without a working secondary or redundant speedometer, the train will be considered failed and must operate under Absolute Block rules to its final destination.



DENVER TRANSIT OPERATORS (DTO)

MAP 10 Daily
Equipment Condition Report

USE SEPARATE REPORT FOR EACH UNIT IN CONSIST

Calendar Day Inspections

Verify Sealed Equipment (note seal number below)

Condition of Equipment (check indicates OK)

Operating Restrictions from QMP

Railcar Defects En Route Are Noted on Backside

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DENVER TRANSIT OPERATORS (DTO)

MAP 10 Daily
Equipment Condition Report

Railcar Defects En Route

Railcar Defects En Route

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MAP 10 Daily Equipment Condition Report

7-K(5) The Dispatcher must be notified of any condition that will delay a train or prevent it from operating at MAS.

7-K(6) The following maximum authorized speeds are in effect:

MAS on other than main tracks is **Restricted Speed not exceeding 10 MPH**, unless otherwise specified.

MAS for any movement where the Operator is not operating from the leading end of the movement is **Restricted Speed**

MAS for movement through hand-operated switches in the diverging position is **Restricted Speed not exceeding 10 MPH**

MAS on yard tracks designated as Maintenance Tracks [Rule 14-B, paragraph 3] is **Restricted Speed not exceeding 3 MPH**

MAS when coupling to equipment is **2 MPH**. Stop must be made prior to coupling passenger equipment.

7-K(7) When more than one speed applies to a movement, the more restrictive speed will govern.

7-L All moves must be made by a qualified Operator operating from the leading end of the movement except as allowed in **[Rule 7-M]**.

7-M OPERATOR OPERATING EQUIPMENT FROM OTHER THAN THE LEADING END OF THE MOVEMENT

7-M(1) Prior to commencing movement with the Operator not on the leading end of movement, permission must be obtained from the movement authority.

7-M(2) After permission is obtained and prior to commencing movement, another qualified Operator must be located on the leading end to observe conditions ahead and communicate with the keyed in Operator at the controls. A job safety briefing must be held between both Operators and any other Employees involved, specifying who will direct movement, means of communication, distance to be traveled, and any other conditions concerning the movement. The entire movement must be made at Restricted Speed. Trains operated from other than the leading end of the movement must approach grade crossings not equipped with both flashers and gates prepared to stop until it is clearly seen that no traffic is approaching or stopped at the crossing.

7-M(3) COMMUNICATIONS

The Operator on the leading end must maintain constant communication with the Operator at the controls by means of voice (radio, intercom, or PA system) or hand signals. The means of communication will be established among all involved Employees prior to commencing movement. The movement must be stopped at once if communications are lost.

When voice communications are being used to direct the movement, all applicable conditions must be conveyed to the Operator at the controls including: signal name, switch positions, derail positions, crossing occupancy, and any track obstructions.

The distance of the movement must be specified before starting the movement, and the movement must be stopped in one-half the remaining distance unless additional instructions are received.

If the intercom or PA system is being used for voice communications, radio rules must be followed.

7-M(4) PASSENGER EQUIPMENT

The Operator on the leading end must be located inside the equipment and have access to a control valve to stop the movement if necessary, except as noted in paragraph (c) below. At all times, Employees are prohibited from riding on the outside of passenger equipment.

Prior to commencing movement, the Operator on the leading end must test the air brake system by initiating an emergency application of the brakes.

When a switching movement is made on a yard or car shop repair track, the Qualified Employee on the leading end may direct the movement from the ground, maintaining constant observation of the train and the conditions ahead.

7-N Revenue passenger and deadhead trains are not permitted to make unscheduled stops to receive or discharge customers or Employees without permission of the Dispatcher.

7-O Except in an emergency, customers will not be received or discharged at locations other than on designated platforms at passenger stations.

7-P Opening doors in any location other than a platform without authorization from the Dispatching Center is prohibited. At station stops, only the doors on the platform side will be opened. If any of the train doors are not spotted correctly, the Operator must immediately contact the Dispatcher before opening any doors, or before moving the train in either direction.

7-Q The Operator will report any delays of 5 minutes or more or delays that could result in his train arriving at its final destination more than 5 minutes late to the Dispatcher. These delays must only be reported when the train is stopped at a station and no safety critical tasks are taking place.

7-R TRAIN SCHEDULES

7-R(1) Changes to Employee operating schedules are made by Driver Time Card.

7-R(2) In the event of a discrepancy between the Driver Time Card and public timetables, contact the Dispatcher for instructions.

7-R(3) Reference marks used on the Driver Time Card are defined in each schedule.

Unless otherwise noted, times shown in bold are passenger station times and times shown in light-face type are passing times.

7-R(4) Trains may not operate in advance of the time shown in the Driver Time Card, unless directed by the Dispatcher.

7-R(5) The train Operator needs to be in the operating cab and ready to depart five minutes before scheduled departure time.

7-R(6) Train Operators must at all times operate trains in accordance with the schedule in effect unless otherwise directed by the Dispatcher.

7-S TRANSFERRING PASSENGERS BETWEEN TRAINS

In electrified territory, differences in electrical potential between equipment on adjacent tracks could present a hazard to persons who bridge the two trains. For this reason, the following actions are required when transferring passengers between two adjacent trains if either or both of the trains is electrically powered:

a. Secure train:
   1) Set the Parking Brake.
   2) Place the Master Controller in the EMER position.
   3) Place the Master Controller key switch in the OFF position and remove the key.

b. All pantographs on both trains must be lowered before any person attempts to bridge or to set-up transfer boards or any other apparatus between the trains. Pantographs may not be raised until the transfer is complete and all persons and objects connecting the two trains are removed.

7-T OPERATION ON OTHER THAN MAIN TRACKS

When trains are operated in accordance with **[Rule 7-M]**, on other than main tracks, the Employee directing movement from the leading end is responsible for observing the position of switches and derails. He must take immediate action to stop the movement if switches or derails are not properly lined or positioned.

7-U BRAKES ON CARS LEFT STANDING

Parking brake must be applied on EMUs left standing to ensure they will not move. When necessary, car wheels must be blocked, and key removed from the controller.

7-V OPERATION THROUGH WATER

Cars must not be operated through water, except when authorized by the Dispatcher. In such a case, the movement must not exceed 2 MPH, the depth must not exceed 2 inches and allow viewing of the top of the rail.

7-W MOVEMENT WITH DEFECTIVE ALERTER/DEADMAN DEVICE

7-W(1) Altering, nullifying, or tampering with an Alerter/Deadman device is prohibited.

7-W(2) Trains dispatched from any terminal must have an operative Alerter/Deadman device in the leading unit of the train.

7-W(3) If the Alerter/Deadman device fails en route, the Dispatcher must be notified immediately and with his permission the device may be cut out. On trains with a secondary or redundant Alerter/Deadman device activated, the train may be operated normally to its final destination. On trains without a secondary or redundant Alerter/Deadman device, a Qualified Employee must take position in or adjacent to the operating control compartment with the Operator. This Employee must be instructed on how to stop the train should the Operator become incapacitated. Trains operated in this manner may be operated normally to its final destination.

7-X RESTRICTION REMINDER

Operating Rules Qualified Employees, whenever riding on the head end with the Operator, are required to remind the Operator of the following instructions prior to reaching the location where the restriction takes effect:

Speed Restriction;

Stop Order at grade crossings;

Working Limits Stop Sign.

RULE 8 - MANDATORY DIRECTIVES

8-A A Mandatory Directive is an order issued by the Dispatcher and contains essential information or instructions.

8-B ISSUING MANDATORY DIRECTIVE AUTHORITY

8-B(1) Mandatory Directives must be addressed to those who are to execute them, indicating the date and naming the location at which each is to receive his copy. Mandatory Directives must be legible and without erasure or alteration. Only authorized abbreviations listed in the Operating Rules or Timetable may be used. Commas must separate numbers or locations listed in a series.

8-B(2) When issuing Mandatory Directives, the Dispatcher must write each Mandatory Directive Form in full in a book, binder, or electronic system. This record must be made immediately when the Mandatory Directive is issued.

8-B(3) Mandatory Directives must be received by Employees who are qualified on RTDC Operating Rules and the physical characteristics of the territory where the Mandatory Directive is effective. Student Operators who are not fully qualified may receive Mandatory Directives only under the direct and immediate supervision of a qualified instructor.

8-B(4) Mandatory Directives, including cancellations, must not be received by Employees who are operating the controls of a moving train or track car.

8-B(5) When Mandatory Directives are being dictated and repeated, numerals must be pronounced digit-by-digit.

1619 will be pronounced “one-six-one-nine”

37 will be pronounced “three-seven”

8-B(6) When Mandatory Directives are issued using radio or telephone:

The Dispatcher will inform the train or track car that there is a Mandatory Directive to be issued specifying the Form and ask if the Employee is ready to receive the Mandatory Directive.

The Employee receiving the Mandatory Directive will state his name or unique designation, location, and that he is ready to copy the specified Form.

The Dispatcher will dictate the Form starting with the top line and working down the form in order. The Dispatcher will dictate the full wording of the line, including line number (if any) and the pre-printed words.

Once the Dispatcher completes dictation, the Employee receiving and writing the information for the Mandatory Directive will read the entire form back to the Dispatcher in the same format as it was dictated.All other Employees will listen while addressees repeat the Mandatory Directive and will call attention to any discrepancies.

Once the Mandatory Directive has been repeated correctly, the Dispatcher will provide the time effective, time delivered on Forms C, S, and W and the Dispatcher's last name or initials. The Employee receiving the Mandatory Directive will print the information and then repeat the time effective, time delivered on Forms C, S, and W and the Dispatcher's last name or initials.

8-B(7) When Mandatory Directives are issued in writing:

A photocopier, fax machine, or other electronic device may be used to transmit and reproduce Mandatory Directives. All Mandatory Directives transmitted or copied by electronic device must be checked for legibility; if not completely legible, the Dispatcher will be contacted, and the Mandatory Directive will be re-transmitted or will be issued verbally.

If necessary, to make copies by hand, the person making the copy must repeat the entire Mandatory Directive to the Dispatcher to ensure accuracy and completeness. An office copy of each manually reproduced Mandatory Directive must be kept by the person making the copy.

When written copies of Mandatory Directives are hand delivered to trains or track cars, the Dispatcher must verify directly with the Operator, pilot, foreman, or track car driver that they have a copy of the required form. This verification must take place before the train or track car reaches the first location where the Mandatory Directive takes effect. The Dispatcher will note in the Computer Aided Dispatch System the train or track car symbol and the time of the verification.

When Mandatory Directives are physically delivered at an interlocking, the fixed signal must display *Stop* and blocking devices must be applied until an Operator has acknowledged to the Dispatcher that he has received a copy of the Mandatory Directive.

8-B(8) If communications fail during transmission of a Mandatory Directive before the time effective has been given, the train or track car operator addressed must not proceed or act on the information contained in the Mandatory Directive until communications has been re-established and delivery is completed.

8-B(9) If an error is discovered in a Mandatory Directive prior to giving the time effective, the Dispatcher must direct all receiving Employees to destroy their copies. The Dispatcher will mark the office copy *VOID*. The Mandatory Directive must be re-issued under a new number.

If an error is discovered in a Mandatory Directive after giving the time effective, the Mandatory Directive must be canceled.

8-C ADDITIONS TO MANDATORY DIRECTIVES

Only the following information can be added to a Mandatory Directive once it is made effective:

Cancellation or fulfillment information;

Form A – Line 2 Time Limit Extension information;

Form O – Line 2 Time Limit Extension information;

Form M – Block(s) Clear information.

When such additional information is added, the Dispatcher must specify to the receiving Employee the Mandatory Directive number and date of the Form being modified, and the receiving Employee must correctly repeat the information back to the Dispatcher before the Dispatcher makes the additional information effective.

When Form Os are issued, information regarding additional equipment or Employees allowed to use the out-of-service track will also be added by the addressee after the Mandatory Directive is made effective. This information does not have to be provided to the Dispatcher.

8-D RECEIVING MANDATORY DIRECTIVE AUTHORITY

8-D(1) When Mandatory Directives are dictated to an Employee on a train or track car, the receiving Employee must ensure that all Employees addressed on the Mandatory Directive receive a copy prior to the first location where the Mandatory Directive takes effect.

8-D(2) When physical delivery of a copy of the Mandatory Directive between Employees is not possible, the Mandatory Directive must be transmitted verbally, using the procedures in **[Rule 8-B(6)]**. The time effective will not be transmitted until the receiving Employee correctly repeats the Mandatory Directive.

8-D(3) Employees addressed must read the Mandatory Directive immediately on receipt, and are responsible for compliance with its requirements.

8-D(4) When possible, Qualified Employees on the train or track car other than the addressee should be allowed to read the Mandatory Directive, and should remind Employees addressed of the requirements of the Mandatory Directive.

8-D(5) When the addressee of a Mandatory Directive is relieved, all Mandatory Directives that are in effect and that have not already been received must be delivered to the relieving Employee. When the relieving Employee is an Operator, he must verify his CCROC number with the Dispatcher and must receive any additional Mandatory Directives in effect that are not already contained in the CCROC.

8-E TERMINATING MANDATORY DIRECTIVE AUTHORITY

8-E(1) Mandatory Directives remain in effect until fulfilled or canceled.

8-E(2) Mandatory Directives are canceled as follows:

The Dispatcher must contact the addressee(s) and state his intent to cancel the Mandatory Directive.

The Dispatcher must specify the Form and state the Form number and date, the cancellation time and date, and his name or initials.

The addressee must repeat the Form number, date, and all cancellation information to the Dispatcher.

The Dispatcher and the addressee(s) must record the cancellation information on the appropriate line on the Form.

8-E(3) Mandatory Directive Forms that are fulfilled or canceled must have the date and time noted on the appropriate line and be marked with an "X" through the body of the Form. For Forms issued electronically, the Dispatcher will enter an "X" following the Form number.

8-E(4) Fulfilled or canceled Mandatory Directive Forms must be retained for inspection for a period of 7 days by Dispatchers and 24 hours by all other Employees.

8-F MANDATORY DIRECTIVE INSTRUCTIONS

8-F(1) No. and Date:

Mandatory Directive Forms will be numbered randomly, beginning each day at 0001 hours.

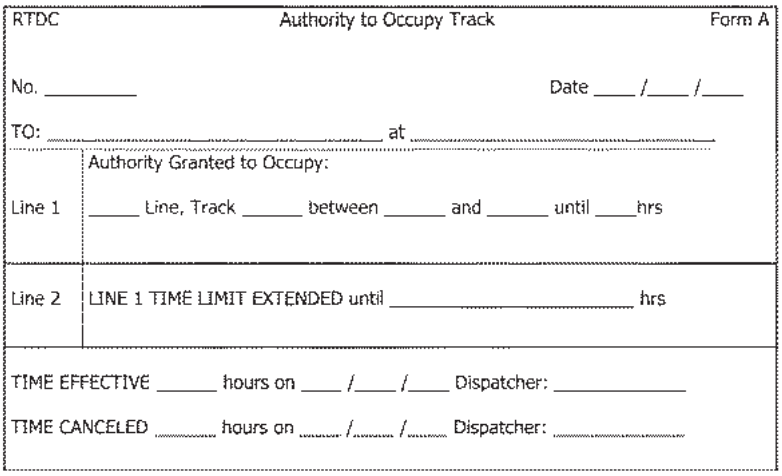
8-F(2) *THIS SECTION RESERVED*

8-F(3) Dispatching District will be shown as "designation of line" Line

8-F(4) To: (Address Line):

a. For trains, the Mandatory Directive must include the name and location of the Operator receiving the Mandatory Directive.
b. For track cars, the Mandatory Directive Form A must be addressed, by title and last name or unique designation, to the Qualified Employee (foreman, track car driver, or pilot) in charge of the movement, and must include the abbreviation TC, the unit identification of the track car, and the location of Employee receiving the Mandatory Directive. If multiple units are being moved on the same authority, use TC, the identification of the lead unit, and the number of additional pieces of equipment being moved.
c. When removing tracks from service, the Mandatory Directive Form O must be addressed, by title and last name or unique designation, to the Qualified Employee taking the track out of service and his location.

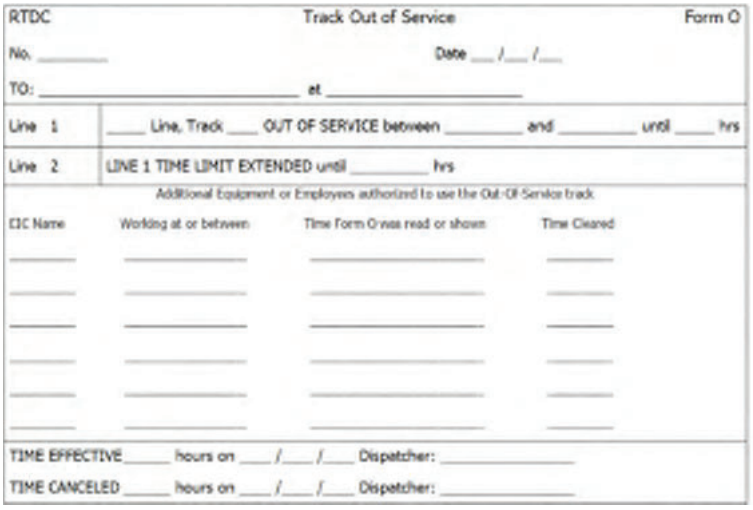
8-F(5) MANDATORY DIRECTIVE FORM A (AUTHORITY TO OCCUPY TRACK)



RTDC	Authority to Occupy Track	Form A
No. _____		Date ____ /____ /____
TO: _____	at _____	
Line 1	Authority Granted to Occupy: _____ Line, Track _____ between _____ and _____ until ____hrs	
Line 2	LINE 1 TIME LIMIT EXTENDED until _____ hrs	
TIME EFFECTIVE _____ hours on ____ /____ /____ Dispatcher: _____		
TIME CANCELED _____ hours on ____ /____ /____ Dispatcher: _____		

Form A used for track cars under CTC rules to authorize exclusive use of the specified track. Track cars addressed may operate in either direction within these limits. When a time limit has been given, one extension of time may be authorized on the original Form A authority using Line 2.

8-F(6) MANDATORY DIRECTIVE FORM O (TRACK OUT OF SERVICE)



RTDC	Track Out of Service	Form O
No. _____	Date ___ /___ /___	
TO: _____	at _____	
Line 1	____ Line, Track ____ OUT OF SERVICE between _____ and _____ until ____ hrs	
Line 2	LINE 1 TIME LIMIT EXTENDED until _____ hrs	

Additional Equipment or Employees authorized to use the Out-Of-Service track

CIC Name	Working at or between	Time Form O was read or shown	Time Cleared

TIME EFFECTIVE_____ hours on ____ /____ /____ Dispatcher: _____
TIME CANCELED _____ hours on ____ /____ /____ Dispatcher: _____

Form O used in CTC territory for removing tracks from service for maintenance. One extension of time may be authorized under the original Form O authority using Line 2.

When the addressee of the Form O allows additional equipment or Employees to use the out-of-service track, in accordance with **[Rule 19-E]**, the addressee will indicate on the appropriate line:

a. The name or unique designation of the Employee in Charge of the additional equipment or personnel.
b. The location where the additional equipment or Employees are working.

c. The time that the Form O was read or shown to the Employee in Charge of the additional equipment or Employees.

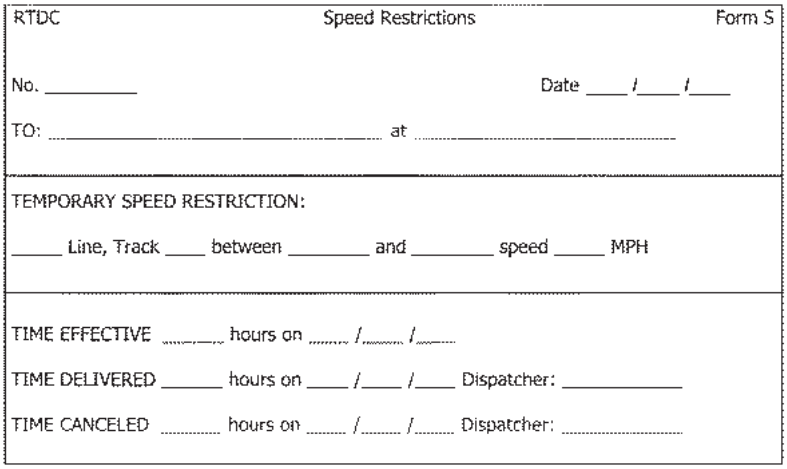
d. When the additional equipment or Employees are clear of the out-of-service track, the time that the Employee in Charge reported clear to the addressee.

8-F(7)MANDATORY DIRECTIVE FORM W (WORKING LIMITS STOP SIGNS)

RTDC	Working Limits Stop Signs Form W
No. _____	Date ____ /____ /____
TO: _____	at _____
PROTECTION BY WORKING LIMITS STOP SIGNS – Rule 20(A) Applies	
_____ Line Track ____	
Working Limits Stop Signs at _____	and _____
Mobile Unit No. _____	
TIME EFFECTIVE _____	hours on _____ /_____ /_____
TIME DELIVERED _____	hours on ____ /____ /____ Dispatcher: _____
TIME CANCELED _____	hours on ____ /____ /____ Dispatcher: _____

Form W used to establish Working Limits protection for work areas adjacent to, or with the potential to foul main tracks, or when one track is out-of-service and it is necessary to protect workers and equipment from trains on adjacent tracks. Working Limits information must be issued by CCROC or Form W to both the Employee in Charge of the work area and to each train operating on the specified track.

8-F(8) MANDATORY DIRECTIVE FORM S (SPEED RESTRICTIONS)



RTDC Speed Restrictions Form S

No. _____ Date ____ /____ /____

TO: _____ at _____

TEMPORARY SPEED RESTRICTION:

_____ Line, Track ____ between _____ and _____ speed _____ MPH

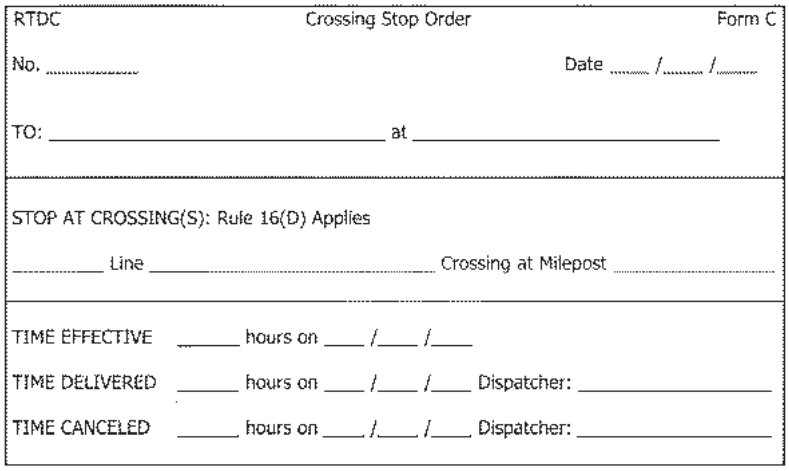
TIME EFFECTIVE _____ hours on ____ /____ /____

TIME DELIVERED _____ hours on ____ /____ /____ Dispatcher: _____

TIME CANCELED _____ hours on ____ /____ /____ Dispatcher: _____

Form S is used to put a temporary speed restriction in effect. Catenary locations or other clearly defined points may be used and must include the milepost location (miles and hundredths).

8-F(9) MANDATORY DIRECTIVE FORM C (CROSSING STOP ORDER)



RTDC Crossing Stop Order Form C

No. _____ Date ____ /____ /____

TO: _____ at _____

STOP AT CROSSING(S): Rule 16(D) Applies

_____ Line _____ Crossing at Milepost _____

TIME EFFECTIVE _____ hours on ____ /____ /____

TIME DELIVERED _____ hours on ____ /____ /____ Dispatcher: _____

TIME CANCELED _____ hours on ____ /____ /____ Dispatcher: _____

Form C is used to put a Stop Order in effect for a highway grade crossing. The name of the highway grade crossing must be as shown in the Employee Timetable, and the milepost must be given.

8-F(10) MANDATORY DIRECTIVE FORM R (RESCUE ORDER)

RTDC Rescue Order Form R

No. _____ Date ____ /____ /____

TO (Disabled Train) _____ at _____
TO (Rescue Train) _____ at _____
_____ Line.

Line 1 (Disabled Train)	REMAIN AT _____ on Track _____ until _____ arrives to assist.
Line 2 (Rescue Train)	PROCEED AT RESTRICTED SPEED on Track _____ from _____ to _____ where _____ stands disabled.

TIME EFFECTIVE _____ hours on ____ /____ /____ Dispatcher _____

TIME CANCELLED (Disabled Train) _____ hours on ____ /____ /____ Dispatcher: _____
TIME CANCELLED (Rescue Train) _____ hours on ____ /____ /____ Dispatcher: _____
TIME FULFILLED _____ hours on ____ /____ /____

Line 1 - Given to a disabled train when an assisting train is to be dispatched.

Line 2 (for CTC Rule 12-D) - Given to the assisting train for a disabled train in CTC territory. Form R is required in CTC territory only if the rescue equipment must operate against the established direction of traffic. Form R Line 1 must be given to the disabled train prior to issuing Form R Line 2 to the assisting train.

TIME FULFILLED is the time when the rescue train couples onto the disabled train. After coupling, immediately notify Dispatcher.

8-F(11) MANDATORY DIRECTIVE FORM M (SUBSTITUTION OF MANUAL BLOCK RULES)

RTDC	Substitution of Manual Block - Rule 10	Form M
No. _____		Date ____ /____ /____
TO: _____	at _____	
_____ Line, Use Track _____ between _____ and _____		
MBS RULES IN EFFECT Instead of CTC/CSS between _____ and _____		
TEMPORARY BLOCK LIMIT(S) ESTABLISHED:	_____ located at _____ _____ located at _____ _____ located at _____	
BLOCK(S) CLEAR:	Track_____ from _____ to _____ at _____ hours Track_____ from _____ to _____ at _____ hours Track_____ from _____ to _____ at _____ hours	
TIME EFFECTIVE _____ hours on ____ /____ /____ Dispatcher: _____		
TIME CANCELED _____ hours on _____ /_____ /____ Dispatcher: _____		

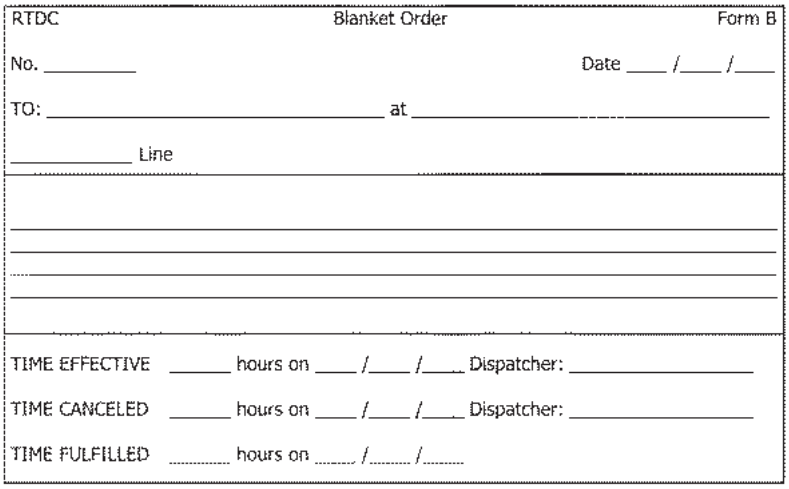
MBS RULES IN EFFECT instead of CTC/CSS on TRK… between … and … **[Rule 10-B]**: Used to substitute MBS rules in the event of a failure of the CTC/CSS system. May apply to a specific track or all tracks.

TEMPORARY BLOCK LIMIT(S) ESTABLISHED: … located at … **[Rule 10-E]**: Used to establish temporary block limits in MBS territory when MBS rules are substituted for CTC/CSS.

BLOCK(S) CLEAR: TRK .. . from … to … at … hrs **[Rule 10-D]**: If consecutive blocks are clear at the same time, clear block indication for all blocks can be conveyed on a single line.

Additional *BLOCK(S) CLEAR* indications, can be added to a Form M authority after Form M is made effective. The Dispatcher will inform the receiving Employee that there is additional BLOCK(S) CLEAR information to be added to Form M No. xx-xx. All rules regarding issuing Mandatory Directives will apply to the transmission of additional clear block information.

8-F(12) MANDATORY DIRECTIVE FORM B (BLANKET ORDER)



RTDC Blanket Order Form B

No. _____ Date ____ /____ /____

TO: _____ at _____

_____ Line

_____

_____

_____

_____

TIME EFFECTIVE _____ hours on ____ /____ /____ Dispatcher: _____

TIME CANCELED _____ hours on ____ /____ /____ Dispatcher: _____

TIME FULFILLED _____ hours on _____ /_____ /_____

Form B is used for all other instructions and information not covered in Forms A, C, M, O, R, S, or W.

RULE 9 - SIGNAL ASPECTS AND INDICATIONS

9-A CAB SIGNAL ASPECTS AND INDICATIONS

Rule No.	Aspect	Indication
9-A(1)		***NAME:*** **Maximum Authorized Speed** ***INDICATION:*** Proceed at Maximum Authorized Speed.
9-A(2)		***NAME:*** **Sixty** ***INDICATION:*** Proceed not exceeding 60 MPH.
9-A(3)		***NAME:*** **Forty-Five** ***INDICATION:*** Proceed not exceeding 45 MPH.
9-A(4)		***NAME:*** **Thirty** ***INDICATION:*** Proceed not exceeding 30 MPH.
9-A(5)		***NAME:*** **Fifteen** ***INDICATION:*** Proceed not exceeding 15 MPH.
9-A(6)		***NAME:*** **Zero** ***INDICATION:*** Stop.
9-A(7)		***NAME:*** **Restricting** ***INDICATION:*** Proceed at restricted speed.
9-A(8)		***NAME:*** **Cab Signal Disengaged** ***INDICATION:*** Follow wayside signal indication.

9-B INTERLOCKING SIGNAL ASPECTS AND INDICATIONS

Dark circles indicate signal lights not illuminated. A horizontal signal identification plate, located at the top of the signal, may be displayed at some locations. Signals may be mounted on ground, masts, or overhead signal bridges. Letters/numerals shown on identification plate are for illustration.

Rule No.	Aspect	Indication
9-B(1)	 Flashing	***NAME:*** **Proceed Cab** ***INDICATION:*** Proceed, governed by cab signal indication.
9-B(2)	 Alt Flashing	***NAME:*** **Absolute Block Signal** ***INDICATION:*** Proceed through interlocking limits at restricted speed. Outside of interlocking limits, proceed prepared to stop at next interlocking, not exceeding 59 MPH.
9-B(3)	 Flashing	***NAME:*** **Restricting** ***INDICATION:*** Proceed through interlocking limits at restricted speed. Outside interlocking limits, proceed at restricted speed until cab signal indication is more favorable.
9-B(4)	 Solid Red	***NAME:*** **Stop Signal** ***INDICATION:*** Stop.

9-C SIGNALS GOVERNING SPEED RESTRICTIONS

Rule No.	Aspect	Indication
9-C(1)		***NAME:*** **Approach Speed Limit Sign** ***INDICATION:*** Proceed, approaching the Speed Limit sign, not exceeding the speed shown. If two speeds are shown, the higher speed applies to passenger trains and the lower speed to all other trains and track cars.
9-C(2)		***NAME:*** **Diverging Approach Speed Limit Sign** ***INDICATION:*** Proceed; approach the Speed Limit sign, or interlocking where speed restriction on other track is in effect, not exceeding the speed shown unless it is determined that train will not be diverging onto affected track(s). If two speeds are shown, the higher speed applies to passenger trains and the lower speed to all other trains and track cars.
9-C(3)		***NAME:*** **Speed Limit Sign** ***INDICATION:*** Proceed not exceeding speed shown on Approach Speed Limit Sign or Diverging Approach Speed Limit Sign until the entire train has passed the Resume Speed Sign.
9-C(4)		***NAME:*** **Resume Speed Sign** ***INDICATION:*** Resume speed after entire train has passed this sign.
9-C(5)		***NAME:*** **Permanent Speed Sign** ***INDICATION:*** Operate at posted speed through permanent speed restriction. Speed applies for the entire train movement.

9-D SIGNALS GOVERNING WORKING LIMITS **[Rule 20-A]**

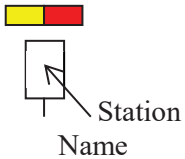
Rule No.	Aspect	Indication
9-D(1)		***NAME:*** **Approach Sign** ***INDICATION:*** Proceed prepared to stop at the Working Limits Stop Sign; trains exceeding **40 MPH** must immediately begin reduction to that speed. ***EXCEPTION:*** See exceptions under **[Rule 20-A(7)]**.
9-D(2)		***NAME:*** **Diverging Approach Sign** ***INDICATION:*** Unless it is determined that train will not be diverging onto affected track(s), proceed prepared to stop at the Working Limits Stop Sign; trains exceeding **40 MPH** must immediately begin reduction to that speed. ***EXCEPTION:*** See exceptions under **[Rule 20-A(7)]**.
9-D(3)		***NAME:*** **Working Limits Stop Sign** ***INDICATION:*** Stop unless permission has been received to pass sign. If permitted to pass the Working Limits Stop Sign, trains will operate at speed directed by Employee in Charge of work area.
9-D(4)		***NAME:*** **Working Limits Resume Speed Sign** ***INDICATION:*** Resume speed after the entire train has passed this sign.

9-E OTHER SIGNAL ASPECTS AND INDICATIONS

Rule No.	Aspect	Indication
9-E(1)	STOP  **fig. A fig. B**	***NAME:*** **Stop Sign** ***INDICATION:*** Stop.
9-E(2)	**W**	***NAME:*** **Whistle Post** ***INDICATION:*** Approach highway grade crossing for which **[Rule 4-E(6)(c)]** must be sounded.
9-E(3)	**W/R**	***NAME:*** **Restricted Whistle Post** ***INDICATION:*** Approach highway grade crossing for which engine horn is not sounded except in emergency or if crossing warning devices are not activated.
9-E(4)	**WR 2X**	***NAME:*** **Restricted Whistle Post-Multiple Crossings** ***INDICATION:*** Approach two or more highway grade crossing for which engine horn is not sounded except in emergency or if crossing warning devices are not activated.
9-E(5)	**W 2X**	***NAME:*** **Whistle Post - Multiple Crossings** ***INDICATION:*** Approaching two or more highway grade crossings for which **[Rule 4-E(6)(c)]** must be sounded until engine is clear of the last crossing.
9-E(6)	**W**	***NAME:*** **Portable Whistle Post** ***INDICATION:*** Sound Engine Horn **[Rule 4-E(6)(c)]**.

Rule No.	Aspect	Indication
9-E(7)		***NAME:*** **Master Location Indicator** ***INDICATION:*** Denotes location where cab signal changes may occur.
9-E(8)		***NAME:*** **Controlled Master Location Indicator** ***INDICATION:*** Denotes location where cab signal changes may occur and where the Dispatcher may have control. Failed trains or trains with a Stop cab signal indication **[Rule 9-A(6)]** must not proceed without permission of the Dispatcher.

9-E OTHER SIGNAL ASPECTS AND INDICATIONS

Rule No.	Aspect	Indication
9 –E(9)		***NAME:*** **Begin Phase Break** ***INDICATION:*** Controller must be in **coast** at or before the phase break sign until the front of the train passes the End Phase Break sign. ***NOTE:*** Do not **accelerate or brake** between the Begin Phase Break signs and End Phase Break signs. **Required speeds must be adjusted before the phase break.** Apply brakes only in an emergency.
9-E(10)		***NAME:*** **End Phase Break** ***INDICATION:*** Controller should not be placed into **power or braking** position until the **front** of the train passes the end phase break sign.
9-E (11)		***NAME:*** **Approach Block Limit** ***INDICATION:*** If authorized to occupy next block, proceed. If not authorized to enter next block, proceed prepared to stop at next Block Limit signal. Trains exceeding **30 MPH** must immediately reduce to that speed.
9-E(12)		***NAME:*** **Block Limit** ***INDICATION:*** Do not pass unless authorized to do so. (Yellow marker next to track governed.) ***NOTE:*** For Temporary Block Limits, the station name may be omitted.

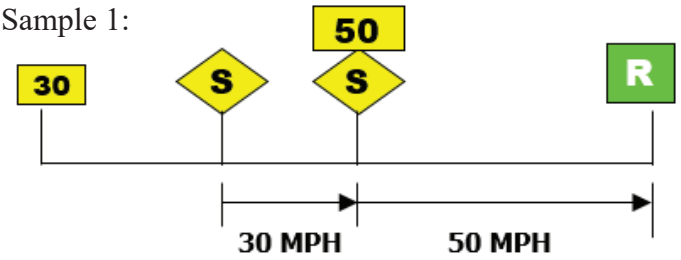
9-E OTHER SIGNAL ASPECTS AND INDICATIONS

Rule No.	Aspect	Indication
9-E(13)		***NAME:*** **End of Block Sign** ***INDICATION:*** End Manual Block System rules; entering non-controlled track.
9-E(14)		***NAME:*** **Begin CTC** ***INDICATION:*** Prior to entering CTC territory, trains must have a proceed indication or obtain verbal authorization from the Dispatcher.
9-E(15)		***NAME:*** **End CTC** ***INDICATION:*** Prior to exiting CTC territory, trains must obtain authorization from the Dispatcher.
9-E(16)		***NAME:*** **Area Subject to Flooding** ***INDICATION:*** Pay particular attention to high water conditions and depth gauges at these locations. Notify Dispatcher of high water occurance**.**
9-E(17)		***NAME:*** **Enter Designated Maintenance Tracks** ***INDICATION:*** Entering tracks under the control of the Vehicle Maintenance Department.
9-E(18)		***NAME:*** **Leaving Designated Maintenance Tracks** ***INDICATION:*** Entering non-controlled track.

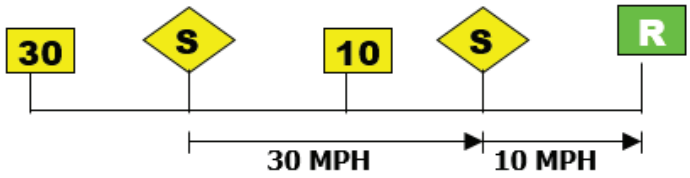
9-F PLACEMENT OF SIGNS

Unless otherwise indicated, signs shown in Rules 9-E and 9-F are placed to the right of and adjacent to the track being protected and are installed in both directions.

Sample 1:



Sample 2:



SAMPLE PLACEMENT OF SIGNS FOR MULTIPLE RESTRICTIONS

9-G IMPERFECTLY DISPLAYED SIGNALS

A signal imperfectly displayed, or the absence of a signal where it is normally displayed or where it should be displayed, must be regarded as the most restrictive indication that can be given by that signal. Signals imperfectly displayed, or the absence of signals, must be reported to the Dispatcher.

9-H TRANSMITTING SIGNAL ASPECTS AND INDICATIONS

9-H(1) Qualified Employees must not request, and Dispatchers must not advise, the name, aspect, or indication of any fixed signal.

9-H(2) Qualified Employees may communicate a fixed signal among themselves by radio, PA, or intercom, in accordance with the rules.

9-H(3) The radio may not be used to convey instructions that have the effect of overriding the indication of a fixed signal unless being authorized by a Dispatcher to pass a stop signal as per **[Rule 11-F]**. Dispatchers are permitted to provide general information by radio, such as location of holds, track assignments at stations, duration of delays, etc.

RULE 10 – OPERATION UNDER MANUAL BLOCK SYSTEM RULES

10-A Manual Block System (MBS) rules are in effect on tracks indicated in the Timetable. Bulletin Order or Mandatory Directive Form M may also place MBS rules in effect.

10-B Where MBS rules are in effect, only one train or track car (or multiple track cars under a single authority) may occupy a block, except for the purpose of rescuing disabled trains. Refer to **[Rule 10-F]**.

10-C To occupy a block, a train or track car must be given authority by the Dispatcher indicating that there are no trains or track cars in that block.

1. Scheduled trains must receive a Form M with information that the BLOCK(S) are clear.
2. Extra trains and track cars must receive a Form M for movement in either direction, plus a BLOCK(S) CLEAR indication on Form M.

The Form M authority may be issued for multiple blocks prior to all blocks being clear, with additional Form M *BLOCK(S) CLEAR* indications added to the Form M when subsequent blocks become clear.

10-C(1) Before admitting a train to a block, the Dispatcher must verify that switches are properly lined.

10-D Block Limits may be designated in the Timetable. Bulletin Order or Mandatory Directive Form M may also establish Block Limits or temporary block limits. Temporary block limits may be established only at stations shown in the Employee Timetable, whole mileposts, or numbered catenary poles. If established at passenger stations, a specific location at the station must be indicated.

If temporary block limits are to be in service for extended periods of time, Approach Block Limit and Block Limit signs must be placed as soon as possible identifying the location of temporary block limits. The aspect and indication of the Approach Block Limit and Block Limit signs must be issued and put into effect by Bulletin Order prior to posting signs.

10-E Trains must:

1. Reduce to 30 MPH on passing Approach Block Limit sign;
2. Approach the Block Limit sign prepared to stop; and
3. Not pass the Block Limit,

until or unless issued *BLOCK(S) CLEAR* authority by Form M for subsequent blocks.

Trains that have *BLOCK(S) CLEAR* authority for subsequent block(s) may proceed past Approach Block Limit and Block Limit signs at MAS.

Trains and track cars must report to the Dispatcher that they are clear of the block as soon as the entire movement has passed each Block Limit, unless otherwise instructed by the Dispatcher.

10-F Assist trains for disabled trains may occupy the same block as the disabled train by using Form R. The Form R, Line 2 may not be issued to the assisting train until Form R, Line 1 has been issued to the disabled train. The assisting train must operate at Restricted Speed from the block limit preceding the disabled train to the location of the disabled train.

10-G REVERSE MOVEMENTS

10-G(1) Trains with Form M authority and BLOCK(S) CLEAR indication may make a reverse movement within the block limits indicated, as follows:

a. The move may be made at Restricted Speed without authority of the Dispatcher if the Operator changes ends and will be operating in the direction of movement. The reverse move may not pass a block limit without BLOCK CLEAR information.

b. If the Operator is not on the leading end of the movement, all provisions of **[Rule 7-M]** apply. The move will be made at Restricted Speed. The reverse movement may not pass a block limit without clear block information.

c. The Dispatcher may issue a new Form M authority with BLOCK*(S) CLEAR* indication from the point where the train is standing to the next block limit in the desired direction of travel. This move may be made at MAS if the Operator is operating from the leading end of the movement.

10-G(2) Trains given permission to enter main track at other than a block limit may operate on the main track in the opposite direction of their Mandatory Directive for the purpose of clearing the switch.

10-H SUBSTITUTING MBS RULES FOR CTC/CSS RULES

10-H(1) In cases of signal system failure or other circumstances, MBS rules may be substituted for CTC/CSS rules. Bulletin Order or Mandatory Directive Form M will authorize such substitution.

10-H(2) The limits of the substitution of MBS Rules must be Controlled Points (CPs).

10-H(3) MBS substitution for CTC/CSS Rules will apply to all main tracks between the designated limits, unless specific tracks are designated in Bulletin Order or Mandatory Directive Form M.

10-H(4) The Dispatcher must place all signals leading to the affected track in Stop position and apply blocking devices to the controls of all switches and signals.

10-I SPEEDS WHEN MBS IS SUBSTITUTED FOR CTC/CSS

10-I(1) MAS will be as shown in the Bulletin Order or Mandatory Directive Form S, not exceeding 59 MPH.

10-I(2) Trains must stop at the signal governing entrance to the MBS territory. After confirming that the train has the necessary Form M authority including BLOCK(S) CLEAR indication, and information that the train control apparatus has been cut-out in accordance

with Airbrake and Train Handling Instructions, the Dispatcher will give the train authorization to pass the Stop Signal per **[Rule 11-F]**. A proceed interlocking signal must not be displayed to enter blocks where MBS is substituted for CTC/CSS.

10-I(3) Trains must approach all interlocking signals within the limits of the MBS territory prepared to stop, and must be given authorization to pass the interlocking signal in accordance with **[Rule 11-F]**. A proceed interlocking signal must not be displayed.

10-I(4) Trains must approach the interlocking signal governing the end of the MBS territory and beginning of CTC/CSS rules prepared to stop. Train control apparatus must be cut-in and confirmed by radio to the Dispatcher, in accordance with Airbrake and Train Handling Instructions, prior to entering CTC/CSS territory. Trains will be governed by signal indication, and must enter the interlocking at Restricted Speed until a more favorable indication is received.

10-J Stop Order rules **[Rule 16-D]** apply at all grade crossings equipped with automatic warning devices in the territory where MBS rules are substituted for CTC/CSS.

10-K To expedite train movements when MBS rules are substituted for CTC/CSS for extended periods of time, interlockings within the MBS territory may be taken out-of-service by Bulletin Order.

10-K(1) Prior to taking an interlocking out-of-service under this rule, a qualified Signal Employee must:

a. physically inspect the interlocking to ensure that all switch points are properly aligned;
b. secure all interlocking appliances;
c. apply protective devices to prevent movement of switch points; and
d. cover all interlocking signals.

10-K(2) Trains may operate through out-of-service interlockings at MAS, unless otherwise specified by Bulletin Order or Mandatory Directive.

10-K(3) The interlockings at the start of the MBS territory and where CTC/CSS territory resumes must not be taken out-of-service under this rule.

10-L To expedite train movements when MBS Rules are substituted for CTC/CSS for extended periods of time, Qualified Employees may be assigned to block limit locations.

10-L(1) Block limits where Employees are assigned will be designated by Bulletin Order, and will include the time when the Employee will be assigned; for example:

Temporary Block Limit Sheridan established at north end of Sheridan platform. Temporary Block Limit Sheridan will be staffed between 0600 hrs. and 2100 hrs. daily.

10-L(2) Employees assigned to block limits must be qualified on the Operating Rules.

10-L(3) Employees assigned to block limits will report to the Dispatcher each train that passes that block limit, providing the train schedule number, lead unit, track, and time. Trains passing staffed block limits are relieved from reporting clear of the block to the Dispatcher.

10-L(4) Employees assigned to block limits may also deliver Mandatory Directives to passing trains. Such Mandatory Directives will be issued by the Dispatcher, and will be transmitted to the Employee at the block limit in accordance with **[Rule 8-B]**. The Employee staffing the block limit will inform the Dispatcher of the time that the Mandatory Directive is delivered to the train.

10-L(5) Written records pertaining to the time trains enter and clear each block will be maintained by the Dispatcher, in accordance with **[Rule 10-I(2)]**, based on information provided by the Employee staffing the block limit.

RULE 11 - OPERATION UNDER INTERLOCKING RULES

11-A Interlocking Rules (IR) are in effect at all interlockings and at locations designated in the Timetable or by Bulletin Order.

11-B Interlocking signals govern the use of the routes of an interlocking. These signals must be cleared sufficiently in advance of approaching trains to avoid unnecessary delay.

11-C Interlocking signals and appliances must be operated only by authorized Employees.

11-D Stop Signals must be displayed and blocking devices applied to all affected interlocking signals and appliances when:

1. Irregularities in the operation of the signals or appliances are detected;
2. The signals or appliances are under repair; or
3. There is damage to the track or interlocking.

This protection will remain in effect, and movements will not be permitted over the affected routes, until all affected signals, track and appliances have been inspected or repaired and found safe for movement.

11-E Interlocking appliances must not be operated when a train, engine, or track car is standing on or closely approaching that appliance.

11-E(1) When an interlocking signal has been cleared for an approaching movement, the signal must not be changed to a Stop Signal until:

a. The train is stopped, as confirmed by the Operator of the train or other Qualified Employee; or
b. The Operator informs the Dispatcher that the train can be safely stopped before reaching the signal.

11-E(2) In an emergency situation, a signal may be immediately changed to a Stop Signal. The route for the approaching train must not be changed, and conflicting routes must not be established, until the approaching train has stopped. The Dispatcher must attempt to contact all affected trains.

11-E(3) When a proceed interlocking signal changes to a Stop Signal before a movement reaches the signal, the movement must be stopped as quickly as safe train handling permits. Any such incidents must be immediately reported to the Dispatcher.

11-E(4) After stopping at an interlocking signal displaying Stop, the Operator, unless the cause is known, shall contact the Dispatcher immediately.

11-F AUTHORIZATION TO PASS STOP SIGNAL FOR TRAINS AND TRACK CARS

Authorization to pass a Stop Signal may be given by the Dispatcher when a proceed interlocking signal cannot be displayed. Authorization to pass a Stop Signal will not be given when the Train Management Dispatch System (TMDS) and rules permit a proceed interlocking signal to be displayed.

11-F(1) The Dispatcher must determine that no opposing or conflicting moves have been authorized.

11-F(2) The Dispatcher must determine that affected interlocking appliances are properly positioned on the TMDS, and must apply blocking devices to all switches that are to be used. The Dispatcher will give verbal authorization for a movement to pass the Stop signal.

11-F(3) The train or track car must be stopped at the signal before authorization to pass the signal is given.

11-F(4) Authorization will be granted by the Dispatching Center in the following format:

After stopping RTDC Train #…. has authorization to pass signal displaying Stop from___ at CP____ lined from Track # … to Track #...in a …. ward direction.

If the signal being passed has an identification plate, the letter and/or number of the signal will be included in the authorization. This will be followed by any special instructions required by the rules.

Example: ***After stopping RTDC Train #403 has authorization to pass signal displaying Stop 2N at CP DIA lined from Track #1 to Track #1 in a northward direction.***

The receiving Employee must repeat the authorization to the Dispatcher prior to beginning movement.

From the point where receiving authorization to pass a Stop Signal until the next interlocking signal, the train must approach all grade crossings prepared to stop until it is confirmed that crossing protection is working as intended.

11-F(5) If the Dispatcher has not been able to determine that affected interlocking appliances are properly positioned on the TMDS, the Dispatcher will give verbal authorization for a movement to pass the Stop Signal and for the Operator to line the switch in the requested position.

After stopping RTDC Train #.....has authorization to pass the signal displaying Stop ____at CP ____lined from Track #.....to Track#.....in a …..ward direction, stopping short of switch____.

Example: ***After stopping RTDC Train #405 has authorization to pass the Stop Signal 4S at CP 78 lined from Track# 2 to Track #2 in a southward direction, stopping short of switch 3A.***

Once the train is past the signal indicating Stop, the Dispatcher will instruct the Operator to exit their train and to line the switch in a specific position. Prior to exiting the train, Operator will secure the train per ABTH 30-F.

RTDC Train #____has permission to exit your train, remove the switch lock and move the selector lever to the hand operation position, and operate the ___switch for a ____ move.

Example: ***RTDC Train #407 has permission to exit your train, remove the switch lock and move the selector lever to the hand operation position, and operate the 3A switch for a straight move.***

11-F(6) Trains or track cars receiving authorization to pass a Stop Signal must operate at **Restricted Speed** until:

a. Entire length of train has passed a location where a more favorable cab signal indication is received; or
b. Track car is clear of interlocking territory and is proceeding on Mandatory Directive authority.

11-G When the Dispatcher stops the train, the train must not move in either direction without verbal permission by the Dispatcher.

11-H REVERSE MOVEMENTS

When necessary to reverse direction where interlocking rules are in effect, trains must have a proceed interlocking signal or permission from the Dispatcher. Movements not governed by signal indication must not be made until all interlocking appliances have been lined and blocked.

11-I NON-SHUNTING EQUIPMENT

11-I(1) Any equipment that may not shunt track circuits must have the permission of the Dispatcher before operating within interlocking territory. Routes to be used must be lined and blocked and protection must be provided against opposing movements prior to permission being issued. Following movements are prohibited. The equipment operator must notify the Dispatcher when the movement has been completed.

11-I(2) Interlocked switches will not be operated until it has been determined that the movement of non-shunting equipment over or through switches is completed.

RULE 12 - OPERATION UNDER CENTRALIZED TRAFFIC CONTROL RULES

12-A Centralized traffic control (CTC) rules are in effect on tracks indicated in the Timetable or by Bulletin Order.

12-A(1) In the event of a failure of the CTC system, MBS rules may be substituted in accordance with **[Rule 10]**.

12-B Trains must not enter or foul a main track, or re-enter a main track after being clear of it, unless authorized by fixed signal indication or verbal permission of the Dispatcher.

12-C The Dispatcher will not permit trains to operate against the established direction of traffic unless the track is known to be clear of opposing moves and blocking devices applied.

12-D Assist trains for disabled trains may be authorized to operate in the opposite direction of the disabled train, as follows:

The disabled train must be issued Form R Line 1.

The assisting train will be issued Form R Line 2 authority after the Dispatcher has determined that the track to be used is clear to the location of disabled train.

The assisting train must operate at Restricted Speed between the locations specified on Line

12-E When track cars require exclusive use of a track in CTC territory for movement in either direction, Form A authority will be issued. No other trains or track cars may occupy the block.

The limits indicated on Form A must be protected by placing signals in Stop position and applying blocking devices.

12-F Trains and track cars will not move without permission of the Dispatcher when:

1. Movement has been stopped between controlled points by instruction of the Dispatcher; or
2. A new Operator takes charge of unattended equipment located on a main track.

12-G NON-SHUNTING EQUIPMENT

12-G(1) Equipment that may not shunt track circuits must not operate in CTC territory without permission of the Dispatcher. Equipment that is considered non-shunting includes:

a. track cars; and
b. equipment indicated in the Timetable.

12-G(2) Prior to allowing non-shunting equipment to enter the block, the Dispatcher must set signals for opposing movements to Stop position and apply blocking devices. Trains will not be permitted to follow the non-shunting equipment within a controlled block. Signals must be set to Stop position and blocking devices applied to prevent following movements.

12-H REVERSE MOVEMENTS

In CTC territory, trains must have permission of the Dispatcher in order to make a reverse movement. Before permission is given, the Dispatcher must determine that the track to be used is clear of opposing movements.

12-H(1) If there are no following trains in the same controlled block, blocking device protection must be afforded at the interlocking where opposing movements can be held.

12-H(2) If there are one or more following trains in the same controlled block, the Dispatcher will instruct the train immediately following to stop, and will not issue permission for the reverse movement until the Operator of the following train confirms that his train is stopped and provides the Dispatcher with his location.

If the reverse movement will be made into Working Limits the train must also have permission of the RWIC in charge of the Working Limits.

RULE 13 - OPERATION UNDER CAB SIGNAL SYSTEM, AUTOMATIC TRAIN CONTROL, AND POSITIVE TRAIN CONTROL RULES

13-A Cab Signal System (CSS) rules are in effect on those tracks as indicated in the Timetable or by Bulletin Order.

13-B Trains operating on tracks where CSS rules are in effect must be equipped with operative train control apparatus (ATC and PTC) in the lead unit.

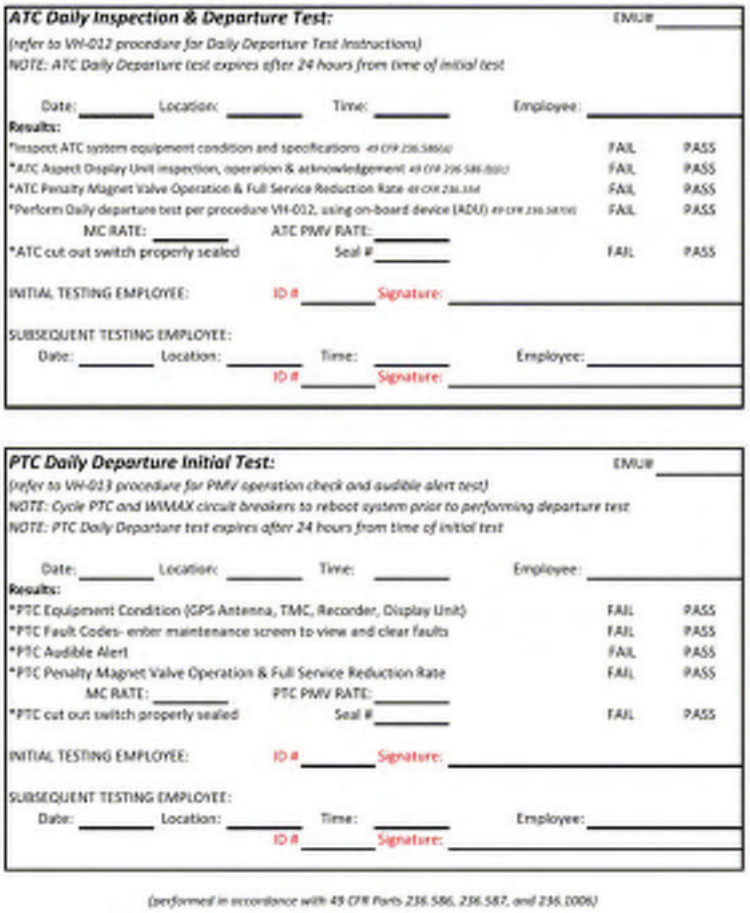
13-C On all EMU cars, train control apparatus (ATC and PTC) must be cut-in at all times.

13-D TRAINS ENTERING CSS TERRITORY

13-D(1) The Operator is responsible for ensuring that the ATC and PTC Mode switches are in the proper position when entering CSS territory.

13-D(2) When a proceed interlocking signal cannot be displayed at the location where trains enter CSS territory, and authorization is given for trains to pass the Stop Signal under **[Rule 11-F]**, the Operator must confirm that the ATC and PTC mode switches are in the cut in position.

13-D(3) Trains entering CSS territory from any non-CSS track must operate at Restricted Speed passing the location where CSS rules take effect and not increase speed until the train has traveled one train length in CSS territory.



ATC Daily Inspection & Departure Test: EMU#

(refer to VH-012 procedure for Daily Departure Test Instructions)
NOTE: ATC Daily Departure test expires after 24 hours from time of initial test

Date: Location: Time: Employee:

Results:

*Inspect ATC system equipment condition and specifications *49 CFR 236.586(a)*	FAIL	PASS
*ATC Aspect Display Unit inspection, operation & acknowledgement *49 CFR 236.586.(b)(c)*	FAIL	PASS
*ATC Penalty Magnet Valve Operation & Full Service Reduction Rate *49 CFR 236.334*	FAIL	PASS
*Perform Daily departure test per procedure VH-012, using on-board device (ADU) *49 CFR 236.587(b)*	FAIL	PASS
MC RATE: ATC PMV RATE:		
*ATC cut out switch properly sealed Seal #	FAIL	PASS

INITIAL TESTING EMPLOYEE: ID # Signature:

SUBSEQUENT TESTING EMPLOYEE:
Date: Location: Time: Employee:
ID # Signature:

PTC Daily Departure Initial Test: EMU#

(refer to VH-013 procedure for PMV operation check and audible alert test)
NOTE: Cycle PTC and WiMAX circuit breakers to reboot system prior to performing departure test
NOTE: PTC Daily Departure test expires after 24 hours from time of initial test

Date: Location: Time: Employee:

Results:

*PTC Equipment Condition (GPS Antenna, TMC, Recorder, Display Unit)	FAIL	PASS
*PTC Fault Codes- enter maintenance screen to view and clear faults	FAIL	PASS
*PTC Audible Alert	FAIL	PASS
*PTC Penalty Magnet Valve Operation & Full Service Reduction Rate	FAIL	PASS
MC RATE: PTC PMV RATE:		
*PTC cut out switch properly sealed Seal #	FAIL	PASS

INITIAL TESTING EMPLOYEE: ID # Signature:

SUBSEQUENT TESTING EMPLOYEE:
Date: Location: Time: Employee:
ID # Signature:

(performed in accordance with 49 CFR Parts 236.586, 236.587, and 236.0006)

ATC/PTC Daily Departure Test Inspection

13-E CAB SIGNAL SYSTEM/AUTOMATIC TRAIN CONTROL APPARATUS TESTING

13-E(1) AUTOMATIC TRAIN CONTROL (ATC) DEPARTURE TEST

An Automatic Train Control Departure Test will be performed by a Qualified Maintenance Person (QMP) no more than 24 hours prior to the departure of a train from an initial terminal.

The QMP performing the Automatic Train Control departure test must complete the ATC Daily Departure Initial Test form, leaving one copy in the cab and filing one copy in the Vehicle Maintenance office.

On trains with multiple units, the Automatic Train Control departure test will be performed on the lead unit for movement of the train in each direction. If it is known that the train will split at a location where test equipment is not available, the units that will become lead units after the split must also be tested.

The Operator taking charge of the EMU must examine the ATC Daily Departure Initial Test form to ensure that the ATC apparatus has been tested within the prescribed period.

13-E(2) AUTOMATIC TRAIN CONTROL (ATC) DEPARTURE TEST PERFORMED BY A SUBSEQUENT TESTING EMPLOYEE

If it is necessary to perform another Automatic Train Control Departure test at a turnaround point other than in a designated yard, the Qualified Employee performing the test must inform the Dispatcher of the test results. The Dispatcher must record this information in the Computer Aided Dispatch System.

When it is necessary to perform the test, the Qualified Employee will fill out the following information on the ATC test form line for Subsequent Testing Employee: date, location, time, Employee name, ID#, and signature. The test will be completed in accordance with instructions in the Airbrake and Train Handling Instructions.

If a portion of the train control apparatus is cut-out or fails, a new Daily Cab Signal Test must be performed by a QMP prior to the train entering CSS territory.

ATC Daily Inspection & Departure Test: EMU# _____

(refer to VH-012 procedure for Daily Departure Test Instructions)
NOTE: ATC Daily Departure test expires after 24 hours from time of initial test

Date: _____ Location: _____ Time: _____ Employee: _____

Results:

*Inspect ATC system equipment condition and specifications *49 CFR 236.586(a)*	FAIL	PASS
*ATC Aspect Display Unit inspection, operation & acknowledgement *49 CFR 236.586 (b)(c)*	FAIL	PASS
*ATC Penalty Magnet Valve Operation & Full Service Reduction Rate *49 CFR 236.554*	FAIL	PASS
*Perform Daily departure test per procedure VH-012, using on-board device (ADU) *49 CFR 236.587(a)*	FAIL	PASS
MC RATE: _____ ATC PMV RATE: _____		
*ATC cut out switch properly sealed Seal # _____	FAIL	PASS

INITIAL TESTING EMPLOYEE: ID # _____ Signature: _____

SUBSEQUENT TESTING EMPLOYEE:
Date: _____ Location: _____ Time: _____ Employee: _____
ID # _____ Signature: _____

13-F When a cab signal changes to a more restrictive indication, the Operator must immediately:

1. acknowledge the audible indicator; and
2. if the train speed is greater than the speed authorized by the cab signal indication, apply brakes until train speed is reduced to the authorized speed.

13-G When a cab signal changes to a more favorable indication, train speed shall not be increased until the train has traveled one train length.

13-H When a cab signal indication momentarily changes ("flips"), the Operator will make a report to the Dispatcher by radio as soon as possible, including the following information:

1. location;
2. track;
3. cab signal indications involved; and
4. whether the flip required acknowledgment.

13-I AUTOMATIC TRAIN CONTROL APPARATUS FAILURES (FAILED TRAINS)

13-I(1) A train will be considered to be a failed train if it has an automatic train control apparatus failure where any component of the automatic train control apparatus fails to operate as intended, such as:

a. The audible indicator fails to sound when required or continues sounding when not required;
b. There is a constant No Motion (V-zero) indication, when the train is moving;
c. It is necessary to operate the cut-out switch for the ATC or any other component of the automatic train control;
d. Damage or fault occurs to any part of the automatic train control apparatus

13-I(2) A train also will be considered a failed train when the train receives a cab signal indication (other than a flip) that is not in conformity with fixed signal indication or observable track occupancy or track conditions.

If the cab signal indication is more restrictive than fixed signal indication, track occupancy, or track conditions, the train will proceed in accordance with **[Rules 13-I(3) and 13-I(4)]**

If the cab signal indication is more favorable than fixed signal indication, track occupancy, track conditions, or allowable speed for diverging route, the Operator will immediately bring the train to a stop and call the Dispatcher for instructions.

13-I(3) When a train experiences an en route automatic train control apparatus failure, the Dispatcher must be notified of the nature of the failure as soon as possible. The Dispatcher must note the nature of the failure and any apparatus cut out in the Computer Aided Dispatch System.

In addition to notifying the Dispatcher, the Operator will complete the proper section on the MAP 10 Daily Equipment Condition Report.

13-I(4) When an automatic train control apparatus failure has occurred, the automatic train control apparatus on that EMU will be considered inoperative until repaired and tested by a QMP.

13-J CAB SIGNAL SYSTEM FAILURES (FAILED TRAINS)

13-J(1) A train will be considered to be a failed train when it has a Cab Signal failure where any component of the cab signal apparatus fails to operate as intended, such as:

a. It is necessary to operate the cut-out switch for the cab signals; or
b. The train experiences continuous cab signal flips.

13-K OPERATION OF TRAINS WITH AN AUTOMATIC TRAIN CONTROL/CAB SIGNAL APPARATUS FAILURE (FAILED TRAINS)

13-K(1) With permission of the Dispatcher only cut out those portions of the train control apparatus as listed in the Airbrake and Train Handling Instructions for trains experiencing a train control apparatus failure.

13-K(2) From the point of failure to the next interlocking signal, a failed train will operate at restricted speed.

13-K(3) For all subsequent blocks, the Dispatcher must display the Absolute Block Signal [**Rule 9-B(2)**] for failed trains. Prior to displaying the Absolute Block Signal, the Dispatcher must know that no other trains have been given signals or permission to enter the controlled block. The Absolute Block Signal indicates that the controlled block ahead of the failed train is clear. Other trains may, on signal indication, be permitted to follow the failed train in the same controlled block.

13-K(4) When governed by the Absolute Signal, failed trains will operate at:

a. Not exceeding Restricted Speed within interlocking limits;
b. MAS not exceeding 59 MPH outside interlocking limits, approaching interlocking signals prepared to stop.

13-L POSITIVE TRAIN CONTROL SYSTEM

13-L(1) *THIS SECTION RESERVED*

13-L(2) Operators must not rely on PTC as a means of train braking. The Operator is responsible for controlling the train at all times including proper braking.

13-L(3) *THIS SECTION RESERVED*

13-L(4) Initializing PTC

The Operator must initialize the PTC system whenever:

1) the Operator is preparing the train to enter PTC territory, or
2) the Operator first takes charge of the train, or
3) changing ends either at a terminal or en route, or
4) instructed to do so by the Dispatcher.

When the PTC screen is illuminated, select the "INIT" button to INITIALIZE the system. (Prompts will display advising of the progress of the initialization.) If initialization fails, inform the Dispatcher and be governed by his instructions.

After successfully initializing, confirm that the most current information regarding the train consist and lead unit are displayed by the PTC system. If any of the information displayed is not correct, inform the Dispatcher and be governed by his instructions.

13-L(5) Departure Testing

A departure test must be performed:

1) when prompted by the PTC system, or
2) when instructed to do so by the Dispatcher.

Positive Train Control Departure Test

1) A Positive Train Control Departure Test will be performed by a Qualified Maintenance Person (QMP) no more than 24 hours prior to the departure of a train from the initial terminal.
2) The QMP performing the Positive Train Control Departure Test must complete the PTC Daily Departure Test form, leaving one copy in the cab and filing one copy in the Vehicle Maintenance office.
3) On trains with multiple units, the Positive Train Control Departure test will be performed on the lead unit for movement of the train in each direction. If it is known that the train will be split at a location where test equipment is not available, the units that will become lead units after the split must also be tested.
4) The Operator taking charge of the EMU must examine the PTC Departure Test form to ensure that the PTC apparatus has been tested within the prescribed period and must examine the CDU display to ensure that the apparatus is powered up and in the Cut Out state.

Positive Train Control Departure Test Performed by a Subsequent Testing Employee

If it is necessary to perform another Positive Train Control Departure test at a turnaround point other than the initial terminal, a Qualified Employee must inform the Dispatcher of the test results. The Dispatcher must record this information in the Computer Aided Dispatch System.

2) When it is necessary to perform the test the Qualified Employee will fill out the following information on the test form line for SUBSEQUENT TESTING EMPLOYEE including: date, location, time, employee name, ID number, and

signature. The test will be completed in accordance with the instructions in the Airbrake and Train Handling Instructions.

3) If a portion of the train control apparatus is cut-out or has failed, a new Positive Train Control Departure Test must be performed by a QMP prior to the train entering CSS territory.

PTC Daily Departure Initial Test: EMU# _____

(refer to VH-013 procedure for PMV operation check and audible alert test)
NOTE: Cycle PTC and WIMAX circuit breakers to reboot system prior to performing departure test
NOTE: PTC Daily Departure test expires after 24 hours from time of initial test

Date: _____ Location: _____ Time: _____ Employee: _____

Results:

*PTC Equipment Condition (GPS Antenna, TMC, Recorder, Display Unit)	FAIL	PASS
*PTC Fault Codes- enter maintenance screen to view and clear faults	FAIL	PASS
*PTC Audible Alert	FAIL	PASS
*PTC Penalty Magnet Valve Operation & Full Service Reduction Rate	FAIL	PASS
MC RATE: _____ PTC PMV RATE: _____		
*PTC cut out switch properly sealed Seal # _____	FAIL	PASS

INITIAL TESTING EMPLOYEE: ID # _____ Signature: _____

SUBSEQUENT TESTING EMPLOYEE:
Date: _____ Location: _____ Time: _____ Employee: _____
ID # _____ Signature: _____

13-L(6) Pre-Departure and En Route Confirmation of Orders

After successful initialization and before departing, the Operator must compare restrictions displayed on the CDU with the paper copy of the CCROC or other written Orders issued to the Operator. When Orders are verbally delivered to the Operator en route, they must then be compared to the information displayed on the CDU. Any discrepancies must be reported to the Dispatcher.

13-M PROCEDURE FOR A STOP ORDER AT GRADE CROSSINGS WITH PTC ACTIVE

13-M(1) When approaching a crossing where a Form C Crossing Stop Order is in effect, the Operator must perform the following actions:

When the first "XING ACTIVATION FAILURE AT MP #### IS XING PROTECTED YES OR NO?" prompt appears on the CDU, respond "NO" regardless of the condition of the crossing.

When the second "XING ACTIVATION FAILURE AT MP #### IS XING PROTECTED YES OR NO?" prompt is displayed (within approximately 500 feet of the crossing), the train must stop. The Operator will respond "Protected" regardless of the condition of the crossing.

After stopping, the Operator must proceed at Restricted Speed, visually confirming that the crossing is protected, and proceed according to **[Rule 16-D(1)]**

13-N POSITIVE TRAIN CONTROL FAILURES

13-N(1) A train will be considered to have a positive train control failure when PTC does not operate as intended, including any of the following conditions:

NOTE: These exceptions do not constitute a failure when PTC is cut out by means of the PTC Cut-Out Key on the CDU display (Soft Cut Out) for the purpose of switching ends or coupling.

After initializing, when operating in PTC territory, the CDU does not indicate that PTC is Active (the CDU displays any state other than Active);

A CDU failure including the screen cannot be read for more than 30 seconds, or is frozen, or displays invalid data;

The Sonalert sounds continuously or fails to sound when it should;

There is a discrepancy between the information PTC conveys and:

1) the indication of wayside signals,
2) the position of switches as observed in the field, or
3) the information conveyed by Timetable, CCROC, or Mandatory Directive including but not limited to:
   i. PTC displays a maximum speed (MAX SPEED) greater than the maximum authorized speed established by Timetable, CCROC, or Mandatory Directive.
   ii. PTC fails to warn of a Work Zone, Crossing Stop Order, or Speed Restriction currently in effect or warns of a Work Zone, Crossing Stop Order, or Speed Restriction not in effect.

It is necessary for any reason to operate the PTC Override Switch, PTC Penalty Brake cut-out valve, or the PTC Cut-Out Key on the CDU display (Hard or Soft Cut Out).

13-N(2) When PTC momentarily changes from Active to Disengaged and back to Active (flips), the Operator must promptly inform the Dispatcher. A momentary flip does not constitute a PTC failure.

13-N(3) When fault prompts are displayed on the CDU, the Operator with authorization from the Dispatcher may cycle the PTC Power Breaker or the WIMAX Breaker to clear fault conditions. If PTC is able to recover to an Active state, then the train may continue with PTC engaged.

13-N(4) If there is a discrepancy between the information conveyed by PTC and that conveyed by wayside signals or Orders, the Operator must operate according to the more restrictive information.

13-O OPERATION OF TRAINS WITH A POSITIVE TRAIN CONTROL FAILURE

13-O(1) When a train experiences an en route PTC failure, the following applies:

The Operator will immediately bring the train to a stop and call the Dispatcher for instructions;

The Operator must report to the Dispatcher the time and location of the incident, signal identification, and location where PTC initially provided conflicting information related to wayside signal aspects or Orders;

The Operator must complete the proper section on the MAP 10 Daily Equipment Condition Report; and

The Dispatcher must make a record of the specific failure and any apparatus cut out in the Computer Aided Dispatch System.

13-O(2) When authorized by the Dispatcher, PTC may be cut out for the following reasons:

it becomes defective, or

it prohibits train movement that should be allowed.

13-O(3) When cutting out PTC, the Operator must:

stop the train;

request permission from the Dispatcher to cut out PTC; and

record the date, time, reason, and who authorized the system to be cut out on the MAP 10 Daily Equipment Condition Report.

13-O(4) Whenever PTC is cut out en route by operating the PTC Breaker Switch or the PTC Penalty Brake Cut out valve (a hard cut out), the train must not proceed until three minutes have elapsed from the time PTC was cut out.

13-O(5) A QMP must inspect and approve for service any onboard PTC apparatus whenever:

PTC was cut out en route by operating the PTC Breaker Switch or the PTC Penalty Brake Cut out valve (a hard cut out);

It was necessary to cycle the PTC Power Breaker more than two times during a trip

13-O(6) A train with inoperative or failed PTC will proceed on CSS rules.

RULE 14 - BLUE SIGNAL PROTECTION OF WORKERS

14-A Railroad Employees engaged in the inspection, testing, repair, and servicing of rolling equipment whose activities require them to work on, under, or between such equipment must be provided with protection.

14-A(1) Operators are not required to have protection under this rule except when assigned to perform work on rolling equipment that is not part of the movement they have been assigned to operate.

14-A(2) Blue Signals must be displayed by each craft or group of workers prior to their going on, under, or between rolling equipment and may only be removed by the same craft or group that displayed them.

14-B *THIS SECTION RESERVED*

14-C OPERATING REQUIREMENTS

14-C(1) Equipment must not pass a blue signal.

14-C(2) Rolling equipment must not be placed on the same track thereby reducing or blocking the view of a blue signal. If a derail is utilized to provide protection per **[Rule 14-E(2)]**, rolling equipment must not be placed on the same track thereby reducing or blocking the view of a derail.

14-C(3) If rolling equipment requiring blue signal protection is on a track equipped with one or more crossovers, both switches of each crossover must be lined against movement through the crossover toward that rolling equipment.

14-C(4) Rolling equipment protected by a blue signal must not be moved or coupled, except as noted below.

a. On Designated Maintenance Tracks, when directed by the Blue Signal Worker in Charge, rolling equipment may be repositioned and/or coupled to without removing the blue signal protection from the track on which the rolling equipment is located. Before moving or coupling to rolling equipment, Employees working on or about the affected track must participate in a job safety briefing which must contain information of the movement, and the blue signals must be removed from the equipment to be moved or coupled.

b. When directed by the Blue Signal Worker in Charge, an EMU consist may be moved onto a Designated Maintenance track after the blue signal has been removed from the entrance switch to the area. Before removing the blue signal protection at the switch, Employees working on or about the affected track must participate in a job safety briefing which must contain information of the movement. The blue signal must be restored immediately after the EMU consist clears the switch. The EMU consist must stop short of any other EMU consist.

c. When directed by the Blue Signal Worker in Charge, an EMU consist may be moved from a designated maintenance track after the blue signal has been removed from both controlling ends of the EMUs and from the area departure switch. Before removing the blue signals from the controlling ends of the EMUs, Employees working on or about the affected track must participate in a job safety briefing which must contain information of the movement. The blue signal must be restored immediately after the EMU consist clears the switch.

14-C(5) Once blue signal protection is established, Employees are prohibited from operating any maintenance, pneumatic or electrical apparatus that could result in movement, unless specifically authorized by the Blue Signal Worker in Charge.

14-D ESTABLISHING BLUE SIGNAL PROTECTION - MAIN TRACKS

14-D(1) Prior to commencing any work that requires blue signal protection, Employees working on or about the track must participate in a job safety briefing reviewing the specific application of the protection provided as required by this rule.

Before going on, under, or between rolling equipment, workers must ensure:

The Blue Signal Worker in Charge will communicate with the Dispatcher and provide the following information:

1) first and last name and craft of Blue Signal Worker in Charge, and
2) the number or other designation of track involved.

the Dispatcher will record this information on the prescribed form.

The Dispatcher must apply blocking devices.

If work is performed at locations other than a station or end terminal platform, the Dispatcher must issue a Form S speed restriction on the adjacent track(s) for restricted speed.

The Dispatcher will then report to the Blue Signal Worker in Charge the date and time that the blocking devices were applied, and that a Form S is in effect and delivered to all trains approaching the work location.

The Blue Signal Worker in Charge will not permit any work to be performed until informed by the Dispatcher that blocking devices are applied and a Form S is in effect.

Display a blue signal at each end of the rolling equipment, and attach a blue signal in a readily visible location in the cab(s) on the controlling ends of the rolling equipment being protected.

Workers, tools, material, or equipment must not foul any adjacent tracks or be left where they could be struck by the passing train.

As trains approach on adjacent tracks, workers will stop work, face the direction from which the train is approaching, and watch for projecting, dragging, or falling objects until the train passes the work location.

14-D(2) On main tracks, when emergency work is to be performed on, under, or between rolling equipment and a blue signal is not available, the Employee requiring protection must not foul the equipment until he has obtained confirmation from the Operator that he has:

a. Set the parking brake;
b. Placed the master controller handle into full service position;
c. Placed the master controller switch in the NEU (neutral) position.

This protection must be maintained until the Operator is notified by the Employee who requested protection that it is no longer needed.

14-E ESTABLISHING BLUE SIGNAL PROTECTION - OTHER THAN MAIN TRACKS

14-E(1) Before going on, under, or between rolling equipment on other than main tracks, protection must first be provided for the track where the rolling equipment is located, then protection must be provided on the rolling equipment where the work is to be performed [**14-E(3)**].

14-E(2) In all circumstances, access to the track where the rolling equipment is located must be prevented.

If switches providing access to the yard are hand-operated, either:

1) Line switches against movement to the track involved and lock with an effective locking device; or

2) Lock a derail in the derailing position with an effective locking device. If a derail is used, it must be placed not less than 50 feet from the end of the rolling equipment for designated maintenance tracks, and not less than 150 feet from the end of the rolling equipment for all other tracks.

A blue signal must be displayed at or near each locked, hand-operated switch, or each locked derail.

If switches providing access to the track are remotely controlled, the following steps must be followed:

1) The Blue Signal Worker in Charge will communicate with the Dispatcher and provide the following information:

   i. First and last name and craft of Blue Signal Worker in Charge, and
   ii. The number or other designation of track involved.

2) The Dispatcher will record this information on the prescribed form.

3) The Dispatcher must line switches against movement to the track involved and apply blocking device.

4) The Dispatcher will then report to the Blue Signal Worker in Charge the date and time that the blocking devices were applied, clearly indicating the track number or other designation of the track protected.

5) The Blue Signal Worker in Charge will not permit any work to be performed until informed by the Dispatcher that switches have been lined against movement and blocking devices applied.

If the switches providing access to the tracks are capable of being operated more than one way, all methods of operation of the switch must be protected.

Workers, tools, material or equipment must not foul any adjacent tracks or be left where they could be struck by the passing train.

As trains approach on adjacent tracks, workers will stop work, face the direction from which the train is approaching and watch for projecting, dragging or falling objects until the train passes the work location.

14-E(3) PROTECTION OF EQUIPMENT ON WHICH WORK IS TO BE PERFORMED

After protection is provided for the track where the equipment is located, a blue signal must be displayed in a readily visible location in the cab(s) on the controlling ends of the rolling equipment being protected.

When multiple workers or groups of workers are on a single piece of rolling equipment, each worker or group of workers must be identified by placing an identification tag on the blue signal in the cab(s) on the rolling equipment.

14-E(4) When Work is Completed:

The Blue Signal Worker in Charge must be certain that all workers are clear of protected rolling equipment prior to releasing protection.

When all workers are clear, blue signals will first be removed from the cab(s) of the rolling equipment.

If switches providing access to the track are hand-operated, switch locks and blue signal device will be removed. If derails were used to provide protection, derails will be placed in the non-derailing position and blue signals removed.

If switches providing access to the track are remotely controlled, the Blue Signal Worker in Charge originally requesting protection must provide the following information to the Dispatcher:

1) first and last name and craft of Blue Signal Worker in Charge;
2) the number or other designation of track released; and
3) the time when blue signal protection is no longer required.

The Dispatcher must make a written record on the prescribed form of the removal of the blocking device protection. Records must be retained for 15 days following the removal of the protection.

When the Blue Signal Worker in Charge who requested protection is relieved from duty or otherwise unavailable, a Supervisor from the department of the Blue Signal Worker in Charge may perform the steps to remove blue signal protection and release tracks. The Supervisor must ensure that all workers are clear of the track.

14-E(5) On other than main tracks, when emergency work is to be performed on, under, or between rolling equipment, and a blue signal is not available, the Employee requiring protection must not foul the equipment until he obtains confirmation from the Operator that he has:

a. set the parking brake;
b. placed the master controller handle in the Full Service position; and
c. placed the master controller switch in the NEU (neutral) position.

This protection must be maintained until the Operator is notified by the Employee who requested protection that it is no longer needed.

RULE 15 - EQUIPMENT

15-A In matters pertaining to the operation of equipment and the handling of defective equipment, unless otherwise specified in these rules, the Airbrake and Train Handling Instructions will apply.

15-B Operators will observe their train for defects that could affect safe operations. Operators and Employees working on or near the right-of-way will, when possible, observe passing and standing trains for defects.

1. Particular attention will be paid to:

   a. The running gear, including wheels, journals and other truck components, and draft gear components;
   b. Dragging equipment; and
   c. Doors.

2. The following may be warning signs of defects:

   a. Unusual noise;
   b. Unusual smell;
   c. Smoke from undercarriage;
   d. Electrical arcing;
   e. Poor ride quality for unknown reasons.

15-C When safety-related defects on a train are detected or reported, the train will be brought to a stop, the Dispatcher notified, and the Operator will inspect the train.

When safety-related defects are observed on a passing or standing train, the person observing the defects will attempt to notify the Operator of that train and the Dispatcher.

When defects are noted that do not affect the safety of the operation, the Dispatcher will be notified. The Dispatcher will determine the location where the train should be inspected, and will issue appropriate instructions to the Operator.

All defects must be noted on the MAP 10 Daily Equipment Condition Report.

15-D EN ROUTE EQUIPMENT DEFECTS

15-D(1) RUNNING GEAR DEFECTS

In accordance with federal regulations, running gear defects require the intervention of a Qualified Maintenance Person (QMP) to determine whether it is safe to operate the equipment, and under what conditions and restrictions.

Running gear defects are defects to any part of the equipment which involves a truck component, a draft system component, a wheel, or a wheel component. Running gear defects do not include defects affecting the propulsion or power collection systems, such as traction motors or catenary apparatus.

When a running gear defect is detected, the Operator will contact the Dispatcher and provide all pertinent information about the location and nature of the defect. The Dispatcher will contact a QMP for instructions, and the train will not proceed beyond the next forward designated repair facility.

15-D(2) FLAT SPOTS ON WHEELS

The Operator is responsible for determining the length of flat spots which are discovered en route and whether there are other running gear defects.

If there is a flat spot of 2½ inches or less in length, and no other defects are detected, it shall not be considered a running gear defect and the train may proceed at MAS. The condition will be noted on MAP 10 Daily Equipment Condition Report and reported to the Vehicle Maintenance Department at the conclusion of the trip for corrective action.

If the flat spot is in excess of 2½ inches in length, or if there are two or more adjacent flat spots any one of which is over 2 inches, it will be considered a running gear defect, and **[Rule 15-D(1)]** will apply.

15-D(3) OTHER DEFECTS

Defects to other than the running gear, such as the air brake system, propulsion system, power collection system, cab signal system, car body, or interior car components will be reported to the Dispatcher and handled in accordance with the Airbrake and Train Handling Instructions.

15-E DISPATCHING DEFECTIVE EQUIPMENT FROM TERMINALS

15-E(1) Defective equipment may be dispatched from terminals only as permitted by federal regulations and the following RTDC rules.

15-E(2) When defective equipment is to be operated, the Vehicle Maintenance Employee in Charge of train make-up at the terminal must notify the Dispatching Center of any movement restrictions.

Dispatching Center personnel must input the following information provided by Vehicle Maintenance into the Computer Aided Dispatching system:

a. the car number;
b. the nature of each defect;
c. the destination where repairs will be made;
d. any speed or other movement restrictions;
e. the name of the inspector;
f. the location and date where inspection was made; and
g. the signature, if possible, and title of the Employee who imposed any restrictions.

This information must be recorded before the train can depart.

15-E(3) When defective equipment is permitted to operate in revenue service the Employee in Charge at the terminal must ensure that the operator knows that there is defective equipment in the consist. The defect must be recorded on the MAP 10 Daily Equipment Condition Report.

15-E(4) When in accordance with federal regulations or RTDC rules, defective equipment must be moved in non-revenue service to a designated repair facility, Form B authority is required. The Form B will be addressed to the Operator of the defective equipment and will specify the unit number (s) of the defective equipment, the destination where the equipment will be repaired, any movement restrictions and the defect or reason for the restriction.

Example: "Operate defective equipment units 4001-4002 from DUS to CRMF. Do not exceed 20 MPH, 10 MPH when diverging, account defective air bags."

RULE 16 - HIGHWAY GRADE CROSSINGS

16-A Automatic highway grade crossing warning devices are provided at locations and on tracks as indicated in the Timetable.

16-B When automatic highway grade crossing warning devices are missing, broken, or otherwise not working as intended, the Dispatcher will issue a Stop order. However, the Dispatcher will not issue a Stop order at a crossing equipped with four quadrant gates if an exit gate arm does not lower to its horizontal position and all other devices of the crossing protection are working as intended. Follow Rule SI 16-B for Exit Gate Malfunction.

16-B(1) Once a Stop order is issued due to a reported malfunction, it will remain in effect until the warning devices have been certified as working as intended by an authorized Employee.

16-C When an Operator observes highway grade crossing warning devices not working as intended, he will take appropriate action for the safety of the train, highway vehicles and pedestrians. The Dispatcher must be notified immediately.

16-C(1) Any Employee who observes highway grade crossing warning devices not working as intended must immediately inform the Dispatcher and, if possible, warn traffic of approaching trains until relieved by qualified personnel or otherwise directed by the Dispatcher.

16-D PROCEDURES FOR A STOP ORDER AT GRADE CROSSINGS

When a Stop order is in effect, the train must stop with the lead unit within 500 feet of the crossing.

16-D(1) After stopping, these actions will be taken:

	IF	THEN
a.	The crossing is equipped with both flashers and gates; and Automatic warning devices appear to be working as intended; and Automatic warning devices have been activated for at least 20 seconds; and The crossing is clear	Operator will sound engine horn signal **[Rule 4-E(6)c]**. Train may proceed across the crossing, at Restricted Speed until the leading end is completely clear of the crossing.
b.	Automatic warning devices are not working as intended; and There is a police officer or flagger controlling vehicular and pedestrian traffic at the crossing; and The crossing is clear	Operator will sound engine horn signal **[Rule 4-E(6)c].** Train may proceed across the crossing, at Restricted Speed until the leading end is completely clear of the crossing.
c.	The conditions in (a) or (b) above are not met	Operator must stop and await the arrival of a flagger or police officer. Once the Operator receives a proceed authorization from a flagger or a police officer, comply with **[Rule 16-D(1)b]**.

16-E LONG-TERM OUTAGE

In circumstances involving long-term outages, special procedures may be put into effect which require a qualified railroad Employee or police officer to manually warn highway and pedestrian traffic of train movements over the crossing. The following procedures will apply:

Bulletin Order, CCROC instruction, or a Form C will be issued to all trains using the affected crossing(s), using the wording:

Long-term outage **[Rule 16-E]** in effect (at location; on Line between milepost limits). MAS over crossings is … MPH (if no speed is indicated, 15 MPH will apply).

Trains will approach designated crossings sounding engine horn signal **[Rule 4-E(6)c]**, and be prepared to stop if the Operator observes that the crossing is not staffed or is not clear.

The Qualified Employee must have radio contact with the Dispatcher and trains using the crossing and must manually operate the crossing warning devices or stop all approaching traffic at least 60 seconds prior to the arrival of the train at the crossing. If traffic cannot be stopped, the Employee or police officer must immediately contact the train and Dispatcher.

If the traffic is stopped and the crossing is clear, after stopping the train may proceed over the crossing without stopping, not exceeding the speed specified in the Form C, Bulletin Order, or CCROC, or not exceeding 15 MPH if no speed is specified. The speed restriction applies until the lead unit is completely clear of the crossing.

If the crossing is not staffed, Stop Order procedures **[Rule 16-D(1)c]** will apply.

16-F INTERRUPTION OF AUTOMATIC CROSSING WARNING DEVICES

16-F(1) At all highway grade crossings, apparatus is provided to manually or automatically interrupt the operation of automatic grade crossing warning devices.

16-F(2) Manual interruption is to be operated in accordance with directions posted at the location. When the apparatus is operated manually, no movement may be made over the crossing until warning devices are manually activated or automatic operation of the crossing warning devices has been restored.

16-F(3) Where automatic interruption is in service, switching movements, movements occurring after a stop within the circuit for the crossing, and all movements operating at 15 MPH or less must be prepared to stop before entering the crossing unless warning devices are observed to be operating. If warning devices are not operating, Stop Order procedures **[Rule 16-D]** will apply.

16-G OPERATION OVER HIGHWAY GRADE CROSSINGS

16-G(1) To prevent unnecessary operation of automatic highway crossing warning devices, switches must not be left open or unlocked and cars must not be left standing within the operating limits any longer than necessary.

16-G(2) When approaching a grade crossing operating at restricted speed or after having changed direction in the controlled block or after an unscheduled stop within the operating limits of the crossing, trains must approach the crossing prepared to STOP. The Operator must verify that warning devices are activated and gate arms are fully lowered and the crossing is clear before proceeding across the crossing.

If grade crossing protection does not activate, the Operator shall ensure that the train is occupying the island circuit within 50 feet of the crossing. If warning devices are still not activated, **[Rule 16-D(1)]** applies. The Dispatching Center must be notified.

16-G(3) When a train or switching movement passes entirely over a crossing provided with automatic warning devices, it must not move in the opposite direction until warning devices have been activated for at least 30 seconds.

16-H NON-SHUNTING EQUIPMENT

16-H(1) Track cars must stop and proceed as required by **[Rule 21-O(5)]** at grade crossings equipped with automatic warning devices.

RULE 17 - OPERATION OF SWITCHES, SIGNALS, AND INTERLOCKING APPLIANCES

17-A HAND OPERATED AND POWER SWITCHES AND DERAILS

17-A(1) Employees operating or verifying the position of switches and derails must be qualified on their use, and are individually responsible for the position of switches and derails used.

17-A(2) Except on designated maintenance track or as otherwise specified in the Timetable, the normal position of a derail is in the derailing position. When not in use, derails must be in normal position and locked, if so equipped.

17-A(3) After operating switches, Employees must examine the switch points and know that they fit the rail properly, and if so equipped, that switch target corresponds with the switch's position. Where derails are in service, Employees must observe that they are in the proper position before and after operation.

17-A(4) Switches and derails equipped with locks or hooks must be locked or hooked at all times except when in use. After locking or hooking switch or derail, lock or hook must be tested to ensure switch or derail is secured.

17-A(5) Equipment must not foul a track until it is determined that no other equipment is fouling intended route and that all switches and derails connected with the movement are properly lined. Before making movement over switch or derail, it must be secured with lock or hook, if so equipped. After movement has been made, switches and derails must not be operated until equipment has passed the clearance point of the track. If a conflicting movement is seen approaching a switch, track must not be fouled nor switch or derail operated. An Employee using a main track switch must be at least 20 feet away from the switch and, if safe, on the side of the track opposite the switch stand while equipment is approaching and passing.

A switch must not be operated while equipment is fouling it, or standing or moving over it, nor shall movement be made over a derail in derailing position.

17-A(6) Both switches of a crossover must be properly lined before equipment starts to make a crossover move, and the movement must be completed before the position of either switch is changed. When not in use, both switches of a crossover must either be lined for straight track or be lined for the crossover.

17-A(7) If switches or derails are found to be defective, or associated locks found to be missing or defective, report must be made immediately to the Dispatching Center.

17-A(8) Equipment on a siding or yard track must not be left standing at a location where such equipment fouls a track. On tracks where clearance point is indicated, leave equipment beyond the clearance point. If clearance point is not indicated or visible, determine the clearance point by standing outside the rail of adjacent track and extend arm towards the equipment. When unable to touch equipment, leave equipment a sufficient distance beyond that point to ensure equipment is behind the clearance point.

17-B DUAL CONTROL SWITCHES

17-B(1) When dual control switches are to be operated manually:

a. Train must be stopped short of the switch that is to be manually operated.

b. Dispatcher will instruct the Operator to operate dual control switch.

c. After the dual control switches have been operated and the entire route through the interlocking lined, the Dispatcher will give the train permission to continue through the switch(s).

17-B(2) To operate dual control switches:

a. Unlock the switch.

b. Move the selector lever to the hand position.

c. Operate the hand-throw lever until the switch points are completely lined to the opposite position and then back to ensure the points are controlled by the operation of the hand-throw lever. This must be done whether or not the switch points appear to be lined for the desired route.

d. Line the switch for the route to be used. Ensure that the hand throw and selector levers are fully in the keeper and lock the hand-throw lever. Ensure the points are closed tightly against the stock rail.

e. The selector lever must remain in the hand position until the entire train has passed through the switch.

f. After the entire train has passed through the switch, both the selector and the hand throw levers must be returned to the normal position and locked unless otherwise instructed by the Dispatcher.

17-C *THIS SECTION RESERVED*

17-D SIGNALS AND INTERLOCKING APPLIANCES

17-D(1) Dispatchers are the only Employees permitted to operate the controls for signals and interlocking appliances. Qualified Signal Employees may operate such controls, with permission of the Dispatcher, only for test and inspection purposes, or in an emergency by direction of the Dispatcher.

17-D(2) Blocking devices are used to prevent the operation of the controls for signals and interlocking appliances.

Blocking devices may be applied by means of pins, pushbuttons, or computer keypads or console control devices.

Only authorized blocking devices may be used.

Blocking devices will not be considered effective until the appropriate confirmation is displayed on the TMDS.

Blocking may be provided by any or all of the following means:

1) The track to be protected is blocked and blocking devices applied;
2) Signals leading to the protected track are placed in the Stop position and locking devices applied;
3) Switches are lined to prevent movement to the protected track and blocking devices applied.

Whenever the use of blocking devices is required, a record must be maintained.

1) The abbreviations BDA for Blocking Device Applied and BDR for Blocking Device Removed, along with the time, must be recorded electronically in the Computer Aided Dispatch Blocking Report. If a blocking device is applied in conjunction with a Form O authority, the time applied must also be shown on the Form O.
2) If the blocking devices are applied manually, the position and switch number of all affected switches must also be recorded. This is not required if panel blocking or keyboard blocking is used.

17-D(3) Maintainers must have the permission of the Dispatcher prior to performing tests or work on any portion of the interlocking apparatus that could affect train movements.

Prior to performing any work, the Dispatcher and the Maintainer must have a clear understanding of what work is being performed and how train movements will be affected.

When requested, the Dispatcher will provide protection for the Maintainer in accordance with **[Rule 20-B]**

17-D(4) If any component of the interlocking becomes inoperative, the approved blocking device for that component must be applied.

The Dispatcher must report such incidents immediately to the Signal Department, including the time of failure and all circumstances at the time of the failure. The Dispatcher must also report indications such as Power Off, Entry Alarm, Smoke Alarm, and Code Line.

17-D(5) Whenever signal equipment is removed from service or restrictions are placed on its use the following will apply:

Prior to taking any action a qualified Signal Employee must provide the Dispatcher with a written request on the prescribed form indicating the equipment to be removed from service or the restrictions to be placed on its use. If applicable, the request will indicate where jumpers will be applied or terminals opened.

In an emergency, the request may be made verbally but a written request must be provided to the Dispatcher as soon as possible. If the request is made verbally the Dispatcher will repeat the request and the Signal Employee will confirm that it was repeated correctly.

The Dispatcher and the Signal Employee must agree on any protection required and the Dispatcher will provide such protection prior to authorizing the request.

The Dispatcher may approve the requested action verbally or in writing on the prescribed form and must make a record in the Computer Aided Dispatch System that includes the details of the authorized request, the name of the Signal Employee making the request and the time the request was approved.

The Dispatcher must include the status of any signal equipment that has been removed from service or had restrictions placed on its use in his transfer.

When the equipment is returned to service or the restrictions are removed, the Signal Department Employee will inform the Dispatcher. The Dispatcher will repeat the information and the Signal Employee will confirm that it was repeated correctly. The Dispatcher will then remove any protection.

The Dispatcher will make a record in the Computer Aided Dispatch System of the equipment that has been returned to service or restrictions that have been removed. The record must include the time normal operation was restored and the name of the Signal Employee providing the information.

RULE 18 - RUSTY RAIL CONDITIONS

18-A Rusty rail conditions refers to any circumstance when the running surface of the rail is covered with rust, sand, or other substance that may interfere with the proper shunting of track circuits.

18-B If rusty rail conditions exist, the signal maintainer will inform the Dispatcher. The Dispatcher will repeat the information and the Signal Employee will confirm that it was repeated correctly. The Dispatcher will make a record in the Computer Aided Dispatch System including the limits of the rusty rail condition and the name of the Employee making the report. Blocking devices must be applied on tracks and interlocking appliances affected. When necessary, they may be removed to permit a movement on the affected route but must be immediately re-applied to maintain protection.

18-C Only one train at a time may operate in the controlled block where rusty rail notification is in effect.

If rusty rail includes any portion of an interlocking, affected interlocking appliances must not be operated unless the route is known to be clear, and routes must be blocked before allowing movement.

18-D The Dispatcher must verbally inform the Operator of rusty rail conditions on the route of the train, and must issue a Form C for the train to Stop at all highway grade crossings with automatic warning devices where rusty rail conditions exist.

18-E The Dispatcher will make a record in the Computer Aided Dispatch System when the track has been returned to normal service. The record must include the time normal operation was restored and the name of the Signal Employee providing the information.

RULE 19 - REMOVING TRACKS FROM SERVICE

19-A Form O must be used to take a track out of service where CTC rules are in effect.

19-B When the Dispatcher instructs the Employee requesting a Form O to report a train or other on track equipment clear of their location prior to issuing the Form O, the EMU number shall be used for identification.

19-C The following procedure will be used for taking tracks out of service:

The Dispatcher will apply blocking device protection for the affected track, and show the time applied on the Form O.

The Form O will be issued, by craft and name or unique designation, to the foreman or RWIC requesting use of the track.

19-D In CTC territory, where the limit of the track out-of-service is not protected by an interlocking signal, a secured barricade and stop sign **[Rule 9-E (1)]** must be placed at the limit of the out-of-service track. The location and type of protection must be shown on the Bulletin Order. Signals and switches will be blocked from the nearest interlocking protecting the out-of-service track.

To allow a train to use the in-service portion of track between the nearest interlocking and the out-of-service limit, the Dispatcher must not display a signal for the movement. The location of the limit of the out-of-service track must be shown in a Bulletin Order.

Authorization to pass the Stop Signal will be given in accordance with **[Rule 11-F]**, and this authorization will include the length of track in service or the location of the out-of-service track limit.

19-E ADDITIONAL EQUIPMENT ENTERING OUT-OF-SERVICE TRACK

19-E(1) When additional equipment, or Employees without equipment not under the supervision of the addressee of the Form O, are to enter the out-of-service track, permission of the addressee of the Form O taking the track out-of-service is required. The addressee must first read or show a copy of the Form O taking the track out-of-service to the Employee in Charge of the additional equipment or Employees. The addressee will then write on his copy of the Form O, in the section labeled “ADDITIONAL EQUIPMENT AND EMPLOYEES authorized to use out-of-service track”, the name of the Employee in Charge of the additional equipment or Employees, the location where the equipment or Employees will be working, and the time that the Form O was read or shown to the Employee in Charge.

19-E(2) If additional equipment is entering the out-of-service track at an interlocking, the Dispatcher will not authorize the additional equipment to pass the Stop Signal governing entrance to the out-of-service track, in accordance with **[Rule 11-F]**, until he has

confirmed that the Employee in Charge of the additional equipment has the permission of the Employee in Charge of the out-of-service track.

19-F Track cars on out-of-service tracks must proceed at Restricted Speed; they must Stop prior to occupying crossings equipped with automatic warning devices and may not proceed until:

Determining that crossing warning devices are functioning as intended, and proceed as per **[Rule 21-P(3)]**; or

A fully equipped flagger is stationed on the ground and has stopped all approaching vehicular and pedestrian traffic prior to signaling the track car(s) to proceed through the crossing.

19-G When two or more consecutive controlled blocks are removed from service, interlocking signals and interlocking rules at intermediate interlockings remain in service.

19-H To return an out-of-service track to service:

The addressee must contact the Dispatcher no later than the time specified on Form O.

If the track cannot be returned to service by the specified time, the addressee must contact the Dispatcher prior to the time shown on Form O and request an extension of time. One extension of time may be issued on the original Form O Line 2; subsequent extensions require the cancellation of the original Form O and issuance of a new Form O.

All equipment must be clear of the limits of the out-of-service track, including trains and additional equipment permitted to enter the track under **[Rule 19-E]**

The addressee must ensure that additional Employees permitted to work within the out-of-service limits under **[Rule 19-E]** are clear and know that the track is being returned to service.

The addressee will write the time that each Employee in Charge of additional equipment or Employees reports clear of the out-of-service track on the appropriate line of the Form O.

When the Form O addressee notifies the dispatcher that he is returning the out-of-service-track to service, the Dispatcher must inquire if the Form O addressee has authorized any additional equipment or Employees to use the out-of-service track. If the addressee has authorized additional occupation, the Dispatcher must inquire and receive confirmation that the addressee has received and recorded on his Form O the time that additional equipment and Employee(s) in charge have reported clear of the out of service track.

The addressee will notify the Dispatcher of any speed or other restrictions on use of the track necessary for the safe operation of trains.

The Dispatcher will then cancel the Form O per **[Rule 8-E]**

19-I REMOVING TRACKS FROM SERVICE WHERE INTERLOCKING RULES ARE IN EFFECT

19-I(1) Where interlocking rules are in effect, tracks will be taken out-of-service with the verbal permission of the Dispatcher.

19-I(2) Each work group performing separate tasks where interlocking rules are in effect must establish their own authority and working limits with the Dispatcher.

19-I(3) The Dispatcher must set signals governing entrance to the affected track to Stop and apply blocking devices to controls of all signals and switches leading to the protected track. Record of the application of blocking devices must be made in the Computer Aided Dispatch System.

19-I(4) The Dispatcher will provide the Employee requesting the track with the following information:

a. track designation,
b. limits of Protection (between locations or at location),
c. time limits, and
d. the time blocking devices were applied and the switches and signals blocked.

The Employee must repeat this information to the Dispatcher before the track will be considered out-of-Service. The Dispatcher will record this information and the name of the requesting Employee in the Computer Aided Dispatch System.

19-I(5) Once permission is granted by the Dispatcher, the track will remain out-of-service until the requesting Employee reports Clear.

19-I(6) When work is completed, the Employee will notify the Dispatcher that the track may be returned to service. The Dispatcher will remove blocking devices and make notation of the time in the Computer Aided Dispatch System.

19-J REMOVING POWER FROM TRACKS

19-J(1) The Employee requesting power removal must contact the Dispatcher, specifying the tracks and territory where power is to be removed, the expected duration of the outage, and the purpose of the outage. The Dispatcher must protect the requested territory where power is to be removed to ensure that trains cannot enter the de-energized section and that trains will not bridge between the de-energized and energized sections by applying blocking devices to controls of all signals and switches leading to the protected area.

19-J(2) After protection for the territory where power is to be removed has been applied, the Dispatcher will issue confirmation that power can be removed.

19-J(3) The qualified Traction Power Technician at the site will explain the outage to the Overhead Catenary System (OCS) Work Permit holder at the site.

a. The Traction Power Technician is responsible for protecting all persons at the work site from hazards associated with the power system. Traction Power Technician must explain to the Overhead Catenary System (OCS) Work Permit holder the extent of the outage limits and areas that remain energized.

b. When work is completed and the power may be restored, the Overhead Catenary System (OCS) Work Permit holder will notify the Traction Power Technician that all men and equipment are in the clear and the area is ready to be energized.

c. The Traction Power Technician will notify the dispatcher that he is ready to restore power.

The Dispatcher will request and must receive confirmation that all personnel, equipment and grounds are clear of the area where power is to be restored. Once confirmation is received, the Dispatcher will perform a one-minute power up announcement on the radio channel designated for the affected section of track. The power up announcement will include the following:

1) The OCS limits for which power will be restored;
2) Advising that anyone not wishing for power to be restored has one minute to contact the Dispatching Center on the said radio channel or by phone as listed in the timetable.

d. The Traction Power Technician can restore power once the Dispatcher advises that the one- minute time limit has expired. Once the power is restored the Traction Power Technician will report to the Dispatcher and at that time the Dispatcher will then remove the protection for the de-energized area.

RULE 20 - PROTECTION OF WORK AREAS

20-A ESTABLISHING WORKING LIMITS ON CONTROLLED TRACK USING PROTECTION BY WORKING LIMITS STOP SIGNS

When work is to be performed adjacent to or with the potential to foul main tracks, or when one track is out-of-service and it is necessary to provide protection to workers and equipment from trains on adjacent tracks, Working Limits may be established by CCROC or Form W.

20-A(1) The working limits will be defined in the CCROC or Form W by track and milepost location (miles and hundredths of a mile). Working Limits Stop Signs **[Rule 9-D(3)]** must be placed to the right of the affected track at the start of the work zone and Working Limits Resume Speed Signs **[Rule 9-D(4)]** at the end of the work zone for each direction of traffic. The Approach Sign **[Rule 9-D(1)]** must be placed to allow trains operating at MAS passing the Approach Sign to safely stop prior to reaching the Working Limits Stop Sign.

Working Limits Resume Speed Signs may be moved as the work progresses; however, Working Limits Stop Signs must remain at the location designated in the CCROC or Form W.

20-A(2) If there is an interlocking located between the Approach Sign and the Working Limits Stop Sign, a Diverging Approach Sign **[Rule 9-D(2)]** must be placed on each track where it is possible to diverge to the restricted track.

20-A(3) The CCROC, Engineering Department Daily Operating Conditions Order, or Form W designating the working limits will indicate the Mobile Unit number of the Employee governing entrance to the working limits. Trains and track cars approaching the working limits will contact the designated Mobile Unit not later than when passing the Approach Sign or Diverging Approach Sign, providing their symbol number, direction of travel and track.

Example: RTDC Train No 4042 to Mobile Unit 402, approaching your working limits stop sign operating southward on Track 2.

20-A(4) The Dispatcher must not allow a train or track car to enter working limits at a hand operated switch or interlocking located between Working Limits Stop Signs, or allow a track car to be placed on the track between Working Limits Stop Signs, without first obtaining permission of the Employee governing entrance to the working limits. At interlockings, blocking devices must be applied to prevent trains and track cars from diverging into working limits, but may be removed when permission is received from the Employee in Charge. The blocking device(s) must be restored immediately after the Employee in Charge reports the train or track has entered the working limits.

The Dispatcher must also inform the Operator or track car driver that they will be entering working limits. The Operator or track car driver must contact the Mobile Unit in charge of the working limits for permission to proceed through working limits, and must not accept a proceed interlocking signal or other authorization from the Dispatcher to enter working limits until permission from the Mobile Unit is received.

20-A(5) The Employee governing entrance to the working limits must determine that all persons and equipment are clear of the affected track prior to giving trains or track cars permission to pass the Working Limits Stop Sign. When possible, the track should be cleared and permission granted so that trains incur minimum delay.

20-A(6) When the Employee governing entrance to the working limits gives permission to pass the Working Limits Stop Sign or to enter the working limits at an intermediate location, he must designate the allowable speed through the working limits.

20-A(7) Trains must immediately begin reduction to 40 MPH on passing the Approach Sign or Diverging Approach Sign and must approach Working Limits Stop Signs prepared to stop except in the following cases:

a. Trains passing Diverging Approach Signs that are able to determine, by visual observation of the switch points or by communication with the Dispatcher or by the PTC route map, that they are not diverging to the affected track may proceed at MAS.

b. Trains given permission to pass the Working Limits Stop Sign at a speed of 40 MPH or higher may immediately proceed at the designated speed or the maximum speed permitted by signal indication whichever is more restrictive.

c. When trains with operative PTC enter a work zone, the Operator must comply with the speed verbally designated by the Mobile Unit unless the maximum speed

permitted by PTC is more restrictive in which case the more restrictive speed will apply.

20-A(8) Trains will not pass the Working Limits Stop Sign unless authorization to proceed is received from the Employee governing entrance to the working limits. Authorization must be obtained in the following manner:

a. For trains with PTC engaged (Active):

The Operator will contact the Mobile Unit designated in the CCROC or Form W per **[Rule 20-A(3)]**

On receiving verbal permission, the Operator will acknowledge receipt of verbal permission by pressing the Received Key on the CDU in response to the Approaching Work Zone warning;

When the warning prompt is replaced by a Confirmation warning prompt, the Operator will press the Confirmed Key displayed on the CDU.

If the train proceeds and then stops for any reason after receiving authorization to enter the work zone or after entering the work zone, PTC will again require both Authorization and Confirmation to continue movement. If this occurs, the Operator may respond to the PTC Authorization and Confirmation prompts without further communication with the Mobile Unit.

b. For trains with PTC disengaged or otherwise inoperative:

The Operator will contact the Mobile Unit designated in the CCROC or Form W per **[Rule 20-A(3)]**;

On receiving verbal permission to pass the Working Limits Stop Sign, the Operator will confirm receipt of verbal permission, including the designated speed from the Employee governing entrance to the working limits;

Verbal permission will be given in the following format:

"RTDC Train #_____has permission to pass the Working Limits Stop Sign on Track#____at MP___in a___ward direction. Proceed at ____MPH through working limits."

The Operator will confirm that permission has been received by repeating the information provided by the Mobile Unit using the same format.

20-A(9) If no Working Limits Stop Sign is visible at the designated location or if a train is stopped at the Working Limits Stop Sign and has not yet received verbal permission, the Operator will attempt to contact the designated Mobile Unit. If the Mobile Unit cannot be contacted, the train will not enter the working limits, and will contact the Dispatcher for instructions. The Dispatcher will attempt to contact the Mobile Unit or the RWIC by all reasonable means. If the Mobile Unit or RWIC still cannot be contacted, the Dispatcher may authorize the train to pass the Working Limits Stop Sign at Restricted Speed.

20-A(10) If the Working Limits Resume Speed Sign is missing, the train may resume MAS after passing the next whole milepost following the location shown in the CCROC or Form W as the end of the working limits.

20-A(11) Prior to making a reverse movement within working limits, both the Dispatcher and the RWIC must be contacted for permission before movement commences.

20-B ESTABLISHING WORKING LIMITS ON CONTROLLED TRACK USING FOUL TIME

Foul Time is a method of establishing working limits on controlled track in which the Dispatcher gives permission to foul a specific segment of track during a specific time period. The Dispatcher will apply approved blocking devices and set governing signals to the affected track to Stop to protect the track being fouled; however, the track is not removed from service. The Employee requesting Foul Time must complete the Foul Time Log and repeat the instructions back to the Dispatcher.

20-B(1) Before foul time is authorized, the Dispatcher must determine that no trains or other on track equipment are approaching the location to be protected from the nearest interlocking or block limit on the affected track, and that no trains or other on track equipment have been authorized to use the affected track.

The Dispatcher must set the requested signals to Stop and apply blocking devices to protect the limits to be granted.

20-B(2) When the Dispatcher instructs the Employee requesting foul time to report a train or other on track equipment clear of their location prior to authorizing foul time, the EMU number shall be used for identification.

20-B(3) In requesting foul time, the Employee will provide the following information to the Dispatcher:

a. track designation,
b. specific location where the work is being performed,
c. a description of the work being performed, and
d. anticipated time frame required.

The Employee requesting foul time must complete the Foul Time Log and repeat this authority to the Dispatcher before the foul time becomes effective.

20-B(4) In granting foul time, the Dispatcher will provide the requesting Employee the following information:

a. track designation,
b. specific location of protection being granted,
c. the time limits for which the protection will be granted, and
d. the time blocking devices were applied and the switches and signals blocked.

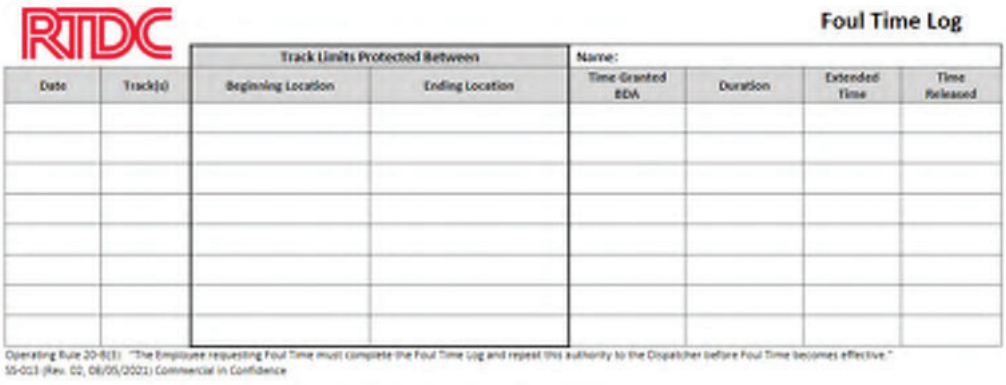
The Employee requesting foul time must complete the Foul Time Log and repeat this authority to the Dispatcher before the foul time becomes effective.

20-B(5) The Employee requesting foul time must report clear by the end of the time limit authorized. If unable to clear by the designated time, the Dispatcher must be notified as soon as possible.

Once foul time is granted by the Dispatcher, it must be maintained until the protected Employee reports clear of the track.

Once the Employee releases the foul time, the Employee must cross out the expired foul time entry on the Foul Time Log.

20-B(6) The Dispatcher shall not permit the movement of trains or other on-track equipment into the working limits protected by foul time until the Employee who obtained the foul time has reported clear of the track.



RTDC

Foul Time Log

Track Limits Protected Between			Name:			
Date	Track(s)	Beginning Location	Ending Location	Time Granted BDA	Duration	Extended Time	Time Released

Operating Rule 20-B(1): "The Employee requesting Foul Time must complete the Foul Time Log and repeat this authority to the Dispatcher before Foul Time becomes effective."
55-013 (Rev. 02, 08/05/2021) Commercial in Confidence

20-C ESTABLISHING WORKING LIMITS ON NON-CONTROLLED TRACK USING INACCESSIBLE TRACK

To establish working limits on non-controlled track, all access points to that track must be protected in one of the following ways:

A switch or derail lined to prevent access to the working limits, secured with an effective securing device and properly tagged. The securing device and tag may be removed only at the direction of the Employee in Charge of the working limits;

A remotely controlled switch aligned to prevent access to the working limits and blocked by a blocking device applied by the person who controls the switch. BDA must be confirmed by the Employee applying the device before the protection is considered in effect, and the blocking device may not be removed until authorized by the Employee requesting protection;

The Roadway Worker in Charge of the working limits on the inaccessible track establishes working limits on a controlled track that connects directly with the inaccessible track;

A disconnected rail;

A flagman assigned to protect the switch providing access to the working limits or to hold trains and track cars clear of the working limits.

Movements within working limits may be made only with permission of the Roadway Worker in Charge.

20-D *THIS SECTION RESERVED*

RULE 21 - MOVEMENT OF TRACK CARS

21-A Movement of track cars is governed by all rules applicable to trains, unless otherwise indicated, and all applicable Roadway Worker regulations.

21-B Track car drivers and other Engineering Department Employees designated by the Chief Engineer are responsible for the movement of track cars.

21-C Employees who receive a Mandatory Directive for track car movements must be qualified on the Operating Rules, Employee Timetable, and the physical characteristics of the territory over which they operate.

Operators of track car who are not qualified must operate under the direct supervision of a Qualified Employee.

21-D Only authorized individuals may ride in track cars.

21-E Prior to operating any track car, the foreman or track car driver must perform a visual inspection to determine that the track car is in safe condition. A brake test must be conducted immediately after starting movement. Any condition that may affect the safe operation of the track car must be corrected before proceeding.

21-F Track cars must not be placed on any track unless authorized by the Employee who controls movement on that track.

21-G Form A will be the authority for movement of track cars in CTC territory. The addressee may permit a track car to enter or clear the limits specified on the Form A en route, provided that the Dispatcher authorizes it, and only if the Employee addressed personally observes the track car entering or clearing the track.

21-G(1) When a track car is to operate over more than one main track, a separate form A must be issued for each track to be used.

21-G(2) When an interlocking is included within the limits shown on the Form A, interlocking rules and **[Rule 21-G]** will apply within all interlocking limits.

21-G(3) Prior to issuing Form A or Form O authority, the Dispatcher must put signals in Stop position and apply approved blocking devices to all switch and signal controls leading to the affected route.

21-G(4) A movement consisting of multiple track cars operating under the same Form A authority is permitted only when the track car group is under the direct supervision of the Employee addressed on the Form A.

21-H Where interlocking rules are in effect, verbal permission of the Dispatcher is required for movement of track cars.

21-H(1) Before granting permission for movement, the Dispatcher must ensure that:

a. when the Employee requesting a Form A is instructed to report a train or other on track equipment clear of their location prior to issuing the Form A, the EMU number shall be used for identification;
b. signals governing opposing and following movements are in the Stop position; and
c. approved blocking devices are applied to all switch and signal controls leading to the affected tracks.

21-H(2) Proceed interlocking signals will not be displayed for track car movements. Verbal permission will be given by the Dispatcher in accordance with **[Rule 11-F]**.

21-H(3) Track cars must report to the Dispatcher when the movement is clear of the interlocking, in the format:

TC (Unit identification) is (direction) of CP (location) on No ___ Track.

Example: TC 2345 is North of CP Pena on No. 1 Track.

21-I Permission of the Dispatcher must be given for a track car to proceed one car length beyond interlocking limits into CTC territory for the purpose of making a reverse movement.

21-J A train must not be permitted to follow a track car into CTC territory. In an emergency, and only after the authorized time for the track car movement shown on the Mandatory Directive has expired, a train may be permitted to follow a track car. Movement of the following train will be at Restricted Speed. The train must be issued a Form B in the following format:

Proceed at Restricted Speed on ___ TRK from ___ to ___.

TC ___ is ahead in the block.

21-K The track car driver must report to the Dispatcher when the movement of the track car is unusually delayed.

21-L On arrival at the destination, or prior to the expiration of the authorized time, or when so instructed by the Dispatcher, the track car must be removed from the main track, and the track car driver must report clear to the Dispatcher.

If the track car is required to clear the main track, the Dispatcher will cancel the Mandatory Directive. A new Mandatory Directive must be issued for further movement.

21-M Track cars must display a white light to the front and a red light to the rear by night, when passing through tunnels, or at any time that visibility is limited. Track cars so equipped must display headlights on high beam at all times while moving on any track.

21-N A sufficient number of hand brakes must be applied to on track equipment left standing. When necessary wheels must be choked to prevent movement.

21-O MAXIMUM AUTHORIZED SPEEDS FOR TRACK CARS

Rule No	Type of Track Car	Will operate at MAS not exceeding ____(MPH)	
		Forward	Backward
21-O(1)	Rail Detector Car, Geometry Car, and Catenary Maintenance Vehicle	50	50
21-O(2)	Highway Rail Cars – Passenger type	50	25
21-O(3)	Highway Rail Cars – Truck type	30	25
21-O(4)	All self-propelled machinery of a rotating type	25	10
21-O(5)	Aerial towers. Truck-mounted hoisting equipment, other equipment with rigid highway-rail mounting	20	20
21-O(6)	All other Track Cars not specified above	25	10

21-P SPECIAL SPEED RESTRICTIONS FOR TRACK CARS

21-P(1) Track cars will not exceed 5 MPH:

a. through crossovers or turnouts, or

b. when passing standing trains.

21-P(2) Track cars will come to a safe stop when being passed by a train on an adjacent track.

21-P(3) Track cars will STOP before proceeding over highway grade crossings, and will yield right-of-way to highway traffic. Maximum speed for track cars over highway grade crossings is 5 MPH.

21-P(4) When operating under a Form A or O Mandatory Directive, a track car in a multiple track car movement, other than the lead unit, must maintain a minimum 300-foot separation from the track car ahead except when approaching a highway crossing at grade when the required separation must be reduced to 50 feet prior to traveling across the crossing. Under any conditions, track cars must regulate their speed to permit stopping short of the track car ahead.

21-Q CRANES AND OTHER EQUIPMENT WITH BOOMS

21-Q(1) When cranes are moved not under their own power, the boom must be secured in the trailing position.

21-Q(2) When being moved, any part of pivoting equipment that may foul adjacent tracks must be in the secured position. Locking pins and hold downs must be in the secured position.

21-Q(3) When pivoting equipment is moved from one location to another, boom anchors and cables must be in place and locking devices fastened.

21-Q(4) When pivoting equipment is moved during the progress of work on or near main tracks, stops must be used to prevent fouling adjacent tracks. The equipment operator must remain in the cab.

21-Q(5) When train movements are being made on adjacent tracks, booms must be securely anchored with center pin in place and the equipment operator must be in the cab.

RTDC

Employee Timetable No. 5

49 CFR 217.7

Revision 9

Effective Date: July 01, 2023

Prepared by

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EMPLOYEE TIMETABLE

The **Employee Timetable** contains four parts, plus Track Charts, which are provided for information only.

1. LINE SPECIAL INSTRUCTIONS

Line Special Instructions contain Line-specific information and rules. Each section has a prefix identifying the Line and is numbered as shown in the Table of Contents.

2. SYSTEM SPECIAL INSTRUCTIONS

System Special Instructions are labeled with the prefix "SI" followed by the letter or number to which the special instruction references; for example, "SI A" refers to rule A, "SI 10" refers to rule 10, etc. Specific rule references are provided following the special instruction title in the Table of Contents, including three appendices.

3. EMERGENCY INSTRUCTIONS

Emergency Special Instructions carry the prefix "EM" followed by the number to which the special instruction references. The pages are numbered as noted in the Table of Contents.

4. EMPLOYEE OPERATING SCHEDULE

Employee Operating Schedules, issued separately by Driver Time Card, contain the operating schedules for trains.

DUS SPECIAL INSTRUCTIONS

DUS 1 STATIONS

DUS CORRIDOR LINE

The direction from Union Station to CP Bright is Northward.

Track 1 through 8 are numbered East to West.

Station (Stations are listed south to north. Passenger Stations are shown in **BOLDFACE** type.)		**NOTE**	**MP**	**Dispatching District**	**Radio Channel**	**Tracks (East to West) and Method of Operation (i)**
						Track 1 through 8
Union Station	INT	a, b, c, d, e, f, g, h, j, k	0.0	DUS	2	
CP Bright	INT		1.54	DUS	2	CTC/ATC
CP Argo	INT		1.50	DUS	2	CTC/ATC

DUS 1-A NOTES FOR DUS CORRIDOR STATIONS

a. DUS Dispatcher controls train movements within Union Station on tracks 1, 2, 3, 4, 5, 6, 7, and 8.

b. Radio Channel 2 (RTDCRDUS) is in service at Union Station tracks 1, 2, 3, 4, 5, 6, 7, and 8. Change radio channel signs erected at CP Bright (MP 1.54), CP Argo (MP 1.50) and CP Platte (MP 1.17).

c. Amtrak operates on BNSF radio channel 96-96.

d. CTC and ATC method of operation in effect within Union Station interlocking tracks 1, 2, 3, 6, 7, and 8.

e. CTC method of operation in effect within Union Station interlocking tracks 4 and 5. Amtrak trains are permitted to operate without cab signals and PTC arriving and departing tracks 4 and 5 between the 8S signal and 8N and 10N signals, and between the 38S and 34S signals and 8N and 10N signals. Amtrak trains must operate at Restricted Speed.

f. BEGIN CTC and END CTC signs **[Rules 9-E (14)** and **9-E (15)]** are installed and in-service:

   1) Entering and exiting BNSF territory at MP 0.41 at the 8S signal. The BEGIN CTC sign exiting BNSF territory at MP 0.41 at the 8S signal is installed to the left side and adjacent to the track at this location.

   2) Entering and exiting UP territory at MP 0.50 at the 34S signal and the Amtrak runaround tracks MP 0.51 at the 38S signal. The BEGIN CTC sign exiting UP territory at MP 0.50 at the 34S signal and exiting the Amtrak runaround track at MP 0.51 at the 38S signal are installed to the left side and adjacent to the track at these locations.

g. Amtrak trains backing into Union Station tracks 4 and 5 must stop a distance of 250 feet from the end of track (bumping post). After making the preliminary stop, movement must not exceed 2 MPH until the final station stop.

h. Platform tracks at Union Station provide for level-boarding (high-level) of RTDC trains, except tracks 4 and 5. Tracks 4 and 5 are low-level platforms for other than RTDC train service.

i. PTC rules in effect and in-service as a supplement to CTC method of operation on all tracks within DUS.

j. Tracks designated as other than main tracks, with operation under Rule 7-T, are the Amtrak Lead and Amtrak Runaround tracks north of the 38S signal. Permission and signal indication to enter/exit these tracks to/from Union Station must be obtained from the DUS Dispatcher.

k. Headlights must be dimmed at DUS between milepost 0.00 and 0.47 in both directions.

DUS 2 MAXIMUM AUTHORIZED SPEED – MAIN TRACKS DUS CORRIDOR LINE

TRACK 1				
LOCATION (a)	**Between MP and MP**		**MAS**	**Other Tracks MAS**
Union Station	0.00	0.48	15	
North Coors Field to Under 22nd Ave.	0.48	0.56	20	
Under 22nd Ave.	0.56	0.74	40	
South CP Bright	0.74	1.54	60	

TRACK 2				
LOCATION (a)	**Between MP and MP**		**MAS**	**Other Tracks MAS**
Union Station	0.00	0.48	15	
N Line Lead	0.44	0.54	15	
North Coors Field to Under 22nd Ave.	0.48	0.56	20	
Under 22nd Ave.	0.56	0.74	40	
South CP Bright	0.74	1.54	60	

TRACK 3				
LOCATION (a)	**Between MP and MP**		**MAS**	**Other Tracks MAS**
Union Station (b)	0.09	0.22	15	

TRACK 4				
LOCATION (a)	**Between MP and MP**		**MAS**	**Other Tracks MAS**
Union Station	0.00	0.42	Restr. Speed	

TRACK 5				
LOCATION (a)	**Between MP and MP**		**MAS**	**Other Tracks MAS**
Union Station	0.00	0.31	Restr. Speed	

TRACK 6				
LOCATION (a)	**Between MP and MP**		**MAS**	**Other Tracks MAS**
Union Station	0.09	0.22	15	

TRACK 7				
LOCATION (a)	**Between MP and MP**		**MAS**	**Other Tracks MAS**
Union Station	0.00	0.48	15	
28S Signal CP DUS	0.48	0.58	20	
CP Argo South	0.58	1.42	30	
CP Argo Pocket Track	1.39	1.48		15
2S CP Argo (c)	1.42	1.50	50	

TRACK 8				
LOCATION (a)	**Between MP and MP**		**MAS**	**Other Tracks MAS**
Union Station	0.06	0.48	10	
32S Signal CP DUS	0.48	0.53	10	
	0.53	0.60	20	
CP Argo Pocket Track	1.39	1.48		15
4S CP Argo(d)	0.60	1.50	30	

NOTES TO MAXIMUM AUTHORIZED SPEED TABLES:

a. The locations shown in the left column for speed restrictions are for general reference only. Milepost locations will govern. Permanent Speed Signs erected in accordance with **[Rule 9-C (5)]**.

b. Trains occupying the platform on track 3 at Union Station must operate at 5 MPH. Operator must call the DUS Dispatcher for permission to cut-out PTC to move closer to the bumping post to allow enough space for 2 Married Pairs.

c. Track 7 DUS transitions to Track 1 NWES at 2S CP Argo.

d. Track 8 DUS transitions to Track 2 NWES at 4S CP Argo.

e. For the purpose of track identification while requesting Mandatory Directives, Foul Time or receiving authorization to pass a Stop Signal, the following will apply.

    1. Track 1 NWES will begin at the 28S, MP 0.48, CP DUS in a northward direction.
    2. Track 2 NWES will begin at the 32S, MP 0.48, CP DUS in a northward direction.

DUS 2-A SPECIAL SPEED INSTRUCTIONS

(None)

DUS 2-B SPEED RESTRICTIONS AT TURNOUTS AND CROSSOVERS

The maximum authorized speed through turnouts and crossovers at Union Station are noted in the following table:

Location	Type (size) of Turnout In-Service at Location	Maximum Authorized Speed Passenger Trains	Maximum Authorized Speed Freight Trains
UNION STATION	#9	15	N/A
CP BRIGHT	#20	45	N/A
CP ARGO	#9	15	N/A

DUS 3 EQUIPMENT RESTRICTIONS EAST CORRIDOR LINE

DUS 3-A EQUIPMENT CLEARANCES

Maximum Height (Vertical Clearance) Permitted:

LOCATION	Maximum Height (measured from top of rail)
Union Station - Tracks 4 and 5	16 feet, 2 inches
Union Station - Tracks 1, 2, 3, 6, 7, and 8	14 feet, 5 inches

Maximum Width (Horizontal Clearance) Permitted:

LOCATION	Maximum Width
Union Station Tracks 1 ,2, 3, 4, 5, 6, 7, and 8	10 feet, 6 inches

NOTES TO EQUIPMENT CLEARANCES:

The Maximum Width (Horizontal Clearance) dimensions are based on the length of vehicle of 85 feet, 0 inches, with truck centers of 59 feet, 6 inches.

Equipment exceeding Maximum Height or Maximum Width dimensions are prohibited and not permitted on RTDC territory without the inspection and written authorization of the DTO Chief Engineer.

DUS 3-B MAXIMUM WEIGHT – GROSS WEIGHT ON RAIL (GWR)

Location	Maximum Weight (Gross Weight on Rail – GWR)
1. Union Station - Tracks 1, 2, 3, 6, 7, and 8	178,000 lbs. (89 tons)
2. Union Station - Tracks 4 and 5 3. MP 0.00 to MP 0.42 at the 38S signal north to the Amtrak Storage/Runaround Tracks:	
Equipment 48 feet, 8 inches to 85 feet, 0 inches	286,000 lbs. (143 tons)
Equipment 44 feet, 11.5 inches or longer but less than 48 feet, 8 inches	268,000 lbs. (134 tons)
Equipment 41 feet, 10.5 inches or longer but less than 44 feet, 11.5 inches	246,000 lbs. (123 tons)
Equipment 38 feet, 0 inches or longer but less than 41 feet, 10.5 inches	224,000 lbs. (112 tons)
Equipment 35 feet, 0 inches or longer but less than 38 feet, 0 inches	206,000 lbs. (103 tons)
Equipment less than 35 feet, 0 inches	Inspection required per DUS 3-C instruction

NOTES TO MAXIMUM WEIGHT - GROSS WEIGHT ON RAIL (GWR) TABLE:

The weights (GWR) for lines 1 and 2 in DUS 3-B table are based on the length of vehicle of 85 feet, 0 inches, with truck centers of 59 feet, 6 inches.

Equipment exceeding the weights (GWR) or having minimum length/truck centers less than the limits shown in DUS 3-B are prohibited and not permitted on RTDC territory without the inspection and written authorization of the DTO Chief Engineer.

DUS 3-C INSPECTION REQUIREMENTS

Inspection and written authorization of the DTO Chief Engineer is mandatory for the operation of all equipment, other than previously inspected and approved RTDC equipment.

DUS 4 ELECTRICAL OPERATION DUS CORRIDOR LINE

DUS 4-A TRACKS EQUIPPED WITH ENERGIZED CATENARY FOR AC OPERATION

All tracks within the DUS territory equipped and energized with 25 kV (25,000 volts) overhead catenary except tracks 4 and 5.

DUS 4-B PHASE BREAKS [RULE 9-E (9) / RULE 9-E (10)]

In the application of **[Rule 9-E (9)]** and **[Rule 9-E (10)]** at the following locations Begin Phase Break and End Phase Break signs are in-service:

LOCATION	CATENARY POLES		TRACKS	TYPE	SIGNS IN SERVICE
DUS PB Northbound	0.73	0.88	1, 2	Phase Break	
DUS PB Southbound	0.85	0.76	1, 2	Phase Break	

DUS 5 HIGHWAY GRADE/PEDESTRIAN CROSSINGS DUS CORRIDOR LINE

									Special Action			Apparatus Provided		
Crossing Name	Special Notes	Type of Crossing	Location	RTDC MP	UPRR MP	RTDC Operating Limits MP	Type of Warning Device	Special Whistle Instruction	Action	Track (s)	Direction	Device	Tracks (s)	Pre-emption
BNSF Fuel Yard Crossing		P	City & County of Denver	1.09		0.57 – 1.73	FG	W/R	Yes	Both	Both			N/A

Special Action (Column 10, 11, 12):

1. When approaching the BNSF Fuel Yard Crossing, all trains will stop within 50 feet of the crossing. After it has been confirmed the crossing is clear, train may immediately continue over the crossing on Cab Signal Indication.

DUS 6 LOCATION OF BULLETIN BOARDS, STANDARD CLOCKS & EMPLOYEE REGISTER EAST CORRIDOR LINE

Bulletin Boards, Standard Clocks and Employee Register are located in:

a. Commuter Rail Maintenance Facility (CRMF).

DUS 7 SIGNAL ASPECTS NOT COVERED BY RULE 9 - DUS CORRIDOR LINE

DUS 7-A SIGNALS OBSTRUCTED FROM VIEW – DUS CORRRIDOR LINE

Signals that may be obstructed from view will have an advanced warning sign that indicates, “Signal in 1000 feet”. Signal obstructed from view at DUS Corridor Line is:

a. Track 8 only, MP 0.66 for 32S CP DUS.

DUS 8 YARD AND YARD TRACKS

(None)

DUS 9 OTHER INSTRUCTIONS DUS CORRIDOR LINE

DUS 9-A DUAL CONTROL SWITCHES [RULE 17-B(2)]

Dual control switches are in service at:

a. Union Station

b. CP Bright

c. CP Argo

DUS 9-B CONTROLLED MASTER LOCATION INDICATORS [RULE 9-E(7) AND RULE 9-E(8)]

(None)

DUS 9-C STATION PLATFORM LENGTHS AND CAPACITY

Union Station			
Platform Track	**Platform Length (FT)**	**Married Pair* Capacity**	**No. of Cars (85 feet in length)**
1	908	5	10
2	1008	2	4
3	538	2	4
4	1050		12
5	1050		12
6	538	2	4
7	1008	3	6
8	608	3	6

* A married pair is two EMUs, measuring 170 feet in length. An EMU is a single car, measuring 85 feet in length.

DUS 9-D WHEEL IMPACT LOAD DETECTOR (WILD)

A *Wheel Impact Load Detector (WILD)* is located on DUS Track 7 (MP 1.11).

EAST CORRIDOR LINE SPECIAL INSTRUCTIONS

EAST 1 STATIONS

EAST CORRIDOR LINE

The direction from CP Bright to Denver Airport is Northward.

Track 2 and track 1 are numbered West to East.

Station (Stations are listed south to north. Passenger Stations are shown in **BOLDFACE** type.)		NOTE	MP	Dispatching District	Radio Channel	Tracks (West to East) and Method of Operation (b)		
						Track 2	Track 1	Other
38th & Blake			**1.86**	East	1	CTC/ATC	CTC/ATC	
40th & Colorado			**3.67**					
CP Quebec	INT		5.74					
Central Park			**6.42**					
CP Sand Creek	INT		6.89					
Peoria			**8.62**					
CP Sable	INT	a	10.49					
CP Chambers	INT	a	11.02					
						No Track 2		
CP 40th Avenue	INT		12.71	East	1	CTC/ATC		
40th Ave. & Airport Blvd.			**12.78**					
Pena Blvd.			**15.21**					
CP 61st Avenue	INT		15.58					
						No Track 2		
CP Pena	INT		19.12	East	1	CTC/ATC		
CP 78th Avenue	INT		21.85					
CP DIA	INT		23.01					
Denver Airport			**23.24**					
End of Track			23.32					

EAST 1-A NOTES FOR EAST CORRIDOR LINE STATIONS

a. CTC and ATC method of operation in effect at Sable Siding between the 6S and 6N signals.

b. PTC rules in effect and in-service as a supplement to CTC method of operation on all East Corridor Line tracks between MP 1.54 and MP 23.32 and Sable Siding between the 6S and 6N signals.

EAST 2 MAXIMUM AUTHORIZED SPEED – MAIN TRACKS
EAST CORRIDOR LINE

TRACK 1				
LOCATION (a)	Between MP	and MP	MAS	Other Tracks MAS
CP Bright (North)	1.54	1.69	60	
Blake Overpass	1.69	2.03	40	
Blake St. and 40th Ave.	2.03	2.19	30	
40th Ave to Columbine S-Curve	2.19	2.75	40	
Columbine S-Curve	2.75	3.02	20	
Clayton St. to Steele St.	3.02	3.28	40	
	3.28	3.66	60	
Colorado Station to Ulster St.	3.66	6.31	65	
CP Sable Controlled Siding (b)	10.55	10.87		15
Ulster St. to South Approach I-70	6.31	11.42	79	
South Approach I-70 Bridge	11.42	11.65	60	
South I-70 Bridge	11.65	11.94	40	
North I-70 Bridge	11.94	12.69	60	
North I-70 Bridge to 64th Ave	12.69	16.17	79	
64th Ave. to Tower Rd.	16.17	18.37	70	
E-470	18.37	19.12	60	
CP Pena	19.12	19.26	65	
Pena Blvd.	19.26	19.50	70	
Pena Blvd./Tibet Rd.	19.50	20.05	75	
	20.05	22.12	79	
Tibet Road	22.12	22.20	60	
CP 78th to Pena Blvd./Newcastle Rd.	22.20	22.44	55	
Pena Blvd./Newcastle Rd.	22.44	23.18	35	
Denver Airport Station	23.18	23.32	15	

TRACK 2				
LOCATION (a)	Between MP	and MP	MAS	Other Tracks MAS
South CP Bright	1.54	1.69	60	
Blake Overpass	1.69	2.03	40	
Blake St. and 40th Ave.	2.03	2.19	30	
40th Ave. to Columbine S-Curve	2.19	2.75	40	
Columbine S-Curve	2.75	3.05	20	
Clayton St. to Steele St.	3.05	3.28	40	
	3.28	3.66	60	
Colorado Station to Ulster St.	3.66	6.30	65	
CP Sable Controlled Siding (b)	10.55	10.87		15
Ulster to CP Chambers	6.30	10.97	79	
CP Chambers to CP 40th Ave	10.97	12.76	*No track 2*	
North of CP 40th to CP 61st Ave	12.76	15.53	79	
CP 61st Ave to CP Pena	15.53	19.12	*No track 2*	
CP Pena	19.12	19.26	65	
Pena Blvd.	19.26	19.50	70	
Pena Blvd./Tibet Rd.	19.50	20.05	75	
	20.05	22.12	79	
Tibet Road	22.12	22.20	60	
CP 78th to Pena Blvd./Newcastle Rd.	22.20	22.44	55	
Pena Blvd./Newcastle Rd.	22.44	23.18	35	
Denver Airport Station	23.18	23.32	15	

NOTE TO MAXIMUM AUTHORIZED SPEED TABLES:

a. The locations shown in the left column for speed restrictions are for general reference only. Milepost locations will govern. Permanent Speed Signs erected in accordance with **[Rule 9-C (5)]**.

b. A 200 ft. section of non-controlled/non-electrified track (Tail Track) is in service and extends southward from the 3B switch at Sable Siding.

EAST 2-A SPECIAL SPEED INSTRUCTIONS

(None)

EAST 2-B SPEED RESTRICTIONS AT TURNOUTS AND CROSSOVERS

The maximum authorized speed through turnouts and crossovers at locations on the East Corridor line are noted in the table below:

Location	Type (size) of Turnout In-Service at Location	Maximum Authorized Speed Passenger Trains	Maximum Authorized Speed Freight Trains
CP QUEBEC	#20	45	N/A
CP SAND CREEK	#20	45	N/A
CP SABLE - *Mainline to Mainline*	#20	45	N/A
CP SABLE - *Mainline to Siding*	#9	15	N/A
CP CHAMBER	#20	45	N/A
CP 40TH AVENUE	#20	45	N/A
CP 61st AVENUE	#20	45	N/A
CP PENA	#20	45	N/A
CP 78th AVENUE	#20	45	N/A
CP DIA	#9	15	N/A

EAST 3 EQUIPMENT RESTRICTIONS EAST CORRIDOR LINE

EAST 3-A EQUIPMENT CLEARANCES

Maximum Height (Vertical Clearance) Permitted:

LOCATION	Maximum Height (measured from top of rail)
All tracks from MP 1.54 (CP Bright North) to MP 23.32 (Denver Airport Station)	14 feet, 5 inches

Maximum Width (Horizontal Clearance) Permitted:

LOCATION	Maximum Width
All tracks from MP 1.54 (CP Bright North) to MP 23.32 (Denver Airport Station)	10 feet, 6 inches

NOTE TO EQUIPMENT CLEARANCES:

The Maximum Width (Horizontal Clearance) dimensions are based on the length of vehicle of 85 feet, 0 inches, with truck centers of 59 feet, 6 inches.

Equipment exceeding Maximum Height or Maximum Width dimensions are prohibited and not permitted on RTDC territory without the inspection and written authorization of the DTO Chief Engineer.

EAST 3-B MAXIMUM WEIGHT – GROSS WEIGHT ON RAIL (GWR)

LOCATION	Maximum Weight (Gross Weight on Rail – GWR)
All tracks from MP 1.54 (CP Bright North) to MP 23.32 (Denver Airport Station)	178,000 lbs. (89 tons)

NOTE TO MAXIMUM WEIGHT - GROSS WEIGHT ON RAIL (GWR) TABLE:

The weight (GWR) in EAST 3-B table is based on the length of vehicle of 85 feet, 0 inches, with truck centers of 59 feet, 6 inches.

Equipment exceeding the weights (GWR) or having minimum length/truck centers less than the limits shown in East 3-B are prohibited and not permitted on RTDC territory without the inspection and written authorization of the DTO Chief Engineer.

EAST 3-C INSPECTION REQUIREMENTS

Inspection and written authorization of the DTO Chief Engineer is mandatory for the operation of all equipment, other than previously inspected and approved RTDC equipment.

EAST 4 ELECTRICAL OPERATION EAST CORRIDOR LINE

EAST 4-A TRACKS EQUIPPED WITH ENERGIZED CATENARY FOR AC OPERATION

All Main Tracks between CP Bright (MP 1.54) and Denver Airport (MP 23.32) are equipped and energized with 25 kV (25,000 volts) overhead catenary

Other Tracks: CP Sable Siding equipped and energized with 25 kV (25,000 volts) overhead catenary except for the tail-track for a distance of 200 feet south of Sable Siding 6N signal and 3B switch.

EAST 4-B PHASE BREAKS [RULE 9-E (9) / RULE 9-E (10)]

In the application of **[Rule 9-E (9)]** and **[Rule 9-E (10)]** at the following locations Begin Phase Break and End Phase Break signs are in-service:

Location	Catenary Poles		Tracks	Type	Signs in Service
Sandown Northbound	5.97	6.06	1, 2	Phase Break	
Sandown Southbound	6.03	5.95	1, 2	Phase Break	

EAST 5 HIGHWAY GRADE/PEDESTRIAN CROSSINGS
EAST CORRIDOR LINE

									Special Action			Apparatus Provided		
Crossing Name	Special Notes	Type of Crossing	Location	RTDC MP	UPRR MP	RTDC Operating Limits MP	Type of Warning Device	Special Whistle Instruction	ACTION	TRACK (S)	DIRECTION	DEVICE	TRACKS (S)	PRE-EMPTION
S. 38th & Blake Station		**PD**	City of Denver	1.86		1.43 - 1.93	FB							N/A
N. 38th & Blake Station		**PD**	City of Denver	1.93		1.43 – 1.93	FB							N/A
York St.			City of Denver	2.72		1.69 – 3.37	FG	W/R						Yes
Josephine St.			City of Denver	2.73		1.69 – 3.37	FG	W/R						Yes
Clayton St.	**UP**		City of Denver	3.09	637.33	2.80 – 3.83	FG	W/R						N/A
Steele St.	**UP**		City of Denver	3.32	637.10	2.88 – 4.07	FG	W/R						N/A
S. 40th & Colorado Station		**PD**	City of Denver	3.67		3.21 – 4.25	FB							N/A
N. 40th & Colorado Station		**PD**	City of Denver	3.76		3.21 – 4.25	FB							N/A
Dahlia St.	**UP**		City of Denver	4.29	636.13	3.02 – 5.86	FG	W/R						Yes
Holly St.	**UP**		City of Denver	4.79	635.63	3.47 – 6.29	FG	W/R						Yes
Monaco Pkwy.	**UP**		City of Denver	5.31	635.12	3.73 – 6.98	FG	W/R						Yes
SB Quebec Pkwy.	**UP**		City of Denver	5.81	634.62	4.39 – 7.22	FG	W/R						Yes
NB Quebec Pkwy.	**UP**		City of Denver	5.88	634.58	4.28 – 7.47	FG	W/R						N/A
Ulster St.	**UP**		City of Denver	6.32	634.10	4.78 – 7.87	FG	W/R						N/A
S. Central Park Station		**PD**	City of Denver	6.42		5.83 – 7.10	FB							N/A
N. Central Park Station		**PD**	City of Denver	6.49		5.83 – 7.10	FB							N/A
Havana St.	**UP**		City of Denver	7.84	632.60	6.19 – 9.50	FG	W/R						Yes

									Special Action			Apparatus Provided		
Crossing Name	**Special Notes**	**Type of Crossing**	**Location**	**RTDC MP**	**UPRR MP**	**RTDC Operating Limits MP**	**Type of Warning Device**	**Special Whistle Instruction**	**ACTION**	**TRACK (S)**	**DIRECTION**	**DEVICE**	**TRACKS (S)**	**PRE-EMPTION**
S. Peoria Station		**PD**	City of Aurora	8.62		8.02 – 9.30	FB							N/A
N. Peoria Station		**PD**	City of Aurora	8.69		8.02 – 9.30	FB							N/A
Sable Blvd.	**UP**		City of Aurora	10.36	630.03	8.83 – 11.78	FG	W/R						Yes
Chambers Rd.	**UP**		City of Aurora	10.89	629.53	9.17 – 12.24	FG	W						Yes
S. 40th Ave. & Airport Blvd. • Gateway Park Station		**PD**	City of Aurora	12.77		12.77 – 12.85	FB							N/A
N. 40th Ave. & Airport Blvd. • Gateway Park Station		**PD**	City of Aurora	12.85		12.77 – 12.85	FB							N/A
S. Pena Blvd. Station		**PD**	City of Denver	15.38		14.76 – 16.04	FB							N/A
N. Pena Blvd. Station		**PD**	City of Denver	15.46		14.76 – 16.04	FB							N/A

SPECIAL NOTES (Column 2):

Note **UP** = Interoperable Crossing w/Union Pacific; Emergency Notification System contact DTO OCC at 720-460-5955

EAST 6 LOCATION OF BULLETIN BOARDS, STANDARD CLOCKS & EMPLOYEE REGISTER EAST CORRIDOR LINE

Bulletin Boards, Standard Clocks, and Employee Register are located in:

a. Commuter Rail Maintenance Facility (CRMF).

EAST 7 SIGNAL ASPECTS NOT COVERED BY RULE 9 EAST CORRIDOR LINE

EAST 7-A SIGNALS OBSTRUCTED FROM VIEW - EAST CORRIDOR LINE

Signals that may be obstructed from view will have an advanced warning sign that indicates, “Signal in 1000 feet” . Signal obstructed from view at East Corridor Line is:

a. Track 1 only MP 10.02 for 2N CP Sable.

EAST 8 YARD AND YARD TRACKS EAST CORRIDOR LINE

(None)

EAST 9 OTHER INSTRUCTIONS EAST CORRIDOR LINE

EAST 9-A DUAL CONTROL SWITCHES [RULE 17-B(2)]

Dual control switches are in service at:

CP Quebec

CP Sand Creek

CP Sable

CP Chambers

CP 40th Avenue

CP 61st Avenue

CP Pena

CP 78th Avenue

CP DIA

EAST 9-B CONTROLLED MASTER LOCATION INDICATORS [RULE 9-E(7) AND RULE 9-E(8)]

Controlled Master Location Indicators are located at:

MP 3.85 - Northbound

MP 3.66 - Southbound

MP 6.41 - Southbound

MP 8.17 - Southbound

EAST 9-C STATION PLATFORM LENGTHS AND CAPACITY

East Corridor Line						
STATION	**Platform Length TRACK 1**			**Platform Length TRACK 2**		
	Feet	**Married Pair* Capacity**	**No. of Cars (85 feet in length)**	**Feet**	**Married Pair* Capacity**	**No. of Cars (85 feet in length)**
38th & Blake	370	2	4	370	2	4
40th & Colorado	370	2	4	370	2	4
Central Park	370	2	4	370	2	4
Peoria	380	2	4	380	2	4
40th Ave. & Airport Blvd. Gateway Park	370	2	4	370	2	4
Pena Blvd.	430	2	5	430	2	5
Denver Airport	774	4	9	774	4	9

* A married pair is two EMUs, measuring 170 feet in length. An EMU is a single car, measuring 85 feet in length.

NORTHWEST ELECTRIFIED SEGMENT LINE SPECIAL INSTRUCTIONS

NWES 1 STATIONS

NORTHWEST ELECTRIFIED SEGMENT LINE

The direction from CP ARGO to CP South Westminster is Northward.

Tracks 2 and 1 are numbered West to East.

Station (Stations are listed south to north. Passenger Stations are shown in **BOLDFACE** type.)	NOTE	MP	Dispatching District	Radio Channel	Tracks (West to East) and Method of Operation (c)		
					Track 2	Track 1	Other
41ST & Fox (Gold Line)		**1.54**	G	3	CTC/ATC	CTC/ATC	
CP CRMF SOUTH INT		2.32					
Commuter Rail Maintenance Facility	a	2.57					
CP CRMF CENTER INT		2.65					
CP CRMF NORTH INT		2.97					
PECOS JUNCTION		**3.94**					
CP Pecos (Gold Line) INT		4.17					
WESTMINSTER		**5.74**			No Track 2		
CP South Westminster INT	b, d	5.83			CTC/ATC		
End of Track		5.91					

NWES 1-A NOTES FOR NORTHWEST ELECTRIFIED SEGMENT LINE STATIONS

a. Radio Channel 5 (RTDCRMF) in service at CRMF Yard. Gold Line Dispatcher controls all movements at CRMF Yard, except for designated maintenance tracks. See Special Instruction NWES 8.

b. All northward trains at Westminster Station:

1) Trains in passenger/revenue service prior to southbound movement - after making a station stop, Operators must confirm that all customers have safely alighted the train and shall proceed on signal indication northward, clear of CP South Westminster Interlocking signal

2) Trains operating deadhead (non-passenger/non-revenue service) prior to southbound movement – Operators shall proceed on signal indication northward, clear of the CP South Westminster Interlocking signal

c. PTC rules in effect and in-service as a supplement to CTC method of operation on all Northwest Electrified Segment Line tracks between MP 1.50 and MP 5.91.

d. Track 1 and Track 2 in-service north of CP South Westminster to End of Track

NWES 2 MAXIMUM AUTHORIZED SPEED – MAIN TRACKS NORTHWEST ELECTRIFIED SEGMENT LINE

TRACK 1				
LOCATION (a)	**Between MP**	**and MP**	**MAS**	**Other Tracks MAS**
CP Argo North	**1.50**	**1.67**	**50**	
	1.67	**2.08**	**55**	
	2.08	**2.13**	**50**	
	2.13	**2.36**	**30**	
CP CRMF South	**2.36**	**2.84**	**50**	
CRMF Pocket Track	**2.43**	**2.56**		**30**
CRMF Center	**2.84**	**3.08**	**70**	
CRMF North	**3.08**	**3.65**	**60**	
	3.65	**3.81**	**50**	
South CP Pecos	**3.81**	**4.10**	**40**	
Start of Single Track Between Pecos	**4.10**	**4.18**	**30**	
And Westminster Station	**4.18**	**4.35**	**40**	
	4.35	**4.77**	**60**	
	4.77	**4.97**	**40**	
	4.97	**5.70**	**60**	
	5.70	**5.91**	**15**	

TRACK 2				
LOCATION (a)	**Between MP**	**and MP**	**MAS**	**Other Tracks MAS**
CP Argo North	**1.50**	**1.79**	**50**	
	1.79	**2.08**	**55**	
	2.08	**2.13**	**50**	
	2.13	**2.35**	**30**	
CRMF South	**2.35**	**2.78**	**50**	
CRMF Pocket Track	**2.43**	**2.56**		**30**
CP CRMF Center	**2.78**	**3.05**	**70**	
CP CRMF North	**3.05**	**3.77**	**60**	
	3.77	**3.97**	**50**	
CP Pecos	**3.97**	**5.80**	***No Track 2***	
CP South Westminster (Tail Track)	**5.80**	**5.91**	**15**	

NOTE TO MAXIMUM AUTHORIZED SPEED TABLES:

a. The locations shown in the left column for speed restrictions are for general reference only. Milepost locations will govern. Permanent Speed Signs erected in accordance with rule **[Rule 9-C (5)].**

NWES 2-A SPECIAL SPEED INSTRUCTIONS

(None)

NWES 2-B SPEED RESTRICTIONS AT TURNOUTS AND CROSSOVERS

The maximum authorized speed through turnouts and crossovers at locations on the northwest electrified segment line are noted in the table below:

Location	Type (size) of Turnout In-Service at Location	Maximum Authorized Speed Passenger Trains	Maximum Authorized Speed Freight Trains
CP CRMF SOUTH - *Mainline to Mainline*	#15	30	N/A
CP CRMF SOUTH - *Mainline to CRMF Yard*	#9	15	N/A
CP CRMF SOUTH – *Mainline to CRMF Pocket*	#15	30	N/A
CP CRMF CENTER - *Mainline to CRMF Pocket*	#15	30	N/A
CP CRMF CENTER - *Mainline to CRMF Yard*	#9	15	N/A
CP CRMF NORTH – *Mainline to Mainline*	#15	30	N/A
CP CRMF NORTH – *Mainline to CRMF Yard*	#15	30	N/A
CP PECOS	#15	30	N/A
CP SOUTH WESTMINSTER	#9	15	N/A

NWES 3 EQUIPMENT RESTRICTIONS NORTHWEST ELECTRIFIED SEGMENT LINE

NWES 3-A EQUIPMENT CLEARANCES

Maximum Height (Vertical Clearance) Permitted:

LOCATION	Maximum Height (measured from top of rail)
All tracks from MP 1.50 (CP Argo) to MP 5.91 (CP South Westminster)	14 feet, 5 inches

Maximum Width (Horizontal Clearance) Permitted:

LOCATION	Maximum Width
All tracks from MP 1.50 (CP Argo) to MP 5.91 (CP South Westminster)	10 feet, 6 inches

NOTES TO EQUIPMENT CLEARANCES:
The Maximum Width (Horizontal Clearance) dimensions are based on the length of vehicle of 85 feet, 0 inches, with truck centers of 59 feet, 6 inches.

Equipment exceeding Maximum Height or Maximum Width dimensions are prohibited and not permitted on RTDC territory without the inspection and written authorization of the DTO Chief Engineer.

NWES 3-B MAXIMUM WEIGHT – GROSS WEIGHT ON RAIL (GWR)

LOCATION	Maximum Weight (Gross Weight on Rail – GWR)
All tracks from MP 1.50 (CP Argo) to MP 5.91 (CP South Westminster)	178,000 lbs. (89 tons)

NOTES TO MAXIMUM WEIGHT - GROSS WEIGHT ON RAIL (GWR) TABLE:

The weight (GWR) in NWES 3-B table are based on the length of vehicle of 85 feet, 0 inches, with truck centers of 59 feet, 6 inches.

Equipment exceeding the weights (GWR) or having minimum length/truck centers less than the limits shown in NWES 3-B are prohibited and not permitted on RTDC territory without the inspection and written authorization of the DTO Chief Engineer.

NWES 3-C INSPECTION REQUIREMENTS

Inspection and written authorization of the DTO Chief Engineer is mandatory for the operation of all equipment, other than previously inspected and approved RTDC equipment.

NWES 4 ELECTRICAL OPERATION NORTHWEST ELECTRIFIED SEGMENT LINE

NWES 4-A TRACKS EQUIPPED WITH ENERGIZED CATENARY FOR AC OPERATION

All Main Tracks between MP 1.50 (CP ARGO) and MP 5.91 (CP South Westminster) are equipped and energized with 25 kV (25,000 volts) overhead catenary.

NWES 4-B PHASE BREAKS

(None)

NWES 5 HIGHWAY GRADE/PEDESTRIAN CROSSINGS NORTHWEST ELECTRIFIED SEGMENT LINE

									Special Action Required			Apparatus Provided		
Crossing Name	Special Notes	Type of Crossing	Location	RTDC MP	UP/ BNSF MP	Operating Limits MP	Type of Warn. Dev.	Special Whistle Instr.	ACTION	TRACK (S)	DIRECTION	DEVICE	TRACKS (S)	PRE-EMPTION
S. 41st & Fox Station		PD	City & County of Denver	1.51		1.13 – 1.98	FB							N/A
N. 41st & Fox Station		PD	City & County of Denver	1.57		1.13 – 1.98	FB							N/A

NWES 6 LOCATION OF BULLETIN BOARDS, STANDARD CLOCKS - AND EMPLOYEE REGISTERS NORTHWEST ELECTRIFIED SEGMENT LINE

Bulletin Boards, Standard Clocks and Employee Registers are located in:

a. Commuter Rail Maintenance Facility (CRMF).

NWES 7 SIGNAL ASPECTS NOT COVERED BY RULE 9 NORTHWEST ELECTRIFIED SEGMENT LINE

NWES 7-A SIGNALS OBSTRUCTED FROM VIEW – NORTHWEST ELECTRIFIED SEGMENT LINE

Signals that may be obstructed from view will have an advanced warning sign that indicates, "Signal in 1000 feet". Signal obstructed from view at East Corridor Line is:

a. Track 1 only, MP 2.04 for 2N CP CRMF South

NWES 8 YARD AND YARD TRACKS NORTHWEST ELECTRIFIED SEGMENT LINE

NWES 8-A DESIGNATED YARDS

The following area on the Northwest Electrified Segment Line is designated a yard:

LOCATION	UNDER THE CONTROL OF
Commuter Rail Maintenance Facility (CRMF Yard)	Gold Line Dispatcher

Permission of the Gold Line Dispatcher is required for all movements on CRMF Yard tracks, except for designated maintenance tracks (see **NWES 8-B, 3**).

a. When moving from the yard to CTC territory:

1) Trains will not move in the yard until permission is given by the Dispatcher.
2) Dispatcher will not give permission to trains to move up to a signal that is displaying stop prior to departing the yard.
3) Dispatcher will not begin movement for trains departing the CRMF yard, until a route and proceed indication is established to the Main Line.

NWES 8-B CRMF YARD

GENERAL YARD INFORMATION AND OPERATION

a. The CRMF yard is located east of the Northwest Electrified Segment Line mainline track 1.

b. Line of Demarcation - CRMF Yard and The Northwest Electrified Segment Line.

The line of demarcation indicates the location where the method of operation changes from mainline CTC system rules to yard operation.

1) The line of demarcation between the CRMF yard and the Northwest Electrified Segment Line is the 8S and 10S signal located at the south end of the yard and 6S and 6N signals located at the north end of the yard (**see NWES 8-B, 1-f**).
2) BEGIN CTC and END CTC signs **[Rules 9-E (14) and 9-E (15)]** are installed and in-service. BEGIN CTC must be observed by Operators when departing the CRMF yard and END CTC must be observed by Operators when entering the yard:

BEGIN CTC



END CTC



c. The CRMF yard tracks are numbered consecutively, from west to east, starting with yard track 1 through yard track 12, and include lead tracks at the north and south entrances to the yard (**see NWES 8-B, 1-f**).

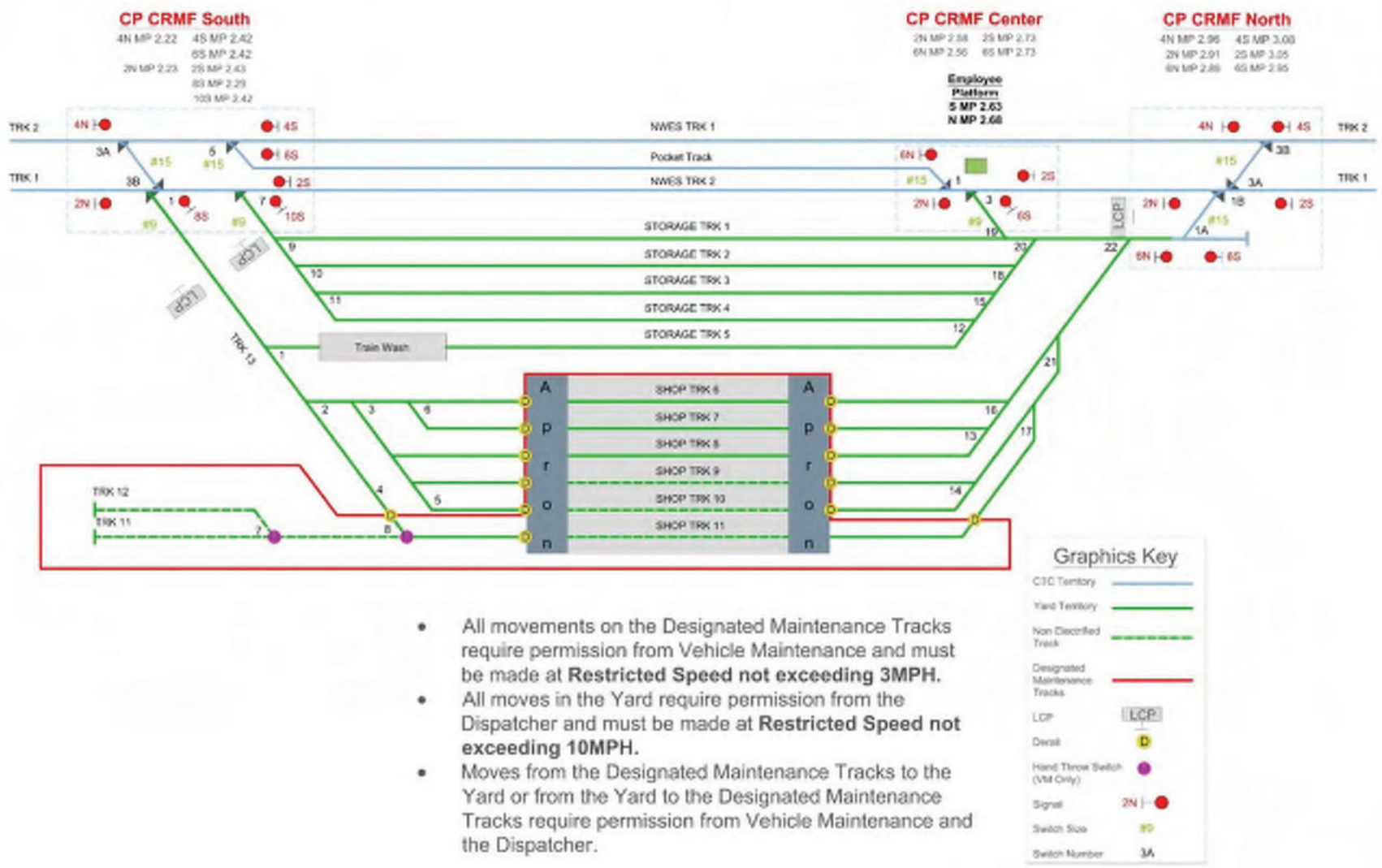
The yard tracks are assigned for use as follows:

1) Five storage tracks – tracks 1, 2, 3, 4, and 5 (includes the train wash facility for exterior cleaning of rolling stock).
2) Six shop tracks (designated maintenance tracks) – shop tracks 6, 7, 8, 9, 10, and 11.
3) Two maintenance of way storage tracks – tracks 11 and 12.
4) One north end tail track (CTC territory).
   i. Proceed on Signal Indication or verbal authorization past the 6N signal to the bumping post.
   ii. Follow all yard track rules from the 6N signal to the bumping post.

d. Radio Channel 5 (RTDCRMF) is in-service governing all movements arriving, departing and within the CRMF yard, and for use by the Gold Line Dispatcher, Vehicle Maintenance Department personnel, train service Operators and servicing Operators.

e. Prior to operation of equipment, the locomotive bell must be activated and used continuously for entire movement within the CRMF yard, including designated maintenance tracks. Locomotive horns are prohibited from use in the shop unless in emergency.

f. CRMF Yard Map



EN-003 Commuter Rail Maintenance Facility System Straight-Line Diagram, Revision 0, 04/03/2023

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V.S. Salama
Exhibit C

TRACKS EQUIPPED WITH 25 kV (25,000 volts) ENERGIZED OVERHEAD CATENARY SYSTEM (OCS) FOR AC OPERATION

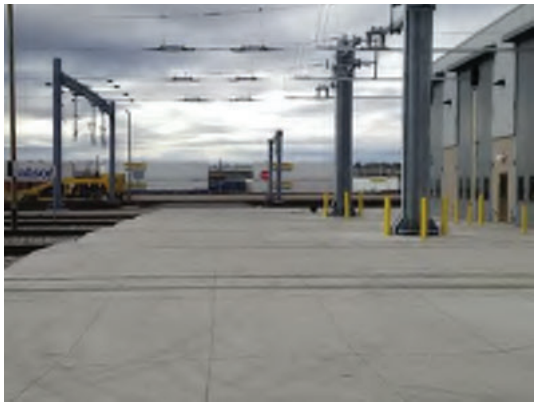
a. OCS in-service in CRMF yard:

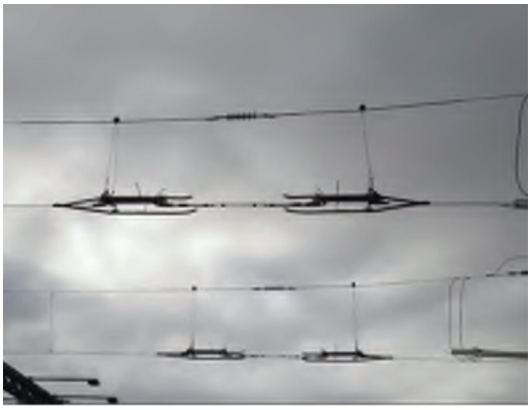
1) All lead tracks – entire length.
2) Storage tracks 1, 2, 3, 4, and 5 – entire length; includes through the train wash building.
3) Shop tracks 6, 7, and 8 – entire length; includes through the shop building.
4) Shop tracks 9, 10, and 11 – outside the shop facility only; no OCS inside the shop.

b. CRMF Section Insulators are in-service as part of the OCS and installed at the following locations in the yard:

1) Shop tracks 6, 7, and 8 - south and north entry/exit points to the shop.
2) Storage track 5 - south and north entry/exit points to the train wash.

CRMF YARD SECTION INSULATORS





c. When operating through section insulators, train service and servicing Operators must place the master controller in the coast position until the pantograph is clear of the section insulator.

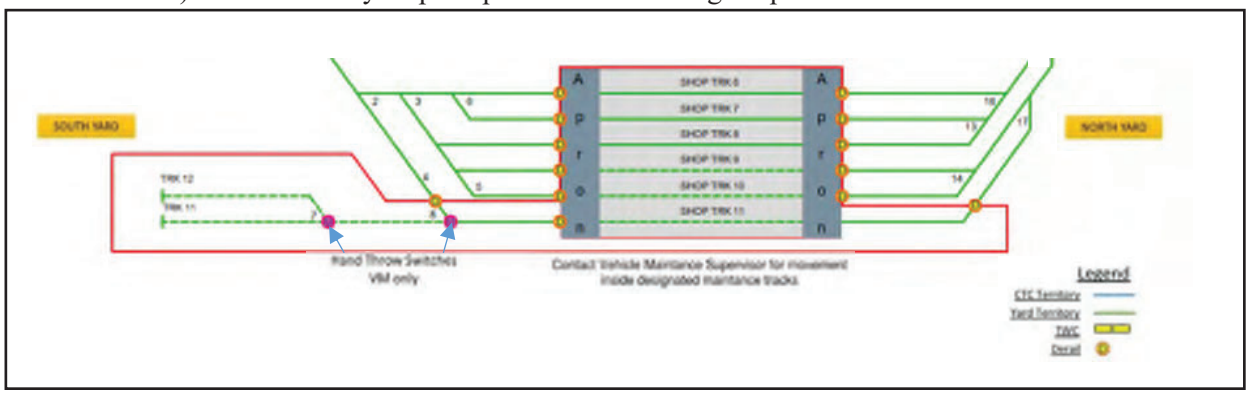
DESIGNATED MAINTENANCE TRACKS **[Rule 14-B]**

a. Designated maintenance tracks in-service in the CRMF yard:

Designated Maintenance Tracks	Use of Tracks Requires Permission of	Radio Channel	Telephone 720-460-Ext.
Shop tracks 6, 7, 8, 9, 10, and 11, and Engineering Dept. storage tracks 11 and 12 as defined in **NWES 8-B, 3-b** and **NWES 8-B, 3-c**	Vehicle Maintenance Supervisor	5	5891, 5892 5893, 5894

b. The designated maintenance tracks in the CRMF yard (boundary drawn in red below) include shop tracks 6 through 11 within the shop facility and a portion of tracks 6 through 11, south and north, outside the shop, including Engineering Dept. storage tracks 11 and 12 as shown in the following diagram:

1) Make a safety stop at apron before entering shop tracks.



c. A line of demarcation is established to separate the yard tracks from designated maintenance tracks and is identified by permanently installed derails and signs, outside the shop on the south and north shop tracks. Double-sided signs erected on each track at the line of demarcation identifying the entrance and exit to designated maintenance tracks is shown in Figures A and B.

Figure A



Figure B



d. Operators approaching the CRMF shop apron will stop short of the apron and line sign shown in Figure C, directly next to the Operator's window in order to provide for proper clearance of the end of the train for adjacent diverging track.

Figure C



CLEARANCE POINT MARKERS

On tracks where a clearance point marker is installed, leave equipment beyond the clearance point marker, as shown in Figure D.

Figure D



GATE CONTROL AT THE MEZZANINE LEVEL INSIDE THE SHOP

Gates located on the mezzanine level of the shop that provide for access to equipment on shop tracks must be closed and secured after use when entering and exiting equipment

PERMISSION TO USE YARD TRACKS

a. Permission for the use of CRMF yard tracks between the NWES Line and CRMF Yard is given by the Gold Line Dispatcher, including all movements within the yard and up to the line of demarcation between the yard tracks and designated maintenance tracks.

b. Permission for movements within the designated maintenance tracks is given by the Vehicle Maintenance Supervisor **[Rule 14-B].**

SPEED RESTRICTIONS **[RULE 7-K(5)]**

a. MAS on all yard tracks, including CRMF North Tail Track - **Restricted Speed, not exceeding 10 MPH**

b. MAS on designated maintenance tracks - **Restricted Speed, not exceeding 3 MPH**
Operators must activate the EMU "switch" mode to regulate speed when operating on designated maintenance tracks, and ring the bell continuously. Use of the horn inside the shop is prohibited, unless in an emergency.

c. MAS through the train wash - **Restricted Speed, not exceeding 3 MPH**

Operators must activate the EMU "switch" mode to regulate speed when entering, exiting, and operating through the train wash, and ring the bell continuously.

TRAIN-TO-WAYSIDE COMMUNICATION AND REMOTE OPERATION OF SWITCHES IN THE YARD

a. A Train-To-Wayside Communication (TWC) system is in service at the CRMF Yard to facilitate remote operation of switches from Operator control cabs or via a co-located Local Control Panel (LCP).
b. The method of TWC for remote operation:
   1) Preferred: Direct access of TWC operator panel located on the overhead cab console above Operator's cab windshield;
   2) Secondary: Use of external LCP box outside cab window

TWC loop and co-located LCPs are in service at:

1) the South Shop Lead (between the 8S signal and yard switch 1);
2) the South Storage Lead (between the 10S signal and yard switch 9); and
3) the North Lead (between the 6N signal and yard switch 22).

The exceptions to TWC operation are the two manually-operated switches accessing Engineering Dept. tracks 11 and 12 from track 11, using yard switches 7 and 8.

c. All yard switches are dual-control and designed for manual operation in case of emergency

CHANGE SWITCH POSITION INDICATORS

Switch Position Indicators are in service in CRMF Yard to aid in the determination of switch position and to confirm the route to assigned tracks. Switch Position Indicators, as shown in Figure E, are capable of displaying the following aspects:

a. Green light illuminated: Switch is lined for straight movement.
b. Yellow light illuminated: Switch is lined for diverging movement.
c. Dark, light not illuminated: Stop and call Dispatcher for further instructions.

Figure E



10. NORMAL POSITION OF YARD SWITCHES

Trailing movements through switches is permitted in the CRMF Yard, except for hand operated switches 7 and 8. Switches are not required to be lined to a specific track when not in use in the CRMF Yard, with the exception of the hand operated switch 8 that provides access to tracks 11 and 12. The normal position of switch 8 must be lined from the South Shop Lead to shop track 11.

Changing direction is prohibited when trailing through yard switches until the entire train completes movement beyond the LCP controlling switch operation. After changing operating cabs, Operator must select desired route.

11. NORMAL POSITION OF DERAILS

The normal position of the derails at the following locations is in the derailing position:

a. Shop Tracks 6, 7, 8, 9, 10, and 11, north and south outside the shop facility, located at the line of demarcation between yard tracks and designated maintenance tracks.

12. TRAIN WASH

All trains must operate through the train wash building in a northward direction only, unless otherwise instructed by the Gold Line Dispatcher. The train wash cleaning feature is only in service for northward movements.

Northward trains must stop at the train wash control panel 25 feet south of the building entrance and key-in the general passcode (1 2 3 4 #) to open the doors, observe that the doors are open at both ends, and key-in a second password with train information to activate the train wash system. The Operator may not proceed into the building until the exterior indicator light affixed to the train wash building turns “green”, indicating that the train wash system is ready.

Southward trains, when authorized by the Gold Line Dispatcher, must stop at the control panel 25 feet north of the building entrance, key-in the general passcode (2 4 6 8 #) to open the doors at both ends, and may proceed once it is clear that the doors are open at both ends.

NWES 9 OTHER INSTRUCTIONS
NORTHWEST ELECTRIFIED SEGMENT LINE

NWES 9-A DUAL CONTROL SWITCHES [RULE 17-B(2)]

Dual control switches are in service at:

CP CRMF South

CP CRMF Center

CP CRMF North

CP Pecos

CP South Westminster

NWES 9-B CONTROLLED MASTER LOCATION INDICATORS [RULE 9-E(7)]

Controlled Master Location Indicators are located at:

(None)

NWES 9-C STATION PLATFORM LENGTHS AND CAPACITY

Northwest Electrified Segment Line						
STATION	Platform Length TRACK 1			Platform Length TRACK 2		
	Feet	Married Pair* Capacity	No. of Cars (85 feet in length)	Feet	Married Pair* Capacity	No. of Cars (85 feet in length)
41st & Fox	200	1	2	200	1	2
Employee Platform	50	N/A	N/A	50	N/A	N/A
Pecos Junction	200	1	2	200	1	2
Westminster	200	1	2	200	1	2

* A married pair is two EMUs, measuring 170 feet in length. An EMU is a single car, measuring 85 feet in length.

GOLD LINE SPECIAL INSTRUCTIONS

GOLD 1 STATIONS

GOLD LINE

The direction from CP Pecos to CP Ward Road is Northward.

Tracks 2 and 1 are numbered West to East

Stations are listed south to north. Passenger Stations are shown in **BOLDFACE** type	NOTE	MP	Dispatching District	Radio Channel	Tracks (West to East) and Method of Operation		
					Track 2	Track 1	Other
CP Pecos (Northwest Electrified Segment Line) INT	a	4.17	G	3	CTC/ATC	CTC/ATC	
CLEAR CREEK • FEDERAL		**5.02**					
60TH & SHERIDAN • ARVADA GOLD STRIKE		**6.40**					
CP Ralston INT		7.08					
OLDE TOWN ARVADA		**8.10**				No Track 1	
CP Balsam INT		8.60					
ARVADA RIDGE		**9.83**					
CP Miller INT		10.14				CTC/ATC	
WHEAT RIDGE • WARD		**11.02**					
CP Ward Road INT	b, c	11.17					
End of Track		11.27					

GOLD 1-A NOTES FOR GOLD LINE STATIONS

a. PTC rules in effect and in-service as a supplement to CTC method of operation on all on all Gold Line tracks between Milepost 3.97 and Milepost 11.27

b. All northward trains at Wheat Ridge • Ward Station:

1) Trains in passenger/revenue service prior to southbound movement - After making a station stop, Operators must confirm that all customers have safely alighted the train and shall proceed on signal indication northward, clear of CP Ward Road Interlocking signal

2) Trains operating deadhead (non-passenger/non-revenue service) prior to southbound movement – Operators shall proceed on signal indication northward, clear of the CP Ward Road Interlocking signal

c. Track 1 and Track 2 in-service north of CP Ward Road to End of Track

GOLD 2 MAXIMUM AUTHORIZED SPEED – MAIN TRACKS GOLD LINE

TRACK 1				
LOCATION (a)	**Between MP and MP**		**Track 1**	**Other Tracks**
North of W. 60th Ave	4.10	4.76	30	
South of I-76 EB to I-76 WB	4.76	5.29	45	
Federal Blvd. to So. Lowell Blvd.	5.29	5.89	65	
Tennyson St. Crossing	5.89	6.29	70	
	6.29	6.53	50	
Sheridan Blvd.	6.53	6.76	45	
Moffat Flyover to CP Ralston	6.76	6.99	30	
CP Ralston to CP Balsam	6.99	8.70	*No Track 1*	
CP Balsam to Garrison St. Crossing	8.70	9.14	79	
	9.14	9.28	70	
Garrison St. to Independence St.	9.28	9.70	60	
North of Arvada Ridge Station	9.70	9.76	40	
	9.76	9.94	60	
Miller St. to Parfet St.	9.94 N	10.52 N	60	
	9.94 S	10.12 S	70	
Parfet St. to Tabor St.	10.12 S	10.80 S	79	
	10.52 N	10.97 N	30	
	10.80 S	10.84 S	60	
Tabor St.	10.84 S	10.97 S	15	
CP Ward Road	10.97	11.26	15	

TRACK 2				
LOCATION (a)	**Between MP and MP**		**Track 2**	**Other Tracks**
	3.97	4.09	50	
CP Pecos to So. Of I-76 EB & I-76 WB	4.09	4.77	30	
So. Of I-76 E/W to No. of Federal Blvd.	4.77	5.29	45	
	5.29	5.89	65	
Tennyson St. Crossing	5.89	6.29	70	
	6.29	6.53	50	
Sheridan Blvd	6.53	6.78	45	
Moffat Flyover to CP Ralston	6.78	7.29	30	
Lamar Crossing	7.29	7.47	45	
	7.47	7.76	60	
Saulsbury Crossing	7.76	7.95	45	
Vance Crossing	7.95	8.07	30	
Olde Wadsworth Crossing	8.07	8.27	35	
Allison St. to Balsam St. Crossing	8.27	8.67	50	
CP Balsam	8.67	8.78	70	
	8.78	9.14	79	
Garrison Crossing	9.14	9.32	70	
Independence Crossing	9.32	9.67	60	
Arvada Ridge Station	9.67	9.87	45	
	9.87	9.90	40	
Miller Crossing	9.90	10.12	60	
CP Miller	10.12 S	10.77 S	79	
	10.12 N	10.53 N	60	
	10.77 S	10.84 S	70	
Tabor Crossing	10.84 S	10.97 S	15	
	10.53 N	10.97 N	30	
CP Ward Road	10.97	11.26	15	

NOTE TO MAXIMUM AUTHORIZED SPEED TABLES:

a. The locations shown in the left column for speed restrictions are for general reference only. Milepost locations will govern. Permanent Speed Signs erected in accordance with **[Rule 9-C (5)].**

GOLD 2-A SPECIAL SPEED INSTRUCTIONS

(None)

GOLD 2-B SPEED RESTRICTIONS AT TURNOUTS AND CROSSOVERS

The maximum authorized speed through turnouts and crossovers at locations on the Gold Line are noted in the table below:

LOCATION	TYPE (SIZE) OF TURNOUT IN-SERVICE AT LOCATION	MAXIMUM AUTHORIZED SPEED PASSENGER TRAINS	MAXIMUM AUTHORIZED SPEED FREIGHT TRAINS
CP PECOS	#15	30	N/A
CP RALSTON	#15	30	N/A
CP BALSAM	#20	45	N/A
CP MILLER	#15	30	N/A
CP WARD	# 9	15	N/A

GOLD 3 EQUIPMENT RESTRICTIONS GOLD LINE

GOLD 3-A EQUIPMENT CLEARANCES

Maximum Height (Vertical Clearance) Permitted:

Location	Maximum Height (measured from top of rail)
All tracks from MP 3.97 (CP Pecos) to MP 11.27 (CP Ward Road)	14 feet, 5 inches

Maximum Width (Horizontal Clearance) Permitted:

Location	Maximum Width
All tracks from MP 3.97 (CP Pecos) to MP 11.27 (CP Ward Road)	10 feet, 6 inches

NOTES TO EQUIPMENT CLEARANCES:

The Maximum Width (Horizontal Clearance) dimensions are based on the length of vehicle of 85 feet, 0 inches, with truck centers of 59 feet, 6 inches.

Equipment exceeding Maximum Height or Maximum Width dimensions are prohibited and not permitted on RTDC territory without the inspection and written authorization of the DTO Chief Engineer.

GOLD 3-B MAXIMUM WEIGHT – GROSS WEIGHT ON RAIL (GWR)

Location	Maximum Weight (Gross Weight on Rail – GWR)
All tracks from MP 3.97 (CP Pecos) to MP 11.27 (CP Ward Road)	178,000 lbs. (89 tons)

NOTES TO MAXIMUM WEIGHT - GROSS WEIGHT ON RAIL (GWR) TABLE:

The weights (GWR) in GOLD 3-B table are based on the length of vehicle of 85 feet, 0 inches, with truck centers of 59 feet, 6 inches.

Equipment exceeding the weights (GWR) or having minimum length/truck centers less than the limits shown in GOLD 3-B are prohibited and not permitted on RTDC territory without the inspection and written authorization of the DTO Chief Engineer.

GOLD 3-C INSPECTION REQUIREMENTS

Inspection and written authorization of the DTO Chief Engineer is mandatory for the operation of all equipment, other than previously inspected and approved RTDC equipment.

GOLD 4 ELECTRICAL OPERATION GOLD LINE

GOLD 4-A TRACKS EQUIPPED WITH ENERGIZED CATENARY FOR AC OPERATION

All Main Tracks between CP Pecos (MP 3.97) and CP Ward Road (MP 11.27) are equipped and energized with 25 kV (25,000 volts) overhead catenary

GOLD 4-B PHASE BREAKS

(None)

GOLD 5 HIGHWAY GRADE/PEDESTRIAN CROSSINGS GOLD LINE

									Special Action Required			Apparatus Provided		
Crossing Name	Special Notes	Type of Crossing	Location	RTDC MP	UPRR/ BNSF MP	Operating Limits MP	Type of Warn. Dev.	Special Whistle Instr.	ACTION	TRACK (S)	DIRECTION	DEVICE	TRACKS (S)	PRE-EMPTION
West 60th Ave.			Adams Co.	4.47	N/A	3.85 – 4.86	FG	W/R						N/A
S. Clear Creek • Federal Station		PD	Adams Co.	5.00	N/A	4.64 – 5.62	FB							N/A
N. Clear Creek • Federal Station		PD	Adams Co.	5.04	N/A	4.64 – 5.62	FB							N/A
Lowell Blvd.	BN/ UP		Adams Co.	5.62	UPRR 5.28 BNSF 5.17	4.77 – 6.54	FG	W/R						N/A
Tennyson St.	BN/ UP		City of Arvada	6.12	UPRR 5.78 BNSF 5.87	6.11 – 6.14	FG	W/R						N/A
S. 60th & Sheridan • Arvada Gold Strike Station		PD	City of Arvada	6.39		5.87 – 6.79	FB							N/A
N. 60th & Sheridan • Arvada Gold Strike Station		PD	City of Arvada	6.43		5.87 – 6.79	FB							N/A
Lamar St.	BN		City of Arvada	7.40	BNSF 6.95	6.80 – 8.24	FG	W/R						Yes
Saulsbury St.	BN		City of Arvada	7.85	BNSF 7.39	7.04 – 8.48	FG	W/R						Yes
Vance St.	BN		City of Arvada	8.04	BNSF 7.57	7.07 – 8.77	FG	W/R						Yes

									Special Action Required			Apparatus Provided		
Crossing Name	Special Notes	Type of Crossing	Location	RTDC MP	UPRR/ BNSF MP	Operating Limits MP	Type of Warn. Dev.	Special Whistle Instr.	ACTION	TRACK (S)	DIRECTION	DEVICE	TRACKS (S)	PRE-EMPTION
Olde Wadsworth Blvd.	BN		City of Arvada	8.17	BNSF 7.71	7.27 – 9.20	FG	W/R						Yes
Allison/ Zephyr St.	BN		City of Arvada	8.40	BNSF 7.94	7.87 – 9.20	FG	W/R						Yes
Balsam St.	BN		City of Arvada	8.56	BNSF 8.10	8.02 – 9.37	FG	W/R						Yes
Carr St.	BN		City of Arvada	8.69	BNSF 8.24	8.08 – 9.53	FG	W/R						Yes
Garrison St.	BN		City of Arvada	9.22	BNSF 8.76	8.35 – 9.91	FG	W/R						Yes
Independence St.	BN		City of Arvada	9.47	BNSF 9.02	8.52 – 10.36	FG	W/R						Yes
Arvada Ridge Station		PD	City of Arvada	9.85		9.48 – 10.37	FB							N/A
Miller St.	BN		City of Arvada	9.99	BNSF 9.53	8.95 – 11.04	FG	W/R						Yes
Parfet St.	BN		City of Wheat Ridge	10.36	BNSF 9.90	9.43 – 11.12	FG	W/R						Yes
Robb St.	BN		City of Wheat Ridge	10.62	BNSF 10.23	9.47 – 11.23	FG	W/R						Yes
Tabor St.	BN		City of Wheat Ridge	10.90	BNSF 10.44	9.70 – 11.23	FG	W/R						Yes
S. Wheat Ridge • Ward Station		PD	City of Wheat Ridge	11.00		10.54 – 11.23	FB							N/A
N. Wheat Ridge • Ward Station		PD	City of Wheat Ridge	11.03		10.54 – 11.23	FB							N/A

SPECIAL NOTES (Column 2):

Note BN/UP = Interoperable crossing w/Union Pacific and BNSF; Emergency Notification System contact RTD at 720-460-5955

Note BN = Highway Grade Warning System controlled by RTD in lieu of BNSF from Lamar St. to Tabor St.; Emergency Notification System contact RTD at 720-460-5955

GOLD 6 LOCATION OF BULLETIN BOARDS, STANDARD CLOCKS AND EMPLOYEE REGISTER GOLD LINE

Bulletin Boards, Standard Clocks and Employee Register are located in:

a. Commuter Rail Maintenance Facility (CRMF).

GOLD 7 SIGNAL ASPECTS NOT COVERED BY RULE 9 GOLD LINE

GOLD 7-A SIGNALS OBSTRUCTED FROM VIEW - GOLD LINE

Signals that may be obstructed from view will have an advanced warning sign that indicates, “Signal in 1000 feet”. Signal obstructed from view on Gold Line is:

a. Track 1 & 2 MP 6.77 for 4N or 2N CP Ralston
b. Track 2 only, MP 8.92 for 4S CP Balsam
c. Track 2 only, MP 7.25 for 4S CP Ralston

GOLD 8 YARD AND YARD TRACKS GOLD LINE

(None)

GOLD 9 OTHER INSTRUCTIONS GOLD LINE

GOLD 9-A DUAL CONTROL SWITCHES [RULE 17-B(2)]

Dual control switches are in service at:

CP Pecos

CP Ralston

CP Balsam

CP Miller

CP Ward Road

GOLD 9-B CONTROLLED MASTER LOCATION INDICATORS [RULE 9-E(7)]

Controlled Master Location Indicators are located at:

MP 5.07 - Northbound

MP 8.16 - Northbound

MP 9.84 - Northbound

MP 6.36 - Southbound

MP 8.07 - Southbound

MP 9.76 - Southbound

MP 10.69 - Southbound

GOLD 9-C STATION PLATFORM LENGTHS AND CAPACITY

Gold Line						
STATION	Platform Length TRACK 1			Platform Length TRACK 2		
	Feet	Married Pair* Capacity	No. of Cars (85 feet in length)	Feet	Married Pair* Capacity	No. of Cars (85 feet in length)
Clear Creek Federal	200	1	2	200	1	2
60th & Sheridan Arvada Gold Strike	200	1	2	200	1	2
Olde Town Arvada	200	1	2	200	1	2
Arvada Ridge	200	1	2	200	1	2
Wheat Ridge Ward	200	1	2	200	1	2

* A married pair is two EMUs, measuring 170 feet in length. An EMU is a single car, measuring 85 feet in length.

GOLD 9-D HIGHWAY GRADE CROSSING MAINTENANCE

On BNSF tracks from Lamar Street to Tabor Street: Any work affecting train movements requires protection per Section 5.9 of the Roadway Worker Protection Manual.

SYSTEM SPECIAL INSTRUCTIONS

SPECIAL INSTRUCTION A

MEDICAL SERVICES [RULE A, PARAGRAPH 5]

SI A-A PROCEDURE FOR HANDLING NON-CRITICAL INJURIES AND ILLNESSES

If a non-serious injury or illness occurs on a train and does not require medical attention, the train Operator will notify the Dispatcher as soon as possible.

If a non-serious injury or illness occurs at a location other than on a train, local supervision must be notified and, if needed, medical attention provided as soon as possible.

Injuries or illnesses serious enough to require medical attention will be handled in accordance with Timetable Emergency Instructions, EM 7. If there is any doubt regarding the seriousness of an injury or illness, Emergency Instructions EM 7 will apply.

SI A-B REPORTING OF INJURIES

In all cases involving injuries and illnesses, necessary documentation will be completed as soon as possible, in accordance with Safety Rules and other instructions. Copies of injury reports must be forwarded to the Safety Department.

SI A-C OTHER MEDICAL SERVICES

All medical services other than immediate care following an injury or illness or federally mandated post-accident toxicological tests must be coordinated through Human Resources.

SI A-D FATALITIES

In the event a fatality occurs on or near RTDC property, the Dispatcher must be notified immediately. The Dispatcher will notify all necessary local authorities, including the coroner and/or medical examiner.

SPECIAL INSTRUCTION C

PERSONS ALLOWED TO RIDE IN CABS AND ON NON-PASSENGER TRAINS

SI C-A

Operators must notify Dispatching Center of any non-DTO Employees riding in the head end of the train. Only the following personnel, in the discharge of their official duties, are permitted to ride in the operating cab of trains:

a. Those DTO officials whose names appear in Appendix 2 of this Timetable;

b. Engineering Department (Track, Traction Power, and Communication and Signals) Managers, Supervisors, Foremen and Department Employees, only in the discharge of their duties and in their assigned territories;

c. Vehicle Maintenance Department Managers, Supervisors, Foremen, and Department Employees performing equipment inspections and maintenance;

d. Dispatchers;

e. Safety Department personnel in the discharge of their duties;

f. RTDC Security in the discharge of their duties;

g. RTD On-board Inspectors in the discharge of their duties and on presentation of valid identification; and

h. FRA, CDOT Division of Transit and Rail, and RTD personnel, on presentation of valid identification.

SI C-B

Except for those individuals listed above, authorization to ride in the operating cab of trains must be issued, in writing, by the Chief Transportation Officer.

SI C-C

Under normal conditions, no more than three people, including the assigned Operator, shall be in the operating cab of a passenger train at any time, unless authorized by Chief Transportation Officer.

SI C-D

No one other than assigned RTDC Employees of the train is permitted to ride in the non-leading end cab of the train, except when required in the performance of their duties. This prohibition includes off-duty RTDC Employees.

SI C-E

RTDC Employees, on and off duty, are permitted to ride on scheduled deadhead trains.

SI C-F

Only those persons listed in **SI C-A** and those holding written authorization from the Chief Transportation Officer shall be permitted to ride on non-revenue trains of other than passenger equipment, such as work trains, freight trains, and light engines.

SI C-G FOREIGN RAILROADS

Instructions issued by foreign railroads regarding access to operating cabs and other areas of their trains will apply on RTDC territory, except that the persons listed in **SI C-A** will have access to all foreign railroad trains, including operating cabs, in the performance of their duties. Special Instruction **SI C-C** applies to all foreign railroad passenger trains on RTDC property.

SPECIAL INSTRUCTION G

DRUG AND ALCOHOL TESTING

SI G-A

For mandatory reasonable suspicion testing during normal business hours, Supervisors must contact Human Resources (HR). HR will make arrangements with Concentra, 420 E. 58th Ave., Suite 111 located in Denver, CO 80216. Concentra's hours of operation are from 7 am to 5 pm.

For other than normal business hours, contact Human Resources Manager Vanessa Jernigan at (303) 946-4384.

SI G-B

For post-accident/incident toxicological testing during normal business hours, supervisors must contact Human Resources (HR). HR will make arrangements with Concentra, 420 E. 58th Ave., Suite 111 located in Denver, CO 80216. Concentra's hours of operation are from 7 am to 5 pm.

For other than normal business hours, the Employee should be escorted to the nearest local hospital.

SPECIAL INSTRUCTION 1

QUALIFICATIONS, RESPONSIBILITES, AND DUTIES

SI 1-A RULES QUALIFICATIONS

SI 1-A(1) AMTRAK EMPLOYEES

Amtrak train and engine service Employees whose assignments on RTDC territory is wholly within Union Station are not required to attend RTDC Operating Rules classes. Those RTDC rules required for operating within these areas will be included in Amtrak Rules classes.

SI 1-B OPERATING MANUAL REQUIRED WHILE ON DUTY – TRAIN SERVICE EMPLOYEES

Train service Employees whose assignment is wholly within yard areas are not required to carry their operating manual while performing service. They must, however, have their manual in their possession when reporting for duty, and must have it available for easy access if needed during their work assignment.

SPECIAL INSTRUCTION 4

COMMUNICATING SIGNALS

SI 4-A BELL [RULE 4- F(1)]

In the application of **[Rule 4 – F(1)]**, trains departing Union Station and within Union Station Interlocking Limits are relieved from sounding the EMU bell unless in emergency.

SPECIAL INSTRUCTION 5

COMMUNICATION DEVICES

SI 5-A RADIO CHANNELS [RULE 5-D(4)]

The following radio frequencies are in use for train operations:

Channel 1 (RTDCREC)
East Corridor Line

Channel 2 (RTDCDUS)
Union Station tracks 1,2,3,4,5,6,7, & 8

Channel 3 (RTDCRGL)
Gold Line and Northwest Electrified Segment Line

Channel 4 (RTDNMC01)
North Metro Rail Line

Channel 5 (RTDCRMF)
Commuter Rail Maintenance Facility (CRMF/Yard)

Channel 6 (RTDCRES)
Reserved

Channel 7 (RTDCRMOW)
Engineering Depts

SI 5-B RADIO BASE STATION [RULE 5-D(4)]

Radio Base Station located at CRMF.

SPECIAL INSTRUCTION 7

TRAIN OPERATION

SI 7-A DELAYS AFFECTING EMPLOYEES ABILITY TO COMPLETE WORK ASSIGNMENT

When, due to train delays or other unforeseen circumstances, train Operators are unable to cover subsequent trips of their assignment, the Dispatcher shall be notified if the Employee is in-route, or a Transportation Supervisor shall be notified if the Employee is at a terminal or crew base. Notification should be made as soon as possible once the situation is known.

The Dispatcher or Transportation Supervisor shall notify the Crew Dispatcher as soon as practicable on notification by the train Operator.

SI 7-B REDUCED WHEEL-RAIL ADHESION

When a reduced wheel-rail adhesion condition exists that affects train operation, Operators must immediately inform the Dispatcher. This report must include the location of occurrence, whether the condition affects train powering or braking, if the condition was caused by a cab signal change to a more restrictive indication, and whether a penalty or emergency brake application was initiated due to the condition.

To minimize wheel spin when resuming movement after a stop and in accordance with proper train handling, avoid using excessive tractive effort.

SI 7-C WEATHER RESTRICTIONS

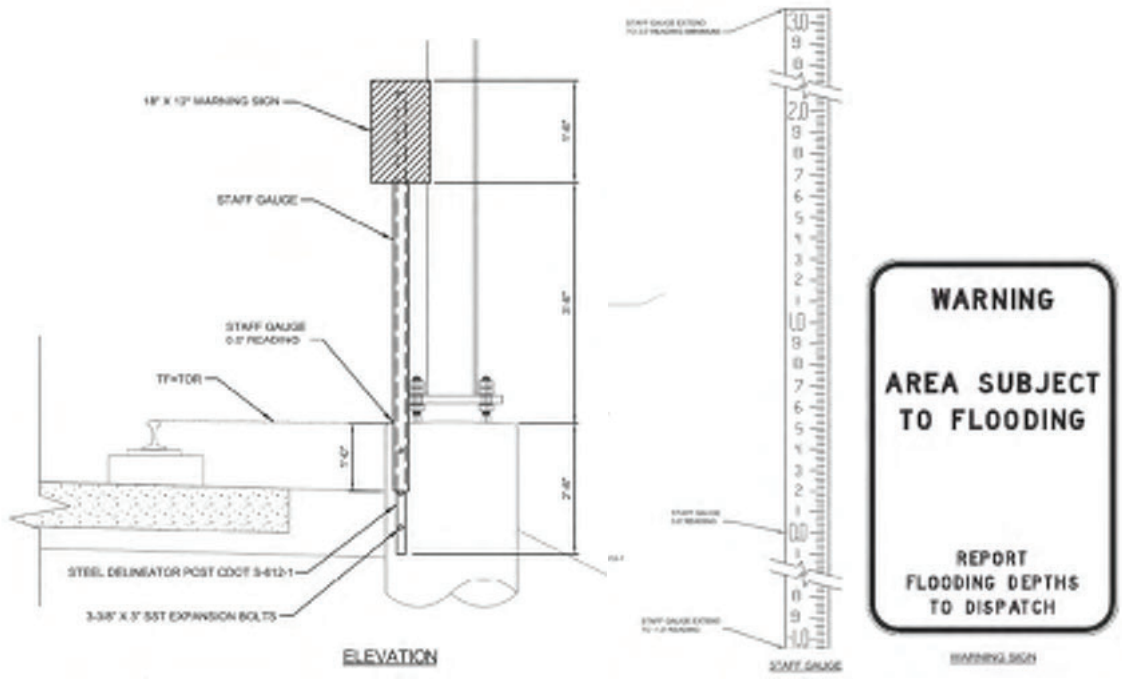
During periods of extreme temperatures, speed restrictions may be imposed due to the possibility of catenary damage and rail irregularities. Operators will be notified by the Dispatcher or indicated in the CCROC when **Timetable Special Instruction SI 7-C Weather Restriction** is in effect.

SI 7-C(1) MAIN TRACK – HOT WEATHER INSPECTION

When the ambient temperature exceeds 95 degrees Fahrenheit, inspections must be performed on RTDC main line tracks as directed by the Chief Engineer, Track Inspector, or Track Supervisor.

SI 7-D FLOOD RESTRICTIONS [RULE 9-E(16)]

In the application of **[Rule 7-V]**, *Operation Through Water*, Operators must pay particular attention to high water conditions and depth gauges at locations indicated by **[Rule 9-E(16)]**, a rectangular white sign, with black lettering with the words “Area Subject to Flooding” and notify the Dispatcher when such conditions occur.



SI 7-E SPEEDS

(None)

SI 7-F COMPLIANCE WITH RESTRICTED SPEED

Tests for compliance with Restricted Speed are randomly conducted by Transportation Supervisors. When testing for that part of Restricted Speed that requires the ability to stop short of an obstruction, a Red Flag will be placed in the gauge of the track as shown in the photo. Such flag will be considered an obstruction and will be used for a track on which Restricted Speed is required by Operating Rules or Special instruction.



SI 7-G TRAIN SPOTTING AND PLATFORM OPERATION

SI 7-G(1) SPOTTING AND PLATFORM OPERATIONS

Unless otherwise instructed, trains shall stop at all station platforms in both directions for no less than 35 seconds. This includes all deadhead trains and out of service trains. If a train arrives at a station prior to the scheduled departure time, it must wait until its scheduled departure time before departing.

All Operators are required to operate the train in a safe and efficient manner. Such a manner would include only making one stop at stations. “Double stops” are not allowed at stations unless an emergency condition is present that would require the Operator to stop twice at the station.

If a train is running late, it must reduce the station stop time to not less than 10 seconds at the following stations:

<u>East Corridor Line</u>

- 38th & Blake – southbound
- 40th& Airport – northbound and southbound
- 61st & Pena – northbound and southbound

Northwest Electrified Segment Line

- 41st & Fox – northbound
- Pecos Junction – northbound and southbound

Gold Line

- 41st & Fox – northbound
- Pecos Junction – southbound
- Clear Creek/Federal – southbound
- Sheridan - northbound

When spotting trains at stations, the train Operator must ensure that all passenger side doors are positioned on the platform area according to the signage (4 cars or 2 cars). The head end of the train must line-up with the appropriate sign.

When spotting trains at Union Station, track 1, the train Operator must stop the train with the Crew Cab Window aligned with the East Side elevator, unless otherwise instructed.

NOTE: RTD Employees must refer to N Line Addendum in this document.

SI 7-G(2) EMPLOYEE PLATFORM OPERATION

All Northwest Electrified Segment Line trains (NWES) are required to stop at the Employee Platform.

All other trains (including all Gold Line trains) are prohibited from stopping at the Employee Platform unless directed by the Dispatcher and will proceed at Maximum Authorized Speed past the platform, ringing the bell.

NWES trains will stop to allow Employee passengers to get on or off the train. If no Employee passengers are present at the platform or on the train, Operators will come to a complete stop; doors will remain closed and then immediately proceed on signal indication.

THE CREW DOOR will be the only door opened at the employee platform. The Employee Platform is too short to accommodate all doors on a trainset.

SI 7-G(3) PROCEDURE FOR EMPLOYEE PLATFORM USE

Only DTO, RTD, and DTP/DTS/DTC Employees and other DTP/O contractors who have been trained and qualified by the Safety Department are authorized to use the Employee Platform.

Employee passengers are required to wear closed toe shoes, a high visibility vest, and eye protection (Z87) when boarding a NWES train at any station. Employee passengers are instructed to stand behind the yellow tactile strip to avoid fouling the tracks.

Employee passengers will show their ID to the NWES Operator at the EMU side window prior to boarding the train and request service to the Employee Platform.

On arrival at the Employee platform, the Operator will only open the **CREW DOOR** for Employee passengers getting on or off the train.

If a revenue passenger exits the train at the Employee Platform, the Employee passenger and Operator must immediately notify the revenue passenger to re-board the train. If the revenue passenger does not comply, the Operator must consider the revenue passenger a trespasser and immediately contact their Second Qualified Person and the Dispatcher.

SI 7-G(4) SOUTH WESTMINSTER PLATFORM OPERATIONS

After unloading passengers on the northbound move at S. Westminster, proceed into the tail track at S. Westminster on signal indication. Once in the tail track at S. Westminster, the Operator will switch ends, complete necessary air brake tests, initialize PTC, and proceed South on signal indication to the platform at S. Westminster. The train Operator will place the doors into passenger enable mode and await scheduled departure time before travelling South to DUS.

SI 7-H EQUIPMENT DOORS AND WINDOWS

SI 7-H(1) INTERIOR AND END DOORS

Interior and end doors at the head end and rear end of trains must be kept closed and secured at all times while the train is in motion. These doors must not be locked.

SI 7-H(2) PASSENGER DOORS

When in-route door problems occur, a minimum of one door on each side of each passenger-carrying car must remain operational or all customers must be removed from that car.

SI 7-H(3) OPERATING CAB DOORS

The train Operator must keep the operating cab door closed at all times.

SI 7-H(4) OPERATION ON DOOR BY-PASS/AUTOMATIC DOOR FAILURE

Trains will not be operated on door-bypass unless authorized by the Dispatcher.

a. After permission is granted to break the seal and proceed on door by-pass, prior to movement, the operator must walk through the entire train and confirm that all doors are closed.
b. Announcements must be made to inform customers to stay clear of the doors.
c. Operators must notify the Dispatcher that all the doors are closed, announcements have been made, the door by-pass is activated, and the train is ready to proceed.
d. The Dispatcher will confirm with the Operator that the train is ready to proceed and issue any necessary operating instructions.

SI 7-H(5) UNINTENDED DOOR OPERATION – OPENING AND CLOSING

If an unintended door operation is observed or reported, the door must be cut out and a report made to the Dispatching Center as soon as possible.

If at any time doors are inadvertently opened on a side of the train where there is no platform, the Operator must visually check that side of the train for any irregularities prior to moving the train. The inadvertent opening must be reported to the Dispatching Center as soon as possible.

SI 7-H(6) CLOSE CLEARANCE AND OPERATING CAB WINDOWS

At all times when the train is operating, cab windows must be kept closed and Employees must keep all body parts within the operating cab to prevent injury from close clearance hazards.

Close clearance hazards exist in multiple locations along the RTDC right-of-way, including all platform railings at Union Station and Denver Airport station, adjacent to wayside signage such as the "2nd Train coming" illuminated signs at all station pedestrian crossings, adjacent to the LCP and train wash control panels in the CRMF yard, and the shop platform railings within the CRMF, as well as other locations where hazard may exist.

SI 7-H(7) DOOR OPERATION AT STATIONS

Intermediate Station Stops

After stopping at a station platform, Operators must:

- Place the Master Controller in the Full Service position.
- Prior to opening the doors, confirm platform location by looking out/through the Operator/Observer cab side-window.
- Operator must visually confirm by turning and facing the “REAR DOOR OPEN” button before opening the doors.
- Observe and monitor the platform by looking out/through the Operator/Observer cab side-window; if necessary, use the PA system for announcements.
- Close doors while monitoring the platform by looking out/through the Operator/Observer cab side window (Do not “ENABLE” doors).
- Ensure the doors are clear and no person is stuck between the door panels.
- Ensure the “DOOR CLOSED” indicator is illuminated.
- Ensure the Traction Enable indicator light is illuminated.
- Just prior to departing, look at the CCTV monitor for anomalies.

At Terminal Ends

When arriving at the terminal, after stopping Operators must:

- Open the doors for passengers.
- After passengers disembark the train, close doors and use the “ENABLE” button until departure.

When departing at the terminal, Operators must:

- When changing operating ends and after keying up: re-enable the doors.
- Observe and monitor the platform by looking through the cab side window; if necessary, use the PA system for announcements.
- Close doors while monitoring the platform through cab side window.
- Ensure the doors are clear and no person is stuck between the door panels.
- Ensure the “DOOR CLOSED” indicator is illuminated.
- Just prior to departing, look at the CCTV monitor for anomalies.
- Ensure Door Enable feature is de-activated.

- Ensure Traction Enable indicator light is illuminated.
- Ensure a favorable signal prior to departing platform. (Call Dispatcher 1 minute in advance of departure time if the signal is not favorable.)

NOTE: RTD Employees must refer to N Line Addendum in this document.

SI 7-I HEATING, VENTILATION, AIR CONDITIONING, LIGHTS

Operating cab windows must be kept closed except for immediate use or when HVAC system is not functioning properly. Lighting and HVAC controls should be turned on as soon as the Operator reports to the train but not more than 30 minutes before departure. Lighting and HVAC should not be turned on in non-revenue cars unless these cars will be used for revenue service within 30 minutes.

Lighting and HVAC must be turned off when the train reaches its final destination, unless otherwise instructed.

SI 7-J AMTRAK TRAINS AT UNION STATION WHEN OPERATING FROM OTHER THAN THE LEADING END OF MOVEMENT

When cars or engines are shoved and conditions require, a crew member must take an easily seen position on the leading car or engine, or be ahead of the movement, to provide protection. Cars or engines must not be shoved to block other tracks until it is safe to do so.

SPECIAL INSTRUCTION 8

SI 8-A MANDATORY DIRECTIVES

All requests for Form O or Form A must be requested from signal (CP) to signal (CP) or from the bumping post to a signal (CP). Verify by track chart and visual reference in the field that you are in your correct location. Form W will not be used.

When CCROCS are activated, Operators on the Northwest and Gold Lines will receive all restrictions in effect at that time for both lines (regardless of route) onboard and on the CCROC as NWGL Line (Northwest – Gold Line).

Crossing protections on the Gold Line north of Pecos (for example: Lowell at 5.62) do not apply to Operators in revenue service between DUS and Westminster.

Speed restrictions will specify either NW TRK or GL TRK number (for example: GL TRK 1).

When receiving a mandatory directive from the Dispatcher, the "read and repeat" process will specify the "Line" as NWGL Line.

Example:

RTDC
Speed Restriction Form S
Number 3098 Date 06172020
to Last Name, First Name AT DUS
Temporary Speed Restriction:
Item 1 NWGL Line, NW TRK 1
Between MP 5.0 and MP 5.2
Speed 15MPH
Time Effective 1510 HRS on 06172020
Time Delivered 1511 HRS on 06172020
Dispatcher: JJD

SPECIAL INSTRUCTION 9

SIGNAL ASPECTS AND INDICATIONS

SI 9-A SIGNAL ASPECTS AT UNION STATION NOT COVERED BY RULE 9

The following signals are in service at Union Station and displayed for Amtrak train movements only at the 8s, 8n, 10n, 38s, and 34s signals:



NAME: Restricting

INDICATION: Proceed through interlocking limits at restricted speed.



NAME: Stop

INDICATION: Signal Stop

SI 9-B ABSENCE OF TEMPORARY SPEED RESTRICTION SIGNAGE [RULE 9-C(4)]

In the absence of any Signals Governing Speed Restrictions, **([Rule 9-C]**), Operators will comply with the Mandatory Directive (Form S) issued on their CCROC or issued using the radio or telephone by the Dispatcher. Notify the Dispatcher of missing or misplaced signage.

SI 9-C ADDING OR REMOVING TEMPORARY SPEED RESTRICTION SIGNAGE [RULE 9-C]

Temporary Speed Restriction signage may be placed within 2 hours of a Temporary Speed Restriction Form S being put in effect.

Temporary Speed Restriction signage will be removed within 2 hours following a Temporary Speed Restriction Form S being cancelled.

SPECIAL INSTRUCTION 11

OPERATION UNDER INTERLOCKING RULES

SI 11-A ACTIVATION OF CONTROLLED MASTER LOCATIONS

In the application of **[Rule 11-E]**, before the Dispatcher activates a controlled master location for the purpose of raising crossing gate protection, he must ensure that any approaching movement is notified and can safely stop prior to occupying the affected grade crossing.

SPECIAL INSTRUCTION 13

OPERATION UNDER CAB SIGNAL SYSTEM, AUTOMATIC TRAIN CONTROL AND POSITIVE TRAIN CONTROL RULES

SI 13-A AUTOMATIC TRAIN CONTROL AND POSITIVE TRAIN CONTROL

Positive Train Control (PTC) rules are in-effect and in-service as a supplement to CTC method of operation on segments of RTDC territory designated in the Employee Timetable under Line Special Instructions, Station, Notes.

SI 13-A (1)ATC/PTC MODE SWITCH – NORMAL POSITION

In the application of **[Rule 13-D(1)]**, when operating a train, Operators must ensure that ATC and PTC mode switches are in the normal position and properly sealed at all times unless when operating as a failed train or as directed by the Dispatcher.

SPECIAL INSTRUCTION 15

EQUIPMENT

SI 15-A REPORTING EQUIPMENT DEFECTS

The MAP 10 Daily Equipment Condition Report (Form VH-001) for reporting equipment defects is located in the Operator's cab. Operators must enter on the MAP 10 form a description of all defects found, as well as other information as instructed on the form.

When defects occur that require attention prior to the train's final destination, the Operator will notify the Dispatcher as soon as possible. The Dispatcher will make necessary arrangements and inform the Operator of the location where repairs will be made. The Operator will inform the Mechanical Department representative by radio as soon as the train arrives at the point indicated for repairs.

All mechanical defects, in addition to being recorded on the MAP 10 form, must be reported to the Dispatcher at the final destination. Any other conditions that require attention (trash, spills, vandalism, etc.) must also be reported to the Dispatcher on arrival at the final destination.

SI 15-B EQUIPMENT CHARACTERISTICS – ELECTRIC MULTIPLE UNITS (EMU)

SI 15-B(1) SPECIFICATIONS AND RESTRICTIONS

UNIT NUMBERS	TYPE	NOTES & RESTRICTIONS	MODEL	MAX. NO. OF UNITS IN CONSIST	MAX. AUTH. SPEED (MPH)
4001-4066	AC	No more than 4 married pairs may be coupled and operated as a train during rescue operation and in deadhead (non-revenue) service.	Hyundai-Rotem EMU	8	79

SI 15-C MOVING EMU EQUIPMENT USING COMPROMISE COUPLERS

(None)

SI 15-D DIESEL OPERATED EQUIPMENT RESTRICTION AT UNION STATION

Amtrak and freight locomotives are prohibited from standing or idling under the station canopy at Union Station unless authorized.

SPECIAL INSTRUCTION 16

HIGHWAY GRADE CROSSINGS

SI 16-A HIGHWAY GRADE CROSSING TABLES

Timetable Special Instructions sections **EAST 5, GOLD 5,** and **NWES 5** list highway grade crossings in the following format:

(Column No.)

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
									Special Action Required			Apparatus Provided		
Crossing Name	Special Notes	Type of Crossing	Location	RTDC MP	MP	RTDC Operating Limits MP	Type of Warn. Device	Special Whistle Instruction	ACTION	TRACK (S)	DIRECTION	DEVICE	TRACKS (S)	PRE-EMPTION

Column 1: Grade Crossing Name

Column 2: *SPECIAL NOTES,* are defined below each table

Column 3: Type of grade crossing -"P" indicates a private crossing; "PD" indicates pedestrian crossing; all other are highway grade crossings

Column 4: Municipality where grade crossing is located

Column 5: RTDC grade crossing milepost location

Column 6: Adjacent Railroad grade crossing milepost location

Column 7: RTDC grade crossing operating limits

Column 8: *TYPE OF WARNING DEVICES*

F – Flashers **G** – Gates **B** – Bells

Column 9: *SPECIAL WHISTLE INSTRUCTIONS*, defined as follows:

W – Engine horn signal **[Rule 4-E(6)(c)]**

W/R – Restricted Whistle Post per **[Rule 9-E(3)]**

W/R 2X – Restricted Whistle Post, Multiple Crossings **[Rule 9-E(4)]**

10. Column 10-12: *SPECIAL ACTION REQUIRED*

    This section intentionally blank; reserved for future use

11. Column 13-14: *APPARATUS PROVIDED*

    This section intentionally blank; reserved for future use

12. Column 14: *PRE-EMPTION,* defined as follows:

    If "Yes" appears in this column, crossing warning devices are interconnected with and pre-empt normal operation of highway traffic signals. Activation of flashers and gates at crossings equipped in this manner may be delayed for a period of time to allow highway signals to cycle before the crossing activates.

SI 16-B EXIT GATE MALFUNCITON

In the event of a Grade Crossing Exit Gate Arm Malfunction, or Multiple Grade Crossing Exit Gate Arm Malfunctions with NO additional failures:

a. If the malfunctioning exit gate arm(s) is protected by a Rules Qualified Employee, Appropriately Equipped Flagger, Second Qualified Person, or Police Officer prior to any train movement over the crossing, then no Form S or Form C is required.

b. If the crossing is not protected and the train does not have a station stop on the approach to the crossing, the Dispatcher will direct the train to stop one car length in advance of the crossing to discharge the onboard Second Qualified Person to protect the crossing exit gate. Once the Second Qualified Person is protecting the exit gate, the Second Qualified Person will direct the train through the crossing. When the head end has cleared the crossing, the

train will stop to pick up the Second Qualified Person. The train cannot continue until the Second Qualified Person is safely onboard and has given permission to proceed.

c. If the crossing is not protected and there is a station stop on the approach (between the train's current position and the malfunctioning exit gate), the Dispatcher will issue a temporary speed restriction (Form S) for Restricted Speed to the Operator while the train is stopped at the station. Once the Operator receives the Form S, the train may proceed through the crossing without protection. The horn must be sounded in compliance with **[Rule 4-E(6)c]**.

d. Once a Rules Qualified Employee, Appropriately Equipped Flagger, Second Qualified Person, or Police Officer is in position at the crossing, Dispatcher will cancel the Form S and trains my proceed at MAS.

SI 16-C MANDATORY DIRECTIVE FORM C AT A PEDESTRIAN CROSSING

1. When a Form C is in effect at a Passenger Station Pedestrian Crossing, all trains will stop within 50 feet off the crossing. After it has been confirmed the crossing is clear, trains may immediately continue over the crossing at Restricted Speed until the lead end is clear of all crossing(s).

2. DO NOT SOUND HORN, ring bell only.

SI 16-D PROCEDURES FOR DISCHARGING SECOND QUALIFIED PERSON TO FLAG A CROSSING.

Stop the train within 50 feet of the crossing.

Contact Dispatcher for permission to discharge the Second Qualified Person on field side of train.

Have Second Qualified Person open the crew door.

After Second Qualified Person is discharged, Second Qualified Person will close crew door.

After receiving proceed authorization from the flagger, proceed through the crossing until head end of the train has cleared the crossing.

The Second Qualified Person will open the crew door on the field side of the train to board the train.

After Second Qualified Person boards and closes the crew door, proceed at MAS.

SPECIAL INSTRUCTION 21

MOVEMENT OF TRACK CARS

SI 21-A SPECIAL INSTRUCTIONS RELATED TO MOVEMENT OF TRACK CARS OR OTHER SPECIAL VEHICLES

1. (None)

SI APPENDIX – 1 SPEED TABLES

CONVERSION FROM TIME TO SPEED (MPH) **per Mile**

Time per mile min	sec	**Speed** (MPH)	Time per mile min	sec	**Speed** (MPH)	Time per mile min	sec	**Speed** (MPH)
0	36	**100**	0	55	**65**	2	00	**30**
0	38	**95**	1	00	**60**	2	24	**25**
0	40	**90**	1	05	**55**	3	00	**20**
0	42	**85**	1	12	**50**	4	00	**15**
0	45	**80**	1	20	**45**	6	00	**10**
0	48	**75**	1	30	**40**	12	00	**5**
0	51	**70**	1	45	**35**			

CONVERSION FROM TIME TO SPEED (MPH) **per Half-Mile**

Time per ½ mile min	sec	**Speed** (MPH)	Time per ½ mile min	sec	**Speed** (MPH)	Time per ½ mile min	sec	**Speed** (MPH)
0	18	**100**	0	27.5	**65**	1	00	**30**
0	19	**95**	0	30	**60**	1	12	**25**
0	20	**90**	0	32.5	**55**	1	30	**20**
0	21	**85**	0	36	**50**	2	00	**15**
0	22.5	**80**	0	40	**45**	3	00	**10**
0	24	**75**	0	45	**40**	6	00	**5**
0	25.5	**70**	0	51.5	**35**			

CONVERSION FROM DISTANCE AND SPEED TO TIME

	SPEED (Miles per hour)							
Distance (Miles)	**20**	**30**	**40**	**50**	**60**	**70**	**80**	**90**
0.25	**0-45**	**0-30**	**0-23**	**0-18**	**0-15**	**0-13**	**0-11**	**0-10**
0.50	**1-30**	**1-00**	**0-45**	**0-36**	**0-30**	**0-26**	**0-23**	**0-20**
0.75	**2-15**	**1-30**	**1-08**	**0-54**	**0-45**	**0-38**	**0-34**	**0-30**
1.00	**3-00**	**2-00**	**1-30**	**1-12**	**1-00**	**0-51**	**0-45**	**0-40**
1.25	**3-45**	**2-30**	**1-53**	**1-30**	**1-15**	**1-04**	**0-56**	**0-50**
1.50	**4-30**	**3-00**	**2-15**	**1-48**	**1-30**	**1-17**	**1-08**	**1-00**
1.75	**5-15**	**3-30**	**2-38**	**2-06**	**1-45**	**1-30**	**1-19**	**1-10**
2.00	**6-00**	**4-00**	**3-00**	**2-24**	**2-00**	**1-43**	**1-30**	**1-20**
2.25	**6-45**	**4-30**	**3-23**	**2-42**	**2-15**	**1-56**	**1-41**	**1-30**
2.50	**7-30**	**5-00**	**3-45**	**3-00**	**2-30**	**2-09**	**1-53**	**1-40**
2.75	**8-15**	**5-30**	**4-08**	**3-18**	**2-45**	**2-21**	**2-04**	**1-50**
3.00	**9-00**	**6-00**	**4-30**	**3-36**	**3-00**	**2-34**	**2-15**	**2-00**
4.00	**12-00**	**8-00**	**6-00**	**4-48**	**4-00**	**3-26**	**3-00**	**2-40**
5.00	**15-00**	**10-00**	**7-30**	**6-00**	**5-00**	**4-17**	**3-45**	**3-20**

TIME CONSUMED (minutes and seconds)

SI APPENDIX – 2 RTDC RAILROAD OFFICIALS

Individuals indicated as "S/LE" are qualified under Federal regulations as Supervisors of Locomotive Engineers for training, certification, and recertification of Operators.

EXECUTIVE

P. Kenney	General Manager
M. Lugo	Deputy General Manager, Maintenance
E. Weber	Deputy General Manager, Operations
V. Jernigan	Human Resources Manager

TRANSPORTATION DEPARTMENT

K. Day	Chief Transportation Officer
C. Balthrop	Transportation Manager
P. Arnold	Transportation Operating Rules Trainer

TRANSPORTATION – DTO DISPATCHING CENTER

M. McAbee	DTO OCC Manager
E. Deocares	DTO OCC Supervisor
M. Haithcox	DTO OCC Supervisor
C. Parch	DTO OCC Supervisor
S. Jimenez	DTO OCC Supervisor

TRANSPORTATION – CREW MANAGEMENT

M. Sharif	Lead Crew Dispatcher

TRANSPORTATION – FIELD OPERATIONS

D. Whited	Lead Transportation Supervisor
K. Bartell	Transportation Supervisor
F. Chione	Transportation Supervisor
A. De La Rosa	Transportation Supervisor
T. Nation	Transportation Supervisor
C. Romero	Transportation Supervisor
I. Yania	Transportation Supervisor
E. Santizo	Transportation Supervisor
R. Beam	Transportation Supervisor
K. Lopes	Transportation Supervisor

M. Byrnes	Transportation Supervisor
J. Pitts	Transportation Supervisor

MECHANICAL DEPARTMENT

C. Knapp	Chief Mechanical Officer
E. Calderon	Deputy Chief Mechanical Officer
J. O'Connell	Vehicle Maintenance Project Manager
C. Mulhall	Vehicle Maintenance Supervisor/Instructor
G. Dorval	Vehicle Maintenance Supervisor/Instructor
W. Feliciano	Railcar Engineer
J. Alpha	Vehicle Maintenance Supervisor
C. Bobenchi	Vehicle Maintenance Supervisor
K. Kellogg	Vehicle Maintenance Supervisor
M. Kleyhauer	Vehicle Maintenance Supervisor
C. Wood	Vehicle Maintenance Supervisor
R. Studebaker	Vehicle Maintenance Supervisor
C. Stafford	Vehicle Maintenance Supervisor

ENGINEERING DEPARTMENT

A. O'Brien	Chief Engineer
F. Castillo	Deputy Chief Engineer
K. Abaray	Engineering Program Manager
S. Coleman	Systems and Infrastructure Engineer
E. Radke	Signals Manager
P. Kristinsson	Signals Supervisor
W. Westover	Signals Supervisor
	Signals Supervisor (vacant at time of publication)
	IT and Communications Manager (vacant at time of publication)
	Track Manager (vacant at time of publication)
	Track Supervisor (vacant at time of publication)
C. Thurman	Traction Power Supervisor
L. Loya	Traction Power Supervisor
S. Anderson	Facilities Manager

P. Hughes	Facilities Supervisor
A. Gonzalez	Communications Supervisor
C. Vazquez	Communications Supervisor
A. Kiehl	Track Usage Coordinator

SAFETY DEPARTMENT

M. Gauger	Safety & Security Manager
P. Snyder	Safety Specialist / Training Coordinator
C. Verseman	Safety Specialist

SI APPENDIX – 3 FREQUENTLY USED TELEPHONE NUMBERS

Internal Department/Title	Name	Cell Number	Office Number
General Manager	Paul Kenney	303-324-7395	720-460-5806
Deputy General Manager - Maintenance	Matthew Lugo	831-320-2173	720-460-5885
Deputy General Manager – Transportation, OCC	Eric Weber	817-600-6808	720-460-5875
Chief Engineer	Annka O'Brien	720-731-3753	720-460-5935
Deputy Chief Engineer	Fleming Castillo	720-878-8116	720-460-5856
Chief Transportation Officer	Kenneth Day	512-557-1211	720-460-5912
Transportation Manager	Chip Balthrop	318-286-8581	720-460-5919
Transportation Operating Rules Trainer	Paul Arnold	720-233-4209	720-460-5913
Lead Transportation Supervisor	Dustin Whited	720-840-8079	720-460-5916
DTO OCC Manager	Michael Mcabee	864-208-5605	720-460-5901
Chief Mechanical Officer	Christian Knapp	303-910-1913	720-460-5887
Deputy Chief Mechanical Officer	Elvin Calderon	787-600-1101	720-460-5882
Safety and Security Manager	Mickey Gauger	602-552-4334	720-460-5818
DTO OCC Emergency Number	-	-	**720-460-5959**
DTO OCC Supervisor on Duty	-	-	**720-460-5906**
DUS Dispatcher	-	-	**720-460-5909**
East Corridor Line Dispatcher	-	-	**720-460-5907**
Gold Line & NWES Dispatcher	-	-	**720-460-5908**
IT and Communications Manager			
Chief Financial Officer	Dina Salama	503-539-0888	720-460-5830
Procurement Contracts Manager			
Human Resources Manager	Vanessa Jernigan	303-946-4384	720-460-5833

Internal Department/Title	Name	Cell Number	Office Number
Quality Manager	Ana Mercado	787-504-9666	720-460-5820
RTD Light Rail	RTD Light Rail Control Center	-	303-299-3480
RTD Bus	RTD Bus Control Center	-	303-299-3000
RTD SCC	Security Command Center	-	303-299-3911

External Agency	Name	Main Office Number	Secondary Office Number
Federal Railroad Administration	National Response Center	800-424-8802	800-424-0201
National Transportation Safety Board	National Response Center	800-424-8802	800-424-0201
Burlington Northern Santa Fe Railroad (Police)	Police Control Center	800-832-5452	-
Burlington Northern Santa Fe Railroad (Rail)	Operations Control Center (Train Dispatcher Office)	817-867-7094	-
Amtrak (Police)	Police Control Center	800-331-0008	800-424-8802
Union Pacific Railroad (Police)	Police Control Center	888-877-7267	-
Union Pacific Railroad (Rail)	Operations Control Center (Denver Train Dispatcher Office)	402-636-1658	1-800-726-1178
Denver International Airport	Communication Command Center	303-342-4200	303-342-4020

EMERGENCY SPECIAL INSTRUCTIONS

EM 1 GENERAL INSTRUCTIONS

EM 1-A DEFINITION - EMERGENCY

An emergency is an unforeseen circumstance or set of circumstances requiring immediate action that threatens the health or safety of a person or persons. Examples include but are not limited to:

- Fatality along the right-of-way;
- Customer or Employee illness or injury requiring immediate medical care;
- Grade crossing accident;
- Collision;
- Derailment;
- Equipment fire or smoke condition;
- Power outage or blackout;
- Extreme weather conditions;
- Security situation.

EM 1-B GENERAL PRINCIPLES

In any emergency, the first priority is the safety of customers, Employees, and the general public.

The following general principles apply in all emergencies:

In any emergency involving trains or track cars, or which occurs on or about the right-of-way, the Dispatching Center must be notified immediately, and must be updated on the situation as often as possible.

Employees on the scene of an emergency must take all appropriate actions to ensure the safety of customers, Employees, and the general public, and to protect Company property. However, Employees will not take unnecessary personal risks nor attempt actions for which they are not trained or do not have the proper equipment or protective gear.

Employees must cooperate fully with police and fire officials and other emergency responders. If responders issue orders which violate railroad safety or operating rules, Employees will immediately contact supervision or the Dispatching Center for instructions. Employees must ensure that all responders are aware of the dangers associated with working along the right-of-way, and must protect these persons from moving trains, power systems, and other railroad-related hazards.

Customers on trains involved in an emergency or being delayed due to an emergency must be kept informed of the situation and the actions being taken. Information must be provided in a manner that will not cause undue alarm or panic.

Employees on the scene of an emergency will provide all necessary and appropriate information to customers, Company officials, and emergency response officers. Employees should refer information requests from the news media or non-railroad Employees, other than emergency responders, to the appropriate department. Employees on the scene of an incident will only provide information to outside persons when expressly instructed to do so by authorized Company officials.

EM 2 RESPONSIBILITIES IN AN EMERGENCY

EM 2-A OPERATOR RESPONSIBILITIES

During an emergency, the Operator is responsible for:

- Providing protection, if required;
- Initiating an emergency radio transmission;
- Establishing and maintaining communications with the Dispatching Center;
- Conducting an initial assessment of the situation and providing accurate information to the Dispatching Center;
- Ensuring the safety of customers, and keeping them informed of the situation;
- Coordinating the evacuation of the train, if necessary;
- Providing direction to other Employees and passengers to assist, as necessary;
- Securing the train in the event of an evacuation;
- Acting as the Railroad Operations Commander and communications liaison with emergency responders and the Dispatching Center until relieved of this responsibility by supervision.

EM 2-B TRANSPORTATION SUPERVISOR RESPONSIBILITIES

During an emergency, the Transportation Supervisor is responsible for:

- Assuming the role of Railroad Operations Commander if so designated and acting as the point of contact between the railroad and emergency responders;
- Making a rapid assessment of the situation and providing information to the Dispatching Center on the nature and severity of the incident;
- Ensuring that all necessary and appropriate action is taken to ensure the safety of all persons (Employees, customers, emergency responders and the general public) at the scene of the incident;
- Recommending to the Dispatching Center and senior management courses of action to mitigate the impact of the incident, move disabled equipment, accommodate displaced customers, and restore normal service;
- Regularly updating the Dispatching Center and senior management on progress at the scene, and providing estimates of the time required to complete key tasks associated with the restoration of service.

EM 2-C DISPATCHING CENTER RESPONSIBILITIES

EM 2-C(1) DURING AN EMERGENCY, THE DISPATCHER IS RESPONSIBLE FOR:

- Receiving the initial notification of the emergency and ascertaining as much information as possible concerning the location and nature of the situation;
- Notifying the Dispatching Center Supervisor of the emergency, who will make additional required notifications;
- Providing track protection as required;
- Arranging for de-energization of traction power as required;
- Receiving follow-up information from Employees at the scene and relaying this information to the Dispatching Center Supervisor and other officials;
- Notifying other trains delayed or otherwise affected by the emergency of the nature of the situation, expected delays, and any operational changes made necessary by the emergency.

EM 2-C(2) DURING AN EMERGENCY, THE DISPATCHING CENTER SUPERVISOR IS RESPONSIBLE FOR:

- Receiving notification of the emergency from the Dispatcher and informing all appropriate emergency service agencies not already contacted by the Dispatcher;
- Notifying and updating Company officials;
- Notifying governmental regulatory and oversight agencies as required;
- In consultation with other Company officials, determining the actions to be taken to best accommodate the needs of the responders at the scene of the emergency;
- To the extent possible, maintaining railroad operations in areas not affected by the emergency.

EM 2-D TRANSIT POLICE COMMUNICATIONS CENTER TWO RESPONSIBILITIES

EM 2-D(1) DURING AN EMERGENCY, THE TRANSIT POLICE COMMUNICATIONS CENTER TWO (TCP2) IS RESPONSIBLE FOR:

- Coordinating with Dispatchers to respond to safety and security issues;
- Dispatching armed security guards to respond to accidents and incidents in cooperation with law enforcement personnel; and perform mobile patrols;
- Providing security support to Operators;
- Operate and monitor all CCTV security systems, including on-board and station-based cameras, as well as cameras at grade crossings.

EM 2-E OTHER COMPANY EMPLOYEE RESPONSIBILITIES

During an emergency, other Company Employees are responsible for:

- Providing whatever immediate assistance they can render to customers, train Operators, company officials, and emergency responders. In particular, RTDC Employees will make it a priority to provide assistance to any passengers with disabilities

- As soon as possible, identifying themselves to the Operator or senior officer on the scene and following their instructions and the instructions of emergency responders. If the Operator or critical personnel are injured or otherwise unable to fulfill their duties, other company Employees may be used if they are qualified for the tasks required.

EM 2-F EMERGENCY MANAGEMENT APPROACH

In the event of an emergency, the DTO Chief Transportation Officer or designee will immediately convene DTO Operations Senior Management at the Dispatching Center or on a conference call to ensure that DTO responds quickly and is prepared for any contingency.

EM 2-G RTDC INCIDENT COMMAND

EM 2-G(1) RAILROAD OPERATIONS COMMANDER (ROC)

Under this plan, the Railroad Operations Commander is the railroad person in charge of railroad operations at an incident scene. Essentially the ROC functions as the railroad's Incident Commander. The ROC may or may not be the ranking railroad officer on scene; nevertheless, all railroad functions will coordinate their actions through the ROC. The ROC acts as the railroad's liaison to the inter-agency Incident Command Post.

EM 2-G(2) SINGLE POINT OF CONTACT

With the exception of intra-departmental communication, all communication from the scene including status reports, requests for resources, direction from the Dispatcher, etc. will be channelled through the ROC to the Dispatching Center. Instructions from the Dispatching Center and senior management will be communicated through the ROC to field personnel. The Single Point of Contact ensures that conflicting information does not cause confusion or mishaps and that the RTDC actions are coordinated and unified.

EM 3 SITUATIONAL ASSESSMENT

EM 3-A INITIAL SIZE UP

Immediately on becoming aware that an emergency exists, all involved parties must cooperate to rapidly develop and share as accurate an assessment of the situation as possible. To accomplish this, all available technical and human resources must be used effectively.

In the initial notification attempt to confirm:

- the nature and location of the event; (the line, milepost, nearest station, crossing or cross street,
- train number(s) involved,
- track(s) affected,
- the approximate number and extent of injuries,
- any unusual circumstances that may pose an imminent danger or that responders should be aware of,
- if any known conditions exist affecting the movement of trains, e.g., structures, track, fire, hazardous materials release, etc..

1. If possible get the name of the caller, and if the report is being made on other than a company radio, secure the telephone number where this person may be reached.

2. If the notification comes from a 911 service, be sure to note any response actions already initiated and any requests for railroad action such as de-energizing the OCS or stopping rail traffic.

3. The Dispatching Center and SCC should determine if visuals are available via CCTV, and if so, information developed should be shared as quickly as possible.

EM 3-B COMMON SITUATIONAL AWARENESS

Effective management of an emergency event depends on maintaining a common situational awareness among those involved in the response. RTDC Employees must make every effort to share information in a coordinated and unified fashion throughout the duration of the event. Particular attention must be paid to the communication protocols in Sections EM-2-G(2) and EM 4.

EM 4 COMMUNICATIONS

EM 4-A INITIAL COMMUNICATION

The initial notification of an emergency situation shall be made without delay and by the fastest means possible, including company radio, company telephone, cell phone, or any other available option.

The initial communication from the scene should be to the Dispatching Center for all incidents involving or occurring on trains or track cars, or any situation along the right-of-way. For other locations, such as buildings and vehicles not on the right-of-way, the initial notification should be to the Dispatcher or to the senior Company official in charge. Should there be any doubt regarding the proper authority, Employees should make the initial call to the Dispatcher.

Initial communication regarding an emergency situation should include as much of the following information as possible:

- the nature and location (the line, milepost, nearest station, crossing or cross street) of the event,
- train number(s) involved,
- track(s) affected,
- the approximate number and extent of injuries,
- any unusual circumstances that may pose an imminent danger or that responders should be aware of,
- if any known conditions exist affecting the movement of trains, e.g., structures, track, fire, hazardous materials release, etc, and
- emergency response required (fire, police, EMS).

EM 4-B FOLLOW-UP COMMUNICATION

After the initial report of the emergency, the following communications guidelines should be followed to the extent possible. However, any means of communication will be used by any person at any time when necessary to protect the safety of customers, Employees, and the public.

One Employee at the scene should be designated as having primary responsibility for maintaining communications with the Dispatching Center or other designated Company offices. This will typically be the Employee designated as the Railroad Operations Commander (ROC) unless the ROC delegates this responsibility to another person. This Employee should remain available at the radio or designated telephone at all times to receive and initiate transmissions whenever required.

The telephone should be used as much as possible for status reports, updates and any lengthy communications, leaving the radio free for transmissions between persons on the scene who do not have access to a telephone. Care must be taken to avoid transmission of sensitive information, such as the names of injured persons or possible causes of the incident, over the radio.

EM 4-C CUSTOMER COMMUNICATION

In any emergency situation, timely and accurate information must be provided to customers. The Operator has the primary responsibility for making announcements to customers; however, supervisory Employees, including the Dispatcher, must ensure that necessary announcements are made in the event the Operator cannot do so.

As soon as possible after determining the nature and extent of the emergency, the customers must be informed of:

- the type of situation;
- any immediate actions required by the customers, such as closing windows, evacuating one or more cars, etc.
- actions being taken by the railroad to respond to the emergency;
- if appropriate, the expected duration of the situation or amount of time until emergency responders will reach the scene.

Announcements must be made that are concise and delivered in a way that does not induce unnecessary concern or panic on the part of the customers.

Operators must ensure that announcements are received in all cars of the train. If the Operator knows or suspects that the PA system in one or more cars is malfunctioning in any way, verbal announcements must be made in the affected car(s).

Customers must be updated as soon as new information is received. In addition, announcements must be made at least every 10 minutes during an emergency situation, even if there is no further information to report.

EM 4-D EMERGENCY ANNOUNCEMENT EXAMPLES:

INITIAL ANNOUNCEMENT TO PASSENGERS:

"MAY I HAVE YOUR ATTENTION PLEASE. THE TRAIN HAS STRUCK A MOTOR VEHICLE. DAMAGE TO THE TRAIN APPEARS TO BE MINOR AND THERE IS NO THREAT TO PASSENGERS. WE ASK THAT YOU REMAIN SEATED WHILE WE ASSESS THE SITUATION FURTHER. THE CONTROL CENTER HAS BEEN NOTIFIED AND EMERGENCY RESPONDERS ARE ON THE WAY."

1. **UPDATE WITH NEW INFORMATION:**

"MAY I HAVE YOUR ATTENTION PLEASE. EMERGENCY RESPONDERS ARE ON THE SCENE ATTENDING TO OCCUPANTS OF THE MOTOR VEHICLE AND RTDC PERSONNEL ARE INSPECTING THE TRAIN. WE WILL UPDATE YOU AS SOON AS THERE IS ADDITIONAL INFORMATION. WE APPRECIATE YOUR PATIENCE."

2. **UPDATE WITH NO NEW INFORMATION (AFTER 5 MINUTES):**

"LADIES AND GENTLEMEN, WE HAVE NOT YET RECEIVED ANY ADDITIONAL INFORMATION. WE WILL INFORM YOU AS SOON AS FURTHER INFORMATION IS AVAILABLE."

3. **UPDATE WITH NEW INFORMATION:**

"MAY I HAVE YOU ATTENTION PLEASE. WE HAVE BEEN INFORMED THAT THE TRAIN MUST REMAIN HERE AND THAT RTDC IS ARRANGING SUBSTITUTE BUS SERVICE. BUSES ARE ALREADY EN ROUTE AND WE EXPECT THEM TO ARRIVE WITHIN 15 MINUTES. WHEN BUSES ARRIVE WE WILL BE EXITING THE TRAIN USING AN EMERGENCY LADDER. EMERGENCY PERSONNEL AND RTDC PERSONNEL WILL BE AVAILABLE TO ASSIST YOU. AT THIS TIME WE ASK THAT YOU PLEASE REMAIN SEATED SO THAT RTDC PERSONNEL CAN MOVE THROUGH THE TRAIN. IF YOU OR A FELLOW PASSENGER WILL NEED ASSISTANCE EXITING THE TRAIN, PLEASE MAKE THIS KNOWN TO RTDC PERSONNEL AS THEY MOVE THROUGH THE TRAIN. I WILL ADVISE YOU WHEN WE ARE READY TO BEGIN EXITING THE TRAIN. THANK YOU FOR YOUR COOPERATION."

4. **INSTRUCTIONS TO EXIT THE TRAIN:**

"MAY I HAVE YOUR ATTENTION PLEASE. IN JUST A MOMENT WE WILL BEGIN EXITING THE TRAIN. THERE ARE BUSES AVAILABLE AND RTDC PERSONNEL WILL DIRECT YOU TO THEM ONCE YOU LEAVE THE TRAIN."

"FOR CUSTOMERS WHO REQUESTED ASSISTANCE, PLEASE REMAIN SEATED AND EMERGENCY PERSONNEL WILL ASSIST YOU."

"AT THIS TIME, WE ASK ALL PASSENGERS EXCEPT THOSE REQUIRING ASSISTANCE TO GATHER YOUR BELONGINGS AND MOVE IN AN

ORDERLY FASHION TOWARDS THE REAR OF THE TRAIN WHERE EMERGENCY PERSONNEL WILL ASSIST YOU. WE WILL BE LEAVING THE TRAIN THROUGH THE REAR DOOR OF THE REAR CAR."

EM 5 TRAIN EVACUATION GUIDELINES

Since each situation is unique, these guidelines must be applied with sound judgment in light of the specific circumstances of each event.

Evacuating passengers from a train will be done only when there is not a feasible alternative such as moving the train to a station where passengers may de-board in the usual manner. Unless circumstances make it an absolute necessity, no evacuation should be initiated without notification to and approval from the Dispatching Center. Whenever possible, evacuations should not be initiated until first responders are on the scene. In any case, when deciding whether to evacuate, how to evacuate, and while conducting an evacuation operation, the first priority must always be passenger safety, followed by passenger convenience and comfort.

Communication with Customers

As soon as practical, timely and accurate information must be provided to customers. Clear and frequent communication with customers reduces passenger distress and the likelihood of panic. It can also help ensure their cooperation and compliance with instructions. The Operator has the primary responsibility to make announcements to customers; however, other onboard personnel, supervisory Employees, or Dispatching Center personnel must ensure that announcements are made in the event the Operator cannot do so.

Customers should be informed of:

the nature of the situation;

the preparations customers should make if an evacuation is anticipated;

any immediate actions required by customers such as evacuating one or more cars;

actions being taken by the railroad to respond to the emergency; and

if known, the expected duration of the situation or the amount of time until emergency responders arrive at the scene.

EM 5-A UNCONTROLLED EVACUATION

In the event of an uncontrolled evacuation (e.g. passengers self-evacuate), the Operator must immediately make an emergency radio broadcast directing all trains approaching the evacuation site to come to a stop. The Dispatching Center must then be advised of the situation. The Dispatching Center must immediately take the necessary steps to ensure that the area of the evacuation is properly protected.

As soon as trains in the area are stopped and the Dispatching Center has been notified, the Operator and any other available RTDC Employees must assess the situation and request that passengers remain on-

board the train and wait for further instructions and emergency assistance organize and, if necessary, take the most appropriate actions to direct the self-evacuation so that it proceeds as safely as possible.

EM 5-B ORDER OF PREFERENCE FOR EVACUATION METHODS

When an evacuation is necessary, the method of evacuation should be chosen based on the nature of the emergency, the urgency of the situation, and the prevailing operational circumstances. When circumstances permit, the order of preference for evacuation methods is:

Train to Platform – move the train to a station and discharge passengers to a station platform.

Same Consist – move passengers from the affected car to an unaffected car in the same consist.

Train to Train – move passengers through the end door to a rescue train on the same track.

Train to Roadbed - discharge passengers to the roadbed.

Train to Train –move passengers across transfer boards to a rescue train on an adjacent track.

Securing the Train for an Evacuation

- Prior to any evacuation, all involved trains must be secured by applying Three Point Protection.
- If the Operator must leave the cab at any time, the key must be removed from the controller.

EM 5-C EVACUATION METHODS

Train to Platform

Fully Platformed Train

If not already at a station, whenever possible, the Operator must be directed to move the train to the nearest station. Prior to discharging the passengers onto the station platform, announcements must be made informing passengers of the reason for the evacuation and what actions they should take after leaving the train (e.g. remain on the platform or leave the station area). Special attention must be paid to ensure that any passengers with disabilities are assisted to safety. The Operator or other railroad or emergency personnel must confirm that all passengers have left the train before concluding the evacuation.

Partially Platformed Train

If a train does not have all doors fully on the platform, the Operator or other railroad personnel must proceed through the cars, opening only those doors that are on the platform. Prior to discharging the passengers onto the station platform, announcements must be made informing passengers of the reason for the evacuation, the locations of the open doors, and what actions they should take after leaving the train (e.g. remain on the platform or leave the station area). If possible, the interior car doors must be secured or held open to expedite passenger movement. Special attention must be paid to ensure that any passengers with disabilities are assisted to safety or that an appropriate alternate means of evacuation is provided. The Operator or other railroad or emergency personnel must confirm that all passengers have left the train before concluding the evacuation.

Bridge Train to Platform

When a second train is at a platform on the same track as the train to be evacuated, the trains may be coupled so that passengers can move to the second train to reach the station platform. Announcements must be made informing passengers that it is necessary to evacuate, the reason for the evacuation, and providing any instructions they need to effect the evacuation. They must also be informed of the actions they should take after leaving the train (e.g. remain on the platform or leave the station area). Special attention must be paid to ensure that any passengers with disabilities are assisted to safety or that an appropriate alternate means of evacuation is provided. The Operator or other railroad or emergency personnel must confirm that all passengers have left the train before concluding the evacuation.

EM 5-D SAME CONSIST: AFFECTED CAR TO AN UNAFFECTED CAR

Move Passengers from the Affected Car to an Unaffected Car in the Same Consist

When the problem is isolated to a single car of the train, passengers may be moved from that car to a position of safety in another car in the same consist. Before beginning any car to car transfer, the train must be stopped and Three Point Protection applied. Announcements must be made informing passengers of the need to leave the affected car and directing them to move in an orderly fashion to the other car. If possible, the appropriate car body doors must be secured or held open to expedite passenger movement. Special attention must be paid to ensure that any passengers with disabilities are assisted to safety or that an appropriate alternate means of evacuation is provided. When the affected car has been evacuated, it should be secured to prevent passengers from reentering. On completion of the car to car transfer, the Operator must contact the Dispatching Center for additional instructions before moving the train.

EM 5-E TRAIN TO TRAIN – SAME TRACK

Rescue Train on the Same Track

The Dispatching Center will coordinate and direct the rescue train that will be used to evacuate passengers. Whenever possible, the rescue train should be coupled to the train being evacuated. Announcements must be made informing passengers that it is necessary to evacuate, the reason for the evacuation and providing any instructions they need to affect the evacuation. They must also be informed of the actions they should take after leaving the train (e.g. moving to the rescue train). Special attention must be paid to ensure that any passengers with disabilities are assisted to safety. The Operator or other railroad or emergency personnel must confirm that all passengers have left the train before concluding the evacuation.

If it is not possible to couple the two trains, passengers should be evacuated onto the roadbed and then proceed onto the rescue train. The Operator or other railroad or emergency personnel must follow the prescribed method to ensure that the emergency ladders are properly installed and safe for use. If passengers will be on the roadbed, then all the requirements in Section 2.4 of DTO-TR-06, RTDC Passenger Train Emergency Preparedness Plan, apply. Passengers must not be permitted to pass between trains that are not coupled unless a Safety Briefing has been held involving the Operators of both trains and field supervision to ensure that both trains have been properly secured against movement and that passengers will be able to cross safely from train to train. Before concluding the operation and allowing the movement of trains, the Operator, other railroad personnel, or emergency responders must confirm that all passengers have safely boarded the rescue train or are otherwise accounted for.

EM 5-F TRAIN TO TRAIN – ADJACENT TRACK

Rescue Train on an Adjacent Track

The Operator or other on-scene RTDC Employees must confer with the Dispatching Center to determine if the inter-track distance and relative elevations of the adjacent tracks will permit the use of transfer boards between trains. When the operating conditions and physical characteristics of the incident location permit, the Dispatching Center will coordinate and direct a rescue train to a point adjacent to the affected train. The rescue train must be positioned at the point that allows the safest and most direct route between the trains.

Before setting up transfer boards or any other apparatus between the trains, all pantographs on both trains must be lowered to protect against any shock hazard. Pantographs may not be raised until the transfer is complete and all persons and objects connecting the two trains are removed. The Operator and other railroad and emergency personnel must follow the prescribed method to ensure that transfer boards are properly secured between the two consists.

Announcements must be made informing passengers that it is necessary to evacuate, the reason for the evacuation, and providing any instructions they need to affect the evacuation. The Operator and other railroad and emergency personnel must direct and assist passengers in moving across the transfer boards to the rescue train. Special attention must be paid to ensure that any passengers with disabilities are assisted to safety or that an appropriate alternate means of evacuation is provided. The Operator or other railroad or emergency personnel must confirm that all passengers have left the train and are safely onboard the rescue train before concluding the evacuation. When the affected train has been evacuated, it must be secured to prevent passengers from re-entering.

EM 5-G TRAIN TO ROADBED

Special Requirements for Evacuations to the Right-of-Way

Do not evacuate passengers onto the roadbed unless no other means of evacuation is possible. The Dispatching Center must approve and coordinate all evacuations to the roadbed. Approval should only be given when it is impractical or unsafe to mitigate the situation by other means such as moving the train to a station platform or making a train to train transfer.

Whenever possible, a railroad official accompanied by emergency responders must be on the scene before any evacuation to the roadbed begins. However, if urgent circumstances necessitate it, the Dispatching Center or the railroad supervisor in charge may direct the evacuation to begin before emergency responders arrive.

Before beginning an evacuation that requires passengers to walk along the roadbed or to cross tracks, the Dispatcher must confirm that all trains on adjacent tracks are stopped and will remain stopped until the evacuation is completed.

When there is any potential hazard from the catenary system such as catenary wires downed at or in close proximity to the evacuation site, catenary power must be removed and must remain so until the hazard has been mitigated or the evacuation is completed.

Special attention must be paid to ensure that any passengers with disabilities are assisted to safety or that an appropriate alternate means of evacuation is provided.

EM 5-H GENERAL PROCEDURE FOR EVACUATIONS TO THE ROADBED

The Operator or other railroad or emergency personnel on the scene will direct the evacuation as follows:

The Operator or the Dispatching Center should inform passengers to prepare for an evacuation to the roadbed.

The Operator must confirm with the Dispatching Center that rail traffic is stopped and that the evacuation can proceed.

The Operator or other railroad or emergency personnel must determine the evacuation route, the assembly area for evacuees, and the door(s) to be used for exit to the roadbed.

If necessary, request assistance from passengers to assist the crew in directing and aiding other passengers.

Follow the prescribed method to erect the emergency ladder at the designated exit(s).

Position personnel at the door(s) for the evacuation, preferably one at the door and one on the roadbed.

Direct passengers to proceed through the train to the designated exit(s).

Railroad personnel must direct emergency responders to any known disabled passengers who may require assistance to evacuate.

Designate railroad or other emergency personnel to lead passengers along the roadbed. If passengers cannot immediately leave the track area, they should be directed to walk in the gage of the track, preferably the occupied track, to a designated assembly area or a location where they can safely leave the track area.

The Operator or other railroad or emergency personnel must confirm that all passengers have left the train and that all evacuees and other personnel are safely clear of the track area before concluding the evacuation.

EM 5-I EVACUATIONS AT SPECIAL CIRCUMSTANCE LOCATIONS

Evacuating a train at a Special Circumstance Location should be avoided whenever possible. If the affected train is located in a designated Special Circumstance Location, the Operator must so inform the Dispatcher. When circumstances permit, every effort must be made to move the affected train clear of the Special Circumstance location prior to initiating any evacuation. At designated Special Circumstance Locations, railroad personnel must follow the evacuation procedures identified for that location. This includes the use of designated egress paths from the right-of-way and the use of designated areas of assembly.

DUS

The South Platte River Bridge is located at DUS 0.67.

East Corridor

The I-70 Bridge is located on the East Corridor at MP 11.63.

The Pena Bridge is located on the East Corridor at MP 19.33.

NWES

The Jersey Cut-Off Bridge is located at NWGL MP 1.90.

The Utah Junction Bridge is located at NWGL MP 3.11.

The Clear Creek Bridge is located at NWGL MP 4.35.

Pecos Junction Station is located at NWGL MP 3.91.

Gold Line

The Moffat Subdivision Bridge located at GL MP 6.73.

The Ralston Creek Bridge is located at GL MP 7.07.

NOTE: RTD Employees must refer to N Line Addendum in this document.

EM 6 EMERGENCY EQUIPMENT AND FEATURES

EM 6-A EMERGENCY EQUIPMENT AND FEATURES

RTDC passenger cars are equipped with the following features and equipment that may be used in an emergency situation:

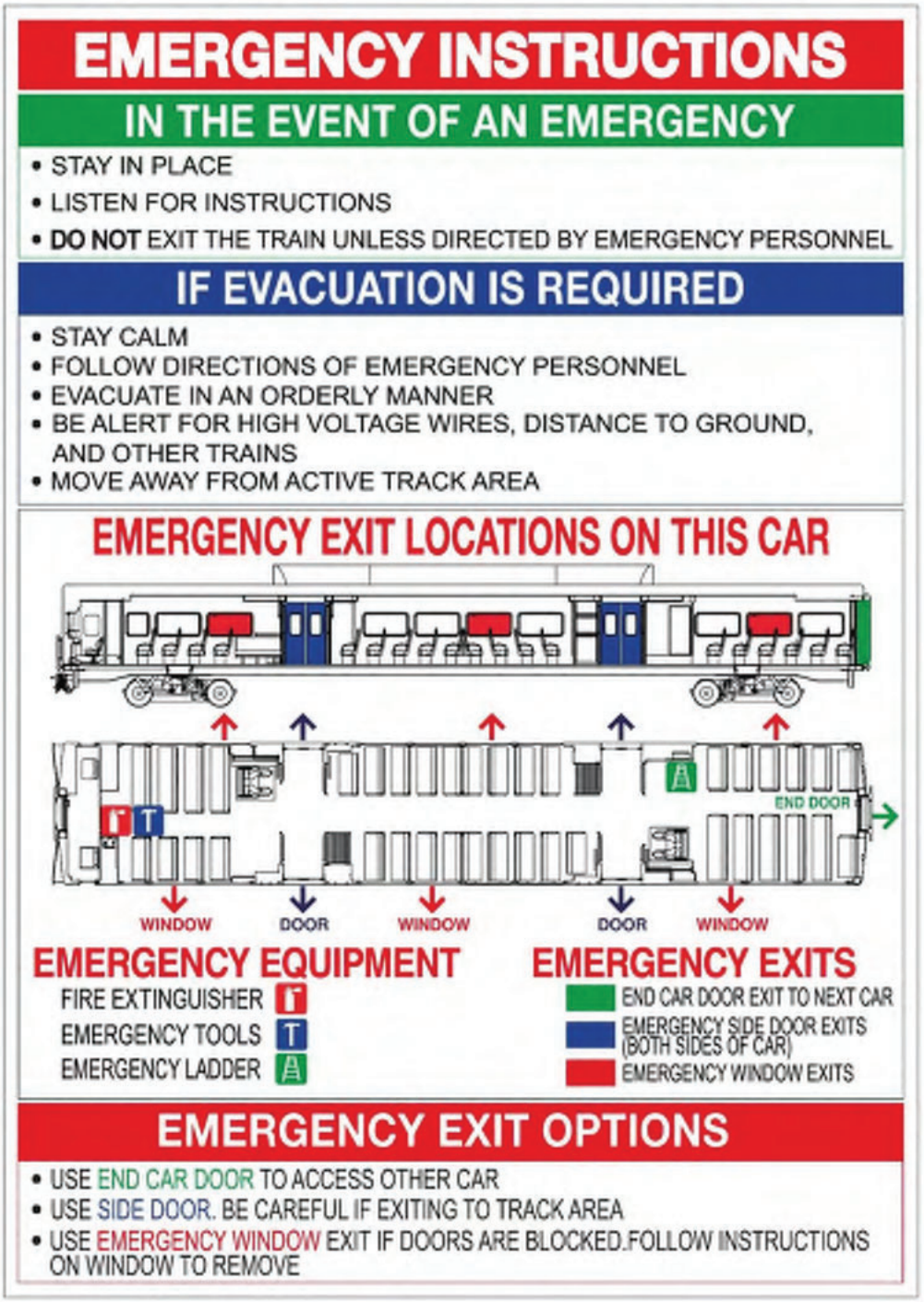
Emergency Equipment and Features
Fire Extinguishers: each car is equipped with a fire extinguisher readily available for use. It is located in the Emergency Tool Locker at the F end of the passenger compartment.
Emergency Tools: each car is equipped with a pry bar, flash light and first aid kit marked by appropriate signage located in the Emergency Tool Locker at the F end of the passenger compartment.
Pantograph Poles: each married pair of cars is equipped with an insulated pantograph pole stored in a dedicated housing unit attached to the side of the “B” car frame, which is utilized to manually retract pantographs away from the catenary wire or unlatch from the down position.
Hand-held Emergency Lighting: all onboard personnel are required to carry a flashlight while performing duty onboard trains.
Onboard Train Radios: each EMU control cab is equipped with a two way radio.
Portable Radios: each Operator is equipped with a hand-held portable radio that must be carried while performing duty onboard trains.
Passenger Emergency Intercom: each car is equipped with an intercom system that customers can use to communicate with the TPC2 in the event the Operator is unable to answer the call.
PA System: each car is equipped with a PA system that can be used by the Operator or the Dispatching Center to make onboard announcements throughout the train.

Emergency Equipment and Features
CCTV: each car is equipped with an onboard interior CCTV system that enables the Operator, the SCC or the Dispatching Center to view activity on the train.
Emergency Ladder/transfer board: each car is equipped with a ladder that can be converted to a transfer board. It is stored in the baggage area adjacent to the vestibule in the A end.

Emergency equipment and features must be used only in the event of an emergency and for the purpose intended. Missing and damaged equipment or used fire extinguishers must be reported to the Mechanical Department as quickly as possible.

EM 6-B HYUNDAI-ROTEM EMU CARS EVACUATION INSTRUCTIONS

Figure 1 - Emergency Instructions Sign



EM 7 SPECIAL CIRCUMSTANCES

EM 7-A ELECTRIFICATION

The entire RTDC system is electrified. When there is any potential hazard from the catenary system, such as catenary wires downed at or in close proximity to the site of a passenger train emergency, catenary power must be removed and must remain so until the hazard has been mitigated or the evacuation is completed.

EM 7-B PARALLEL OPERATIONS

Both the BNSF and Union Pacific railroads operate parallel to RTDC along various segments of RTDC's alignment (see Table 1). In the event of an emergency situation in an area where there are parallel operations, the Dispatcher must ensure proper notification is made to adjacent rail modes of transportation.

Once the Dispatcher has been notified that an emergency situation has occurred where parallel operations take place, the Dispatcher must make immediate notification to the adjacent property.

As a component of mutual emergency notification protocols, Operators of parallel rail operations are provided with RTDC emergency contact information per the Emergency Operations and Incident Management Plan (DTO-TR-05) referenced in the Passenger Train Emergency Preparedness Plan (DTO-TR-06), Appendix K: Emergency Preparedness Plan Related Procedures.

TABLE 1: Parallel Operations

RTDC LINE	Adjacent Railroad	Division	Sub-division	From MP	To MP
East Corridor	UPRR	Denver	Greeley	0.43	2.05
East Corridor	UPRR	Denver	Limon	629.53	637.33
Northwest Electrified Segment	BNSF	Powder River	Front Range	0.39	5.90
Gold	UPRR	Denver	Moffat Tunnel	4.34	6.53
Northwest Electrified Segment	UPRR	Denver	Moffat Tunnel	3.32	3.53
Gold	BNSF	Powder River	Golden	5.04	10.83

EM 7-C JOINT OPERATION

RTDC conducts joint operations with Amtrak and BNSF in DUS Interlocking.

EM 7-D SPECIAL CIRCUMSTANCE LOCATIONS (SEE EM 5-I)

Evacuating a train at a Special Circumstance Location should be avoided whenever possible. If the affected train is located in a designated Special Circumstance Location, the Operator must so inform the Dispatcher. When circumstances permit, every effort must be made to move the affected train clear of the Special Circumstance location prior to initiating any evacuation. At designated Special Circumstance Locations, railroad personnel must follow the evacuation procedures identified for that location. This

includes the use of designated egress paths from the right-of-way and the use of designated areas of assembly.

EM 8 MEDICAL EMERGENCIES

In all cases, care of ill or injured persons is the highest priority. If, for any reason, these procedures cannot be followed, Employees will use any means available to secure immediate medical attention, following up as soon as possible with notification to proper Company authority. In all areas, local emergency assistance can be secured by calling 911 on an outside phone.

EM 8-A MEDICAL EMERGENCIES ONBOARD TRAINS

If a medical emergency occurs onboard a train:

The Operator must immediately inform the Dispatcher, providing as much information as possible about the person's condition and location on the train. Unless the Operator, through conversation with the ill or injured person, or qualified medical personnel can positively determine that the person's condition does not require emergency treatment, all appropriate measures must be taken to provide immediate medical assistance.

The Dispatcher will instruct the train to stop at the next forward station. The Dispatcher will contact the Police and provide the current location of the train, the station where the train will be stopped, approximate arrival time for the train and any available information about the person's location on the train and condition.

The Operator will:

a. Attempt to secure medical assistance on the train by making an announcement requesting assistance from qualified medical personnel (doctors, nurses, EMTs);

b. Render first aid to the extent that they are capable;

c. To the extent possible, isolate the ill or injured person by asking other customers who are not assisting to move to other sections of the car;

d. Not attempt to move the ill or injured person until directed by qualified medical personnel or first responders;

e. Provide regular updates on the person's condition to the Dispatcher;

f. Notify the Dispatcher when emergency assistance arrives on the scene; and

g. Assist emergency personnel to the extent possible.

EM 8-B MEDICAL EMERGENCIES AT OTHER LOCATIONS

If a medical emergency occurs along the right-of-way, other than in a station, shop, yard, or other facility, the Employee-in-Charge will contact the Dispatcher, providing as much information as possible regarding the location and the nature and extent of the illness and injury. The Dispatcher will notify 911 to dispatch emergency assistance.

In stations, shops, yards and other facilities, the Employee-in-Charge will call 911directly. As soon as time and conditions permit, the Employee-in-Charge will also notify local supervision.

EM 8-C REPORTING

In any case involving illness or injury to an Employee, customer, or any other person on railroad property, the responsible Employee will complete the necessary reports and documentation as soon as possible, in accordance with the General Safety Instructions and other applicable instructions.

EM 9 SPECIAL SECURITY MEASURES

EM 9-A SUSPICIOUS PERSONS AND OBJECTS

At all times, RTDC Employees and Employees of foreign railroads on RTDC property must be alert to suspicious persons and objects on trains, in stations, at company facilities, and along the right-of-way. Suspicious persons and objects are those which, in the opinion of the observing Employee, have the potential to cause harm to persons or damage to equipment or property.

Employees must use their best judgment in determining when a person or object should be considered suspicious. Normal procedures, rather than these special security measures, must be followed for everyday lost and found articles, disruptive customers, and other common situations. Nonetheless, if the observing Employee has any doubt about the seriousness of the threat or the proper procedure to apply, they should not hesitate to take whatever action is necessary to protect the health and safety of the customers, Employees, and the general public.

EM 9-A(1) THE FOLLOWING ARE GENERAL GUIDELINES TO ASSIST EMPLOYEES IN GAUGING WHETHER A PERSON OR OBJECT SHOULD BE CONSIDERED SUSPICIOUS.

A suspicious person:

- Acts unusually curious, loiters, paces, acts nervous or jumpy;
- Quickly exits an area after abandoning a package;
- Wears clothes that are baggy or inappropriate to the season or the person;
- Is in a non-public area or along the right-of-way and doesn't have proper ID, uniform, or safety gear.

The determination of whether a person is suspicious must be based on their actions – not solely on the basis of race or perceived national origin, clothing, accessories, or language being spoken.

A suspicious object:

- Is abandoned by someone quickly leaving the area, or is left unattended for a significant period of time;
- Is found in an out-of-the-way location;
- Does not have any identification readily visible;
- Gives off an odor, mist or oily liquid;
- May feature one or more of these items:

- a thermos, fire extinguisher, or piece of pipe,
- wires, batteries, a clock or timer, and/or
- a bottle containing unusual objects or colored liquid.

EM 9-A(2) ACTIONS TO BE TAKEN

Operators or other Employees observing suspicious persons on a train should notify the Operator, who will contact the Dispatcher and ask for police assistance. The Operator should provide the Dispatcher with as much of the following information as possible:

a. A physical description of the person, including gender, approximate height, weight, hair color, facial hair (if any), clothing, and any distinguishing features;

b. Where the person is located on the train, or where the person left the train; and

c. The reason the observing Employee considers the person suspicious.

To the extent possible, the Employee making the report or the Operator should continue to observe the person discreetly until the police arrive.

Operators or other Employees observing unattended articles on the train should make inquiries of customers in the vicinity of the article regarding its ownership; for example, did the owner simply get up to change seats. If ownership cannot be determined, the Dispatcher must be notified. The Operator or other Employee should observe the object for the characteristics listed in section EM 9-A(1) of this document; however, under no circumstances should the object be touched, opened, or moved until it is positively determined that it is not dangerous.

If ownership of the article cannot be determined, and if the observing Employee and/or Operator believe the package is suspicious as defined in section EM 9-A(1), the Operator must contact the Dispatcher and request police assistance. The Operator must also determine if the situation warrants evacuation of the area where the article was found; if so, such evacuation must be done as calmly and efficiently as possible, informing customers that there is an unattended object (package, suitcase, etc.) in the area and asking them, as a precaution, to move as quickly as possible to an area of safety, generally another car of the train or, if at a station, onto the platform away from the affected car or as directed by the police. The Dispatcher must be informed of the actions being taken by the Operator, and of any instructions issued by emergency responders to the Operator.

Operators or other Employees observing suspicious articles in stations, facilities, or along the right-of-way should contact the Dispatcher (if observed from a train) or the Police. The Employee should provide the location, a description of the article, and the reason they consider it suspicious. If possible, the observing Employee should attempt to secure the area pending the arrival of emergency response personnel

EM 9-B HEIGHTENED SECURITY ALERT STATUS

Based on guidance from law enforcement or the Department of Homeland Security, RTDC senior management may place the railroad on "Heightened Security Alert" status. Employees should be aware this Alert Status may be used as a precautionary measure, and does not necessarily indicate that there is a specific threat to this railroad or the Denver Metropolitan Region.

Employees will be informed of the Heightened Alert Status verbally by the Dispatcher, by an Operations Manager, or by a CCROC.

In Heightened Alert Status, all Employees are expected to be especially vigilant for any unusual or suspicious person, object, or activity on trains, in stations and facilities, or along the right-of-way. In addition, the Employees may be directed to implement additional Enhanced Security Actions. These may include but are not limited to:

Pre-Departure Train Sweeps - Prior to departure from initial terminals and turnaround locations, Operators will make a thorough inspection of the interior of the train for unattended or suspicious packages and objects, paying particular attention to cabs, toilets, equipment lockers, overhead racks, and the area under seats. If such an object is found, the Employee-in-Charge (Operations Manager, Mechanical Foreman, or Dispatcher, depending on location) must be notified immediately, and will contact the Police. Customers will not be permitted to board the train and/or the train will not be moved from the yard until cleared by the police.

Operators, when not engaged in other duties required for train operation, will pay particular attention to overhead racks and areas under seats. During a train sweep, Operators should be alert for atypical and suspicious actions, particularly if they involve suitcases, bags, or packages.

Operators must ensure that unoccupied operating cabs have their windows completely closed and doors locked.

Operators and other Employees on the head or rear ends of trains will pay particular attention, consistent with their other job responsibilities, for suspicious articles, persons, or activities along the right-of-way.

When unusual or suspicious persons and objects are observed, the procedures given in section EM 9-A will be followed.

Additional Security Announcements - Operators will be directed to make the following PA announcement at least twice on inbound trains and at least once immediately after departure from DUS on outbound trains:

"Please assist us in ensuring the security of our trains. Keep your personal articles in sight at all times, and remove newspapers and trash from the train when you leave so that we can more quickly spot any suspicious objects. If you see something out of the ordinary, inform the Operator via the Passenger Emergency Intercom. Thank you for your cooperation."

In addition to the measures above, Operators and other personnel may be directed to implement additional security measures. These measures will be communicated verbally by the Dispatching Center or issued by a CCROC.

EM 9-C SYSTEM-WIDE TRAIN EVACUATION PROCEDURES

Under extreme circumstances, it may be necessary to order the evacuation of all trains on the railroad due to security concerns. The Dispatching Center Manager or senior Operating Officer on duty must authorize the evacuation of all trains.

Operators will take the following action when informed, by radio or by other means, that an evacuation of all trains is in effect:

Revenue passenger trains are to stop at the next station platform in the direction of travel.

Operators will spot revenue trains at the designated 2/4 car spot sign so that the head revenue car is at the far end of the platform. If there is a train already stopped at the station, the arriving train will contact Dispatching Center and get permission to couple to the stopped train to allow the train on the platform to be used for transferring customers.

Non-revenue trains will stop just past the next station platform, where the Operator can safely evacuate the train, leaving the platforms and pedestrian crossing clear for revenue trains.

If a train is stopped but not on a platform, Operators or other Employees will initiate an evacuation following instructions of the Dispatcher or other authorities.

When the train is stopped, the following announcement will be made:

"As a security precaution, we are being asked to evacuate the train at this station. Please gather your personal belongings and exit the train quickly and calmly, moving at least 300 feet away from the platform to make room for the people behind you. Thank you for your cooperation."

Once customers have evacuated, the Operator must secure the train according to ABTH Rule 30-F. All doors should be closed, except for the crew door, to provide access for emergency responders. The Operator will leave the train as spotted unless instructed otherwise and will radio the Dispatcher with notification of the train's location and status prior to leaving the train. The Operator and other Employees should move at least 300 feet away from the train to the same location as their customers.

The Dispatching Center will be the primary point of contact for RTDC crews during an evacuation. As soon as they reach the safe evacuation point, Operators must contact the Dispatcher with their names, train number, location, and possible contact information (cell phone number, etc.). Operators must check in with the Dispatching Center at least once an hour for updates.

Once the Operator reaches the evacuation point, they must:

a. Remain at the assembly area until relieved or directed to do other duties by the Dispatching Center or a company official;

b. Provide any available information and all possible assistance to customers;

c. Identify themselves to emergency response workers and company officials on the scene, and offer assistance; and

d. Monitor the portable radio at all times.

V.S. Salama
Exhibit C

EXHIBIT D

Train Schedule

ROCKY MOUNTAINEER

2024 EASTBOUND RAIL SCHEDULE

ARRIVAL TIME FOR DENVER UNION STATION: 1700

(In addition to the ates below, 2024 training trips are scheduled for DUS arrivals in the 3 weeks preceeding the start of the 2024 season)

D= Denver, M= Moab

APRIL	DAY	DATE	RTR
	Sun	14-Apr-24	
	Mon	15-Apr-24	
	Tue	16-Apr-24	
	Wed	17-Apr-24	
	Thu	18-Apr-24	
	Fri	19-Apr-24	
	Sat	20-Apr-24	
	Sun	21-Apr-24	
	Mon	22-Apr-24	
	Tue	23-Apr-24	
	Wed	24-Apr-24	
	Thu	25-Apr-24	M-D
	Fri	26-Apr-24	
	Sat	27-Apr-24	
	Sun	28-Apr-24	
	Mon	29-Apr-24	M-D
	Tue	30-Apr-24	

MAY	DAY	DATE	RTR
	Wed	1-May-24	
	Thu	2-May-24	M-D
	Fri	3-May-24	
	Sat	4-May-24	
	Sun	5-May-24	
	Mon	6-May-24	M-D
	Tue	7-May-24	
	Wed	8-May-24	
	Thu	9-May-24	M-D
	Fri	10-May-24	
	Sat	11-May-24	
	Sun	12-May-24	
	Mon	13-May-24	M-D
	Tue	14-May-24	
	Wed	15-May-24	
	Thu	16-May-24	M-D
	Fri	17-May-24	
	Sat	18-May-24	
	Sun	19-May-24	
	Mon	20-May-24	M-D
	Tue	21-May-24	
	Wed	22-May-24	
	Thu	23-May-24	M-D
	Fri	24-May-24	
	Sat	25-May-24	
	Sun	26-May-24	
	Mon	27-May-24	M-D
	Tue	28-May-24	
	Wed	29-May-24	
	Thu	30-May-24	M-D
	Fri	31-May-24	

JUNE	DAY	DATE	RTR
	Sat	1-Jun-24	
	Sun	2-Jun-24	
	Mon	3-Jun-24	M-D
	Tue	4-Jun-24	
	Wed	5-Jun-24	
	Thu	6-Jun-24	M-D
	Fri	7-Jun-24	
	Sat	8-Jun-24	
	Sun	9-Jun-24	
	Mon	10-Jun-24	M-D
	Tue	11-Jun-24	
	Wed	12-Jun-24	
	Thu	13-Jun-24	M-D
	Fri	14-Jun-24	
	Sat	15-Jun-24	
	Sun	16-Jun-24	
	Mon	17-Jun-24	M-D
	Tue	18-Jun-24	
	Wed	19-Jun-24	
	Thu	20-Jun-24	M-D
	Fri	21-Jun-24	
	Sat	22-Jun-24	
	Sun	23-Jun-24	
	Mon	24-Jun-24	M-D
	Tue	25-Jun-24	
	Wed	26-Jun-24	
	Thu	27-Jun-24	M-D
	Fri	28-Jun-24	
	Sat	29-Jun-24	
	Sun	30-Jun-24	

JULY	DAY	DATE	RTR
	Mon	1-Jul-24	M-D
	Tue	2-Jul-24	
	Wed	3-Jul-24	
	Thu	4-Jul-24	M-D
	Fri	5-Jul-24	
	Sat	6-Jul-24	
	Sun	7-Jul-24	
	Mon	8-Jul-24	M-D
	Tue	9-Jul-24	
	Wed	10-Jul-24	
	Thu	11-Jul-24	M-D
	Fri	12-Jul-24	
	Sat	13-Jul-24	
	Sun	14-Jul-24	
	Mon	15-Jul-24	M-D
	Tue	16-Jul-24	
	Wed	17-Jul-24	
	Thu	18-Jul-24	M-D
	Fri	19-Jul-24	
	Sat	20-Jul-24	
	Sun	21-Jul-24	
	Mon	22-Jul-24	M-D
	Tue	23-Jul-24	
	Wed	24-Jul-24	
	Thu	25-Jul-24	M-D
	Fri	26-Jul-24	
	Sat	27-Jul-24	
	Sun	28-Jul-24	
	Mon	29-Jul-24	M-D
	Tue	30-Jul-24	
	Wed	31-Jul-24	

AUGUST	DAY	DATE	RTR
	Thu	1-Aug-24	M-D
	Fri	2-Aug-24	
	Sat	3-Aug-24	
	Sun	4-Aug-24	
	Mon	5-Aug-24	M-D
	Tue	6-Aug-24	
	Wed	7-Aug-24	
	Thu	8-Aug-24	M-D
	Fri	9-Aug-24	
	Sat	10-Aug-24	
	Sun	11-Aug-24	
	Mon	12-Aug-24	M-D
	Tue	13-Aug-24	
	Wed	14-Aug-24	
	Thu	15-Aug-24	M-D
	Fri	16-Aug-24	
	Sat	17-Aug-24	
	Sun	18-Aug-24	
	Mon	19-Aug-24	M-D
	Tue	20-Aug-24	
	Wed	21-Aug-24	
	Thu	22-Aug-24	M-D
	Fri	23-Aug-24	
	Sat	24-Aug-24	
	Sun	25-Aug-24	
	Mon	26-Aug-24	M-D
	Tue	27-Aug-24	
	Wed	28-Aug-24	
	Thu	29-Aug-24	M-D
	Fri	30-Aug-24	
	Sat	31-Aug-24	

SEPTEMBER	DAY	DATE	RTR
	Sun	1-Sep-24	
	Mon	2-Sep-24	M-D
	Tue	3-Sep-24	
	Wed	4-Sep-24	
	Thu	5-Sep-24	M-D
	Fri	6-Sep-24	
	Sat	7-Sep-24	
	Sun	8-Sep-24	
	Mon	9-Sep-24	M-D
	Tue	10-Sep-24	
	Wed	11-Sep-24	
	Thu	12-Sep-24	M-D
	Fri	13-Sep-24	
	Sat	14-Sep-24	
	Sun	15-Sep-24	
	Mon	16-Sep-24	M-D
	Tue	17-Sep-24	
	Wed	18-Sep-24	
	Thu	19-Sep-24	M-D
	Fri	20-Sep-24	
	Sat	21-Sep-24	
	Sun	22-Sep-24	
	Mon	23-Sep-24	M-D
	Tue	24-Sep-24	
	Wed	25-Sep-24	
	Thu	26-Sep-24	M-D
	Fri	27-Sep-24	
	Sat	28-Sep-24	
	Sun	29-Sep-24	
	Mon	30-Sep-24	M-D

OCTOBER	DAY	DATE	RTR
	Tue	1-Oct-24	
	Wed	2-Oct-24	
	Thu	3-Oct-24	M-D
	Fri	4-Oct-24	
	Sat	5-Oct-24	
	Sun	6-Oct-24	
	Mon	7-Oct-24	M-D
	Tue	8-Oct-24	
	Wed	9-Oct-24	
	Thu	10-Oct-24	M-D
	Fri	11-Oct-24	
	Sat	12-Oct-24	
	Sun	13-Oct-24	
	Mon	14-Oct-24	M-D
	Tue	15-Oct-24	
	Wed	16-Oct-24	
	Thu	17-Oct-24	M-D
	Fri	18-Oct-24	
	Sat	19-Oct-24	
	Sun	20-Oct-24	
	Mon	21-Oct-24	M-D
	Tue	22-Oct-24	
	Wed	23-Oct-24	
	Thu	24-Oct-24	M-D
	Fri	25-Oct-24	

ROCKY MOUNTAINEER

2024 WESTBOUND RAIL SCHEDULE

DEPARTURE TIME FROM DENVER UNION STATION: 0900

(In addition to the dates below, 2024 training trips are scheduled for DUS departures in the 3 weeks preceeding the start of the 2024 season)

D= Denver, M= Moab

APRIL	DAY	DATE	RTR
	Sun	14-Apr-24	
	Mon	15-Apr-24	
	Tue	16-Apr-24	
	Wed	17-Apr-24	
	Thu	18-Apr-24	
	Fri	19-Apr-24	
	Sat	20-Apr-24	
	Sun	21-Apr-24	
	Mon	22-Apr-24	
	Tue	23-Apr-24	
	Wed	24-Apr-24	D-M
	Thu	25-Apr-24	
	Fri	26-Apr-24	
	Sat	27-Apr-24	
	Sun	28-Apr-24	D-M
	Mon	29-Apr-24	
	Tue	30-Apr-24	

MAY	DAY	DATE	RTR
	Wed	1-May-24	D-M
	Thu	2-May-24	
	Fri	3-May-24	
	Sat	4-May-24	
	Sun	5-May-24	D-M
	Mon	6-May-24	
	Tue	7-May-24	
	Wed	8-May-24	D-M
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	Sun	26-May-24	D-M
	Mon	27-May-24	
	Tue	28-May-24	
	Wed	29-May-24	D-M
	Thu	30-May-24	
	Fri	31-May-24	

JUNE	DAY	DATE	RTR
	Sat	1-Jun-24	
	Sun	2-Jun-24	D-M
	Mon	3-Jun-24	
	Tue	4-Jun-24	
	Wed	5-Jun-24	D-M
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	Sat	29-Jun-24	
	Sun	30-Jun-24	D-M

JULY	DAY	DATE	RTR
	Mon	1-Jul-24	
	Tue	2-Jul-24	
	Wed	3-Jul-24	D-M
	Thu	4-Jul-24	
	Fri	5-Jul-24	
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	Fri	26-Jul-24	
	Sat	27-Jul-24	
	Sun	28-Jul-24	D-M
	Mon	29-Jul-24	
	Tue	30-Jul-24	
	Wed	31-Jul-24	D-M

AUGUST	DAY	DATE	RTR
	Thu	1-Aug-24	
	Fri	2-Aug-24	
	Sat	3-Aug-24	
	Sun	4-Aug-24	D-M
	Mon	5-Aug-24	
	Tue	6-Aug-24	
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	Mon	26-Aug-24	
	Tue	27-Aug-24	
	Wed	28-Aug-24	D-M
	Thu	29-Aug-24	
	Fri	30-Aug-24	
	Sat	31-Aug-24	

SEPTEMBER	DAY	DATE	RTR
	Sun	1-Sep-24	D-M
	Mon	2-Sep-24	
	Tue	3-Sep-24	
	Wed	4-Sep-24	D-M
	Thu	5-Sep-24	
	Fri	6-Sep-24	
	Sat	7-Sep-24	
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	Wed	25-Sep-24	D-M
	Thu	26-Sep-24	
	Fri	27-Sep-24	
	Sat	28-Sep-24	
	Sun	29-Sep-24	D-M
	Mon	30-Sep-24	

OCTOBER	DAY	DATE	RTR
	Tue	1-Oct-24	
	Wed	2-Oct-24	D-M
	Thu	3-Oct-24	
	Fri	4-Oct-24	
	Sat	5-Oct-24	
	Sun	6-Oct-24	D-M
	Mon	7-Oct-24	
	Tue	8-Oct-24	
	Wed	9-Oct-24	D-M
	Thu	10-Oct-24	
	Fri	11-Oct-24	
	Sat	12-Oct-24	
	Sun	13-Oct-24	D-M
	Mon	14-Oct-24	
	Tue	15-Oct-24	
	Wed	16-Oct-24	D-M
	Thu	17-Oct-24	
	Fri	18-Oct-24	
	Sat	19-Oct-24	
	Sun	20-Oct-24	D-M
	Mon	21-Oct-24	
	Tue	22-Oct-24	
	Wed	23-Oct-24	D-M
	Thu	24-Oct-24	
	Fri	25-Oct-24	

JOINT CORRIDOR USE AGREEMENT

This Joint Corridor Use Agreement (the "**Joint Corridor Use Agreement**") is hereby made as of the _____ day of March, 2010 (the "**Effective Date**"), by and between Regional Transportation District, a political subdivision of the State of Colorado ("**RTD**") and BNSF RAILWAY COMPANY ("**BNSF**"), a Delaware corporation (each a "**Party**" and together, **"Parties**").

WHEREAS, RTD and BNSF have entered into that certain Purchase and Sale Agreement dated as of the date hereof (the "**Purchase and Sale Agreement**") and the Relocation and Construction Agreement (the "**Construction Agreement**") dated as of the date hereof providing for the purchase and sale of a commuter rail passenger transportation easement in and to the DUS Corridor (as described below) and BNSF's interest in and to the Gold Corridor (described below) subject to the Retained Freight Easement (defined below); and

WHEREAS, RTD and BNSF wish to provide the terms of joint use of the DUS Corridor and Gold Corridor by BNSF and RTD.

NOW THEREFORE, in consideration of the recitals and the mutual covenants contained in this Joint Corridor Use Agreement and other good and valuable consideration, the receipt and adequacy of which the Parties acknowledge, the Parties agree as follows:

ARTICLE I
DEFINITIONS and EXHIBITS

SECTION 1.1 – DEFINITIONS

Each definition in this Joint Corridor Use Agreement includes the singular and the plural. Capitalized terms not otherwise defined herein shall have the definitions set forth in the Purchase and Sale Agreement. As used in this Joint Corridor Use Agreement, the following terms, when capitalized as in this Section, have the following meanings:

"**AAA**" shall have the meaning set forth in Section 10.2.A of this Joint Corridor Use Agreement.

"**Amtrak**" means the National Railroad Passenger Corporation except when operating as a Non-BNSF Contractor.

"**Applicable Additives**" shall have the meaning set forth Section 3.3.A of this Joint Corridor Use Agreement.

"Approved Plans" shall mean the plans and specifications approved by BNSF in connection with, and applicable to, the portion of the RTD Improvements depicted on such plans and specifications and including any change orders approved in accordance with the Construction Agreement or this Joint Corridor Use Agreement, as applicable and any requirements approvals are conditioned upon. The Approved Plans include the Initial Improvements Approved Plans.

"BNSF" means BNSF Railway Company, a Delaware corporation.

"**BNSF Covered Liability**" shall have the meaning set forth in Section 6.1.B of this Joint Corridor Use Agreement.

"**BNSF Improvements**" shall mean all railroad track, ties, ballast, bridges, structures, signals, and associated improvements located on the Corridors as of the date hereof or in the future constructed, owned, or controlled by BNSF, including without limitation the BNSF Modifications and specifically excluding all RTD Improvements other than those conveyed to BNSF pursuant to Section 2.3 of the Construction Agreement.

"**BNSF Modifications**" shall have the meaning set forth in the Construction Agreement.

"**BNSF Modifications Payments**" means all payments required to be made by RTD to BNSF pursuant to the Construction Agreement.

"**BNSF Party**" means any one or more of (i) BNSF and its affiliates and subsidiaries and one or more of their officers, directors, employees, agents, or contractors while using, or on, the DUS Corridor or Gold Corridor in connection with performing duties of any kind for BNSF including, among others, performing duties relating to or arising under this Joint Corridor Use Agreement and excluding any person who is a fare paying passenger on board a Train operating in RTD Passenger Service; (ii) persons (other than a RTD Party) receiving services of BNSF involving use of the DUS Corridor or Gold Corridor or using the DUS Corridor or Gold Corridor under authority of or by agreement with BNSF; or, (iii) any "BNSF Party" at or proximate to a commuter rail station used in RTD Passenger Service who is struck by improperly secured equipment or cargo of a BNSF freight Train on tracks at or adjacent to a commuter rail station used by RTD.

"Cleanup Actions" shall have the meaning set forth in Section 8.3.B of this Joint Corridor Use Agreement.

"**Construction Agreement**" means that certain Relocation and Construction Agreement dated of even date herewith between BNSF and RTD relating to the construction of RTD Initial Improvements and BNSF Modifications.

"**Corridors**" means the DUS Corridor and Gold Corridor.

"**CPI**" shall have the meaning set forth in Section 3.2.D of this Joint Corridor Use Agreement.

"DUS" shall mean Denver Union Station.

"**DUS Corridor**" shall be as defined in the Purchase and Sale Agreement but is generally depicted on Exhibit D.

"**DUS Permitted Start Date**" means the date upon which RTD receives notice from BNSF as contemplated in the Construction Agreement of Final Completion (as defined in the Construction Agreement) of the RTD Initial Improvements within the DUS Corridor and satisfaction of all requirements under the Construction Agreement with respect to the DUS Corridor.

"**Emergency Preparedness Plan**" shall have the meaning set forth in Section 2.1.C.1. of this Joint Corridor Use Agreement.

"**Engineering Agreements**" mean collectively (i) that certain Rail Passenger Capital Improvements and Engineering Agreement dated November 28, 2007 between the BNSF and RTD, as amended, on November 4, 2009.

"**Environmental Law**" means any applicable federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree or common law pertaining in any way to the protection of human health or the environment including, without limitation, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, and any similar or comparable state or local law.

"**Environmental Loss or Damage**" means all investigations, cleanups, removals, remediations, response actions, requirements, or any expense of every character at any location, whether on or off either Corridor or on public or private property (including, without limitation, amounts paid under any Environmental Law, and including all expenses and attorneys' fees incurred in the investigation, defense or settlement of any actual or threatened legal proceeding), as well as all fines, penalties, or other obligations arising under any Environmental Law, arising from, resulting from, related to, or incurred in connection with or with respect to Hazardous Materials released on or from an activity conducted on or about the DUS Corridor

or Gold Corridor, after the First Closing Date and including, without limitation, damages or injuries to public property (real or personal and including, without limitation, natural resources).

"**Environmental Tort Liability**" means all claims for damages for personal injury or property damage arising from, resulting from, related to or incurred in connection with Hazardous Material released in connection with a railroad accident on or about the DUS Corridor or Gold Corridor, (including without limitation, punitive damages), claims (formal or informal), actions, judgments, suits, liability, cost, injuries, deaths, losses, fees, charges, or expenses (including, without limitation, amounts paid under any State or Federal workers compensation law, and including all expenses and attorneys' fees incurred in the investigation, defense or settlement of any actual or threatened legal proceeding).

"**Final Completion**" shall have the meaning set forth in Section 2.2.B(5) of this Joint Corridor Use Agreement.

"**Force Majeure Event**" shall have the meaning set forth in Section 11.2 of this Joint Corridor Use Agreement.

"**Fouling**" shall mean the existence, movement or placement of material, equipment and/or personnel on any track or within twenty-five (25) feet vertically or laterally of the centerline of any track, or any other activity which in BNSF's reasonable opinion may interfere with any BNSF operations.

"**FRA**" shall mean the Federal Railroad Administration.

"**Gold Corridor**" shall be as defined in the Purchase and Sale Agreement and is generally depicted on Exhibit E.

"**Gold Corridor Deeds**" shall be as defined in the Purchase and Sale Agreement concerning the Gold Corridor.

"**Gold Permitted Start Date**" means the later of the Third Closing or the date upon which RTD receives notice from BNSF as contemplated in the Construction Agreement of Final Completion (as defined in the Construction Agreement) of the RTD Initial Improvements within the Gold Corridor and satisfaction of all requirements under the Construction Agreement with respect to the Gold Corridor.

"**Hazardous Materials**" means hazardous materials, hazardous substances, or hazardous wastes, as defined under any Environmental Law.

"**Initial Improvements Approved Plans**" shall have the meaning set forth in the Construction Agreement.

"**Joint Corridor Use Agreement**" means this Joint Corridor Use Agreement.

"**Joint Working Group**" shall mean that Joint Working Group described in Section 2.7.

"**Lines**" shall have the meaning set forth in Section 2.5.A(3) of this Joint Corridor Use Agreement.

"**Loss or Damage**" or "**loss or damage**" means all fines, penalties, damages (including, without limitation, punitive damages), claims (formal or informal), actions, judgments, suits, liability, cost, injuries, deaths, losses, fees, charges, cleanups, removals and remediations of non-Hazardous Materials, requirements and expense of every character (including, without limitation, amounts paid under any State or Federal workers compensation law, and including all expenses and attorneys' fees incurred in the investigation, defense or settlement of any actual or threatened legal proceeding), incident or related to loss or destruction of or damage to property (including real property and improvements thereon, and personal property, including injury or death to animals, and including property of the Parties and of third parties) and injury to and death of persons (including officers, directors, agents, employees, contractors, invitees, customers, or patrons of the Parties, and third parties) arising from or related to the performance under or existence of this Joint Corridor Use Agreement, the provision of RTD Passenger Service,

occurrence of an RTD Activity or the Parties' respective shared use of, or activities on, the DUS Corridor or Gold Corridor; provided that Loss or Damage does not include Environmental Loss or Damage.

"**Non-BNSF Contractor**" shall mean any provider or providers of any portion of RTD Activity on either Corridor other than BNSF and any Non-BNSF Operator and/or RTD acting on its own behalf.

"**Non-BNSF Operator**" shall mean any operator or operators other than BNSF providing crews for operation of Trains for RTD Passenger Service on either Corridor including, but not limited to, RTD acting on its own behalf.

"**Operating Standards**" shall mean those standards set forth in Section 2.1.C of this Joint Corridor Use Agreement.

"**Operator**" means any Non-BNSF Operator and including, but not limited to, RTD acting on its own behalf.

"**OSHA**" shall have the meaning set forth in Section 4.5.B(1) of this Joint Corridor Use Agreement.

"**Other Agreements**" means the Construction Agreement, Purchase and Sale Agreement, Engineering Agreements, and Entry Agreement.

"**Other Improvements**" shall have the meaning set forth in Section 2.5.C of this Joint Corridor Use Agreement.

"Party" or "**Parties**" means RTD and/or BNSF, as applicable.

"**Permits and Approvals**" means all necessary or desirable governmental, environmental, land use, construction or other permits, licenses, certifications, authorizations, entitlements and approvals including, without limitation, those related to environmental mitigation, permits or approvals that are required by law and any easements, rights of entry, licenses or other property rights required from a governmental or quasi-governmental entity (including, but not limited to, street crossings, closings, or vacations and connections to sewers or other facilities).

"**Permitted Start Date**" means the Gold Permitted Start Date with respect to the Gold Corridor and the DUS Permitted Start Date with respect to the DUS Corridor.

"**Permitted State Agency**" shall have the meaning set forth in Section 2.1.A.

"**PRAC**" shall have the meaning set forth in Section 3.7.B of this Joint Corridor Use Agreement.

"**Punch List**" shall have the meaning set forth in Section 2.2.B(5) of this Joint Corridor Use Agreement.

"**Purchase and Sale Agreement**" means the Purchase and Sale Agreement referred to in the recitals to this Joint Corridor Use Agreement.

"**Records**" shall have the meaning set forth in Section 3.9 of this Joint Corridor Use Agreement.

"**Retained Freight Easement**" means the easement rights reserved by BNSF in the Gold Corridor Deeds.

"**Rolling Stock**" means the locomotives, passenger coaches, cab cars or self-propelled units and maintenance of way equipment used to provide the RTD Passenger Service.

"RTD" means Regional Transportation District, a political subdivision of the State of Colorado.

"**RTD Activity**" means all activities other than RTD Passenger Service required or permitted under this Joint Corridor Use Agreement, the Construction Agreement, the RTD Easement or Gold Corridor Deeds

or otherwise conducted by or for RTD within or proximate to the DUS Corridor or Gold Corridor including, but not limited to, RTD's construction, maintenance and repair activities and the commissioning and testing of Rolling Stock and/or RTD Improvements.

"**RTD Easement**" means the DUS Corridor Easement (defined in the Purchase and Sale Agreement).

"**RTD Improvements**" shall mean all railroad track, ties, ballast, bridges, overpasses/underpasses, tunnels, culverts, structures, signals, and associated improvements on or adjacent to the DUS Corridor or Gold Corridor constructed, owned, or controlled by RTD or its agents or contractors, and any alterations thereto but not including any property conveyed by RTD to BNSF pursuant to Section 2.3 of the Construction Agreement.

"RTD Improvements Area" shall mean that portion of the DUS Corridor or Gold Corridor that is within 15 feet on either side of the centerline of the RTD Initial Improvements as shown on the Initial Improvements Approved Plans.

"**RTD Initial Improvements**" shall mean those RTD Improvements constructed pursuant to the Construction Agreement as part of the initial implementation of RTD Passenger Service, excluding any alterations thereto performed after the DUS Permitted Start Date or Gold Permitted Start Date, as applicable.

"RTD Subsequent Improvements" shall mean all RTD Improvements except for the RTD Initial Improvements, but including any alterations to the RTD Initial Improvements performed after the DUS Permitted Start Date or Gold Permitted Start Date, as applicable.

"**RTD Party**" means any one or more of: (i) RTD and any Permitted State Agency and their affiliates and subsidiaries and one or more of their officers, directors, employees, agents or contractors, including any Non-BNSF Contractor, while on, adjacent to or using the DUS Corridor or Gold Corridor, including highway grade crossings of the DUS Corridor or Gold Corridor; or while performing any RTD Activity or matters related to the DUS Corridor or Gold Corridor; (ii) any passenger of a RTD Passenger Service Train while the passenger is on a Train owned or operated by RTD or Permitted State Agency or their agents or contractors; or (iii) any other person (other than a BNSF Party) at or proximate to (x) a commuter rail station, or (y) RTD Improvements.

"**RTD Passenger Service**" means the transportation or conveyance of persons by rail by or for an RTD Party and the transportation of Rolling Stock in connection with such transportation or conveyance and activities or occurrences at or proximate to a passenger rail station used by an RTD Party or other RTD Improvement.

"**RTD's Share of Ad Valorem Taxes**" shall have the meaning set forth in Section 3.5.B(7) of this Joint Corridor Use Agreement.

"**Safety Orientation**" shall have the meaning set forth in Section 2.5.B of this Joint Corridor Use Agreement.

"**STB**" shall mean the Surface Transportation Board.

"**Tax**" or "**Taxes**" shall have the meaning set forth in Section 3.5.A of this Joint Corridor Use Agreement.

"**Third Party**" means a person or entity that is neither a BNSF Party nor a RTD Party.

"**Train**" or "**Trains**" means locomotive or other self-propelled rail units (one or more, respectively) with or without freight, commuter or passenger cars attached thereto.

"**Train Miles**" means the sum of the number of miles traveled on the RTD Improvements within either Corridor and BNSF's mainlines within the DUS Corridor or Gold Corridor by a Train, whether or not

revenue-generating, including all locomotives or self-propelled rail units and attached freight, commuter, or passenger cars but excluding locomotive-only moves, Work Trains, hi-rail vehicles, and yard and industry moves, even if they incidentally occupy the mainlines.

"**Work Train**" means a Train, other than a RTD Passenger Service Train, engaged in service or operations for maintenance of way purposes.

SECTION 1.2 – EXHIBITS

The following exhibits are incorporated herein by reference:

Exhibit A - Additional Track
Exhibit B - Joint Improvements
Exhibit C - BNSF Contractor Requirements
Exhibit D - General Depiction of DUS Corridor
Exhibit E - General Depiction of Gold Corridor

ARTICLE II
NATURE OF JOINT CORRIDOR USE BY RTD and BNSF

SECTION 2.1 SHARED USE OF DUS CORRIDOR; OPERATING STANDARDS

A. Easement Rights. All recitals in this Joint Corridor Use Agreement are incorporated as part of the Parties' agreement. At Closing under the Purchase and Sale Agreement, BNSF will convey to RTD the RTD Easement enabling RTD to construct, maintain, repair and replace the RTD Improvements for the operation only of rail passenger transportation that is not part of the national rail passenger transportation system as currently defined in 49 U.S.C. Section 24102 by or for RTD or a Permitted State Agency (defined below) using only FRA compliant equipment, and the transportation of Rolling Stock in connection with such transportation or conveyance, all in accordance with and subject to the terms of this Joint Corridor Use Agreement and the Construction Agreement. RTD must operate trains and related equipment on the Corridors in a manner that (a) complies with the requirements of 49 C.F.R. Part 238, as such requirements may be amended or waived by the Federal Railroad Administration or any successor agencies (collectively, the "**FRA**"), and (b) uses only trains and other equipment that do not qualify as light rail operations (as determined by the FRA). RTD may permit the State of Colorado or other political subdivisions of the State of Colorado ('**Permitted State Agency**") to operate Trains on the RTD Improvements provided that (i) the Permitted State Agency first agrees in writing with BNSF to allocate liabilities with respect to its operations, and maintain insurance, in the same manner as set forth in Articles VI, VII, VIII and X of this Joint Corridor Use Agreement with respect to RTD. Any Train operated by a Permitted State Agency must comply with all the requirements and restrictions set forth in this Joint Corridor Use Agreement with respect to Trains operated by RTD including but not limited to Section 6.2.

From and after the DUS Permitted Start Date RTD shall (i) provide BNSF with at least 500 track feet in or near the 23rd Street Yard as shown on Exhibit A for movement by BNSF of locomotives without coordinating with RTD dispatch, and (ii) allow such access to DUS as may be reasonably accommodated, in conjunction with other uses, that will not interfere with Amtrak's operations in the performance of its intercity rail passenger service pursuant to applicable law on those tracks reserved for Amtrak and other carriers for access to and from DUS under such terms and conditions as are made to other non-RTD parties seeking to access DUS.

B. Reservations by BNSF. BNSF retains and reserves the exclusive right and obligation on its own behalf or by any other parties who may obtain from BNSF written permission or authority (whether by lease, easement, license, trackage rights or otherwise) to provide freight service and permit Amtrak service in the performance of its intercity rail passenger service pursuant to applicable law within the DUS Corridor and Gold Corridor, but such service shall not be conducted on the RTD Improvements (except to the extent Amtrak has rights pursuant to 49 U.S.C. Section 24308 or other applicable law to use RTD Improvements.) In addition to BNSF's rights under the Retained Freight Easement in and to the Gold Corridor, BNSF further retains and reserves the right on its own behalf or by any other parties who may obtain from BNSF written permission or authority (whether by lease, easement, license, trackage rights or otherwise), to use the DUS Corridor:

(1) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any BNSF Improvements or other improvements upon, over, under or across the DUS Corridor;

(2) to use the DUS Corridor in any manner;

provided BNSF does not unreasonably interfere with RTD's rights under the RTD Easement and this Joint Corridor Use Agreement except pursuant to agreed upon construction and maintenance schedules, such agreement not to be unreasonably withheld, or in the event of an emergency.

C. Operating Standards. Prior to operating any Rolling Stock (whether or not containing passengers) on the DUS Corridor or Gold Corridor RTD shall, or shall cause its Non-BNSF Contractor to, prepare the following Operating Standards with respect to the DUS Corridor and Gold Corridor:

(1) RTD's Emergency Preparedness Plan/Terrorist Response Plan, developed by RTD or its Non-BNSF Contractor(s) and coordinated with BNSF and provided to BNSF upon request, which shall, among other things, (i) meet the requirements of the FRA (49 C.F.R. Part 239); (ii) include preparations for and responses to derailments; fatalities 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 Non-BNSF Operator and BNSF 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 RTD Passenger 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 Preparedness Plan**").

(2) RTD's Operations Safety Manual, developed by RTD or its Non-BNSF Contractor(s), which will be provided to BNSF, which Plan shall include:

(a) safety guidelines for the safe performance of RTD Passenger 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 RTD Passenger Service, which shall be distributed to all persons responsible for the provision of RTD Passenger Service;

Such Operating Standards shall be prepared to coordinate with BNSF's existing plans and procedures and in coordination with BNSF. If after receiving a full set of the above-referenced documents BNSF does not provide any comments on them to RTD in writing within thirty (30) days, BNSF shall be deemed to have accepted them as provided. Following finalization of the documents specified in Section 2.1.C, either Party may propose changes or updates to those documents, which changes or updates shall take effect only if agreed upon in writing by both Parties. In the event that RTD disagrees with BNSF's changes or updates, RTD may avail itself to the dispute resolution provisions in this Joint Corridor Use Agreement.

D. Permitted Start Date. Provided RTD is not then in breach of its obligations under the Other Agreements, upon the DUS Permitted Start Date, RTD may operate RTD Passenger Service on the RTD Improvements located in the DUS Corridor, in accordance with this Joint Corridor Use Agreement and the RTD Easement. RTD shall have no right to operate RTD Passenger Service on the DUS Corridor prior to the DUS Permitted Start Date but RTD may operate Rolling Stock on the DUS Corridor prior to the DUS Permitted Start Date solely for the purpose of commissioning and testing the Rolling Stock, other associated support equipment and/or RTD Improvements located on the DUS Corridor or for purposes of transporting Rolling Stock not containing

passengers over the DUS Corridor to access RTD's maintenance facility. Provided RTD is not then in breach of its obligations under the Other Agreements, upon the Gold Permitted Start Date, RTD may operate RTD Passenger Service on the RTD Improvements located in the Gold Corridor east of Ward Road, in accordance with this Joint Corridor Use Agreement and the terms of the Gold Corridor Deeds. RTD shall have no right to operate RTD Passenger Service on the Gold Corridor prior to the Gold Permitted Start Date but RTD may operate Rolling Stock on the Gold Corridor prior to the Gold Permitted Start Date solely for the purpose of commissioning and testing the Rolling Stock and/or RTD Improvements located on the Gold Corridor. RTD shall have no right to operate RTD Passenger Service on the Gold Corridor west of Ward Road until such time as additional modifications agreed to by the Parties are made, at RTD's expense, to BNSF's improvements on the Gold Corridor west of Ward Road so as to avoid interruption to BNSF's operations.

SECTION 2.2 CONSTRUCTION AND MODIFICATION OF IMPROVEMENTS.

A. BNSF Modifications and RTD Initial Improvements. Implementation of RTD Passenger Service on the DUS Corridor and Gold Corridor will require the construction of the BNSF Modifications and RTD Initial Improvements. Such construction shall be performed in accordance with the terms and conditions of this Joint Corridor Use Agreement and the Construction Agreement. Except as contemplated in the Construction Agreement and in Section 2.1.D of this Joint Corridor Use Agreement, RTD shall not have any right to modify any BNSF improvements.

B. RTD Subsequent Improvements. RTD will be responsible, at its sole cost and expense for all design, engineering, permitting and construction of any RTD Subsequent Improvements it wishes to make. RTD shall reimburse BNSF for its reasonable costs associated with the activities of BNSF contemplated in this Section 2.2(B).

1. Condition Precedent to Construction. Upon final completion of the RTD Initial Improvements, RTD shall have no right to commence any subsequent construction activities on the DUS Corridor or make any alterations to the DUS Corridor, or permanently affix anything to the DUS Corridor except as permitted by and in compliance with all terms and conditions of this Joint Corridor Use Agreement and all Other Agreements, including without limitation providing evidence of all insurance. RTD will only construct, operate or maintain any RTD Subsequent Improvements on the Gold Corridor consistent with the terms of the Reserved Freight Easement and must follow for RTD Subsequent Improvements on the Gold Corridor the procedures outlined in this Joint Corridor Use Agreement with respect to RTD Subsequent Improvements on the DUS Corridor as long as the Reserved Freight Easement has not been abandoned.

2. Design and Engineering. RTD shall have no right at any time to construct, operate, or maintain any RTD Subsequent Improvements within the DUS Corridor outside the RTD Improvements Area. RTD will be responsible for the work of design and engineering associated with all RTD Subsequent Improvements. If RTD wishes to construct any RTD Subsequent Improvements (or make modifications to existing Approved Plans) then RTD shall submit its proposed plans and specifications (or modifications) to BNSF for review and approval in accordance with Section 2.6 below. RTD shall have no right to commence any construction activities on the Corridors prior to receiving final approval from BNSF of its plans and specifications, subject to the terms of Section 2.6 below and then only in accordance with such Approved Plans. Upon receipt of approval from BNSF, such plans and specifications along with any requirements on which the approval is condition (and any subsequent change orders approved in accordance with this Joint Corridor Use Agreement) shall be the Approved Plans applicable to the RTD Subsequent Improvements depicted thereon. Prior to RTD commencing construction of improvements located on adjacent property BNSF shall have the right to comment on the design or construction of such improvements to the extent BNSF believes any proposed construction, design or operation of RTD will affect the safe operation or level of utility of the Parties' operations. If there is any dispute concerning proposed plans and specifications for RTD Subsequent Improvements or adjacent improvements proposed by RTD the parties will promptly meet and work together in good faith to resolve such dispute. Any such dispute will be subject to the dispute resolution procedures described in Article X. If requested by BNSF (i) prior to issuing any invitation to bid on construction of any RTD Subsequent Improvements,

RTD will conduct a pre-bid meeting where prospective contractors have the opportunity for BNSF to communicate any site specific train speeds, train density, and general safety requirements for men and equipment working near live tracks; and (ii)any invitation to bid and specifications for any RTD Subsequent Improvements must be submitted to BNSF for review and approval prior to letting of bids.

3. Permits and Approvals. RTD will be responsible for securing all necessary Permits and Approvals for any RTD Subsequent Improvements, including, if required, wetland mitigation and maintenance of wetland mitigation and for acquiring any property or right of entry needed for such wetland mitigation. RTD shall have the right to challenge or contest with the permitting agencies any permits or permit conditions. Notwithstanding anything to the contrary contained in this Joint Corridor Use Agreement or any Other Agreement, RTD shall not agree as a condition to obtaining any such Permits and Approvals to any restrictions on BNSF's freight operations or property or on the operation of other non-RTD Trains operating on the DUS Corridor or Gold Corridor (including, but not limited to, train speeds, track clearance standards and any matter that is regulated by federal law). Any Permit and Approval that contains a condition in violation of this Section, whether agreed to by RTD or not, shall not be deemed a Permit and Approval that would satisfy RTD's obligations under this Joint Corridor Use Agreement or be binding upon BNSF unless otherwise agreed to in writing by BNSF's Asst. Vice President for Passenger Operations. Nothing in this Joint Corridor Use Agreement shall constitute an acknowledgement by BNSF whether any or which Permits and Approvals are required under existing law or a waiver of any preemption applicable to BNSF, its operations, or the DUS Corridor or Gold Corridor.

4. Construction. RTD shall give BNSF's Director, Engineering Services thirty (30) days prior written notice prior to commencement of construction of any RTD Subsequent Improvements. RTD shall take all actions necessary and proper to the lawful construction of the RTD Subsequent Improvements in accordance with this Joint Corridor Use Agreement. BNSF shall have the right to inspect and approve the RTD Subsequent Improvements at any time during construction, subject to the terms of Section 2.6 below. Further, if BNSF reasonably believes that such construction has the potential to Foul BNSF tracks or other facilities or wishes to inspect compliance with safety requirements then BNSF may require an on-site safety inspector be present during some or all construction activities within the DUS Corridor or Gold Corridor, and RTD shall reimburse BNSF for all costs in connection with such inspector.

5. Completion. RTD must advise BNSF's Director, Engineering Services in writing of the completion date of any RTD Subsequent Improvements within thirty (30) days after such completion date and provide with such notice a certificate of the engineer of record for such RTD Subsequent Improvements certifying to BNSF that such RTD Subsequent Improvements were completed in substantial compliance with the applicable Approved Plans identifying any items that do not conform to such Approved Plans but which nonconformity is not material (the "**Punch List**"). Upon receipt of such notice and certificate, BNSF and RTD shall schedule a joint meeting to inspect such RTD Subsequent Improvements and identify any additional items that do not conform to the applicable Approved Plans to be added to the Punch List. RTD shall cause all such Punch List items to be corrected within 60 days and upon such correction (i) cause the engineer of record to reissue a certificate to BNSF certifying that such RTD Subsequent Improvements were completed in compliance with the applicable Approved Plans, and (ii) provide one set of as built plans (prepared in English Units) to BNSF, as well as one set of computer diskettes (or other electronic medium) containing as built CAD drawings of such RTD Subsequent Improvements, identifying the software used for the CAD drawings, which shall be deemed "**Final Completion**" of such RTD Subsequent Improvements. The "as built plans" must confirm that such RTD Subsequent Improvements comply with the applicable Approved Plans and depict all information in BNSF engineering stationing and mile post pluses. The "as built plans" must also include plan and profile, structural bridge drawings and specifications, and drainage plans. All portions of such RTD Subsequent Improvements and improvements of RTD reasonably proximate to either Corridor that were impacted by the RTD Subsequent Improvements must be shown.

C. BNSF Subsequent Improvements. BNSF will provide information to the Joint Working Group of any BNSF Improvements it plans to construct within 25 feet of the centerline (vertically or horizontally) of any RTD Improvements at least 90 days in advance and provide RTD and opportunity to review and comment on BNSF

plans as they may affect safety of RTD Parties or the use of RTD Improvements as contemplated in this Joint Corridor Use Agreement.

SECTION 2.3 MAINTENANCE OF RTD IMPROVEMENTS AND JOINT IMPROVEMENTS

A. RTD Improvements. Except as otherwise set forth in Section 2.3.B below, RTD shall at all times, at RTD's sole cost and expense, keep and maintain (i) the RTD Improvements and RTD Improvements Area, and (ii) on those portions of the Gold Corridor on which RTD has started grading or construction of any RTD Improvements, all but the ballast, track and ties over which BNSF operates, and (iii) on those portions of the Gold Corridor for which RTD has not started grading or construction of any RTD Improvements, the portion outside of 25 feet from the centerline of any BNSF track (collectively, the "**RTD Maintenance Areas**") in a structurally safe and sound condition, in good repair and in compliance with the applicable Approved Plans in accordance with this Joint Corridor Use Agreement. RTD shall not permit the existence of any nuisance or the accumulation of junk, debris, spalling, or other unsightly materials on the RTD Maintenance Area (including any unfinished RTD Improvements) and shall keep the RTD Maintenance Area in a clean and safe condition. RTD shall, at its sole cost and expense, remove ice and snow from the RTD Maintenance Area as reasonably necessary to avoid interference with BNSF's operations on the DUS Corridor or Gold Corridor. RTD agrees to keep the RTD Maintenance Area free and clear from combustible materials, birds, scavengers, vermin, creatures and other animals and to cut and remove or cause to be cut and removed at its sole expense all weeds and vegetation on the RTD Maintenance Area, said work of cutting and removal to be done at such times and with such frequency as to comply with county and local laws and regulations and abate any and all hazard of fire. RTD shall promptly notify BNSF of any concerns it becomes aware of regarding the structural integrity of the RTD Improvements that might materially adversely impact BNSF's operations and take such measures necessary to avoid such impact. RTD shall also promptly repair any damage to the DUS Corridor or Gold Corridor or improvements thereon caused, either in whole or in part, by any RTD Party. RTD shall not cause or permit another person to cause any damage to the DUS Corridor, Gold Corridor or improvements thereon, and RTD shall be responsible for any such damage arising out of or related to any RTD Activity. BNSF shall have no obligation whatsoever, monetary or non-monetary, to maintain or repair the RTD Improvements or the RTD Maintenance Area.

B. Joint Improvements. The improvements described on Exhibit B shall be maintained by BNSF or RTD, as set forth on Exhibit B. Neither RTD nor BNSF shall permit the existence of any nuisance or the accumulation of junk, debris, spalling, or other unsightly materials on the respective improvements for which they are responsible to maintain and shall keep such improvements in a clean and safe condition. RTD and BNSF shall each remove ice and snow from their respective improvements they are responsible to maintain as reasonably necessary to avoid interference with both parties' operations on the DUS Corridor and Gold Corridor. RTD and BNSF shall each keep their respective improvements they are responsible to maintain free and clear from combustible materials, birds, scavengers, vermin, creatures and other animals and cut and remove or cause to be cut and remove all weeds and vegetation on their respective improvements they are responsible to maintain, said work of cutting and removal to be done at such times and with such frequency as to comply with applicable laws and regulations. RTD and BNSF shall each promptly notify the other of any concerns they become aware of regarding the structural integrity of any of the improvements that might materially adversely impact either of their operations on the DUS Corridor or Gold Corridor. The party responsible to maintain such improvement shall take such measures that are necessary to avoid such impact. The cost to maintain the improvements shall be borne by the Party responsible for such maintenance as set forth on Exhibit B except to the extent otherwise stated on Exhibit B and except that RTD and BNSF shall each be responsible to pay for the cost to repair at their respective sole expense any damage to such improvements to the extent caused by their respective RTD Parties or BNSF Parties. The party not required to maintain such improvements shall only be permitted to perform such maintenance if the party responsible fails to so maintain such improvements after notice and reasonable opportunity to cure (except in the event of emergency including risk of derailment in which case no notice or cure opportunity is required.)

SECTION 2.4 DISABLED EQUIPMENT AND CLEARING WRECKS

A. Each Party shall be solely responsible for removing its own disabled equipment and clearing derailments, wrecks and other obstructions involving its equipment.

B. Notwithstanding Section 2.4.A above, if any disabled equipment, derailment, wreck, or other occurrence on or from one Party's track impacts operations on the other Party's track, the impacted Party shall have the right, after giving the other party at least 12 hours notice (which notice to BNSF will be given to Claims Department at _____ and to RTD to _____) to collect and/or preserve evidence as necessary related to such occurrence, to clear any disabled equipment, derailments, wrecks, and other obstructions from its tracks following notice to the other Party and reasonable opportunity to cure, except in case of emergency when no notice shall be required. The Party that owns the equipment shall be responsible for the cost of such work.

SECTION 2.5 CONSTRUCTION AND MAINTENANCE STANDARDS AND PROCEDURES

A. Construction and Contractor Requirements. For any construction, maintenance, repair or replacement work to be performed by RTD (i) in the Gold Corridor within 25 feet of the centerline of BNSF track or where activities have the potential to Foul any active railroad track, or (ii) in the DUS Corridor, RTD must comply, and cause its contractors to comply, with the obligations set forth in Exhibit C. For any construction, maintenance, repair or replacement work to be performed by BNSF in the Gold Corridor or within the RTD Improvements Area BNSF must comply with the obligations set forth in Exhibit D. In addition, all such work described above performed by or for either Party must comply with all of the following requirements:

(1) All work must be performed (i) in a good and workmanlike manner, (ii) in accordance with the applicable Approved Plans (for RTD Improvements), (iii) in conformance with applicable building codes and all applicable engineering, safety and other Laws, (iv) in accordance with the highest accepted industry standards of care, skill and diligence, (v) in such a manner as shall not adversely affect the structural integrity or maintenance of the BNSF Improvements or the Corridors, any structures on or near the Corridors, or any lateral support of structures adjacent to or in the proximity of the Corridors; and (vi) each portion must be promptly commenced and diligently prosecuted to conclusion in its logical order and sequence.

(2) To facilitate scheduling , the Parties shall give each other's designated representative identified in the Joint Working Group described below thirty (30) calendar days advance notice of the proposed times and dates for work windows for such work. BNSF and RTD will establish mutually agreeable work windows for such work. BNSF has the right at any time to revise or change the work windows, due to train operations, or service obligations, but will use good faith efforts to coordinate the revisions or changes with the needs of RTD. BNSF will not be responsible for any additional costs and expenses resulting from a change in work windows. Additional costs and expenses resulting from a change in work windows shall be accounted for in the RTD's expenses for the RTD Improvements.

(3) RTD is placed on notice that fiber optic, communication and other cable lines and systems (collectively, the "**Lines**") owned by various telecommunications companies may be buried on either Corridor. RTD will show Lines on plans submitted for approval. RTD will be responsible for contacting BNSF's Engineering Representative, BNSF's Telecommunication Representative, and the telecommunications companies and notifying them of any work that may damage these Lines or facilities and/or interfere with their service. RTD must also mark all Lines shown on the plans or marked in the field in order to verify their locations. RTD must also use all reasonable methods when working in the DUS Corridor or Gold Corridor to determine if any other Lines (fiber optic, cable, communication or otherwise) may exist. Failure to mark or identify these Lines will be sufficient cause for BNSF's engineering representative to stop construction in the DUS Corridor at no cost to BNSF until these items are completed. If it becomes aware of a failure by RTD to so mark or identify Lines in the Gold Corridor then BNSF shall notify RTD's engineering representative of such failure and BNSF shall have no liability for any loss or damage as a result of RTD's failure to do so.

(4) The Parties shall be responsible for all job site cleanup including removal of all construction and maintenance materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials resulting from their respective work described above to the reasonable satisfaction of the other Party.

B. Safety. During any work described in Section 2.5.A, each Party, at its sole cost, shall perform all activities and work on or near the applicable Corridor in such a manner as to preclude injury to persons or damage to the property of the other Party, and shall ensure that there is no interference with the railroad operations or other activities of the other Party, or anyone present on the applicable Corridor pursuant to authority granted by the other Party. RTD shall not disturb any improvements of BNSF or BNSF's existing lessees, licensees, license beneficiaries or lien holders, if any, or interfere with the use of such improvements other than according to plans approved by such parties. Prior to entering either Corridor, RTD shall cause all Non-BNSF Contractor(s) to comply with BNSF's applicable safety and security rules and regulations and complete the safety orientation program at the Website "www.contractororientation.com" or then-current program designated by BNSF (the "**Safety Orientation**") and eRAILSAFE or then-current security program designated by BNSF (the "**Security Orientation**") within one year prior to entering upon such Corridor. Additionally, RTD must ensure that each and every employee of all Non-BNSF Contractors possess a card certifying completion of the Safety Orientation and the Security Orientation prior to entering upon either Corridor. RTD must renew the Safety Orientation and Security Orientation annually. RTD must supervise and inspect the operations of all Non-BNSF Contractors and assure compliance with the applicable Approved Plans, the terms of this Joint Corridor Use Agreement and all safety requirements of BNSF.

BNSF will have the right to stop work on either Corridor if any of the following events take place: (i) If BNSF determines that proper supervision and inspection is not being performed by RTD at any time during construction or maintenance of the RTD Improvements, (ii) any Non-BNSF Contractor performs any work in a manner contrary to the applicable Approved Plans; (iii) any Non-BNSF Contractor, in BNSF's opinion, prosecutes its work in a manner which is hazardous to BNSF property, facilities or the safe and expeditious movement of railroad traffic; or (iv) the insurance described in this Joint Corridor Use Agreement is canceled or expires. The work stoppage will continue until all necessary actions are taken by RTD to rectify the situation to the satisfaction of BNSF's Division Engineer or (if the stoppage is due to item (iv)) until additional insurance has been delivered to and accepted by BNSF. Any such work stoppage under this provision will not give rise to any liability on the part of BNSF. BNSF's right to stop the work is in addition to any other rights BNSF may have under this agreement. In the event that BNSF desires to stop work, BNSF agrees to immediately notify RTD in writing. Notwithstanding the foregoing, BNSF has no duty or obligation to observe or inspect, or to halt work by any Non-BNSF Contractor on either Corridor, it being solely RTD's responsibility to ensure that work performed by any Non-BNSF Contractor is conducted in compliance with the terms of this Joint Corridor Use Agreement, all Laws and the applicable Approved Plans.

C. Other Improvements. In the event construction, repair, maintenance, work or other use of the BNSF Modifications or RTD Improvements will affect any wire lines, pipe lines, or other utilities, fences, buildings, improvements or other facilities located within the Corridors (collectively, "**Other Improvements**"), RTD will be responsible at no cost to BNSF to locate and make any adjustments necessary to such Other Improvements. RTD must contact the owner(s) of the Other Improvements notifying them of any work that may damage these Other Improvements and/or interfere with their service and, if required, obtain the owner's written approval prior to so affecting the Other Improvements. RTD must mark all Other Improvements on the applicable Approved Plans and mark all Other Improvements in the field in order to verify their locations. RTD must also use all reasonable methods when working on or near the Corridors to determine if any Other Improvements (fiber optic, cable, communication or otherwise) may exist. At RTD's request and sole cost including, where applicable, attorneys' fees, BNSF shall cooperate with RTD in connection with the identification and relocation of any utilities in the exercise of rights in Third Party Leases/Easements/Licenses not assigned to RTD. As to any modifications by BNSF to BNSF improvements in the Gold Corridor after the Gold Permitted Start Date, BNSF shall be responsible at no cost to RTD to follow the procedures set forth above as to identification and protection of Other Improvements for all Third Party Leases/Licenses/Easements assigned to RTD.

D. Flagging and Other Costs. Subject to modification in writing by BNSF's local Division Engineer, and except for normal operation of Trains by RTD Parties, for all work described in Section 2.5.A. neither party shall conduct or allow their contractors to conduct such work that is within twenty-five (25) feet of any active railroad track or where any such activities have the potential to Foul any active railroad track, except in the presence of a flagman. In any case where a flagman or flagmen are required , RTD and BNSF shall provide the other as much advance notice as possible prior to commencing such work. Each Party, as applicable, shall arrange for the presence of the flagman or flagmen as soon as practicable after receipt of such notice from the other concerning

work to be performed by such other Party requiring flagging. RTD shall reimburse to BNSF BNSF's costs in arranging for and providing the flagman or flagmen for work performed by RTD, which shall be billed to RTD at BNSF's then applicable standard rate, in accordance with the terms of Section 3.2B below. BNSF shall reimburse RTD's costs for flagmen related to BNSF's work on the Gold Corridor.

E. No Unauthorized Tests or Digging. For work described in Section 2.5.A., neither Party shall conduct or allow their contractors to conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track of the other Party or where it has the potential to Foul track on either Corridor, except after written approval from the other Party, and then only in strict accordance with the terms and any conditions of such approval.

F. Drainage. Any and all cuts and fills, excavations or embankments necessary in the construction, maintenance, or future alteration of the RTD Improvements shall be made and maintained by RTD in such manner, form and to the extent as will provide adequate drainage of and from the Corridors and any adjoining BNSF right of way; and wherever any such fill or embankment shall or may obstruct the natural and pre-existing drainage from either Corridor and BNSF's adjoining right of way, RTD shall maintain such culverts or drains within the Corridors that are RTD Improvements except as may otherwise be specified in Exhibit B. RTD shall wherever necessary with respect to RTD Improvements, construct extensions of existing drains, culverts or ditches through or along either Corridor, such extensions to be of adequate sectional dimensions to preserve flowage of drainage or other waters, and/or material and workmanship equally as good as those now existing.

G. Liens. RTD shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by RTD on the DUS Corridor or Gold Corridor or attributable to Taxes that are the responsibility of RTD pursuant to Section 3.5. BNSF is hereby authorized to post any notices or take any other action upon or with respect to the DUS Corridor that is or may be permitted by Law to prevent the attachment of any such liens to any portion of the DUS Corridor; provided, however, that failure of BNSF to take any such action shall not relieve RTD of any obligation or liability under this Section or any other section of this Joint Corridor Use Agreement. After conveyance of the Gold Corridor Deeds BNSF shall promptly pay, discharge or bond over any and all liens arising out of any construction, alteration or repairs done by BNSF to BNSF Improvements in the Gold Corridor.

H. Timing. RTD will coordinate the timing of any maintenance, repair or construction activities to minimize interference with BNSF's operations and to avoid non-critical work during peak freight season, currently the fourth quarter of each year.

I. Environmental Compliance and Notification.

(1) Compliance with Environmental Laws. The Parties shall, and shall cause their respective contractors to, strictly comply with all Environmental Laws. RTD and its Non-BNSF Contractors, if any, shall not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws, on the DUS Corridor or Gold Corridor. RTD and its Non-BNSF Contractors, if any, shall not handle, transport, release or suffer the release of "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any Environmental Laws.

(2) Notice of Release. The Parties shall give one another immediate notice, if to BNSF to BNSF's Resource Operations Center at (800) 832-5452 and if to RTD to its Assistant General Manager for Safety at 303-299-4038 in the event of any release of hazardous substances on or from either Corridor, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to their respective use of the DUS Corridor or Gold Corridor. The Parties shall cause use best efforts to promptly respond to any release arising from or related to their respective activities contemplated in this Joint Corridor Use Agreement. The Parties also shall give one another notice of all measures undertaken on their respective behalf to investigate, remediate, respond to or otherwise cure such release or violation.

(3) Remediation of Release. In the event that either Party has notice of a release or violation of Environmental Laws which occurred or may occur as a result of the other Party's activities contemplated in this Joint Corridor Use Agreement, the responsible Party shall take timely measures to investigate, remediate, respond to or otherwise cure as required by applicable law such release or violation affecting the DUS Corridor or Gold Corridor. Notwithstanding the foregoing, if BNSF is required to investigate, remediate, respond to or otherwise cure such release or violation to a higher standard due to RTD's contemplated use of the Corridors for other than freight operations then RTD must reimburse BNSF for the incremental cost related to such higher standard. If during the construction or subsequent maintenance of the RTD Improvements, soils or other materials considered to be environmentally contaminated are exposed, RTD will remove and safely dispose of said contaminated soils. Determination of soils contamination and applicable disposal procedures thereof will be made only by an agency having the capacity and authority to make such a determination.

(4) Evidence of Compliance. The Parties agree to periodically to furnish one another upon written request with reasonable proof that they are in compliance with this Section.

J. At-Grade Crossings. Nothing in this Joint Corridor Use Agreement shall be considered a consent by BNSF or RTD to any new, modified or relocated at-grade pedestrian or vehicular crossings that may be proposed or approved by the applicable regulatory authority within the DUS Corridor or Gold Corridor or modify any rights BNSF or RTD may have to object to such proposals under applicable law.

SECTION 2.6 – BNSF APPROVALS

Whenever this Joint Corridor Use Agreement provides for review and/or approval by either party, the party seeking approval must provide with plans and specifications, electronic CAD drawings and/or such other information reasonably necessary to allow review of such request. Upon receipt of a written request for such review and receipt of such information the reviewing party will promptly review the applicable subject matter or waive in writing its right to approve and upon such approval or waiver in writing give final written notice thereof, including any reasonable conditions that the reviewing party may impose in connection with its approval. If the reviewing party objects to any portion of the applicable subject matter then the parties shall meet to resolve in good faith any objections. Neither party shall have an obligation to approve matters that are inconsistent with the terms of this Joint Corridor Use Agreement or the Other Agreements. Any approval by a party shall in no way obligate that party in any manner with respect to the applicable subject matter or finished product. Any approval by shall mean only that the applicable subject matter meets the subjective standards of the reviewing party, and such approval shall not be deemed to mean that any plans and specifications, construction or other matter that is the subject of such approval is structurally sound or appropriate or that any plans and specifications, construction or other matter meets applicable regulations, laws, statutes or local ordinances and/or building codes. RTD will be solely responsible for determining whether its plans and specifications, construction, and maintenance of the RTD Improvements and its operating practices meet its needs and will provide for safe operation of its RTD Activities and RTD Passenger Service. BNSF will be solely responsible for determining whether its plans and specifications, construction, and maintenance of its improvements and its operating practices meet its needs and will provide for safe operation of its freight service.

SECTION 2.7 - JOINT WORKING GROUP

BNSF and RTD shall work together in good faith in order to coordinate their respective construction, maintenance, repair and other activities within either Corridor that may impact the other. BNSF and RTD shall establish a joint working group for obtaining Permits and Approvals and coordinating issues related to the design, construction and maintenance of the Project. 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 established in this Section and expedite resolution of any issues arising in connection with such processes. To the extent any authorizations are called for by either party herein including but not limited to those persons specified in Section 2.2 it shall be the responsibility of the Joint Working Group members to forward requests and information to their respective employees and officers.

It shall be the responsibility of the Joint Working Group to develop access, notification and safety procedures for BNSF personnel or contractors at any time such personnel or contractors are performing work that may Foul the

RTD tracks in either Corridors and such requirements shall be similar in form and substance to those required by BNSF at contractororientation.com.

ARTICLE III
CORRIDOR EXPENSES

SECTION 3.1 – BNSF EXPENSES

Except as set forth in this Joint Corridor Use Agreement or any Other Agreements, BNSF shall be solely responsible for all costs and expenses attributable to BNSF's operations over the DUS Corridor, the Gold Corridor and the ownership and maintenance of the BNSF Improvements.

SECTION 3.2 – RTD EXPENSES

A. Direct Expenses. Except to the extent of BNSF's obligation to reimburse RTD for costs of maintaining Joint Improvements as set forth below, RTD shall be solely responsible for all costs and expenses of operating the RTD Passenger Service and the ownership and maintenance of the RTD Improvements in addition to all other costs and expenses allocated to RTD pursuant to this Joint Corridor Use Agreement.

B. Reimbursable Expenses. In addition to payments made under the Other Agreements, RTD shall reimburse BNSF for all costs and expenses identified as reimbursable in this Joint Corridor Use Agreement, and all costs and expenses that BNSF would not incur but for its conveyance of the RTD Easement, DUS Parcels Deed or the Gold Corridor Deeds, the construction and maintenance of the RTD Improvements, and/or the operation of the RTD Passenger Service on the DUS Corridor or Gold Corridor, including without limitation the following:

(1) Signal, track, civil and associated approach modifications required to modify or install grade crossing warning devices at all at-grade crossings within the DUS Corridor or Gold Corridor (and the cost of synchronization between BNSF and RTD) and on-going maintenance associated with such at-grade crossings as further specified in Exhibit B.

(2) Any signal, track, civil and associated work for any quiet zones established in the DUS Corridor or Gold Corridor and ongoing maintenance of any improvements or facilities required for such quiet zones.

(3) The cost of installing track integrity system and/or other similar system and positive train control system on BNSF's track and RTD's track within the DUS Corridor or Gold Corridor, if requested in the future by BNSF.

(4) The cost of flaggers and other costs incurred by BNSF associated with coordination with construction, maintenance or repair of RTD Improvements;

(5) Any additional costs incurred by BNSF pursuant to existing joint facility agreements between BNSF and other railroads resulting from RTD projects (in the DUS Corridor, Gold Corridor or otherwise) affecting such joint facilities;

(6) Additional maintenance costs incurred by BNSF during the construction of the RTD Improvements.

(7) Any costs incurred by BNSF associated with any new at-grade crossings other than at-grade crossings initiated by BNSF.

SECTION 3.3 – [Reserved]

SECTION 3.4 – REIMBURSEMENT FOR CAPITAL PROJECTS CONTRIBUTING TO SERVICE CAPACITY AND RELIABILITY

BNSF may make any capital improvements in either Corridor in compliance with Article II of this Joint Corridor Use Agreement. If such capital improvements would benefit both BNSF and RTD, then the Parties shall meet and negotiate in good faith what percentage of the costs of such improvements will be reimbursed by RTD to BNSF. RTD shall have the right to request that BNSF make improvements outside the RTD Improvement Area, subject to BNSF's approval pursuant to Section 2.6 above. BNSF shall have no obligation to approve any such improvements or modifications outside the RTD Improvement Area that would more than minimally affect BNSF's level of utility or ability to meet current and future freight needs in BNSF's good faith determination. Any such improvements shall be made at RTD's expense, the cost of which shall be paid by RTD to BNSF prior to commencement of any work.

SECTION 3.5 TAXES

A. Definition. "**Tax**" (and, with correlative meaning, "**Taxes**") means any gross receipts, business and occupation, ad valorem, transfer or public utility taxes, or any other tax, governmental fee or other like assessment or charge (other than any U.S. federal, state, or local net income tax), together with any interest, penalty or addition thereto imposed by any governmental authority on BNSF, on any consolidated, combined or unitary group of which BNSF is a member for federal or state tax purposes, or on any member of such group.

B. Taxes.

1. Tax Reimbursement. RTD shall pay or reimburse BNSF for any Taxes which are solely attributable to the receipt by BNSF from RTD of any amounts under the Purchase and Sale Agreement and this Section 3.5, including any increase in Colorado ad valorem taxes determined under Section 3.5.B.7.

2. Determination of Amount of Taxes. In determining amounts payable to BNSF under Section 3.5.B.1, or amounts to which RTD may be entitled under Section 3.5.B.4, proper adjustment shall be made to reflect any Tax benefits to, and Tax detriments incurred by, BNSF in connection with payment of such amounts.

3. Initial Payment of Taxes. To the extent not previously paid under other provisions of the Joint Corridor Use Agreement, amounts payable by RTD under this Section 3.5.B shall be paid within 30 days of its receipt of written notice by BNSF of an amount due including a written explanation supporting the computation of the amount due. However, in a case in which BNSF receives a written notice asserting that additional Taxes for which RTD may be required to make a payment under Section 3.5.B.1 (and in which RTD properly exercises its rights under the contest provisions of Section 3.5.B.4), amounts payable by RTD under this Section 3.5.B.3 attributable to the contested Taxes shall be payable within 30 days from the earliest day on which (1) RTD ceases to properly exercise its rights under the contest provisions of Section 3.5.B.4, (2) the underlying Taxes cannot be further contested without payment of such Taxes or posting of bond (unless RTD timely posts the bond or advances the amount of such Taxes to BNSF, who shall pay them in time to continue such Tax contest), or (3) there is a final determination as to the underlying Taxes.

4. Contest of Taxes. BNSF shall pay all Taxes described in Section 3.5.B.1 at the time and in the amounts that such Taxes are due. BNSF shall promptly notify RTD within 15 days of the receipt by BNSF's Vice President and General Tax Counsel of written notice that a taxing jurisdiction is asserting that additional Taxes, for which RTD may be required to make a payment under Section 3.5.B.1, are due for a given period. Upon receipt of such notice, RTD has the right to require that BNSF contest such additional Taxes; and shall exercise that right, if at all, by (i) acknowledging that such Taxes (and any related additional amounts due under this Section 3.5.B) are the liability of RTD pursuant to Section 3.5.B.1, (ii) giving written notice to BNSF that RTD accepts responsibility for the costs of such contest and the payment of any additional Taxes or other amounts resulting from such contest and (iii) presenting evidence (from time to time as BNSF may reasonably request) reasonably satisfactory to BNSF of RTD's ability and commitment to promptly pay such Taxes and other amounts. Similarly, to the extent permitted by law, RTD shall be entitled to require that BNSF seek in a timely fashion refunds of those Taxes which

BNSF paid in a timely fashion, and for which it was reimbursed by RTD, by giving written notice to BNSF that RTD accepts responsibility for (i) such Taxes (and any related additional amounts due under this Section 3.5.B), (ii) any additional Taxes (and any related additional amounts due under this Section 3.5.B) resulting from such refund claim and (iii) the costs of pursuing such refund claim. To the extent allowed by law and at the option of BNSF, BNSF shall assign such refund claim to RTD and RTD shall conduct such contest or prosecute such refund claim at no cost to BNSF. In no event shall BNSF settle or otherwise voluntarily resolve a contest or refund claim to the extent such contest or claim relates to any Tax for which RTD may be responsible under this Section 3.5.B without the prior written consent of RTD, which consent shall not be unreasonably withheld. In all events, BNSF shall cooperate with RTD in any such contest of Taxes or Tax refund claim. RTD shall be given the opportunity, at RTD's own expense, to associate with BNSF in the contest and settlement of any claim for which BNSF seeks reimbursement under this Section 3.5.B. In no event, however, absent BNSF's written consent, which consent shall not be unreasonably withheld, shall RTD settle or otherwise voluntarily resolve a contest of Taxes or Tax refund claim if such settlement or resolution might adversely affect BNSF's interests with respect to past, current or future Taxes. If the Taxes must be paid (or placed in escrow) in connection with the adjudication of any such Tax contest or refund action, including appeals, RTD shall advance (without interest) to BNSF the funds needed for such payment (or escrow) and, in that event, RTD shall be entitled to any related refunds, including interest thereon. RTD shall reimburse the reasonable out-of-pocket costs, including attorney's fees, that BNSF incurs in connection with its cooperation under this Section 3.5.B. For purposes of this Section 3.5.B.4, costs of a contest, costs of pursuing a refund and reasonable out-of-pocket costs shall not include salaries, wages, overhead or benefit expenses of any officer or any other employee of BNSF or an affiliated entity.

5. Cooperation. BNSF shall (1) consult with RTD in good faith in determining the nature of actions to be taken in connection with claims pertaining to Taxes for which RTD may be required to make a payment under Section 3.5.B.1 and (2) provide RTD with all information, assistance and co-operation that RTD reasonably requests with respect to any notice that a taxing jurisdiction is asserting that additional Taxes for which RTD may be required to make a payment under Section 3.5.B.1 are due for a given period.

6. Savings Clause. The failure of BNSF to take any action described in Section 3.5.B.4 or 3.5.B.5 shall not prejudice BNSF's rights to payment under Section 3.5.B except and only to the extent that RTD is prejudiced by such failure.

7. Computation of Incremental Ad Valorem Taxes. To the extent that BNSF's liability for Colorado ad valorem taxes on its railroad company operating property is greater than it otherwise would have been in the absence of investments in the RTD Improvements pursuant to the provisions of this Joint Corridor Use Agreement and the sale of the RTD Easement, DUS Parcels and Gold Corridor to RTD pursuant to the Purchase and Sale Agreement (the difference being referred to herein as "**RTD's Share of Ad Valorem Taxes**"), then RTD shall pay or reimburse BNSF pursuant to Section 3.5.B.1 for RTD's Share of Ad Valorem Taxes. Upon billing by BNSF as provided herein, RTD shall annually reimburse BNSF (pursuant to Section 3.5.B.1) for RTD's Share of Ad Valorem Taxes attributable to that ad valorem tax year.

For each tax year, BNSF will bill RTD for RTD's Share of Ad Valorem Taxes and provide the following documentation in support of the bill:

a. Portion of BNSF's Annual Report to the Colorado Department of Revenue for that tax year showing BNSF's total gross road investment in Colorado and in BNSF's entire rail system ("**Total Gross Road Investment**").

b. BNSF schedule showing (i) the amount of gross investment in RTD Improvements included in BNSF's Total Gross Road Investment and (ii) the effects, if any, of the sale of the RTD Easement, DUS Parcels and Gold Corridor to RTD on the amount of BNSF's system market value for Colorado Ad Valorem Tax purposes.

c. BNSF schedule showing the calculation of BNSF's actual Colorado ad valorem tax, including allocation factors and system market value for the ad valorem tax year (the "**Actual BNSF Ad Valorem Tax**").

d. BNSF schedule showing the Actual BNSF Ad Valorem Tax, adjusted to exclude from the system market value (i) the gross investment in RTD Improvements and (ii) the sale of the RTD Easement, DUS Parcels and Gold Corridor to RTD (the "**Adjusted BNSF Ad Valorem Tax**").

e. BNSF schedule showing RTD's Share of Ad Valorem Taxes, which equal the Actual BNSF Ad Valorem Tax less the Adjusted BNSF Ad Valorem Tax.

The method described in this Section shall be used to compute RTD's Share of Ad Valorem Taxes as long as the State of Colorado Department of Revenue uses the Unit Method of Value to determine the taxable value of BNSF's property in the State of Colorado. If the method used to determine the taxable value of BNSF's property in the State of Colorado should change to a method different from the Unit Method of Value, BNSF shall notify RTD in writing, and both Parties shall negotiate in good faith to determine a revised tax allocation formula that equitably reflects the new method of valuation. Any dispute regarding the applicability of such costs to RTD shall be resolved pursuant to Article X.

C. Confidentiality. Any information provided by BNSF to RTD pursuant to this Section 3.5 shall be regarded as confidential and shall not be published or disclosed by RTD to any third party without the prior written consent of BNSF, except for the purpose of performing this Joint Corridor Use Agreement or as required by a governmental authority or by law.

SECTION 3.6- UNFORESEEN EVENTS

If there is an occurrence, including requirements of governmental authorities not reasonably foreseeable when this Joint Corridor Use Agreement was executed, that has a material impact on the ability or cost to perform BNSF responsibilities established under this Joint Corridor Use Agreement, the Parties will negotiate in good faith and use their good faith efforts to agree upon an appropriate amendment to the applicable contract provision. If the Parties cannot agree upon such an appropriate amendment, or if other issues arise under this Section 3.6 upon which the Parties cannot agree, the Parties agree that resolution of these issues will be pursuant to Article X. Pending a final decision in the arbitration proceeding, both Parties shall continue to perform under and be bound by the terms of this Joint Corridor Use Agreement as it exists without any proposed amendment.

SECTION 3.7 - METHOD OF INVOICING AND PAYMENT

A. Whenever a Party is required to pay or reimburse the other Party, such payment must be made within thirty (30) days after receipt of an invoice for such amounts along with reasonable supporting documentation. Late payments shall be subject to interest at a rate equal to the lesser of twelve percent (12%) per year or the maximum rate allowed by law.

B. Whenever RTD is required under the terms of this Joint Corridor Use Agreement to reimburse BNSF for costs incurred by BNSF, such costs shall include applicable sales and use taxes and additives including, for example, the cost of vehicles, machinery, tools, supervision, clerical, union agreement lodging and rents ("**Applicable Additives**") and applicable payroll related associated costs ("**PRAC**"). The fixed amount of the base BNSF Modifications Payments includes the Applicable Additives and PRAC related to that work.

SECTION 3.9 - INSPECTION AND EXAMINATION

Upon reasonable notice, a Party will permit the other Party, its auditors, or any other duly authorized agent, to inspect and examine books, records, accounts, and documents (collectively, "**Records**") that are relevant to this Joint Corridor Use Agreement relating to reimbursement under this Article III. Such Records will be maintained by each Party pursuant to its then-current records retention policy, except in the event of litigation between the Parties arising out of or related to this Joint Corridor Use Agreement, in which case the Parties shall maintain

Records related to such litigation as required by applicable law. Subject to the preceding sentence, Records will be made available upon request and reasonable prior notice. The Party requesting review of Records shall reimburse the other Party's reasonable expenses in making such Records available. Upon completion of such inspection and examination, any adjustment required to make any reconciliation will be made, paid or credited, as the case may be, in the next monthly billing cycle.

ARTICLE IV
EMPLOYEES AND CONTRACTORS

The relationship of the Parties as respects all activities hereunder will be that of independent contractors, and nothing in this Joint Corridor Use Agreement will be construed as inconsistent with that status.

SECTION 4.1 - PERSONNEL TO BE EMPLOYEES OF BNSF OR SUBCONTRACTORS

The personnel performing BNSF's obligations under this Joint Corridor Use Agreement shall at all times be employees of BNSF, or its contractors or subcontractors as determined by BNSF, under BNSF's or said contractor's or subcontractor's exclusive direction and control and shall not be employees of RTD. BNSF or its contractors or subcontractors shall have the sole authority to hire, fire, discipline, promote, demote, direct the work of and manage the personnel performing such obligations. RTD shall have no role or authority to hire, fire, discipline, promote, demote, direct the work of or manage anyone employed by BNSF or its contractors or subcontractors. BNSF shall pay the wages and salaries of its own officers, agents, and employees in strict accordance with applicable laws and regulations

SECTION 4.2 - RESERVED

SECTION 4.3 - LABOR AGREEMENTS

A. Existing Labor Agreements. In performing activities, if any, specified hereunder, BNSF will comply with the terms and conditions of all applicable agreements with any labor organization representing BNSF's employees concerning wages, benefits and terms and conditions of employment. RTD does not accept, succeed to or assume, and this Joint Corridor Use Agreement shall not be construed to impose or allow any acceptance of, succession to, or assumptions of, any obligations of BNSF under any of its collective bargaining agreements with its employees or their representatives. This Joint Corridor Use Agreement will not be construed to obligate BNSF to operate subject to any labor agreement not otherwise applicable to such operations.

B. Existing RTD Labor Agreements. In performing activities, if any, permitted hereunder, RTD will comply with the terms and conditions of all applicable agreements with any labor organization representing RTD's employees concerning wages, benefits and terms and conditions of employment. BNSF does not accept, succeed to or assume, and this Joint Corridor Use Agreement shall not be construed to impose or allow any acceptance of, succession to, or assumptions of, any obligations of RTD under any of its collective bargaining agreements with its employees or their representatives. This Joint Corridor Use Agreement will not be construed to obligate RTD to operate subject to any labor agreement not otherwise applicable to such operations.

C. Labor Claims and Labor Protection. RTD shall assume the cost of any labor claims and labor protection obligations arising from employees of RTD or Non-BNSF Contractors in connection with: (1) the application of Section 13(c) of the Federal Transit Act, 49 U.S.C. Section 5333(b), to RTD Passenger Service or RTD Activity; (2) any changes in applicable local, state or federal ordinance or legislation which affect RTD Passenger Service or RTD Activity; or (3) any other affirmative act of RTD or of BNSF that BNSF undertakes pursuant to this Joint Corridor Use Agreement. In the event of any changes described in clause (2) of the previous sentence, BNSF will diligently pursue efforts to negotiate an agreement with its employees or their representatives that minimizes the impact of such protection obligation on or the cost thereof to be borne by RTD. This Joint Corridor Use Agreement will not be construed to obligate RTD to operate subject to any labor agreement not otherwise applicable to such operations.

SECTION 4.4 – BNSF CONTRACTORS

As determined by BNSF, any of BNSF's obligations under this Joint Corridor Use Agreement may be performed by one or more contractors selected by BNSF. Approval of RTD is not required for BNSF to have any of such obligations performed by one or more contractors. No subcontract shall release or relieve BNSF from any obligation hereunder.

SECTION 4.5 – NON-BNSF CONTRACTORS

A. RTD shall cause any Non-BNSF Contractor to perform pertinent activities in accordance with the related obligations of RTD under this Joint Corridor Use Agreement. RTD shall be responsible for all personnel and services required to perform and support the operation of trains for the RTD Passenger Service. No contract entered into by RTD with any contractor will release or relieve RTD from any obligation as provided in this Joint Corridor Use Agreement, and RTD will be as fully responsible to BNSF for the acts and omissions of any and all contractors and of persons either directly or indirectly employed by them as if these acts and omissions were the acts and omissions of RTD or of persons directly employed by RTD.

B. In performing under this Joint Corridor Use Agreement: RTD shall cause any Non-BNSF Contractor to

(1) comply with all applicable federal, state, local, standards, codes, rules, regulations, enactments, and ordinances (including FRA standards) as may be amended or promulgated form time to time, affecting or applicable to the Corridors including but not limited to laws, rules, orders, regulations, or restrictions administered or issued by the Occupational Safety and Health Administration of the United States Department of Labor ("**OSHA**"), the Colorado Department of Labor and Industry and the Colorado Department of Transportation (to the extent they have jurisdiction); discrimination in employment and occupational safety and health acts and regulations, relating to wages, working hours, overtime, and working conditions applicable to its employees, relating to employee compensation, benefits, leaves of absences and any other aspect of the employment relationship, assumption of liability to its employees for payment of all applicable payroll taxes and all contributions for unemployment insurance and old age pensions or annuities that are measured by the wages, salaries, or other compensation paid to the Non-BNSF Contractor's employees; and supply information related to the taxes and contributions described in this paragraph to the proper authorities;

(2) use only such methods as are consistent with the safety of BNSF's own officers, agents, employees, and property, RTD's officers, agents, employees, and property, and the public in general;

(3) assure that its employees have the necessary training and qualifications;

(4) operate safely, efficiently, and in a cost-effective manner; and

(5) promptly provide written notification to RTD and BNSF if the Non-BNSF Contractor (a) knows or believes there may have been a failure to comply with any laws, regulations, or enactments described in Section 4.5B, or (b) receives notice of an action seeking to impose a fine, penalty, cost, or charge against BNSF or RTD for an alleged violation of any of the items described in this Section 4.5B.

If any failure by RTD or RTD's Non-BNSF Contractor to comply with the items described in this Section 4.5B, or failure by either Party to comply with laws or regulations applicable to it shall result in the imposition of any fine, penalty, cost, or charge by an enforcement or regulatory body against the other Party, then subject to Section 3.2.B, the non-complying Party shall reimburse, indemnify, and hold harmless the other Party for any such fine, penalty, cost, or charge and shall reimburse, indemnify, and hold harmless the other Party for any such failure to comply.

C. RTD shall ensure that its Non-BNSF Contractor on either Corridor at all times:

1. Has adequate numbers of skilled personnel performing the applicable RTD Activity so as to comply with the requirements of this Joint Corridor Use Agreement, including, without limitation, to respond to emergencies that could otherwise interfere with safe and efficient operations and activities;

2. Adequately trains and supervises its personnel (including subcontractors, if applicable) to ensure safe and efficient operation of such RTD Activity and to maintain proficiency and the qualifications necessary for them to perform such service;

3. Ensures compliance with all FRA standards for Rolling Stock; and

4. Is, if a Non-BNSF Operator, an entity subject to the jurisdiction of the FRA.

SECTION 4.6 - NONCOMPLIANCE

If any employee of RTD or its Non-BNSF Contractor shall neglect, refuse or fail to abide by BNSF's rules, instructions and restrictions governing the safety of operation on or along either Corridor after reasonable notice and opportunity for corrective action, such employee shall upon written request of BNSF, be prohibited by RTD or its Non-BNSF Contractor from working on either Corridor. If either Party shall deem it necessary to hold a formal investigation to establish such neglect, refusal or failure on the part of any employee of RTD or its Non-BNSF Contractor, then upon such notice presented in writing, RTD or its Non-BNSF Contractor shall promptly hold an investigation in which the Parties concerned shall participate and bear the expense for their respective officers, counsel, witnesses and employees. Notice of such investigation to RTD or its Non-BNSF Contractor's employees shall be provided, and such investigations shall be conducted in accordance with the terms and conditions of labor union agreements between RTD or its Non-BNSF Contractor and its employees. If, in the judgment of BNSF, the result of such investigation warrants, such employee shall, upon written request by BNSF, be withdrawn by RTD or its Non-BNSF Contractor from service on either Corridor. RTD or its Non-BNSF Contractor shall release and indemnify BNSF from and against any and all claims and expenses arising from such withdrawal. If the disciplinary action is appealed by an employee of RTD or its Non-BNSF Contractor to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of such board or tribunal sustains the employee's position, such employee shall not thereafter be barred from service on either Corridor by reason of such disciplinary action.

SECTION 4.7 - OTHER REQUIREMENTS

RTD will be using federal funds to fund payments to BNSF under the Construction Agreement, as set forth in the Construction Agreement. RTD will not use federal grant dollars or other federal funds to fund payments to BNSF under this Joint Corridor Use Agreement for RTD Subsequent Improvements or otherwise unless BNSF and RTD each sign a written consent expressly referencing this Section 4.7. No such consent shall be effective unless signed by an officer of BNSF with the status of Vice President or higher and no failure to give such consent shall be deemed to be a waiver of this requirement or subject BNSF to any liability. Nothing in this Joint Corridor Use Agreement or any of the Other Agreements shall obligate BNSF to grant written consent.

ARTICLE V
RTD OBLIGATIONS

SECTION 5.1 - ROLLING STOCK SAFETY AND MAINTENANCE

All Rolling Stock is the exclusive risk and responsibility of RTD. RTD shall be responsible at its sole expense for ensuring that all Rolling Stock on the Corridors complies with all applicable federal, state, and local laws, regulations, and enactments, including without limitation FRA standards for Rolling Stock, and be compatible with BNSF's safety, signal and communication systems to the extent applicable, as the same may be modified from time to time for any reason, including but not limited to the on-board locomotive and cab car equipment that is part of a positive train control system. RTD shall further be responsible at its sole expense for providing the facilities, equipment, and machinery outside of either Corridor necessary for Rolling Stock maintenance, and for providing the fuel necessary for operation of Rolling Stock. If any failure of the Rolling Stock to comply with any laws, regulations, or enactments results in the imposition of any fine, penalty, cost, or charge against BNSF, then RTD shall reimburse, indemnify, and hold harmless BNSF for any such fine, penalty, cost, or charge. RTD agrees,

upon receiving notice of any action seeking to impose any such fine, penalty, cost, or charge against BNSF, to defend such action at RTD's own expense.

SECTION 5.2 - POLICE AND SECURITY

The provision of the services of law enforcement personnel in connection with passenger activities aboard the RTD Passenger Service Trains shall be the exclusive responsibility of RTD as between the Parties. The provision of the services of law enforcement personnel in connection with DUS Corridor right-of-way violations within the portion of either Corridor occupied by the BNSF Improvements shall be the exclusive responsibility of BNSF, as between the Parties to this Joint Corridor Use Agreement. The provision of the services of law enforcement personnel in connection with DUS Corridor right-of-way violations within the RTD Improvements Area shall be the exclusive responsibility of RTD, as between the Parties to this Joint Corridor Use Agreement. The provision of the services of law enforcement personnel on the Gold Line Corridor East Portion shall be the responsibility of RTD after RTD receives the Gold Corridor East Parcel Deed. The provision of the services of law enforcement personnel on the Gold Corridor West Portion shall be the responsibility of RTD after RTD commences construction of improvements on the Gold Corridor West Portion.

SECTION 5.3 - CUSTOMER RELATIONS RESPONSIBILITIES

All responsibilities for marketing, public information, customer complaints, customer claims or other customer relations matters shall be the responsibility of RTD or its Non-BNSF Operator.

SECTION 5.4 - LIAISON WITH OTHER TRANSIT AGENCIES

RTD shall coordinate with other transit agencies in such matters as intermodal transfers, passes, connecting schedules, or other matters determined at RTD's discretion.

SECTION 5.5 - REGULATORY APPROVALS

In the event that any state, federal, or local regulatory prior approval or exemption is required with respect to the operation of RTD Passenger Service on the DUS Corridor or Gold Corridor, securing such approval or exemption shall be the responsibility of RTD, and RTD Passenger Service shall be operated in accordance with such order or governmental requirements.

SECTION 5.6 - PROVISION OF STATIONS, PLATFORMS AND ADDITIONAL TRACK

RTD's right to construct, operate or use any passenger stations, platforms, track or other improvements within the Corridors is subject to such improvements being constructed in accordance with the Construction Agreement or this Joint Corridor Use Agreement (for any subsequently constructed facilities) and operated and maintained in accordance with this Joint Corridor Use Agreement. BNSF may require RTD to install and maintain at its expense intertrack fencing for any stations within or adjacent to the Corridors. Any passenger stations, platforms, track, or other improvements shall be designed, constructed, and operated in such a way as to prevent any interaction by passengers or other parties near any BNSF track, equipment, or operations. RTD shall be solely responsible for any Environmental Loss or Damage arising out of the construction and/or operation of any passenger stations, platforms, track or other improvements, as set forth in more detail in the platform agreement or other applicable agreement.

SECTION 5.7 – NON OPERATION OF RTD PASSENGER SERVICE

RTD may, at its sole discretion, suspend or not initiate operation of the RTD Passenger Service on the Corridors. For any such suspension or when RTD Passenger Service is suspended pursuant to Sections 6.2 or 9.3.A or lack of operation for any reason, RTD shall secure all platforms on or adjacent to the Corridors so that members of the public may not readily access the platforms. RTD shall remain liable and responsible for all of its obligations under this Joint Corridor Use Agreement notwithstanding such lack of operations, including without limitation maintenance of the RTD Improvements and applicable Joint Improvements, payments or reimbursements contemplated in this Joint Corridor Use Agreement, the provisions of Articles VII and VIII and for all requirements

of any agreement it enters into with another public agency, as such agreement relate to the construction of improvements attributable to or needed for commuter rail operations or use of those improvements in RTD Passenger Service.

ARTICLE VI
INSURANCE

SECTION 6.1 - INSURANCE

A. Prior to conducting any RTD Activity on either Corridor, RTD shall secure and maintain the insurance required by the Construction Agreement.

B. Prior to operating any Rolling Stock (whether containing passengers or not) on either Corridor, RTD shall secure and maintain:

1. railroad general liability insurance in an amount of at least $200,000,000 or such greater amount as may be set by the United States Congress as the limit of liability in relation to commuter related accidents, and as presently set forth in 49 U.S.C. §28103, which insurance shall be accessible to and for the mutual benefit of both BNSF and RTD in accordance with this Joint Corridor Use Agreement. Such insurance shall cover Loss or Damage and Environmental Tort Liability (but need not cover Environmental Loss or Damage), alleged by any Party to have arisen in whole or in part out of RTD Passenger Service or RTD Activity, including, without limitation, negligence (including specifically any action arising pursuant to the Federal Employers' Liability Act), gross negligence, recklessness, and willful and wanton misconduct of BNSF ("**BNSF Covered Liability**"). Loss or Damage not related in any way to RTD Passenger Service or RTD Activity shall not be deemed a BNSF Covered Liability (i.e. it need not be covered by insurance under this Joint Corridor Use Agreement). Such insurance may include a reasonable deductible or self-insured retention not to exceed $1,000,000; provided, however, if RTD elects to include any deductible or self-insured retention, RTD shall itself directly cover, in lieu of insurance, any and all BNSF Covered Liability that would otherwise be covered in accordance with the provisions of this Joint Corridor Use Agreement by RTD insurance if RTD elected not to include a deductible or self-insured retention, and such direct coverage by RTD shall be in an amount equal to the amount of RTD's actual deductible or self-insured retention. In the event that all or any portion of the insurance required by this Joint Corridor Use Agreement is exhausted, RTD's insurance policy or policies shall have the ability to provide limits adequate to cover future losses within the same annual policy period, but in no event shall the insurance provide coverage in excess of $400,000,000 within the same annual policy period. To satisfy this requirement, RTD's insurance may include either a reinstatement option or an annual aggregate, provided that either alternative provides for coverage of no less than $200,000,000 for each BNSF Covered Liability, but shall not exceed $400,000,000 for the annual policy period.

2. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

- RTD's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- Employers' Liability (Part B) with limits of at least $500,000 each accident, $500,000 by disease policy limit, $500,000 by disease each employee.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to BNSF.

C. Other Requirements.

1. Subject to Section 6.1.C(2), the railroad general liability insurance required hereunder may be written on an occurrence basis or a claims-made basis, and shall provide coverage for personal injury, bodily injury and death (including coverage under the Federal Employers Liability Act), and property damage (including, but not limited to, property listed on any bill(s) of lading, and Rolling Stock). Such insurance shall include blanket contractual coverage, including coverage for this Joint Corridor Use Agreement and specific coverage for the indemnity provisions set forth in Article VIII regarding Environmental Tort Liability and Article VII of this Joint Corridor Use Agreement. Allocated Loss Expense shall be in addition to policy limits for all coverages listed herein.

2. In the event RTD purchases railroad general liability insurance on a claims-made basis, RTD hereby agrees to procure insurance with the ability to trigger extended reporting period(s) of three (3) years (on a cumulative basis) beyond expiration, cancellation or termination of the policy, intended expressly to cover events that may have occurred while the policy was in force. RTD shall trigger such extended reporting period(s) for a three (3) year period (on a cumulative basis), in the event of the expiration, cancellation, or termination of any such policy.

3. RTD must provide certificates of insurance from an authorized individual evidencing the coverage set forth above prior to the applicable dates set forth in Section 6.1.A and 6.1.B; and annually thereafter prior to expiration of the coverage. Within twenty (20) days of issuance of the policies, copies of the policies shall be provided to BNSF by RTD. Acceptance of a certificate or copy of a policy that does not comply with this Section shall not operate as a waiver of RTD's obligations hereunder.

4. On the date that is five years after the latest of each of the following conditions to be satisfied: (i) BNSF no longer operates freight Trains on or across either Corridor, (ii) BNSF no longer dispatches Trains on or across either Corridor, (iii) BNSF does not maintain any segment of either Corridor on which RTD operates RTD Passenger Service, and (iv) no events giving rise to actual or potential claims for which BNSF would be liable under this Joint Corridor Use Agreement have occurred; the insurance requirements of this Article VI shall not apply.

5. At intervals of five (5) years from the Permitted Start Date the Parties shall meet and confer in good faith to reassess and re-evaluate the exposure of BNSF, and the insurance requirements set out in this Section (including, but not limited to, the amount of deductible or self insurance retention and major changes in the insurance market affecting availability and cost of railroad liability insurance), and to reopen and renegotiate a new level of insurance intended to reflect BNSF's exposure to liability, and to make an increase or reduction, if necessary, to the insurance coverage required by this Section.

6. For purposes of this Article, references to BNSF shall include BNSF's officers, directors, employees, agents, attorneys, and contractors, to the extent any of them are performing duties related to either Corridor for BNSF which would not have been performed but for this Joint Corridor Use Agreement.

7. In the event the $200 million per occurrence limitation under the Amtrak Reform and Accountability Act of 1997 (49 U.S.C. § 28103) (or a successor provision) is held by a court of competent jurisdiction, to be inapplicable to passenger rail service of the nature provided by RTD, then the Parties agree to reopen and renegotiate a new level of RTD railroad general liability insurance intended to reflect any resulting change in either Party's exposure to liability, giving due consideration to the additional costs or savings of such a change. In the event that such legislation is held to be inapplicable to any event involving RTD and BNSF, RTD shall be liable for all amounts held to be applicable to any such event(s) and to have insured BNSF for such amounts.

8. Insurance obtained pursuant to this Article shall be primary and non-contributing as respects any level of self-insurance or coverage maintained by BNSF. The certificate(s) of insurance must reflect that the above wording is included in all policies required herein. Any other coverage maintained by BNSF shall be excess of this coverage herein defined as primary and shall not contribute with it. Nothing in this Article shall be interpreted to prevent RTD from requiring any Non-BNSF Contractor to procure primary insurance as a condition of a particular contract, and, in that event, the insurance required by this Article may be excess to such Non-BNSF Contractor's primary insurance,

provided that BNSF will be protected to the same extent as if RTD had not secured services from such Non-BNSF Contractor.

9. Each insurance policy required by this Article shall be endorsed to state that coverage shall not be suspended, voided, canceled, or amended except after 30 days prior written notice has been given to BNSF.

10. Each insurance policy shall be issued by financially sound insurers who may lawfully do business in the State of Colorado and who have a Best's rating of A- and Class VII or better, unless otherwise agreed to by the Parties.

11. All policies required herein shall include a severability of interest endorsement (or separation of insureds language within the policy), and BNSF's status as an insured shall be described as one of the following: a Named Insured, an Additional Insured, or an Additional Named Insured. The severability of interest (or separation of insureds) and BNSF's status as an insured shall be indicated on all the certificates of insurance. In the event RTD procures insurance policies naming BNSF as an "Additional Insured" or an "Additional Named Insured," BNSF shall have the right to approve all language of the endorsement(s) prior to RTD's purchase of the insurance.

SECTION 6.2 - MAINTENANCE OF LIABILITY PROTECTION

In the event that RTD cannot or does not obtain the insurance coverage required under this Article, or if such insurance is initially procured but later lapses for any reason or is no longer commercially available, RTD shall immediately suspend RTD Passenger Service on the DUS Corridor, and on the Gold Corridor if BNSF has not abandoned its retained easement until such time as the insurance required by this Article VI, or equivalent protection, is obtained. If insurance required under this Article or equivalent protection is, for any reason, not in place, then BNSF shall have the right, but not the duty, to purchase such insurance. In the event BNSF chooses to procure such insurance, RTD shall reimburse BNSF for the actual cost of such insurance.

SECTION 6.3 - SUBROGATION RIGHTS

RTD agrees to waive its right of recovery against BNSF for all claims and suits against BNSF as outlined by the terms and conditions contained herein. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against BNSF for all claims and suits. RTD further waives its right of recovery, and its insurers also waive their right of subrogation against BNSF for loss of its owned or leased property or property under RTD's care, custody or control. Waivers of subrogation shall be indicated on all certificates of insurance.

ARTICLE VII - LIABILITY AND INDEMNIFICATION FOR LOSS OR DAMAGE

SECTION 7.1 - ALLOCATION OF LIABILITIES FOR LOSS OR DAMAGE

The insurance procured by RTD under Section 6.1 of this Joint Corridor Use Agreement is intended to cover RTD's and/or BNSF's liability for Loss or Damage. As long as and to the extent that such insurance pays for or reimburses Loss or Damage, there is no need for any allocation of liability under this Article. Nothing herein shall be construed to require RTD to provide insurance coverage for or indemnify BNSF for other than BNSF Covered Liability. If any Loss or Damage exceeds the insurance limits provided in Section 6.1, or if liability needs to be apportioned even if the Loss or Damage, or a portion of the Loss or Damage, is covered by the insurance secured under Section 6.1, then the Parties agree that such liability shall be apportioned as follows:

A. RTD shall, as between the Parties, bear all Loss or Damage to a RTD Party.

B. Subject to Section 7.1.C and 7.1.D, BNSF shall, as between the Parties, bear all Loss or Damage to a BNSF Party.

C. RTD shall bear all Loss or Damage to a Third Party or BNSF Party (1) that involves a Train operated by a RTD Party and does not result from and is not contributed to by an accident, collision, or derailment of a Train other than a Train operated by a RTD Party, or (2) to the extent caused by, contributed to, exacerbated by, or arising or resulting from RTD Passenger Service or RTD Activity, the existence of the RTD Improvements, RTD's occupation and use of the DUS Corridor or Gold Corridor, or RTD's breach of this Joint Corridor Use Agreement or any Other Agreement.

D. Subject to Section 7.1.C, when Loss or Damage to a Third Party or BNSF Party involves a Train operated by a RTD Party, and also involves a Train operated by a BNSF Party, then such Loss or Damage shall be allocated, as between the Parties, on a usage basis considering each Party's Train Miles over the DUS Corridor or Gold Corridor depending on which Corridor the incident occurred for the preceding month or, if such Loss or Damage occur during the first month following the DUS Permitted Start Date or Gold Permitted Start Date, on a usage basis of each Party's Train Miles over the DUS Corridor or Gold Corridor, as applicable between the occurrence of such Loss or Damage and the anniversary of the Permitted Start Date applicable to such Corridor.

E. Loss or Damage to Third Parties occurring on either Corridor and not otherwise allocated pursuant to Sections 7.1.A, B, C, D shall, as between the Parties, be borne by BNSF. Loss or Damage to Third Parties occurring on the Gold Corridor and not otherwise allocated pursuant to Sections 7.1.A, B, C, D shall, as between the Parties, be borne by RTD.

F. The allocation of Loss or Damage provided in this Article VII shall not be affected by any allocation of Loss or Damage as between a Party hereto and a third person or entity.

G. The Parties agree that in any litigation involving one or more of the Parties and any third person in which Loss or Damage is sought to be imposed under applicable law without regard to the provisions of this Joint Corridor Use Agreement, neither Party will introduce Section 7.1. A., B., C., D., E., F., or G., or Section 7.2. into evidence and each Party will oppose discovery of those sections by any person not a Party to this Joint Corridor Use Agreement to the extent that there exist reasonable grounds for opposition.

H. For purposes of Article VII, neither BNSF, nor its employees, agents, contractors, attorneys, licensees, lessees, invitees, customers, or patrons shall be considered employees, agents, or contractors of RTD, and neither RTD, nor its employees, agents, contractors, attorneys, licensees, lessees, invitees, customers, or patrons shall be considered employees, agents, or contractors of BNSF.

SECTION 7.2 - RELEASES AND INDEMNIFICATION

A. RTD agrees to release and covenants not to sue BNSF (including for all purposes of this paragraph, BNSF's employees, directors, contractors, officers, agents, attorneys, predecessors, successors, and assigns) from and for any claims it could otherwise assert against BNSF for Loss or Damage for which RTD shall be liable under the provisions of this Article VII other than to enforce the allocation of such liability and covenants as provided herein.

B. BNSF agrees to release and covenants not to sue RTD from and for any claims it could otherwise assert against RTD for which BNSF shall be liable under the provisions of this Article VII other than to enforce the allocation of such liability and covenants as provided herein.

C. To the maximum extent permitted by law, each Party shall pay all Loss or Damage for which such Party shall be liable under the provisions of this Article VII and shall defend, indemnify and hold harmless the other Party (including without limitation the other Party's employees, directors, contractors, officers, agents, attorneys, predecessors, successors, and assigns) against such Loss or Damage. The Parties expressly intend that their mutual indemnification obligations under this Section do not constitute a waiver of or operate to defeat any other immunities, limitations, or defenses imposed by or available under any statute or common law which are applicable to any Party. Consistent with C.R.S 24-10-114, the Parties do not perceive or anticipate that any Loss or Damage, including any BNSF Covered Liability, could include a bona fide claim for punitive damages. However, if any claim for punitive damages avoids C.R.S. 24-10-114 for any reason, including but not limited to

the repeal or invalidation of that statute, then the Parties' indemnification obligations expressly include the duty to indemnify the other Party for Loss or Damage including punitive damages.

D. The indemnification obligations assumed by the Parties hereunder shall include without limitation any liability, suits, claims, damages, judgments, lawsuits, demands, causes of action, losses, reasonable defense costs, and expenses under the Federal Employer's Liability Act, the Safety Appliance Act, or the Locomotive Inspection Act, including claims for strict liability.

E. With respect to each other only, BNSF and RTD, by mutual negotiation, hereby waive any immunity against claims for which they have assumed an indemnification obligation hereunder that would otherwise be available.

F. If any provision of this Joint Corridor Use Agreement purports to indemnify a Party against Loss or Damage and such indemnification would be prohibited by or unenforceable under applicable federal and state law, the indemnity provided by such provision shall be deemed to be limited to and operative only to the maximum extent permitted by law. Further, to the extent that BNSF is thereby deprived of the protection it would otherwise have had under this Joint Corridor Use Agreement, the Parties agree to negotiate in good faith to ensure equivalent protection for BNSF, and if agreement is not reached regarding the equivalent protection required, then, upon written demand by BNSF, RTD shall suspend RTD Passenger Service on either Corridor until such time as the equivalent protection is obtained.

SECTION 7.3 - SURVIVAL

It is mutually understood and agreed that the allocations of liability, releases, and indemnifications under this Joint Corridor Use Agreement shall survive any termination of this Joint Corridor Use Agreement.

SECTION 7.4 - CLAIMS

A. RTD shall have the exclusive right to defend, investigate, settle, or cause to be settled all claims for Loss or Damage that is covered by the insurance required by Article VI and for which RTD acknowledges in writing it is responsible for all Loss or Damage related thereto pursuant to this Article VII. During the course of RTD's investigation and/or defense of any such claim, BNSF agrees to cooperate fully with RTD, including sharing relevant information and providing access to necessary witnesses and other company experts or expertise, without additional cost to RTD. If such claim involves a lawsuit naming BNSF as a party, BNSF shall immediately tender such suit to RTD.

B. BNSF shall have the exclusive right to defend, investigate, settle, or cause to be settled all claims for Loss or Damage that is covered by the insurance required by Article VI and for which BNSF acknowledges in writing it is responsible for all Loss or Damage related thereto pursuant to this Article VII. During the course of BNSF's investigation and/or defense of any such claim, RTD agrees to cooperate fully with BNSF, including sharing relevant information and providing access to necessary witnesses and other company experts or expertise, without additional cost to BNSF. If such claim involves a lawsuit naming RTD as a party, RTD shall immediately tender such suit to BNSF.

C. For any claim for which A or B above do not apply, each Party to this Joint Corridor Use Agreement shall have the right for itself only to settle, or cause to be settled for it, all claims for Loss or Damage and for itself only to defend or cause to be defended all suits for such claims.

D. In the event a suit is commenced or a claim is asserted for or on account of a Loss or Damage against any Party for which another Party may be solely or jointly liable under the provisions of this Article VII, or which is not covered by the insurance required in Article VI, the Party so sued or against whom the claim is asserted shall promptly notify the other Party in writing of the pendency of the suit or claim, and thereupon such other Party may assume or join in the defense of such suit or claim.

E. In the event that a Party who is liable for Loss or Damage settles a claim for such Loss or Damage by a voluntary payment of money or other valuable consideration, the settling Party shall obtain a full release from

liability for and in the name of all Parties who may be jointly liable for such claim. Other parties who may be jointly liable can waive this requirement. Neither Party shall be bound by any admissions of fault made by the other Party in such settlement unless agreed to in writing by both Parties.

F. Prior to settling any claim or suit for an amount in excess of One Hundred Thousand Dollars ($100,000) (as adjusted for changes in the CPI) in the aggregate in any given calendar year, the settling Party shall obtain the written consent of the other Party, which consent shall not be unreasonably withheld. The Party being requested to give consent shall provide the same within ten (10) business days of the request being made. In the event that a response is not received within said ten (10) business days it shall be conclusively presumed that such consent has been given. Giving of such consent, impliedly or expressly, shall not be deemed an admission that such claim involves joint liability.

G. No Party shall be conclusively bound by any judgment against the other Party, unless that Party shall have had reasonable notice requiring it to defend and reasonable opportunity to make such defense. As between the Parties only, when such notice and opportunity shall have been given, the Party so notified shall be conclusively bound by the judgment as to all matters which could have been litigated in such suit.

ARTICLE VIII
ALLOCATION OF ENVIRONMENTAL TORT LIABILITY AND ENVIRONMENTAL LOSS OR DAMAGE

SECTION 8.1 – APPLICATION OF ALLOCATION PROVISIONS

Environmental Loss or Damage and Environmental Tort Liability is addressed and apportioned in Section 8.2, *et seq.* The insurance procured by RTD under Article VI of this Joint Corridor Use Agreement is intended to cover RTD's and/or BNSF's liability for Environmental Tort Liability for those matters for which liability is allocated in this Article, to the monetary limits provided therein. As long as and to the extent that such insurance pays for or reimburses Environmental Tort Liability, there is no need for any allocation of liability for Environmental Tort Liability under this Article. If any Environmental Tort Liability exceeds the insurance limits provided in Article VI, or if liability needs to be apportioned even if the Environmental Tort Liability or a portion of the Environmental Tort Liability, is covered by the insurance secured under Article VI, the Parties agree that such liability will be apportioned in Section 8.2, *et seq*.

SECTION 8.2 – ALLOCATION OF ENVIRONMENTAL LOSS OR DAMAGE AND ENVIRONMENTAL TORT LIABILITY

A. Subject to Section 8.2.D and 8.2.E, as between the Parties, RTD shall bear all Environmental Loss or Damage and all Environmental Tort Liability to any RTD Party or any Third Party to the extent such Environmental Loss or Damage or Environmental Tort Liability (as applicable) is caused by, contributed to, exacerbated by, or arising or resulting from RTD Passenger Service or RTD Activity, the existence of the RTD Improvements, RTD's occupation and use of the DUS Corridor or Gold Corridor, or RTD's breach of this Joint Corridor Use Agreement or any Other Agreement. Subject to Section 8.3, to the extent that RTD bears responsibility for Environmental Loss or Damage, any Cleanup Actions (defined below) on the Corridors may be performed by BNSF and RTD shall reimburse BNSF, subject to the provisions of Section 8.3.

B. Subject to Section 8.2.D and 8.2.E, as between the Parties, BNSF shall bear all Environmental Loss or Damage and all Environmental Tort Liability to any BNSF Party or any Third Party to the extent such Environmental Loss or Damage or Environmental Tort Liability (as applicable) is caused by, exacerbated by, contributed to, or arising or resulting from a BNSF Party's past, present or future use of either Corridor.

C. Subject to Section 8.2.D and 8.2.E, as between the Parties, if any Environmental Loss or Damage or any Environmental Tort Liability is caused by or arises from a combination of the matters set forth in Sections 8.2 A and B then, as between the Parties, RTD shall bear so much of such Environmental Loss or Damage and Environmental Tort Liability as was caused by, contributed to, exacerbated by, or resulting from the matters set forth in Section 8.2.A and BNSF shall bear so much of such Environmental Loss or Damage and Environmental Tort Liability as was caused by, contributed to, exacerbated by, or resulting from the matters set forth in Section

8.2.B. Notwithstanding anything to the contrary in this Joint Corridor Use Agreement, the parties acknowledge and agree that to the extent any Environmental Loss or Damage or any Environmental Tort Liability would not have occurred but for the disturbance or exposure (but not mere discovery) of Hazardous Materials in connection with the BNSF Modifications, RTD Passenger Service or RTD Activity such Environmental Loss or Damage or Environmental Tort Liability shall be borne by RTD.

D. RTD shall have no claim against BNSF for any Environmental Tort Liability to any RTD Party even to the extent caused by or related to a BNSF Party's past, present or future use of the DUS Corridor or Gold Corridor and regardless of any negligence, gross negligence, or strict liability of a BNSF Party (but this provision shall not preclude or affect claims for allocation of any liability to any Third Party). BNSF shall have no claim against RTD for any Environmental Tort Liability to any BNSF Party even to the extent caused by or related to a RTD Party's past, present or future use of either Corridor and regardless of any negligence, gross negligence, or strict liability of a RTD Party (but this provision shall not preclude or affect claims for allocation of any liability to any Third Party). Nothing in this Joint Corridor Use Agreement is intended to obligate BNSF or RTD for Environmental Loss or Damage or Environmental Tort Liability to the extent caused, contributed to or exacerbated by a Third Party.

E. RTD covenants and agrees that the personnel associated with RTD Passenger Service or any RTD Activity shall not initiate any communications with any federal or state regulatory agency concerning Environmental Loss or Damage caused by, contributed to, arising or resulting solely from a BNSF Party's past use of the DUS Corridor or Gold Corridor absent a legal duty to do so and further agrees that if it initiates any such communications in the absence of a legal duty to do so under applicable federal or state law, then those communications will be deemed to represent exacerbation of the conditions, provided however, that nothing in this provision pertains to the actions of any representatives of any governmental agency at the state, federal or local level with regulatory responsibilities for environmental issues or release of information required to be made available under the Colorado Open Records Act or other Colorado law.

F. Nothing in this Joint Corridor Use Agreement will prevent any Party from seeking coverage and defense of any claim for Environmental Loss or Damage or Environmental Tort Liability to a Third Party from the insurance company issuing the insurance required by Article VI of this Joint Corridor Use Agreement for any Environmental Loss or Damage or Environmental Tort Liability to a Third Party, whether or not that Environmental Loss or Damage or Environmental Tort Liability to a Third Party is allocated to BNSF or RTD by this Article, except that BNSF may not seek coverage and defense by the insurer of any Environmental Loss or Damage allocated exclusively to BNSF by Section B of this Section 8.2.

G. The allocation of Environmental Loss or Damage or Environmental Tort Liability provided in this Article shall be made in accordance with Sections 8.2.A through 8.2.F and will not be affected by (1) any allocation of Environmental Loss or Damage or Environmental Tort Liability as between a Party hereto and a third person; (2) liability, however asserted, attributable to BNSF merely because of its status as an owner or easement holder; or (3) liability, however asserted, attributable to RTD merely because of its status as an owner or easement holder. Any allocation of Environmental Loss or Damage or Environmental Tort Liability as between a Party hereto and a third person, under applicable rules of collateral estoppel or res judicata, shall not affect the rights of either Party under Articles VI, VII and VIII of this Joint Corridor Use Agreement pertaining to insurance.

H. The Parties agree that in any litigation involving one or more of the Parties and any third person in which Environmental Loss or Damage or Environmental Tort Liability is sought to be imposed under applicable law without regard to the provisions of this Joint Corridor Use Agreement, neither Party will introduce the terms of this Section of the Joint Corridor Use Agreement into evidence. The Parties agree that they will resolve any disputes between themselves about allocation for Environmental Loss or Damage or Environmental Tort Liability pursuant to Article X of the Joint Corridor Use Agreement.

I. For purposes of this Section 8.2, neither BNSF nor its employees, agents, officers, directors, contractors, licensees, lessees, invitees, customers or patrons shall be considered to be employees, agents or contractors of RTD, and neither RTD nor its employees, agents, officers, directors, contractors, licensees, lessees, invitees, customers or patrons shall be considered to be employees, agents or contractors of BNSF.

SECTION 8.3 – NOTICES AND WORK ON THE DUS CORRIDOR RELATING TO RELEASES OF HAZARDOUS MATERIALS

A. BNSF shall be responsible for any initial reports required by federal, state or local authorities in connection with any release following Closing on the Corridors of Hazardous Materials from any equipment or other facilities involved in its service or its other activities upon the Corridors. RTD shall be responsible for any initial reports required by federal, state or local authorities in connection with any release following Closing on the Corridors of Hazardous Materials from any equipment or other facilities involved in RTD Passenger Service or resulting from any RTD Activity. Each Party shall immediately notify the other of any such release of Hazardous Materials on either Corridor. A Party's Operator or contractor may give such notice.

B. Pursuant to Section 8.2.A, BNSF may conduct investigations, cleanups, removals remediations or other response actions ("**Cleanup Actions**") for which RTD is otherwise responsible under Section 8.3.A if RTD fails to do so in a reasonable or reasonably timely manner, or federal state or local authorities require actions which RTD fails to undertake as may be necessary or beneficial to protect persons, property or the environment from further loss or damage, or to comply with the orders of federal state or local authorities. BNSF shall conduct such Cleanup Actions in accordance with all applicable Environmental Laws and shall endeavor to give RTD reasonable notice and opportunity to comment to the extent practicable under the circumstances and in no event more than 24 hours after commencing Cleanup Actions. RTD's obligation to reimburse BNSF is subject to reasonableness in the exercise of the Cleanup Actions in accordance with customary environmental standards of engineering and to the necessity or advisability of the Cleanup Actions, provided that any Cleanup Actions mandated or directed in writing by any governmental agency at the state, federal or local level with regulatory responsibilities for environmental issues shall be deemed reasonable and necessary as between the Parties for purposes of this Joint Corridor Use Agreement and provided also that BNSF shall be granted discretion to implement Cleanup Actions in a manner necessary to eliminate or minimize interference with rail operations even if the result is to increase costs if there are no reasonably available alternative methods. RTD may have representatives on the Corridors at the scene of any release of Hazardous Materials for which it is responsible, in whole or in part, under this Joint Corridor Use Agreement. Nothing herein shall give rise to a right or remedy in any party, including a RTD Party to compel specific performance regarding Cleanup Actions under this provision except insofar as RTD is required to undertake the Cleanup Actions on a Corridor by regulatory authorities with jurisdiction over releases of Hazardous Materials for which it is responsible, in whole or in part, under this Joint Corridor Use Agreement and BNSF has breached its obligations under this Article. Nothing in this Joint Corridor Use Agreement shall prevent BNSF or RTD from maintaining or pursuing legal rights or defenses in any administrative proceedings, orders or actions with third parties, including regulatory agencies, in proceedings, orders or appeals concerning any Cleanup Actions. Nothing in this Joint Corridor Use Agreement shall compel BNSF to compromise or abrogate its obligations as a common carrier or to accept land use or deed restrictions on the Corridors or its other property. The cost for the activities described in this Section shall be borne in accordance with Section 8.2.

SECTION 8.4 - RELEASES AND INDEMNIFICATION

A. RTD agrees to release and covenants not to sue BNSF (including, for all purposes of this paragraph, BNSF's employees, directors, contractors, officers, agents, attorneys, predecessors, successors, and assigns) from and for any claims it could otherwise assert against BNSF for Environmental Tort Liability or Environmental Loss or Damage for which RTD shall be liable under the provisions of this Article VIII other than to enforce the allocation of such liability and covenants as provided herein.

B. BNSF agrees to release and covenants not to sue RTD from any and all claims it could otherwise assert against RTD, for Environmental Tort Liability or Environmental Loss or Damage for which BNSF shall be liable under the provisions of this Article VIII other than to enforce the allocation of such liability and covenants as provided herein.

C. To the maximum extent permitted by law, each Party shall pay all Environmental Tort Liability or Environmental Loss or Damage for which such Party will be liable under the provisions of this Article VIII, and shall defend, indemnify and hold harmless the other Party (including, for all purposes of this paragraph, without

limitation, the other Party's employees, directors, contractors, officers, agents, attorneys, predecessors, successors, and assigns) against this Environmental Tort Liability or Environmental Loss or Damage.

D. The indemnification obligations assumed by the Parties in this Article shall include, as applicable, without limitation, any liability, suits, claims, damages, judgments, lawsuits, demands, causes of action, losses and expenses under Environmental Law.

SECTION 8.5 - SURVIVAL

It is mutually understood and agreed that the allocations of liability, releases, and indemnifications under this Joint Corridor Use Agreement shall survive any termination of this Joint Corridor Use Agreement.

SECTION 8.6 - CLAIMS

A. The procedure for handling claims related to Environmental Loss or Damage and Environmental Tort Liability shall be identical to the procedure set forth in Section 7.4 regarding claims for Loss or Damage.

B. The allocations of Environmental Loss or Damage or Environmental Tort Liability and responsibilities with respect to Hazardous Materials on either Corridor set forth in this Article VIII shall be the exclusive allocation and remedy thereof as between the Parties. The Parties agree that any disputes between themselves under Article VIII will be resolved pursuant to Article X of the Joint Corridor Use Agreement.

C. Nothing in this Joint Corridor Use Agreement shall be construed to prevent either Party from seeking enforcement of the Joint Corridor Use Agreement in accordance with Article X of the Joint Corridor Use Agreement.

ARTICLE IX
EFFECTIVE DATE, TERM, AND TERMINATION

SECTION 9.1 - EFFECTIVE DATE AND TERM

BNSF's obligations under this Joint Corridor Use Agreement are contingent upon and become effective after execution upon the first date on which each and every one of the following preconditions have been met: (i) execution of the Purchase and Sale Agreement, and (ii) the occurrence of the Closings under the Purchase and Sale Agreement. Unless otherwise terminated in accordance with its provisions, this Joint Corridor Use Agreement shall remain in effect with respect to the DUS Corridor as long as the RTD Easement remains in effect and with respect to the Gold Corridor as long as the Reserved Freight Easement remains in effect. As to Articles VI, VII and VIII, the obligations of the Parties with respect to the DUS Corridor shall not arise until the DUS Permitted Start Date and the obligations of the Parties with respect to the Gold Corridor shall not arise until the Gold Permitted Start Date. Prior to the DUS Permitted Start Date or Gold Permitted Start Date allocation for Loss or Damage, Environmental Loss or Damage, Environmental Tort Liability and insurance requirements with respect to the DUS Corridor and Gold Corridor respectively shall be as set forth in the Construction Agreement.

SECTION 9.2 - BNSF DEFAULT

A. BNSF shall be in default under this Joint Corridor Use Agreement if it is found in a binding arbitration decision or a final decision by a court of competent jurisdiction to have materially breached this Joint Corridor Use Agreement, and such breach remains uncured and continuing for forty (40) days or more after RTD delivers to BNSF written notice of such failure (which notice and forty day period may run prior to the arbitration or court decision) and remains uncured and continuing. Any disagreement or dispute concerning this Section shall be promptly submitted for resolution by arbitration in accordance with Article X of this Joint Corridor Use Agreement. With respect to any other disagreement or dispute between the Parties, the Parties shall continue to perform and make any required payments under this Joint Corridor Use Agreement in the same manner and under the same terms as existed prior to the dispute or disagreement.

B. Notwithstanding any provision of this Joint Corridor Use Agreement, (i) in no event shall BNSF be held liable for consequential, indirect, or incidental damages, and (ii) RTD shall in no event be entitled to any prospective profits or reimbursements of prospective overhead and general expenses, or administrative expenses. Subject to the foregoing, the remedies of RTD provided for in this Joint Corridor Use Agreement shall not be deemed to be the exclusive remedy for breach of this Joint Corridor Use Agreement by BNSF, but shall be in addition to all remedies available at law or equity.

SECTION 9.3 - RTD DEFAULT

A. BNSF shall have the right to suspend any RTD Passenger Service in the DUS Corridor or Gold Corridor during any period in which: (1) RTD has been in arrears in its payments required under this Joint Corridor Use Agreement in an amount in excess of $500,000 (as adjusted for changes in the CPI) for a period of 6 months or longer, (2) RTD fails to maintain the insurance required under this Joint Corridor Use Agreement, or (3) RTD (i) is determined by a binding arbitration decision or a final decision by a court of competent jurisdiction to have defaulted in or failed to meet other material obligations under this Joint Corridor Use Agreement, and (ii) said default or failure continued for forty (40) days after written notice of such default or failure by BNSF to RTD (which notice and forty day period may run prior to any such arbitration or court decision and remains uncured and continuing). RTD shall secure the RTD Improvements to prevent trespassers from entering during such suspension. Any disagreement or dispute concerning this Section shall be promptly submitted for resolution by arbitration in accordance with Article X of this Joint Corridor Use Agreement. With respect to any other disagreement or dispute between the Parties, the Parties shall continue to perform and make any required payments under this Joint Corridor Use Agreement in the same manner and under the same terms as existed prior to the dispute or disagreement.

B. Notwithstanding any other provision of this Section 9.3, if at any time BNSF is allowed to suspend RTD Passenger Service pursuant to Section 9.3.A and the events giving rise to such right are not cured by RTD within a ten (10) year period after the date BNSF suspends RTD Passenger Service, then BNSF shall have the right to terminate this Joint Corridor Use Agreement by written notice to RTD with respect only to the DUS Corridor. RTD shall have the right to cure any such default at any time prior to the effective date of such termination which cure shall nullify such termination. Such termination shall also terminate the RTD Easement and any right of RTD to use the DUS Corridor.

C. Suspension of this Joint Corridor Use Agreement pursuant to the provisions of this Section 9.3 shall not (i) alter the obligations of the Parties with respect to late payments as set forth in Section 3.7, or (ii) release RTD or BNSF from any liability or obligation under this Joint Corridor Use Agreement including, but not limited to, those set forth in Articles III, VI, VII and VIII. Notwithstanding any provision of this Joint Corridor Use Agreement, (i) in no event shall RTD be held liable for consequential, indirect, or incidental damages, and (ii) BNSF shall in no event be entitled to any prospective profits or reimbursements of prospective overhead and general expenses, or administrative expenses. Subject to the foregoing, the remedies of BNSF provided for in this Joint Corridor Use Agreement shall not be deemed to be the exclusive remedy for breach of this Joint Corridor Use Agreement by RTD, but shall be in addition to all remedies available at law or equity.

SECTION 9.4 - RIGHTS UPON TERMINATION

A. No termination or cancellation of this Joint Corridor Use Agreement shall release either Party from any liability or obligation under this Joint Corridor Use Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of such termination or cancellation.

B. Upon termination as to the DUS Corridor, the Parties shall execute a release of the RTD Easement in a form suitable for recording.

C. Upon any termination or cancellation of this Joint Corridor Use Agreement, RTD shall, at its sole cost and expense, immediately perform the following:

1. remove all or such portion of the RTD Improvements and all appurtenances thereto from the DUS Corridor, as BNSF directs at BNSF's sole discretion;

2. repair and restore any damage to the DUS Corridor arising from, growing out of, or connected with RTD's use of the DUS Corridor;

3. remedy any unsafe conditions on the DUS Corridor created or aggravated by RTD; and

4. leave the DUS Corridor in the condition which existed as of the date of this Joint Corridor Use Agreement, subject to Section 9.4.C.1 above.

D. If this Joint Corridor Use Agreement is terminated with respect to the DUS Corridor, BNSF may direct RTD to undertake one or more of the actions set forth above, at RTD's sole cost, in which case RTD shall have a limited license to enter upon the DUS Corridor to the extent necessary to undertake the actions directed by BNSF. The terms of this limited license include all of RTD's obligations under this Joint Corridor Use Agreement. Termination will not release RTD from any liability or obligation under this Joint Corridor Use Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when the RTD Improvements are removed and the DUS Corridor is restored to the condition that existed as of the date of this Joint Corridor Use Agreement. If RTD fails to surrender the DUS Corridor to BNSF upon any termination of this Joint Corridor Use Agreement, all liabilities and obligations of RTD hereunder shall continue in effect until the DUS Corridor is surrendered.

ARTICLE X
DISPUTE RESOLUTION

SECTION 10.1 - PREVENTING AND RESOLVING CONFLICTS THROUGH COMMUNICATION AND NEGOTIATION

A. **Preventing Conflicts.** The Parties agree to use all commercially reasonable efforts to prevent and resolve potential sources of conflict before the conflicts escalate into disputes or claims.

B. **Resolving Disputes Through Negotiation.** The Parties agree to use all commercially reasonable efforts to resolve disputes arising out of or related to this Joint Corridor Use Agreement using good faith negotiations by engaging sequentially in the following dispute escalation process:

(1) Level One - RTD's Manager for Passenger Rail Operations, or equivalent designee at the time of dispute, and BNSF's AVP-Passenger Operations, shall meet personally in a timely manner to discuss and attempt to resolve the dispute. If they cannot resolve the dispute within 15 business days after referral to this Level One, either Party may refer the dispute to Level Two. If the dispute is not referred to Level Two, it is deemed to be finally resolved.

(2) Level Two - RTD's Assistant General Manager for Rail Operations, or equivalent designee at the time of the dispute, and BNSF's Regional Vice President- Operations, shall meet personally in a timely manner to discuss and attempt to resolve the dispute. If they cannot resolve the dispute within 5 business days after referral to this Level Two, either Party may refer the dispute to Level Three. If the dispute is not referred to Level Three, it is deemed to be finally resolved.

(3) Level Three - RTD's General Manager, or equivalent designee at the time of the dispute, and BNSF's Vice President-Operations, shall meet personally in a timely manner to discuss and attempt to resolve the dispute. If they cannot resolve the dispute within 5 business days after referral to this Level Three, either Party may refer the dispute to Level Four. If the dispute is not referred to Level Three, it is deemed to be finally resolved.

(4) Level Four – Not later than 30 business days after referral of the dispute to this Level Four, RTD and BNSF shall submit the dispute to mediation before a qualified mediator acceptable to the Parties.

C. **Failure to Resolve a Dispute Through These Efforts.** Except as otherwise specified in this Joint Corridor Use Agreement, if the dispute is not resolved within 45 business days after referral to Level Four, the

dispute shall be submitted to arbitration as described in Section 10.2. At all times prior to final resolution of the dispute, the Parties shall continue to perform and make any required payments under this Joint Corridor Use Agreement in the same manner and under the same terms as existed prior to the dispute.

SECTION 10.2 – ARBITRATION

A. General Provisions. All disputes that are not resolved pursuant to Section 10.1 shall be submitted to binding arbitration as set forth in this Section 10.2. All such disputes shall be finally resolved by binding arbitration in accordance with the following provisions and the American Arbitration Association ("**AAA**") Commercial Arbitration Rules (AAA-CAR) in effect at the time arbitration is demanded (even if the matter is not submitted to the AAA). The parties may submit *(*but shall not be required *to* submit unless consensus over the selection of the arbitrator(s) is not reached), disputes to the AAA for administrative purposes. In the event that any provisions in this Agreement differ from the AAA-CAR, this Agreement shall govern.

B. Commencement of the Arbitration. Subject to the provisions of Section 10.1 above, any party may initiate arbitration by serving a demand at any time. The written demand for arbitration shall include a short and plain statement identifying the provisions of this Agreement which are in dispute, a summary of the facts or circumstances giving rise to the dispute, and describing the relief requested. Any party served with an arbitration demand may respond by serving upon the other party a written answer or a written counterclaim identifying additional claims to be considered in the arbitration, with a short and plain statement identifying the provisions of this Agreement which are in dispute, a summary of the facts or circumstances giving rise to the dispute, and describing the relief requested.

C. Selection of Arbitrator. The parties agree to submit arbitration disputes to a single arbitrator. The parties shall attempt to select an arbitrator by consensus within ten (10) business days after a demand has been served. In the event consensus is not reached by the parties, the arbitrator shall be selected in accordance with AAA-CAR and this Agreement. The arbitrator must be a retired Colorado state or federal judge or magistrate or someone of similar stature with experience in interpreting and enforcing complex commercial contracts, or someone with knowledge or experience of the railroad industry, commuter rail, or the type of matters at issue in the arbitration. The arbitration shall take place in Colorado. Governing law for all disputes shall be as set forth in Section 11.8.

D. Authority to Grant Comprehensive Relief. The arbitrator shall have all legal and equitable powers necessary to interpret and to enforce the terms of this Agreement, but not to modify or vary its terms. The parties expressly agree that the arbitrator may fashion all necessary and appropriate relief, including money damages and/or injunctive relief, so long as any equitable remedy is consistent with the obligations of the parties under this Agreement

E. Award. Notwithstanding any AAA-CAR to the contrary, the arbitrator's award shall be in writing and include findings of fact and conclusions of law supporting that written decision. Any action to compel arbitration under this Agreement, to enforce an arbitration award, or to vacate an arbitration award must be brought, if jurisdiction exists, in federal court in the District of Colorado. Otherwise, such actions must be brought in state court in The City and County of Denver, Colorado. However, in actions seeking to vacate an award, the standard of review to be applied to the arbitrator's findings of fact and conclusions of law will be the same as that applied by an appellate court reviewing a decision of a trial court sitting without a jury.

F. Payment of Fees and Costs of Arbitrator(s). The parties shall split and pay in equal shares the fees and costs of the arbitrator. Otherwise, the parties expressly reject any fee shifting, and each party shall pay all its own expenses associated with the arbitration, including all fees and costs relating to its own witnesses, exhibits, and counsel.

G. Amendment of Deadlines. The parties may, by mutual stipulation, agree to shorten or extend any of the deadlines set forth in this Section. The arbitrator also may, for good cause shown, alter any of those same deadlines.

ARTICLE XI
MISCELLANEOUS

SECTION 11.1 - PREPARATION

The Parties and their legal counsel have cooperated in the drafting of this Joint Corridor Use Agreement. Accordingly, this Joint Corridor Use Agreement shall be deemed the joint work product of the Parties and not be construed against either Party by reason of such preparation.

SECTION 11.2 – FORCE MAJEURE

Each Party will be excused from performance of any of its obligations (except for payment of monetary obligations and obligations to maintain insurance) to the other as provided in this Joint Corridor Use Agreement, where such non-performance is caused by any event beyond the non-performing Party's reasonable control, which may include, without limitation, an order, rule, or regulation of any federal, state, or local government body, agency, or instrumentality; work stoppage or labor dispute resulting in a strike; extraordinary unavailability of essential materials from third-party suppliers; accident; natural disaster, an act of war or terrorist attack, or civil disorder ("**Force Majeure Event**"); provided that the Party excused hereunder shall use all reasonable efforts to minimize its non-performance and to overcome, remedy, or remove such Force Majeure Event in the shortest practical time; and provided further that a Force Majeure Event shall not include any governmental act, order or regulation by RTD or any other state or local government body, agency or instrumentality acting at the request or direction of RTD.

SECTION 11.3 - OTHER AGREEMENTS

This Joint Corridor Use Agreement, the RTD Easements, the DUS Parcels Deed, Gold Corridor East Deed, Gold West Deed, 711 Building Parcel Deed and Fox Parcel Deed (collectively, the "**Deeds**") and the Other Agreements and their corresponding attached exhibits embody the entire agreement and understanding between RTD and BNSF relating to the subject matter contained in this Joint Corridor Use Agreement. No restrictions, promises, representations, warranties, covenants or undertakings, oral or otherwise exist, other than those expressly set forth or referred to in this Joint Corridor Use Agreement or the Other Agreements. In the event of an express conflict between any provisions of this Joint Corridor Use Agreement, the RTD Easements, Deeds and the Other Agreements, the terms of the agreement specifically governing the particular activity in question shall control.

SECTION 11.4 - AMENDMENTS

Except as otherwise expressly provided in this Joint Corridor Use Agreement, no waiver, modification, addition, or amendment to this Joint Corridor Use Agreement shall be of any force or effect unless reduced to writing executed by the authorized officers or agents of each Party.

SECTION 11.5 - SEVERABILITY

If any term, covenant, condition, or provision of this Joint Corridor Use Agreement, or the application thereof to any person or circumstance, is found to be invalid or unenforceable in any respect, the remainder of this Joint Corridor Use Agreement, and the application of such term or provision to other persons or circumstances nevertheless shall be binding with the same effect as if the invalid or unenforceable provision were originally deleted. The Parties agree to bargain in good faith to reform this Joint Corridor Use Agreement or replace any invalid or unenforceable provision with a valid and enforceable provision that comes as close as possible to the intention of the invalid or unenforceable provision if the invalid or unenforceable term, covenant, condition or provision is contained in Article VI, Article VII or Article VIII of this Joint Corridor Use Agreement, then BNSF may require RTD to suspend operation of RTD Passenger Service until such time as the Parties agree on a valid and enforceable substitute term, covenant, condition or provision that will provide BNSF with the equivalent level of protection against those Losses and Damages (including Environmental Losses and Damages) for which BNSF is to have recourse under Article VI, Article VII or Article VIII.

SECTION 11.6 - NOTICES

Except as otherwise expressly provided in this Joint Corridor Use Agreement, all requests, notices, demands, authorizations, directions, consents, waivers or other communications required or permitted under this Joint Corridor Use Agreement shall be in writing and shall either be: (i) delivered in person, (ii) deposited postage prepaid in the certified mails of the United States, return receipt requested, (iii) delivered by a nationally recognized overnight or same-day courier service that obtains receipts, or (iv) delivered via facsimile, with confirmation of receipt by telephone, with an original deposited postage prepaid in the first class mails of the United States, addressed to RTD at:

If to RTD at:

Regional Transportation District
1600 Blake Street
Denver, Colorado 80202
Attn: General Counsel

or to BNSF at:

BNSF Railway Company
2600 Lou Menk Drive
P.O. Box 961034
Fort Worth, Texas 76161-0034
ATTN: Assistant Vice President Passenger Services

with a copy to:

BNSF Railway Company
2500 Lou Menk Drive
Fort Worth, Texas 76131-2828
ATTN: Vice President & General Counsel - Regulatory

or to such person and at such other addresses as either Party may at any time or from time to time designate for itself by notice in accordance with this Section. Each such request, notice, demand, authorization, direction, consent, waiver or other document shall be deemed to be delivered to a Party when received at its address set forth or designated as above provided.

SECTION 11.7 - RIGHTS AND REMEDIES

Except as stated in Articles VII and VIII, the rights and remedies available under this Joint Corridor Use Agreement for breach of this Joint Corridor Use Agreement shall be in addition to and not a limitation of or waiver regarding any duties, obligations, rights and remedies otherwise available by law. No waiver by either Party of any default shall affect or impair any right arising from any subsequent default. The failure of either Party to insist at any time upon the strict observance or performance of any of the provisions of this Joint Corridor Use Agreement or to exercise any right or remedy provided for in this Joint Corridor Use Agreement shall not impair any such right or remedy nor be construed as a waiver or relinquishment thereof.

SECTION 11.8 - APPLICABLE LAW; CHOICE OF FORUM

The laws of the United States of America and, to the extent not preempted by federal law, the laws of the State of Colorado shall govern the interpretation of this Joint Corridor Use Agreement, the relationship of the Parties under this Joint Corridor Use Agreement and all disputes relating to the matters stated in this Joint Corridor Use Agreement, without regard to the choice of law principles of that State. Subject to Article X, litigation arising out of or in connection with this Joint Corridor Use Agreement may be instituted and maintained only in the Federal courts located in the State of Colorado, so long as jurisdiction is proper in such courts, and the Parties consent to the exercise by those courts of jurisdiction over their person, and consent to service of process issued by such

courts. The venue for any action relating to this Joint Corridor Use Agreement shall be in the State of [Colorado]. Nothing in this Joint Corridor Use Agreement shall be deemed a submission by BNSF to the jurisdiction of any state or local jurisdiction or a waiver of the preemptive effect of any federal or state law, regulation or ruling.

SECTION 11.9 - SUCCESSORS

This Joint Corridor Use Agreement shall bind and inure to the benefit of the respective successors of BNSF and RTD. Any successor will be required to accede, in writing, to all of the terms, conditions, and requirements of this Joint Corridor Use Agreement.

SECTION 11.10 -TRANSFER OR ASSIGNMENT

RTD may only assign its rights and obligations under this Joint Corridor Use Agreement, the RTD Easement, DUS Parcel Deed or Gold Corridor Deeds to any governmental entity designated or delegated by the State of Colorado or by applicable state law that has succeeded to and assumed all of RTD's right, title and interest in and to this Joint Corridor Use Agreement. BNSF acknowledges that a concessionaire providing services for RTD as contemplated in the [Eagle P3] that does not take title to the RTD Easement or Gold Corridor or DUS Parcels would be a Non-BNSF Contractor rather than an assignee.

SECTION 11.11 - BENEFITS

This Joint Corridor Use Agreement is intended for the sole benefit of the Parties hereto. Nothing in this Joint Corridor Use Agreement is intended or may be construed to give any person or entity, other than the Parties hereto, their permitted successors, and permitted assigns, any legal or equitable right, remedy, or claim under this Joint Corridor Use Agreement.

SECTION 11.12 - HEADINGS

The section headings of this Joint Corridor Use Agreement are for convenience and reference only and in no way define, limit or describe the scope or intent of the section or this Joint Corridor Use Agreement.

SECTION 11.13 - COUNTERPARTS

This Joint Corridor Use Agreement shall be simultaneously executed in duplicate counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

DRAFT

IN WITNESS WHEREOF, the Parties hereto have executed this Joint Corridor Use Agreement as of the Effective Date.

BNSF Railway Company

By: _____
Title: Richard E. Weicher,
Vice President and General
Counsel - Regulatory

Regional Transportation District

By:_____
Title:

Approved as to form.

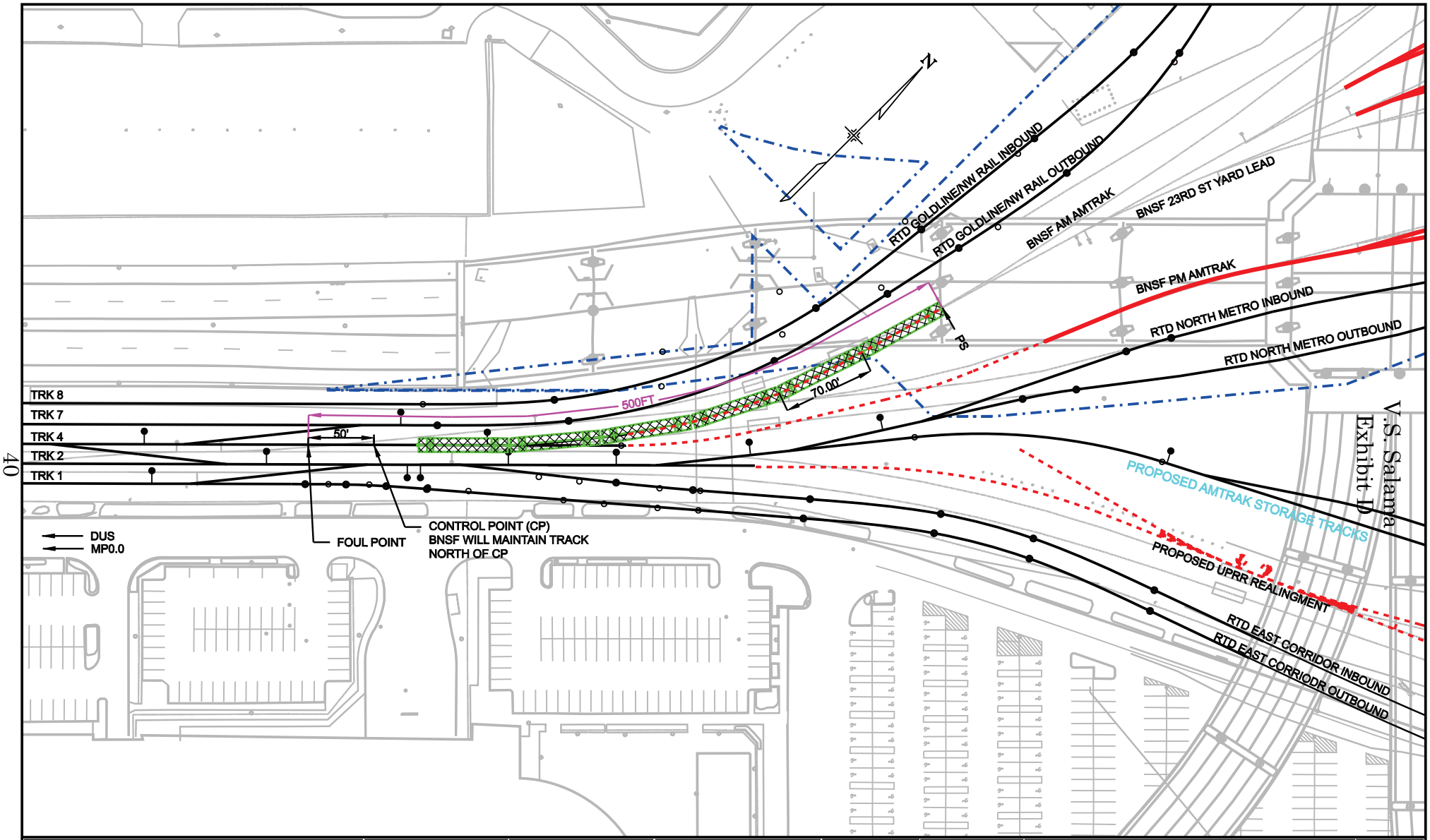
_____
Legal Counsel

DRAFT

[SIGNATURE PAGE TO JOINT CORRIDOR USE AGREEMENT]

EXHIBIT A
ADDITIONAL TRACK

DRAFT



V.S. Salama
Exhibit D

40

NO.	REVISIONS	BY	DATE

DESIGNED BY: DATE:
DRAWN BY: DATE:
CHECKED BY: DATE:
APPROVED BY: DATE:

LEGEND
- LOCOMOTIVE
- PROPOSED FREIGHT/ AMTRAK TRACK MODIFICATIONS
- PROPOSED 23RD ST YARD BNSF TRACK MODIFICATIONS
- PROPOSED RTD TRACKS
- BNSF ROW

HORZ. SCALE: 1" = 200'
VERT. SCALE: N/A
0 200 400 600
03/17/10

BNSF RAILWAY

RTD FASTTRACKS
1560 BROADWAY, SUITE 700
DENVER, COLORADO 80202
(303) 299-6990

JOINT CORRIDOR USE AGREEMENT

DUS CORRIDOR
Exhibit A: Additional track

SHEET REFERENCE NUMBER:
1 OF 1

EXHIBIT B

JOINT IMPROVEMENTS

DRAFT

JOINT IMPROVEMENTS
TO
BNSF/RTD JOINT CORRIDOR USE AGREEMENT

Joint Improvements

A joint improvement is an infrastructure element that is constructed for the use and benefit of both BNSF and RTD. These infrastructure elements include, but are not limited to:

- Corridor fencing
- Drainage infrastructure
- At-grade crossings
- ROW maintenance (trash, debris, pest, and vegetation removal)
- Access roads

RTD has developed a preliminary list of joint improvements along the DUS and Gold Corridors (see Attachment 1). This list will be updated during the design and construction phases of the Eagle P3 project to include all joint improvements along the completed corridors.

The following general corridor wide infrastructure elements shall be constructed and maintained by the parties listed below unless specifically identified otherwise in Attachment 1.

DUS Corridor - Front Range Sub MP 0 to MP 6.3

DUS to Pecos Projects

- Corridor fencing – RTD will construct and maintain all new corridor fencing.
- Drainage – BNSF will maintain all drainage improvements.
- At grade crossings – RTD shall construct and maintain all at-grade crossings.
- ROW maintenance – BNSF shall maintain ROW on the corridor and RTD within its fenced corridor.
- Access Roads – BNSF shall maintain the access roads along the corridor unless specifically identified for RTD use.
- RTD will be responsible for any improvements within 150 feet of the station designed for the sole benefit of the station

Pecos to S. Westminster Projects

- Corridor fencing – RTD will construct and maintain all new corridor fencing.
- Drainage – RTD shall construct and BNSF will maintain all drainage improvements.
- At grade crossings – BNSF will construct and maintain all at-grade crossings. RTD will maintain their track equipment and provide a feed from the RTD bungalow to the BNSF system.
- ROW maintenance – BNSF shall maintain ROW on the corridor. RTD must provide track access for BNSF ROW maintenance equipment.
- Access Roads – BNSF shall maintain the access roads along the corridor unless specifically identified for RTD use.
- RTD will be responsible for any improvements within 150 feet of the station designed for the sole benefit of the station

Gold Corridor – Sheridan to Golden

Sheridan to Ward Rd Projects (MP 6.3 to MP 10.83)

JOINT IMPROVEMENTS
TO
BNSF/RTD JOINT CORRIDOR USE AGREEMENT

BNSF will construct and maintain their track structure (rails, ties and ballast) and all signal hardware from their track to the signal bungalow.

RTD will construct and maintain all other infrastructure improvements within the corridor. These infrastructure elements include, but are not limited to:

- Overpass structures – although not considered joint improvements, these structures will be maintained by RTD. BNSF will maintain their track structure on these structures.
    - new Kipling Street Bridge for BNSF Mainline (MP 9.26)
    - existing Ralston Creek Bridge for BNSF Mainline (MP 6.65)
- Corridor fencing
- Drainage infrastructure
- At grade crossings
- ROW maintenance
- Access Roads
- Walls

Ward Rd to Golden Projects (MP 10.83 to End)

BNSF will maintain the entire corridor ROW to ROW until they leave the corridor or RTD starts construction within the corridor. BNSF will be responsible for any section of the corridor not being utilized by RTD

Attachment 1 to Exhibit B to the RTD/BNSF Joint Corridor Use Agreement - Joint Improvements shared by BNSF & RTD						
Item #	**Improvement**	**Segment**	**Approximate MP**	**Party Constructing**	**Party Maintaining**	**Notes**
DUS Corridor - Front Range Sub MP 0 - MP 6.3						
DUS to CRMF Projects						
Section 1. 711 Building						
No specific joint improvements identified at this time						
Section 2. 23rd St. Yard modifications						
No specific joint improvements identified at this time						
Section 3. BNSF Fuel Unloading Facility						
1	Drainage - New 66" RCP between BN and RTD tracks	DUS to Pecos	0.97 to 1.25	RTD	BNSF	
2	At-grade crossing BNSF Fuel Unloading Facility	DUS to Pecos	1.12	RTD	RTD	
Section 4. Jersey Cutoff Track Realignment (MP 1.31 to 2.5)						
3	Fencing east of Jersey Cutoff	DUS to Pecos	1.95 to 2.19	RTD	BNSF	
Section 5. Jersey Cutoff Retaining Wall						
4	Jersey Cutoff Retaining Walls	DUS to Pecos	2.19 to 2.35	RTD	RTD	
Section 6. 48th St. Access to BNSF TOFC						
5	Drainage - Install 3-12'x4' CBC (as necessary by design)	DUS to Pecos	2.35	RTD	BNSF	
6	At-grade crossing at 48th Street	DUS to Pecos	2.41	RTD	RTD	
Section 7. Severe Industrial Spur on Fox Street (MP 3.4)						
No specific joint improvements identified at this time						
Section 8. TOFC RIP Track Relocation						

Attachment 1 to Exhibit B to the RTD/BNSF Joint Corridor Use Agreement - Joint Improvements shared by BNSF & RTD

Item #	Improvement	Segment	Approximate MP	Party Constructing	Party Maintaining	Notes
7	Drainage - Install new drainage channel east of RIP track	DUS to Pecos	2.41 to 3.02	RTD	BNSF	
8	Fencing east of BNSF Rip Track	DUS to Pecos	2.42 to 3.09	RTD	RTD	
9	Drainage - New 30" RCP & inlet between CRMF and BNSF RIP track	DUS to Pecos	2.46	RTD	BNSF	
10	Drainage - New 30" RCP & inlet between CRMF and BNSF RIP track	DUS to Pecos	2.52	RTD	BNSF	
11	Drainage - New 24" RCP & inlet between CRMF and BNSF RIP track	DUS to Pecos	2.67	RTD	BNSF	
CRMF to Pecos Projects						
Section 1. TOFC Flyover (MP 3.00 to 3.30) - Temp Trailer Parking						
12	Drainage - New 36" RCP connected to existing RCP in BNSF property	DUS to Pecos	2.75	RTD	BNSF	
13	Drainage - New 24" RCP west of CRMF	DUS to Pecos	2.76	RTD	BNSF	
Section 2. TOFC Flyover (MP 3.00 to 3.30) - Replacement Trailer Parking						
No specific joint improvements identified at this time						
Section 3. BNSF Mainline Modfications - Utah Junction to Pecos (MP 3.41 to 4)						
14	Fencing east/north of BN track	DUS to Pecos	3.64 to 4.05	BNSF	BNSF	
15	Fencing south of RTD track	DUS to Pecos	3.80 to 4.13	RTD	RTD	
16	Drainage - Install new 24” culvert	DUS to Pecos	3.9	BNSF	BNSF	

Attachment 1 to Exhibit B to the RTD/BNSF Joint Corridor Use Agreement - Joint Improvements shared by BNSF & RTD						
Item #	**Improvement**	**Segment**	**Approximate MP**	**Party Constructing**	**Party Maintaining**	**Notes**
17	Drainage - Install new drainage channel north of BNSF mainline tracks	DUS to Pecos	3.90 to 4.11	BNSF	BNSF	
18	Drainage - Extend 36" SSP, relocate cleanout 30' downstream, relocate irrigation inlet structure (Fisher Ditch)	DUS to Pecos	4.03	RTD	BNSF	
19	Drainage - Install 3-60" RCP Culverts 180' long	DUS to Pecos	4.11	RTD	BNSF	
Pecos to S. Westminster Projects						
Section 1. BNSF Mainline Track Modifications Pecos to 72nd Street						
20	Drainage - Extend existing 36"CMP 41' and install new 36" RCP 114' long	Pecos to 72nd	4.13	RTD	BNSF	
21	Drainage - Extend existing 12"CMP 60'	Pecos to 72nd	4.18	RTD	BNSF	
22	Grade separated crossing at 64th Ave	Pecos to 72nd	4.59	RTD	RTD	
23	Drainage - Plug & fill existing 36" RCP/48" CMP and replace with 60" RCP 84' long	Pecos to 72nd	5.11	RTD	BNSF	
24	Drainage - Extend existing 48" CIP 29' and install new 30" RCP 114' long	Pecos to 72nd	5.39	RTD	BNSF	
25	Retaining walls under Federal Blvd	Pecos to 72nd	5.47	RTD	RTD	
26	Drainage - Construct new flood wall to protect tracks under existing bridge	Pecos to 72nd	5.47	RTD	BNSF	

Attachment 1 to Exhibit B to the RTD/BNSF Joint Corridor Use Agreement - Joint Improvements shared by BNSF & RTD

Item #	Improvement	Segment	Approximate MP	Party Constructing	Party Maintaining	Notes
27	Drainage - Plug & fill existing 48" CMP and install 2-48" RCP 88' long	Pecos to 72nd	5.49	RTD	BNSF	
28	Drainage - Plug & fill existing 5'x3' RCB and install 3-36" RCP 82' long	Pecos to 72nd	5.68	RTD	BNSF	
29	Pedestrian Underpass at S. Westminster Station	Pecos to 72nd	5.74	RTD	RTD	
30	Drainage - Plug & fill existing 36" RCP and install 2-12'x7' RCB 101' long	Pecos to 72nd	5.83	RTD	BNSF	
Gold Corridor - Sheridan to Golden						
Sheridan to Ward Rd Projects						
Section 1. BNSF Mainline Track Modifications - W. Sheridan to Ralston Rd. (MP 6.3 to 6.6)						
All joint improvements shall be constructed and maintained by RTD						
Section 2. BNSF Mainline Track Modifications - Vance Street to Miller (MP 7.57 to 9.53)						
All joint improvements shall be constructed and maintained by RTD						
Section 3. Kipling Bridge Replacement (BNSF Track - MP 9.26)						
All joint improvements shall be constructed and maintained by RTD						
Section 4. BNSF Mainline Track Modfications - W. Miller Street to Ward Rd. (MP 9.53 to 10.83)						
All joint improvements shall be constructed and maintained by RTD						
Ward Rd to Golden Projects						
No RTD improvements are planned as part of this project from Ward Rd. to Golden. BNSF will maintain this segment of the corridor.						

EXHIBIT C
CONTRACTOR REQUIREMENTS

DRAFT

EXHIBIT "C"
CONTRACTOR REQUIREMENTS

1.01 General

- **1.01.01** The Contractor must cooperate with **BNSF RAILWAY COMPANY**, hereinafter referred to as "Railway" where work is over or under on or adjacent to Railway property and/or right-of-way, hereafter referred to as "Railway Property", during the construction of _____.

- **1.01.02** The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit "C-1" Agreement, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit "C-1". Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to to Rosa Martinez at Marsh, USA, 214-303-8519.

- **1.01.03** The Contractor must plan, schedule and conduct all work activities so as not to interfere with the movement of any trains on Railway Property.

- **1.01.04** The Contractor's right to enter Railway's Property is subject to the absolute right of Railway to cause the Contractor's work on Railway's Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway's Property, employees, and/or operations. Railway will have the right to stop construction work on the Project if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the Project work in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway's opinion, prosecutes the Project work in a manner which is hazardous to Railway property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Contractor fails to pay Railway for the Temporary Construction License or the Easement. The work stoppage will continue until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of Railway's Division Engineer or until additional insurance has been delivered to and accepted by Railway. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, Railway may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of Railway. Railway's right to stop the work is in addition to any other rights Railway may have including, but not limited to, actions or suits for damages or lost profits. In the event that Railway desires to stop construction work on the Project, Railway agrees to immediately notify the following individual in writing:

_____
_____
_____
_____

- **1.01.05** The Contractor is responsible for determining and complying with all Federal, State and Local Governmental laws and regulations, including, but not limited to environmental laws and regulations (including but not limited to the Resource Conservation and Recovery Act, as amended; the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA), and health and safety laws and regulations. The Contractor hereby indemnifies, defends and holds harmless Railway for, from and against all fines or penalties imposed or assessed by Federal, State and Local Governmental Agencies against the Railway which arise out of Contractor's work under this Agreement.

- **1.01.06** The Contractor must notify the (Agency) at _____ and Railway's Manager Public Projects, telephone number ( ) at least thirty (30) calendar days before commencing any work on Railway Property. Contractors notification to Railway, must refer to Railroad's file _____.

- **1.01.07** For any bridge demolition and/or falsework above any tracks or any excavations located with any part of the excavations located within, whichever is greater, twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 2 horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. For all excavation and shoring submittal plans, the current "BNSF-UPRR Guidelines for Temporary Shoring" must be used for determining the design loading conditions to be used in shoring design, and all calculations and submittals must be in accordance with the current "BNSF-UPRR Guidelines for Temporary Shoring". All submittal drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. The Contractor must not begin work until notified by the Railway that plans have been approved. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of said approved plans.

- **1.01.08** Subject to the movement of Railway's trains, Railway will cooperate with the Contractor such that the work may be handled and performed in an efficient manner. The Contractor will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

1.02 Contractor Safety Orientation

- **1.02.01 No employee of the Contractor, its subcontractors, agents or invitees may enter Railway Property without first having completed Railway's Engineering Contractor Safety Orientation, found on the web site www.contractororientation.com. The Contractor must ensure that each of its employees, subcontractors, agents or invitees completes Railway's Engineering Contractor Safety Orientation through internet sessions before any work is performed on the Project. Additionally, the Contractor must ensure that each and every one of its employees, subcontractors, agents or invitees possesses a card certifying completion of the Railway Contractor Safety Orientation before entering Railway Property. The Contractor is responsible for the cost of the Railway Contractor Safety Orientation. The Contractor must renew the Railway Contractor Safety Orientation annually. Further clarification can be found on the web site or from the Railway's Representative.**

1.03 Railway Requirements

- **1.03.01** The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Agency.

- **1.03.02** The Contractor must notify the Railway's Division Superintendent _____ at (_____)_____ and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway's Property.

- **1.03.03** The Contractor must abide by the following temporary clearances during construction:

  - 15' Horizontally from centerline of nearest track
  - 21'-6" Vertically above top of rail
  - 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
  - 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
  - 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts

- 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts

- **1.03.04** Upon completion of construction, the following clearances shall be maintained: **[Note to Drafter: The vertical clearance should mirror the final negotiated design clearance]**

  - 25' Horizontally from centerline of nearest track
  - 23'-3 ½" Vertically above top of rail

- **1.03.05** Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to the (Agency)_____ and must not be undertaken until approved in writing by the Railway, and until the (Agency)_____ has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be allowed in the event the Contractor's work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.

- **1.03.06** In the case of impaired vertical clearance above top of rail, Railway will have the option of installing tell-tales or other protective devices Railway deems necessary for protection of Railway operations. The cost of tell-tales or protective devices will be borne by the Agency.

- **1.03.07** The details of construction affecting the Railway's Property and tracks not included in the contract plans must be submitted to the Railway by (Agency)_____ for approval before work is undertaken and this work must not be undertaken until approved by the Railway.

- **1.03.08** At other than public road crossings, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Construction Crossing Agreement" from the Railway prior to moving his equipment or materials across the Railways tracks. The temporary crossing must be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be constructed and, at the completion of the project, removed at the expense of the Contractor.

- **1.03.09** Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited and Contractor must immediately notify the Railway's Resource Operations Center at 1(800) 832-5452, of any discharge, release or spills in excess of a reportable quantity. Contractor must not allow Railway Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.

- **1.03.10** The Contractor upon completion of the work covered by this contract, must promptly remove from the Railway's Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said property by said Contractor or any Subcontractor, employee or agent of Contractor or of any Subcontractor, and must cause Railway's Property to be left in a condition acceptable to the Railway's representative.

1.04 Contractor Roadway Worker on Track Safety Program and Safety Action Plan

- 1.04.01 Each Contractor that will perform work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway Project Representative to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site **www.contractororientation.com**, which will be made available to Railway prior to commencement of any work on Railway Property. During the performance of work, the Contractor must audit its work activities. The Contractor must designate an on-site Project Supervisor who will serve as the contact person for the Railway and who will maintain a copy of the Safety Action Plan, safety audits, and Material Safety Datasheets (MSDS), at the job site.

- **[Note to Drafter: when appropriate insert e-RailSafe language as follows:**

Contractor shall have a background investigation performed on all of its employees, subcontractors and agents who will be performing any services on railroad property under this Agreement.

The background screening shall at a minimum meet the criteria defined by the e-RAILSAFE program outlined at http://www.e-railsafe.com in addition to any other applicable regulatory requirements. The e-RAILSAFE program uses rail industry background screening standards.

Contractor shall obtain consent from all employees screened in compliance with the e-RAILSAFE program criteria to release completed background information to BNSF. Contractor shall be subject to periodic audit to ensure compliance.

Contractor shall not permit any of its employees, subcontractors or agents to perform services on property hereunder who are not approved under e-RAILSAFE program standards. Railroad shall have the right to deny entry onto its premises to any of Contractor's employees, subcontractors or agents who do not display the authorized identification badge issued by a background screening service meeting the standards set forth for the e-RAILSAFE program or who pose a threat, in Railroad's reasonable opinion, to the safety or security of Railroad's operations.

Contractors shall ensure its employees, subcontractors and agents are United States citizens or legally working in this country under a work VISA.

1.05 Railway Flagger Services:

- **1.05.01** The Contractor must give Railway's Roadmaster (telephone _____) a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.

- **1.05.02** Unless determined otherwise by Railway's Project Representative, Railway flagger will be required and furnished when Contractor's work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:

- **1.05.02a** When, upon inspection by Railway's Representative, other conditions warrant.

- **1.05.02b** When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.

- **1.05.02c** When work in any way interferes with the safe operation of trains at timetable speeds.

- **1.05.02d** When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.

- **1.05.02e** Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.

- **1.05.03** Flagging services will be performed by qualified Railway flaggers.

- **1.05.03a** Flagging crew generally consists of one employee. However, additional personnel may be required to

protect Railway Property and operations, if deemed necessary by the Railways Representative.

- **1.05.03b** Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.

- **1.05.03c** The cost of flagger services provided by the Railway will be borne by the (Agency) . The estimated cost for one (1) flagger is approximately between $800.00-$1,600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, vehicle, transportation, meals, lodging, radio, equipment, supervision and other costs incidental to performing flagging services. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. **THE FLAGGING RATE IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF FLAGGING PURSUANT TO THIS PARAGRAPH.**

- **1.05.03d** The average train traffic on this route is _____ freight trains per 24-hour period at a timetable speed _____ MPH and _____ passenger trains at a timetable speed of _____ MPH.

1.06 Contractor General Safety Requirements

- **1.06.01 Work in the proximity of railway track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations.**

- **1.06.02 Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the personnel or task changes. If the task is within 25 feet of any track, the job briefing must include the Railway's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).**

- **1.06.03 Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by the Railway's Project Representative. When authority is provided, every contractor employee must know: (1) who the Railway flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.**

- **1.06.04 When Contractor employees are required to work on the Railway Property after normal working hours or on weekends, the Railroad's representative in charge of the project must be notified. A minimum of two employees must be present at all times.**

- **1.06.05** Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the Railway's Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway's Property by that employee will be denied.

- **1.06.06** Any damage to Railway Property, or any hazard noticed on passing trains must be reported immediately to the Railway's representative in charge of the project. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment must be reported immediately to the Railway representative in charge of the project and to the Railway's Resource Operations Center at 1(800) 832-5452. Local emergency numbers are to be obtained from the Railway representative in charge of the project prior to the start of any work and must be posted at the job site.

- **1.06.07** For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly

weapons in their possession while working on Railway's Property.

- **1.06.08** All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, **www.contractororientation.com,** however, a partial list of the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats c) safety shoe with: hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railroad's representative in charge of the project is to be contacted regarding local specifications for meeting requirements relating to hi-visability work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. **(NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)**

- **1.06.09 THE CONTRACTOR MUST NOT PILE OR STORE ANY MATERIALS, MACHINERY OR EQUIPMENT CLOSER THAN 25'-0" TO THE CENTER LINE OF THE NEAREST RAILWAY TRACK. MATERIALS, MACHINERY OR EQUIPMENT MUST NOT BE STORED OR LEFT WITHIN 250 FEET OF ANY HIGHWAY/RAIL AT-GRADE CROSSINGS OR TEMPORARY CONSTRUCTION CROSSING, WHERE STORAGE OF THE SAME WILL OBSTRUCT THE VIEW OF A TRAIN APPROACHING THE CROSSING. PRIOR TO BEGINNING WORK, THE CONTRACTOR MUST ESTABLISH A STORAGE AREA WITH CONCURRENCE OF THE RAILROAD'S REPRESENTATIVE.**

- **1.06.10** Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway's Property must be left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)

- **1.06.11** Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any work performed over water must meet all Federal, State and Local regulations.

- **1.06.12** All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

1.07 Excavation

- **1.07.01** Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the Project work area. The Contractor must determine whether excavation on Railway's Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact **BNSF's Field Engineering Representative (_____).**All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. **It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.**

- **1.07.02** The Contractor must cease all work and notify the Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.

- **1.07.03** All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of depth, must be shored where there is any danger to tracks, structures or personnel.

- **1.07.04** Any excavations, holes or trenches on the Railway's Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.

1.08 Hazardous Waste, Substances and Material Reporting

- **1.08.01** If Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any non-containerized commodity or material, on or adjacent to Railway's Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under this Agreement, Contractor must immediately: (a) notify the Railway's Resource Operations Center at 1(800) 832-5452, of such discovery: (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties: and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the impact of such release.

1.09 Personal Injury Reporting

- 1.09.01 The Railway is required to report certain injuries as a part of compliance with Federal Railroad Administration (FRA) reporting requirements. Any personal injury sustained by an employee of the Contractor, subcontractor or Contractor's invitees while on the Railway's Property must be reported immediately (by phone mail if unable to contact in person) to the Railway's representative in charge of the project. The Non-Employee Personal Injury Data Collection Form contained herein is to be completed and sent by Fax to the Railway at 1(817) 352-7595 and to the Railway’s Project Representative no later than the close of shift on the date of the injury.

NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

INFORMATION REQUIRED TO BE COLLECTED PURSUANT TO FEDERAL REGULATION. IT SHOULD BE USED FOR COMPLIANCE WITH FEDERAL REGULATIONS ONLY AND IS NOT INTENDED TO PRESUME ACCEPTANCE OF RESPONSIBILITY OR LIABILITY.

1. Accident City/St _____ 2. Date: _____ Time:
County: _____ 3. Temperature: _____ 4. Weather
(if non-Railway location)

5. Social Security #

6. Name (last, first, mi)

7. Address: Street: _____ City: _____ St._____ Zip:

8. Date of Birth: _____ and/or Age _____ Gender:
(if available)

9. (a) Injury: _____ (b) Body Part:
(i.e. (a) Laceration (b) Hand)

11. Description of Accident (To include location, action, result, etc.):

12. Treatment:
? First Aid Only
? Required Medical Treatment
? Other Medical Treatment

13. Dr. Name _____ 30. Date:

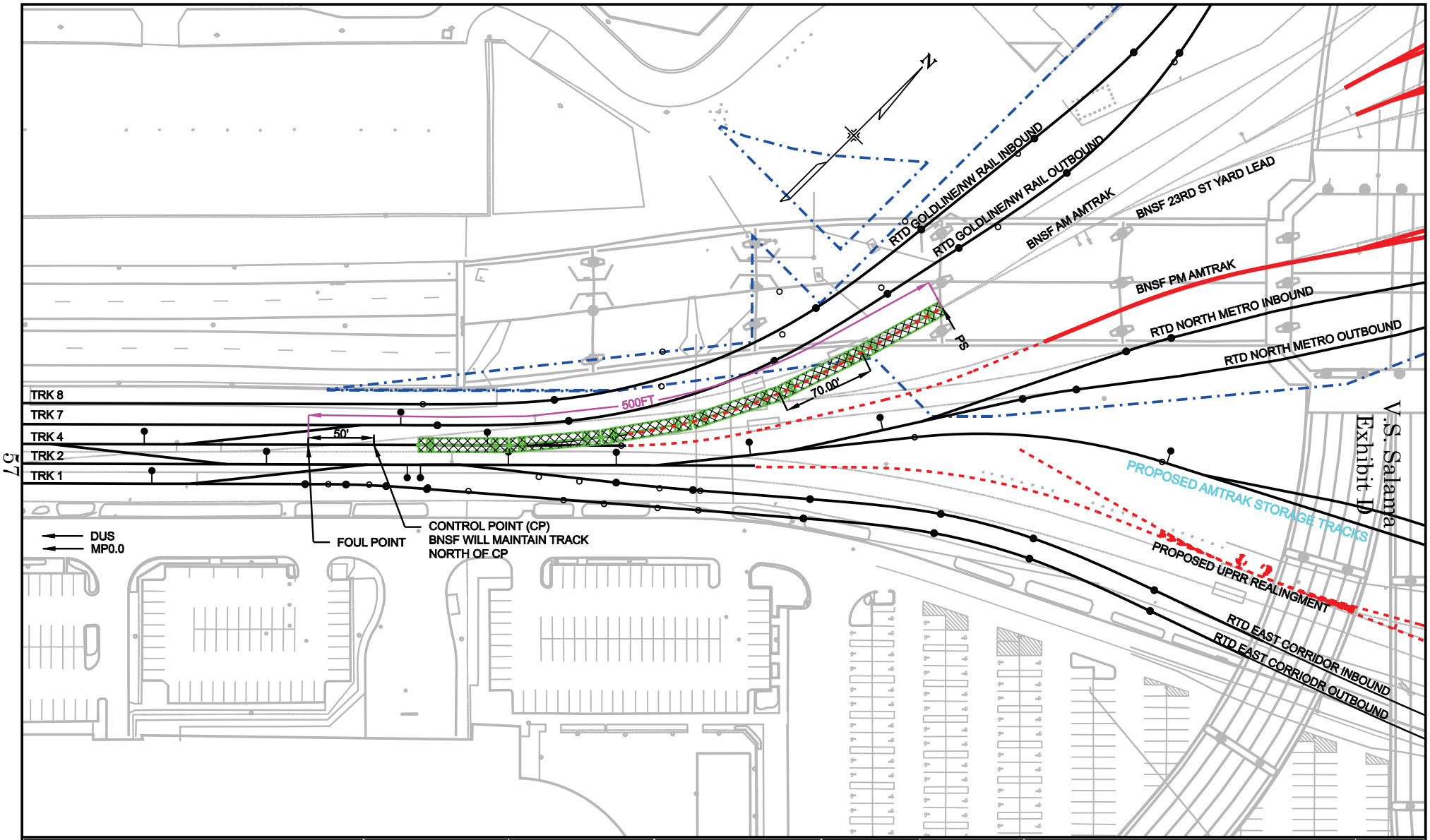
14. Dr. Address:
Street: _____ City: _____ St: _____ Zip:

15. Hospital Name:

16. Hospital Address:
Street: _____ City: _____ St: _____ Zip:

17. Diagnosis:

FAX TO
RAILWAY AT (817) 352-7595
AND COPY TO
RAILWAY ROADMASTER FAX



NO.	REVISIONS	BY	DATE

DESIGNED BY: DATE:
DRAWN BY: DATE:
CHECKED BY: DATE:
APPROVED BY: DATE:

LEGEND
- LOCOMOTIVE
- PROPOSED FREIGHT/ AMTRAK TRACK MODIFICATIONS
- PROPOSED 23RD ST YARD BNSF TRACK MODIFICATIONS
- PROPOSED RTD TRACKS
- BNSF ROW

HORZ. SCALE: 1" = 200'
VERT. SCALE: N/A
0 200 400 600
03/17/10

BNSF RAILWAY

RTD FASTTRACKS
1560 BROADWAY, SUITE 700
DENVER, COLORADO 80202
(303) 299-6990

JOINT CORRIDOR USE AGREEMENT

DUS CORRIDOR
Exhibit A: Additional track

SHEET REFERENCE NUMBER:
1 OF 1

Joint Improvements

A joint improvement is an infrastructure element that is constructed for the use and benefit of both BNSF and RTD. These infrastructure elements include, but are not limited to:

- Corridor fencing
- Drainage infrastructure
- At-grade crossings
- ROW maintenance (trash, debris, pest, and vegetation removal)
- Access roads

RTD has developed a preliminary list of joint improvements along the DUS and Gold Corridors (see Attachment 1). This list will be updated during the design and construction phases of the Eagle P3 project to include all joint improvements along the completed corridors.

The following general corridor wide infrastructure elements shall be constructed and maintained by the parties listed below unless specifically identified otherwise in Attachment 1.

DUS Corridor - Front Range Sub MP 0 to MP 6.3

DUS to Pecos Projects

- Corridor fencing – RTD will construct and maintain all new corridor fencing.
- Drainage – BNSF will maintain all drainage improvements.
- At grade crossings – RTD shall construct and maintain all at-grade crossings.
- ROW maintenance – BNSF shall maintain ROW on the corridor and RTD within its fenced corridor.
- Access Roads – BNSF shall maintain the access roads along the corridor unless specifically identified for RTD use.
- RTD will be responsible for any improvements within 150 feet of the station designed for the sole benefit of the station

Pecos to S. Westminster Projects

- Corridor fencing – RTD will construct and maintain all new corridor fencing.
- Drainage – RTD shall construct and BNSF will maintain all drainage improvements.
- At grade crossings – BNSF will construct and maintain all at-grade crossings. RTD will maintain their track equipment and provide a feed from the RTD bungalow to the BNSF system.
- ROW maintenance – BNSF shall maintain ROW on the corridor. RTD must provide track access for BNSF ROW maintenance equipment.
- Access Roads – BNSF shall maintain the access roads along the corridor unless specifically identified for RTD use.
- RTD will be responsible for any improvements within 150 feet of the station designed for the sole benefit of the station

Gold Corridor – Sheridan to Golden

Sheridan to Ward Rd Projects (MP 6.3 to MP 10.83)

JOINT IMPROVEMENTS
TO
BNSF/RTD JOINT CORRIDOR USE AGREEMENT

BNSF will construct and maintain their track structure (rails, ties and ballast) and all signal hardware from their track to the signal bungalow.

RTD will construct and maintain all other infrastructure improvements within the corridor. These infrastructure elements include, but are not limited to:

- Overpass structures – although not considered joint improvements, these structures will be maintained by RTD. BNSF will maintain their track structure on these structures.
    - new Kipling Street Bridge for BNSF Mainline (MP 9.26)
    - existing Ralston Creek Bridge for BNSF Mainline (MP 6.65)
- Corridor fencing
- Drainage infrastructure
- At grade crossings
- ROW maintenance
- Access Roads
- Walls

Ward Rd to Golden Projects (MP 10.83 to End)

BNSF will maintain the entire corridor ROW to ROW until they leave the corridor or RTD starts construction within the corridor. BNSF will be responsible for any section of the corridor not being utilized by RTD

Attachment 1 to Exhibit B to the RTD/BNSF Joint Corridor Use Agreement - Joint Improvements shared by BNSF & RTD

Item #	Improvement	Segment	Approximate MP	Party Constructing	Party Maintaining	Notes
DUS Corridor - Front Range Sub MP 0 - MP 6.3						
DUS to CRMF Projects						
Section 1. 711 Building						
No specific joint improvements identified at this time						
Section 2. 23rd St. Yard modifications						
No specific joint improvements identified at this time						
Section 3. BNSF Fuel Unloading Facility						
1	Drainage - New 66" RCP between BN and RTD tracks	DUS to Pecos	0.97 to 1.25	RTD	BNSF	
2	At-grade crossing BNSF Fuel Unloading Facility	DUS to Pecos	1.12	RTD	RTD	
Section 4. Jersey Cutoff Track Realignment (MP 1.31 to 2.5)						
3	Fencing east of Jersey Cutoff	DUS to Pecos	1.95 to 2.19	RTD	BNSF	
Section 5. Jersey Cutoff Retaining Wall						
4	Jersey Cutoff Retaining Walls	DUS to Pecos	2.19 to 2.35	RTD	RTD	
Section 6. 48th St. Access to BNSF TOFC						
5	Drainage - Install 3-12'x4' CBC (as necessary by design)	DUS to Pecos	2.35	RTD	BNSF	
6	At-grade crossing at 48th Street	DUS to Pecos	2.41	RTD	RTD	
Section 7. Severe Industrial Spur on Fox Street (MP 3.4)						
No specific joint improvements identified at this time						
Section 8. TOFC RIP Track Relocation						

Attachment 1 to Exhibit B to the RTD/BNSF Joint Corridor Use Agreement - Joint Improvements shared by BNSF & RTD

Item #	Improvement	Segment	Approximate MP	Party Constructing	Party Maintaining	Notes
7	Drainage - Install new drainage channel east of RIP track	DUS to Pecos	2.41 to 3.02	RTD	BNSF	
8	Fencing east of BNSF Rip Track	DUS to Pecos	2.42 to 3.09	RTD	RTD	
9	Drainage - New 30" RCP & inlet between CRMF and BNSF RIP track	DUS to Pecos	2.46	RTD	BNSF	
10	Drainage - New 30" RCP & inlet between CRMF and BNSF RIP track	DUS to Pecos	2.52	RTD	BNSF	
11	Drainage - New 24" RCP & inlet between CRMF and BNSF RIP track	DUS to Pecos	2.67	RTD	BNSF	
CRMF to Pecos Projects						
Section 1. TOFC Flyover (MP 3.00 to 3.30) - Temp Trailer Parking						
12	Drainage - New 36" RCP connected to existing RCP in BNSF property	DUS to Pecos	2.75	RTD	BNSF	
13	Drainage - New 24" RCP west of CRMF	DUS to Pecos	2.76	RTD	BNSF	
Section 2. TOFC Flyover (MP 3.00 to 3.30) - Replacement Trailer Parking						
No specific joint improvements identified at this time						
Section 3. BNSF Mainline Modfications - Utah Junction to Pecos (MP 3.41 to 4)						
14	Fencing east/north of BN track	DUS to Pecos	3.64 to 4.05	BNSF	BNSF	
15	Fencing south of RTD track	DUS to Pecos	3.80 to 4.13	RTD	RTD	
16	Drainage - Install new 24” culvert	DUS to Pecos	3.9	BNSF	BNSF	

Attachment 1 to Exhibit B to the RTD/BNSF Joint Corridor Use Agreement - Joint Improvements shared by BNSF & RTD						
Item #	**Improvement**	**Segment**	**Approximate MP**	**Party Constructing**	**Party Maintaining**	**Notes**
17	Drainage - Install new drainage channel north of BNSF mainline tracks	DUS to Pecos	3.90 to 4.11	BNSF	BNSF	
18	Drainage - Extend 36" SSP, relocate cleanout 30' downstream, relocate irrigation inlet structure (Fisher Ditch)	DUS to Pecos	4.03	RTD	BNSF	
19	Drainage - Install 3-60" RCP Culverts 180' long	DUS to Pecos	4.11	RTD	BNSF	
Pecos to S. Westminster Projects						
Section 1. BNSF Mainline Track Modifications Pecos to 72nd Street						
20	Drainage - Extend existing 36"CMP 41' and install new 36" RCP 114' long	Pecos to 72nd	4.13	RTD	BNSF	
21	Drainage - Extend existing 12"CMP 60'	Pecos to 72nd	4.18	RTD	BNSF	
22	Grade separated crossing at 64th Ave	Pecos to 72nd	4.59	RTD	RTD	
23	Drainage - Plug & fill existing 36" RCP/48" CMP and replace with 60" RCP 84' long	Pecos to 72nd	5.11	RTD	BNSF	
24	Drainage - Extend existing 48" CIP 29' and install new 30" RCP 114' long	Pecos to 72nd	5.39	RTD	BNSF	
25	Retaining walls under Federal Blvd	Pecos to 72nd	5.47	RTD	RTD	
26	Drainage - Construct new flood wall to protect tracks under existing bridge	Pecos to 72nd	5.47	RTD	BNSF	

Attachment 1 to Exhibit B to the RTD/BNSF Joint Corridor Use Agreement - Joint Improvements shared by BNSF & RTD

Item #	Improvement	Segment	Approximate MP	Party Constructing	Party Maintaining	Notes
27	Drainage - Plug & fill existing 48" CMP and install 2-48" RCP 88' long	Pecos to 72nd	5.49	RTD	BNSF	
28	Drainage - Plug & fill existing 5'x3' RCB and install 3-36" RCP 82' long	Pecos to 72nd	5.68	RTD	BNSF	
29	Pedestrian Underpass at S. Westminster Station	Pecos to 72nd	5.74	RTD	RTD	
30	Drainage - Plug & fill existing 36" RCP and install 2-12'x7' RCB 101' long	Pecos to 72nd	5.83	RTD	BNSF	
Gold Corridor - Sheridan to Golden						
Sheridan to Ward Rd Projects						
Section 1. BNSF Mainline Track Modifications - W. Sheridan to Ralston Rd. (MP 6.3 to 6.6)						
All joint improvements shall be constructed and maintained by RTD						
Section 2. BNSF Mainline Track Modifications - Vance Street to Miller (MP 7.57 to 9.53)						
All joint improvements shall be constructed and maintained by RTD						
Section 3. Kipling Bridge Replacement (BNSF Track - MP 9.26)						
All joint improvements shall be constructed and maintained by RTD						
Section 4. BNSF Mainline Track Modfications - W. Miller Street to Ward Rd. (MP 9.53 to 10.83)						
All joint improvements shall be constructed and maintained by RTD						
Ward Rd to Golden Projects						
No RTD improvements are planned as part of this project from Ward Rd. to Golden. BNSF will maintain this segment of the corridor.						

Salama
Exhibit E
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)

Salama
Exhibit E

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 _____, 20__

Salama
Exhibit E

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Salama
Exhibit E

OPERATIONS AGREEMENT – MOFFAT TUNNEL SUBDIVISION/GOLD LINE

THIS OPERATIONS AGREEMENT – MOFFAT TUNNEL SUBDIVISION/GOLD LINE ("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 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 16 – DEFINITIONS

16.1 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, 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 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 _____, 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 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 August __, 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 17 - USE OF LINES

17.1 Other Agreements; Future Easements; Maintenance of Certain Improvements.

a. 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.

b. 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.

c. 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.

d. 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.

17.2 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.

17.3 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.

17.4 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 Gold Line, 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 Gold Line. 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 Moffat Tunnel Subdivision, then RTD shall be responsible only for any incremental Costs incurred by UP due to RTD's Gold Line.

ARTICLE 18 - 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 19 - RIGHTS OF ENTRY

19.1 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).

19.2 Rights of Entry.

a. 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.

b. 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.

c. 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.

19.3 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 20 – SIGNAL INTERFACE COSTS

20.1 RTD's Reimbursement Obligation.

The Engineering Agreement and Article 4 of the Transfer Agreement contain certain RTD obligations and liabilities with respect to payment for UP's design and construction of additional signal work on UP's Moffat Tunnel Subdivision; those obligations and liabilities survive the Closing of the Moffat Tunnel Subdivision/Gold Line under the Transfer Agreement. Accordingly, RTD shall continue its performance under the Engineering Agreement and the Transfer Agreement. In addition, 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 crossing signalization interface between UP's signal system and RTD's signal system for at-grade crossings shall be reimbursed by RTD to UP in accordance with Section 5.2 below.

20.2 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 21 – OPERATING AUTHORITY; OPERATIONS SAFETY; ENVIRONMENTAL NOTIFICATION

21.1 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.

21.2 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:

a. 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").

b. 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.

c. Such operations safety documents shall be prepared to coordinate with UP's existing plans and procedures and in coordination with UP.

21.3 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 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 22 - INSURANCE

22.1 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:

a. 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.

b. 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.

c. 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.

d. 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.

e. 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.

22.2 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:

a. 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.

b. 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.

c. 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.

d. 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.

22.3 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:

a. 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.

b. 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.

c. 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.

d. 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.

e. 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.

f. 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).

g. 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.

h. 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.

22.4 Self-Funding.

a. 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.

22.5 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.

22.6 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 23 - LIABILITY AND INDEMNIFICATIONS

23.1 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.

23.2 Allocation of Responsibilities.

a. 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.

b. 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.

c. 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).

d. 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.

23.3 Interpretation and Scope of Indemnification.

a. 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.

b. 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).

23.4 Procedure.

a. 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.

b. 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.

c. 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.

d. 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.

23.5 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 24 – DISPUTE RESOLUTION AND ARBITRATION

24.1 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.

24.2 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.

24.3 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.

24.4 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.

24.5 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.

24.6 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 25 – 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 26 - 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 27 - ADDITIONAL PROVISIONS

27.1 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

27.2 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.

27.3 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.

27.4 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.

27.5 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.

27.6 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.

27.7 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.

27.8 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.

27.9 Successors and Assigns.

a. 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.

b. 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.

c. 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.

d. 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.

e. 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.

27.10 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.

27.11 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.

27.12 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.

27.13 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.

27.14 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.

Salama
Exhibit E

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

DTO-BRS Collective Bargaining Agreement

This Agreement is made this 1st day of December 2017, by and between Denver Transit Operators, LLC, hereinafter referred to as the Company or DTO, and the Brotherhood of Railroad Signalmen, hereinafter referred to as the Union or BRS. This agreement is subject to the ratification of the bargaining unit members currently employed by the DTO and the Board of Directors of DTO. The Union shall promptly initiate its ratification procedures and advise the Company of the result. The Company shall take this Agreement to its next Board meeting for ratification and shall advise the Union of the result.

ARTICLE 1 – Union Recognition and Management Rights

a) Recognition

The Company hereby recognizes the Union as the sole and exclusive bargaining agent for the following bargaining unit: All full-time and regular part-time Signal Maintainers and Signal Maintainer Apprentices, Track Maintainers, Track Maintainer Apprentices, Track Inspectors, Traction Power Technicians, Traction Power Technician Apprentices, Communication Technicians, Facility Maintainers, Train Dispatchers and Operations Control Coordinators, but excluding all other employees as defined in the National Labor Relations Act. "Employees" as used in this Agreement shall mean the employees for whom the Union is recognized as the bargaining representative as defined by National Labor Relations Board Case No. 27-RC-194717.

b) Dues Checkoff

It is understood and agreed that, as a condition of employment, all persons who are hereafter employed by the Company for whom the Union is the recognized bargaining representative shall become members of the Union not later than the thirty-first (31st) day following the beginning of their employment or execution of this Agreement, whichever is later. The Company agrees to deduct the dues levied by the Union upon its members from the wages of each employee covered by this Agreement from whom the Company has received a voluntarily executed written authorization which meets the requirements of Section 302(c) of the National Labor Relations Act, as amended, authorizing such deductions. Deductions shall be made monthly and will be applied when the employee has worked at least one day in the month. Deductions will be direct deposited to the Union's account.

c) Indemnification

The Union shall indemnify and save the Company harmless against any and all claims, demands, suits, or other forms of liability (including attorneys' fees and costs of defense) which may arise out of or by reason of any action taken or not taken pursuant to Article 1.b above.

d) Management Rights

It is agreed that the Union and the employees will cooperate with the Company to liberally construe this Agreement to facilitate the Company's efficient, flexible and uninterrupted operation of its business. Except to the extent expressly abridged by a specific provision of this agreement, the Company reserves and retains, solely and exclusively, all of its rights, power or authority to manage its business, as such existed prior to the execution of this Agreement with the Union. These rights include, but are not limited to the following: to decide all equipment to be used; to improve efficiency; to hire, lay off, recall, assign, transfer promote and demote all full and part-time employees; to determine the qualifications of employees; to determine the starting and quitting times; to establish the number of shifts; to determine and schedule the number of hours to be worked, including the determination of the necessity for overtime work; to promulgate and enforce reasonable rules and policies; to establish and enforce productivity and performance standards; to establish customer service and public relations policies; to determine the number, size, business hours and location of its establishments; to decide the processes, nature, extent, duration, character and method of operation, including the unlimited right to contract out or subcontract, to discharge or discipline for cause, except that any employee discharged or disciplined shall have recourse through the grievance procedure (except probationary employees), the establishment of run structure including any changes to routes, and the implementation of policies and procedures that may be required by the Regional Transportation District. It is understood and agreed that the foregoing statement of rights of the Company shall not be deemed to exclude other prerogatives not so enumerated and that are necessary for the normal operation of the Company's business.

ARTICLE 2 – Continuity of Service

The parties agree that maintaining the continuity of service for the riding public is of the utmost importance. In emergencies and other situations that could result in a disruption of service, the Company may assign any qualified person to perform the work of any employee covered by this Agreement as part of their regular work for the duration of such emergency or other situation that could result in a disruption of service.

ARTICLE 3 – Term of Contract

This Agreement shall be effective as of January 1, 2018, and shall remain in full force and effect from said date through December 31, 2022, both inclusive. Thereafter, it shall automatically renew itself from year to year unless at least 60 days and not more than 90 days prior to the termination date or anniversary thereof, either party gives written notice to the other by Certified Mail, return receipt requested, of a desire to amend, add to, subtract from, or terminate this Agreement. In the event such notice is given, the Company, Union and employees shall have no rights beyond the term of this Agreement, and the parties shall, within a reasonable time thereafter, enter into negotiations concerning the request. This Agreement constitutes a complete understanding and settlement of any and all outstanding issues between the Company and the Union and the employees. Notwithstanding the foregoing, in the event the Company's agreement with the

Regional Transportation District to operate its commuter rail service terminates, this Agreement shall terminate as of the same date.

ARTICLE 4 – Wage Rates

Position	Experience	
Dispatchers	Level One: 1 year or less experience in related dispatching function	$26.97
	Level Two: 2 or more years of experience in related dispatching function	$29.43
Operations Control Coordinators		$23.83
Track Maintainer	Level One: 1 year or less experience	$24.00
	Level Two: Minimum 3 years experience	$25.50
	Level Three: Minimum 5 years experience	$26.76
Track Inspector	Level One: 4 years of industry experience	$30.77
	Level Two: Bachelor degree and or 5 years of industry experience	$34.13
Signal Maintainer	Level One: (Signal Apprentice) 1 year or less of previous railroad signal maintenance.	$25.00
	Level Two: (Signal Maintainer) 2 or more years of previous railroad signal maintainer experience.	$28.84
	Level Three: (Lead Signal Maintainer) 10 or more years of previous railroad signal maintainer experience. At least 1 year of lead or supervisor or equivalent experience.	$32.00
Traction Power Technicians	Level One: (Power Apprentice) 2 years or less of previous linemen and or substation maintenance experience.	25.00
	Level Two: (Power Technicians) 4 or more years of linemen and or power substation experience. Previous maintenance of railroad power distribution system.	$32.00
Communication Technician	Level One: (Communication Apprentice) 1 year or less of communication system maintenance.	$25.00

	Level Two: (Communication Technician) 2 or more years of communication system maintenance.	$25.96
Facility Maintainers	Level One: 1 year or less of commercial facility maintenance experience	$23.07
	Level Two: 1-3 years of commercial facility maintenance experience	$23.53
	Level Thee: more than 3 years of commercial facility maintenance experience	24.00

Third Shift Differential

Employees covered by this Agreement shall be paid an additional $1.50 per hour for all hours worked between 9:00pm and 5:30am.

ARTICLE 5 – Wages Increases

a) First General Wage Increase. Effective July 1, 2017, the hourly base rates of pay of the employees covered by this Agreement shall be increased in the amount of three percent (3.0%). Overtime pay will be calculated as described elsewhere in this document.

b) Subsequent general wage increases shall be as follows

July 1, 2018 – 2.5 percent
July 1, 2019 – 3.0 percent
July 1, 2020 – 2.5 percent
July 1, 2021 – 3.0 percent

i. Disposition of Fractions. Rates of pay resulting from application of the Article that end in a fraction of a cent will be rounded to the nearest whole cent; fractions less than one-half cent will be dropped and fractions of one-half cent or more will be increased to a full cent.

ii. Application of Wage Increases. The increase in wages provided for in this Article shall be applied in accordance with the hourly base wage rate in effect. Special allowances and differentials not included in the hourly base wage rate, and arbitraries representing duplicate time payments, will not be increased unless specifically agreed upon in writing signed by the Company and Union.

iii. Subject to the ratification of this Agreement by January 31, 2018, each employee of the Company covered by this Agreement shall be entitled to a lump sum bonus incentive of One Thousand Dollars ($1,000.00).

ARTICLE 6 – Group Insurance and Other Benefits

a) Dental, Medical and Vision Insurance

The Company shall offer regular full-time employees the opportunity to participate in a health insurance plan, providing health, dental and vision benefits, effective on the first day of the month following commencement of full-time employment. As a condition of participation in such plan, eligible employees must agree to make the employee contribution, if any, then uniformly required by the Company under such plan for the type of coverage elected. The plan, including any employee contribution, may be changed at the discretion of the Company, provided that changes applicable to the employees covered by this Agreement shall be consistent with any changes applicable to employees not covered by this Agreement, including management employees.

b) Life Insurance.

The Company shall provide life and accidental death and dismemberment insurance in the amount of $25,000 for all regular full-time employees, effective on the first day of the month following the commencement of full-time employment.

c) Short-Term Disability Insurance

The Company shall offer short-term disability coverage for purchase by all regular full-time employees, effective on the first day of the month following the commencement of full-time employment. The maximum weekly benefit shall be sixty percent (60%) of base straight-time wages, commencing with the first day of accident or hospitalization or the eighth day of illness, for a maximum of thirteen (13) weeks duration.

d) Long-Term Disability Insurance

The Company shall offer long-term disability coverage for purchase by all regular full-time employees, effective on the first day of the month following the commencement of full-time employment. The maximum monthly benefit shall be sixty percent (60%) of base straight-time wages, up to a maximum of $3,000 per month, commencing in accordance with eligibility requirements set forth in the plan or policy.

e) Extent of Obligations

The Company may choose to arrange for funding of the foregoing benefits through insurance, self-funding, or a combination thereof. DTO reserves the right, in its sole and absolute discretion, to amend, modify or terminate, in whole or in part, any or all of the provisions of the benefit plans described herein. Further, DTO reserves the exclusive right, power and authority, in its sole and absolute discretion, to administer, apply and interpret the benefit plans described herein, and to decide all matters arising in connection with the operation or administration of such plans.

ARTICLE 7 – Vacations

Each regular full-rime employee who has earned vacation in accordance with the accrual and continuous service with the Company requirements set forth below shall be eligible to receive the following amount of vacation time off with pay during the succeeding anniversary year at the employee's regular straight-time hourly rate:

Years of Continuous Service	Weeks of Vacation
1 to 7 years	2
8 to 16 years	3
17 to 24 years	4
25 to 29 years	5

Employees with less than 8 years' service earn vacation at a rate of 3.077 hours per two-week pay period.

Employees with 8 years of service, but less than 17 years of service earn vacation at a rate of 4.615 hours per two-week pay period.

Employees with 17 years of service, but less than 25 years of service earn vacation at a rate of 6.153 hours per two-week pay period.

Employees with 25 years or more years of service earn vacation at a rate of 7.692 hours per two-week pay period.

Employees who meet the above two requirements: (1) length of continuous service with the Company; and (2) number of hours worked to accrue vacation, shall be entitled to receive a vacation. Requests for vacation time off will be granted, so far as practical, in order to ensure orderly and unhindered operations, the final right to allotment of vacations is exclusively reserved to and vested solely in the Company, and the Company may require an employee to defer taking a vacation which the Company determines would interfere with the efficient operation of the business. Vacation time must generally be scheduled and taken in weekly blocks, except for unusual situations where the Company agrees to make an exception and grant a single day vacation within its sole and absolute discretion. Any request for a single day vacation must be made to the Department Manager not less than 48 hours in advance of the requested vacation day except for emergency or extenuating circumstances. All requests for single day vacation shall be subject to the requirements of the service. Vacation may be carried over from year to year up to a maximum amount of twice the employee's annual vacation allotment. The Company will determine how many employees may be on vacation at any given time and will provide a schedule of available vacation weeks from which employees will, in seniority order, select their vacations. In seniority order, each employee will have the opportunity to select one week's vacation for the coming year. When all eligible employees have had the opportunity to select one week's vacation, eligible employees will be given the opportunity, in seniority order, to select a second week's vacation. Under no circumstance may an employee take more than two consecutive weeks of vacation without the approval of both the Department Manager and Human Resource Manager.

ARTICLE 8 – Holidays

New Year's Day	President's Day
Memorial Day	Independence Day
Labor Day	Thanksgiving Day

Christmas Day

Holiday Pay

Holiday pay for non-exempt regular full-time employees will be calculated based on the non-exempt employee's straight-time hourly rate of pay (as of the date of the holiday) time eight (8) hours the employee would otherwise have worked on that day. Benefited part-time employees' hours will be calculated based on the non-exempt employee's straight-time hourly rate of pay as of the date of the holiday) times six (6) hours the employee would otherwise have worked on that day. Exempt employees shall be paid one day's pay as holiday pay.

Generally, if a recognized holiday falls during an eligible employee's paid absence (such as a vacation or approved sick time) holiday pay will be provided instead of the paid time-off benefit that would otherwise have been applied.

Payment of holiday pay is granted to employees who are actively employed on the holiday and both the scheduled workday before and the scheduled workday after a holiday to include approved sick, vacation and excused absence days. Employees who are absent from work for unpaid leave such as FMLA and leave of absence will not be granted holiday pay. Holiday pay is not included in the calculation of weekly overtime.

ARTICLE 9 - Sick Leave

Each regular full-time employee employed prior to July 1 shall be allowed up to five (5) days of paid time off for illness in the following year. Each eligible full-time employee employed between July 1 and December 31 shall be allowed up to three (3) days of paid time off for illness in the following year and up to five (5) days in succeeding years. Accumulated but unused paid time off for illness shall not roll-over to any succeeding year. Use of paid time off for illness shall be in accordance with the Company's policy as established from time-to-time in the Company's sole discretion.

ARTICLE 10 - 401(k)

The Company shall continue to offer employees the opportunity to participate in a Section 401(k) Plan, subject to the eligibility and other requirements of the Plan.

ARTICLE 11 – Bereavement Leave

Employees are eligible for up to three consecutive days off with pay at the employee's regular hourly rate of pay at 8 hours per day when a death occurs in the employee's family (spouse, parent, child, including step parent, step child, brother, sister, parent-in-law, brother-in-law, sister-in-law, and grandchildren, grandparents, grandparents-in-law). If more than three days is required, other paid or unpaid time off may be approved.

ARTICLE 12 – Jury Duty

An employee required to perform jury duty will be granted unconditional leave of absence for the duration of the duty. Pay status of Jury Duty for employees will be placed on administrative leave with compensation for the duration of duty. The Company will pay the difference between the amount paid by the court and the employee's regular hourly rate of pay, at 8 hours per day, regardless of the employee's run pay. Benefits will continue uninterrupted for the duration of paid leave associated with jury duty.

It is the employee's responsibility to notify his supervisor promptly upon receipt of a jury summons and subsequent notice of selection to serve as juror. The employee may be required to submit evidence of the summons and selection notice. Additionally, the employee should regularly notify his supervisor of the status of the duty and the anticipated duration of the trial, if reasonably possible.

Upon return to work from an absence due to jury duty, the employee must provide a note from the court confirming the dates the employee was in attendance for duty. In the absence of such a document or the ability to produce such a document, the employee's status for the time off will revert to unexcused leave

ARTICLE 13 – Overtime

The Company will pay overtime at a rate of 1.5 x the base hourly rate for all worked over 40 per week.

ARTICLE 14 – Pay Day.

Employees will be paid via direct deposit every two weeks on Thursdays for work performed during the two-week period ending the Saturday before pay day.

ARTICLE 15 – Seniority

Seniority means the length of continuous service of an employee covered by this Agreement. The seniority rosters as of the date of this Agreement are attached hereto as Exhibit 1. For employees hired after the date of this Agreement, seniority shall be established based upon the date the employee commences employment. The date the employee commences employment with the Company shall be listed on the seniority roster. Continuous service of an employee shall be broken, all seniority rights lost, by termination of employment. When two or more employees are physically present and compensated as a regular employee on the same day, they shall be ranked in alphabetical order by order of their last names. Any tie shall be decided in favor of the employee with the highest sum of the last four digits of his or her social security number. For the purposes of work bids, displacement rights, overtime call and vacation selection only, the employee's seniority date shall be the date the employee commences employment in their job classification. The date an employee commences employment in a particular job classification shall also be reflected on the seniority roster.

ARTICLE 16 – Work Bids

Work Bids will take place approximately 3 times per year, coinciding with the RTD's regular network schedule changes. However, the Company may conduct work bids more or less frequently to accommodate maintenance, special service requirements, or other needs.

Employees will select work in order of seniority from a list of weekly duties, each described by:

-work days
-regular days off
-report time for each work day
-off time for each work day
- weekly scheduled work hours
- special notes

ARTICLE 17 – Part-Time Employees

The Company may hire part-time employees as needed after consultation and agreement with the Union in order to meet the needs of service. Part time employees will not be used if any employee represented in this bargaining unit is furloughed, or use of part time employees results in the layoff of a full-time employee. Part-time employees shall be members of the Union and shall be paid the same hourly rate as regular full-time employees. Except for provisions that apply only to full-time employees, this Agreement applies to part-time employees.

ARTICLE 18 – Reporting for Duty and Signing out.

Employees are required to sign-in and to sign-out at the location designated by the Company. Any employee who signs in or out for others shall be subject to disciplinary action. An employee must not sign-in more than 10 min before report time or any later than the report time.

ARTICLE 19 - Grievance Procedure

Any and all disputes and differences whatsoever, regarding the interpretation, application or meaning of this Agreement, between the Company on the one hand, and the Union or any employees of the Company represented by the Union on the other hand, shall be exclusively settled in the following manner and there shall be no interruption of the business.

The grievance procedure shall be as follows:

STEP 1: Any employee who believes that he/she has a justifiable complaint must first present and discuss the grievance with his or her proper supervisor. The Employee's Union representative may file a grievance on Employees behalf if multiple Employees wish to present and discuss the same grievance. A Union representative may be present with the employee, or the employee may present the grievance alone, as the employee may elect. The time limit for the presentation and discussion of a grievance shall be seven (7) business days, following the date the employee knew or could reasonably have had knowledge of the event which gave rise to the grievance.

At the conclusion of the Step I discussion, the supervisor and the Union representative or employee, shall promptly, but in no event later than seven (7) business days following the date of the Step 1 discussion, complete and sign the Step I Disposition Form to be furnished to the Union. Such Disposition Form shall show the nature of the complaint, the date of the discussion, the name(s) of the grievant(s), the decision of the supervisor and the response of the Union representative to such discussion and decision.

The settlement of a grievance at the Step I discussion shall not constitute a precedent.

STEP 2: If the matter is not settled at Step 1, and the Union wishes to appeal, the grievance must be reduced to writing and shall be referred to the General Manager, or his or her authorized representative. Such written grievance must be received by the Company within seven (7) business days of the date the Step I Disposition Form is furnished to the Union.

The appealed grievance shall be discussed at a mutually convenient time between the General Manager of the Company and the designated Union representative, or their authorized representatives, within seven (7) business days following the date upon which the Company received the Step 1 Disposition Form with the Union's appeal noted thereon, or the written appeal, as the case may be. At the conclusion of the Step 2 discussion, the General Manager of the Company and the designated Union representative, or their authorized representatives, shall promptly, but in no event later than seven (7) business days or such other deadline as may be mutually agreed upon by the Company and the Union following the date of the Step 2 discussion, complete and sign the Step 2 Disposition Form to be provided by the Union; if such a form is not provided, the Director of Human Resources of the Company, or his or her authorized representative, shall nevertheless answer the appeal within said period. The Step 2 Disposition Form shall contain a statement of the facts of the case, as alleged by the Union representatives; the relief sought, and the contract provisions relied upon; the decision of the Company representative; and the response of the Union representative to such decision. Any settlement at Step 2 shall constitute a precedent and shall be binding upon the Company, the Union and the aggrieved employee or employees.

STEP 3: If the grievance is not settled in Step 2, and when the Union representative has indicated his or her desire to appeal the grievance in the space provided for Union response on the Step 2 Disposition Form, the Union, but not an individual employee or employees, may submit the dispute to arbitration by serving a written request to arbitrate upon the Company by certified mail, return receipt requested, within seven (7) business days or such other deadline as may be mutually agreed upon by the Company and the Union following the timely completion of the Step 2 Disposition Form.

The parties shall then select an arbitrator. If the parties fail to agree on the selection of an arbitrator, such arbitrator shall be selected from a list of at least nine (9) arbitrators residing or working in the Denver Metropolitan area provided by the Federal Mediation and Conciliation Service. If one of the arbitrators on the list is not mutually acceptable, the parties will select an arbitrator within seven (7) business days of receipt of the panel by alternately striking names, and the last remaining name shall be selected. An arbitrable matter must involve the meaning and application of a specific provision of this Agreement. The provisions of this Agreement shall be the sole source of any rights, which either party may assert in arbitration. The arbitrator shall have no power to amend, add to, subtract from, or change the terms of this Agreement, and shall be authorized only to interpret the existing provisions of this Agreement and apply them to the specific facts of the grievance or dispute. The decision of the arbitrator shall be based wholly on the evidence and arguments presented to him or her by the parties in the presence of each other, and ex parte arbitration hearings and awards are void. The decision of the arbitrator within the limits herein prescribed shall be final and binding on all parties to the dispute, including the employee or employees involved. The fee and expenses of the arbitrator shall be borne equally by the Company and the Union. No other joint expenses shall be incurred except by mutual written agreement of the parties.

Time Limits

Failure of the Union to file or appeal a grievance within the time limits herein shall bar said grievance. Failure of the Company to answer a grievance within the time limits herein shall permit the Union to refer the case to the succeeding step of the procedure, except that the time limits may be extended by mutual agreement of the parties and must be in writing.

ARTICLE 20 – No Strikes or Lockouts

a) Strikes

During the term of this Agreement, neither the Union, nor any of its members, officers, stewards, agents or representatives, nor any employee, shall instigate, authorize, call, support, sanction, encourage, maintain, or in any way take part or participate in any strike, sympathy strike, walkout, work stoppage, work slowdown, work curtailment, refusal to cross picket line(s), cessation or interruption of work or production, or in any picketing of the Company's premises for any reason (or the premises or facilities of any of the Company's customers or suppliers because of any dispute between the Company and the Union or any of the Company's employees).

b) Union Responsibility

The Union agrees that it will use its best efforts to prevent any acts forbidden in this Article and that in the event any such acts take place or are engaged in by any employee or group of employees, the Union further agrees it will use its best efforts to cause an immediate cessation thereof. If the Union immediately takes steps in good faith to end any stoppages, strikes, picketing, intentional slowdown or suspension of work, the Company agrees that it will not bring action against the Union to establish responsibility for such wildcat or unauthorized conduct.

c) Discipline for Violations

The Company in its sole discretion may terminate the employment of or otherwise discipline any employee - or employees who engage in any act forbidden in this Article. In any arbitration over such discharge or discipline, the sole issue shall be the factual question of whether or not the employee engaged in any forbidden act.

Employees will not be disciplined for refusing to enter Company property when there is a reasonable fear for the Employee's safety.

d) No Lockouts

The Company will not lock out employees during the term of this Agreement.

ARTICLE 21 – Controlled Substance Testing

Employees shall be subject to the Company's policies on controlled substance testing.

ARTICLE 22 – Probationary Period

New employees will be in a probationary period during the first ninety (90) days of employment. During the probationary period, an employee will not have rights under Rule 19 Grievance Procedure.

ARTICLE 23 – Training Program

Employees requiring training will go through a training program that the Company develops in consultation with the Union. The Company will be responsible for the curriculum and implementation of the training.

ARTICLE 24 – 40 Hour Week

All full-time employees shall regularly be scheduled for at least forty (40) hours per week.

ARTICLE 25 – Subject to Call

Employees assigned to the following departments recognize the possibility of emergencies in the operation of the carrier and are subject to call; traction power, signal and communications, and track.

Employees assigned to or filling positions will notify their supervisor of their residence and telephone number and will respond as promptly as conditions will permit, when called for service outside of regular assigned working hours. Employees who desire to be off "subject to call" will notify their supervisor that they will not be available for calls, and will advise him when they expect to return. Unless registered absent, as above, the regular assignees, or employees filling such positions, will be called in seniority order for trouble on the assigned section or territory in the craft and class involved. In the event the regular assignee is not available, or needs assistance, other available employees covered by the Agreement will be called in seniority order from the class involved. In the event of a serious emergency, the Company may determine in its discretion that the needs of service require that all employees shall be subject to call.

ARTICLE 26 – Attending Court Hearing, Inquest or Investigation

Employees attending court, hearing, inquest, investigation, or giving a deposition or stenographic statement in connection with legal proceedings as a witness on behalf of the Company at the direction of the Company, will be paid for the time actually lost on his or her assignments each day. Necessary expenses, including necessary travel expenses, will be paid when away from home.

Employees attending court, hearing, inquest, or investigation as a witness on behalf of the Company, or giving a deposition or stenographic statement in connection with legal proceedings at the direction of the Company, when no time is lost, will be paid at the base hourly rate of the last service worked. Necessary expenses, including necessary travel expenses, will be paid when away from home.

Any witness fees and mileage allowance will be remitted to the Company, by the employee, promptly after receipt.

If an Employee is summoned to testify as a witness in any civil or criminal proceeding, he/she should contact his/her manager for a determination of whether an absence from duty will be excused and the circumstances thereof.

ARTICLE 27 -- Displacement Rights

Employees whose positions have been abolished, who have been off by reason of force reductions, or who have been displaced, must assert displacement rights if they desire to do so or if they are required to do so by the provisions of this agreement within three days from the effective date* of abolishment, lay off, or displacement unless a leave of absence has been granted under the provisions of this agreement.

*Note: The effective date as noted is defined as the first workday immediately following the last workday of the affected employee.

When two or more positions are abolished on the same date, the employees affected will be given preference in exercising displacement rights in the order of their seniority.

Except as otherwise provided in this agreement, an employee returning to duty after leave of absence, vacation, sickness, jury duty, disability, involuntary military service or suspension shall

return to his former position or may exercise displacement to any position in any classification advertised during his absence which was awarded to a junior employee.

ARTICLE 27 -- Leave of Absence to Serve in Union Position

An employee holding a full time elected or appointed official position with the Brotherhood of Railroad Signalmen will be granted a leave of absence, while holding such positions, for the tenure of their office. Such positions will be bulletined as permanent. An employee who ceases to hold such position will have thirty 30 calendar days from the termination dates on such position, to exercise his or her seniority rights in accordance with the rules of this agreement. Employees who held full time elected or appointed official positions with the Brotherhood of Railroad Signalmen will be granted a leave of absence to attend the Union's annual meeting and its regular convention.

ARTICLE 28 -- Job Abandonment

Employees who are absent for three (3) consecutive working days without providing proper notification to his or her Supervisor will be considered as having resigned from service. Such absence will not be deemed job abandonment if the employee is incapable of providing notification due to of either physical incapacity or circumstances beyond their control which prevented such notification. The employee must provide documented evidence to substantiate the reason for providing notification. If the Company refuses to accept such documented evidence, the employee or his representative may appeal such action in accordance with Rule 19 Grievances Procedure.

ARTICLE 29 --Tools/Company Issued Equipment

The Company will furnish the employees uniforms, tools and equipment as are necessary to perform their work. When tools and other Company issued equipment become worn to the extent they are unsafe, the railroad will furnish appropriate replacements.

Employees will be held responsible for the proper use and care of tools furnished by the Company, and when they leave the service of the railroad, will turn over to their supervisor all tools furnished them by the Company. Employee shall be responsible for the cost of any tools not returned upon separation from employment.

ARTICLE 30 -- Contracting Out

The Company may not contract out work normally performed by an employee in this bargaining unit if any employee is furloughed, or the contracting out results in the layoff of an employee.

ARRICLE 31 – Scope

This agreement governs the rates of pay, hours of service, and working conditions of all employees working as Company employees listed in the following departments and engaged in the following duties, which may be changed by the Company in its sole discretion:

<u>Operations Control Center</u>

Employees engaged in the control and monitoring of all rail movement within Company's territory from a central Operations Control Center in accordance with schedules, railroad operating rules and procedures and FRA regulations will be known as Dispatchers. Dispatchers' duties include but are not limited to:

- Direct and coordinate rail traffic by using a computerized train control system to select the proper routing of trains
- Monitor train movements, remotely control track switches, traction power, and signals,
- Application and remove blocking devices.
- Issue all track permits and authorities.
- Energize and de-energize traction power for maintenance and emergency purposes.
- Coordinate and prioritize on-track work on the track, signal, structures and traction power infrastructure with the efficient movement of scheduled trains.
- Maintain detailed and accurate records of train movements, permits and authorities and unusual events or incidents using manual processes and computerized software applications
- Management of unexpected events and emergency situations to protect the public, railroad employees, and railroad property
- Notify and coordinate all internal personnel and external emergency responders and direct the activities associated with emergency situations.
- Coordinate alternate revenue service during emergencies.
- Communicate by telephone, radio and intercom with field personnel, supervisors and other staff to coordinate and monitor train and on-track equipment movements, maintenance activity and requests for power control.
- Record and relay reports of equipment and infrastructure defects using computerized software applications.
- Perform the work of other classifications of employees for which the employee is qualified as determined by the Company in its sole discretion.
- All other work assigned by the Company in its sole discretion as Dispatcher's work.

Employees responsible for taking incoming maintenance calls, emails and maintenance system service requests from OTO personnel, RTD and/or vendors. This includes the notification, documentation, and management of all response efforts from OTO maintenance and vendors for routine and emergency maintenance issues to ensure completion of repairs will be known as **Operations Control Coordinators**. Operations Control Coordinator's duties include but are not limited to:

- Receive emergency and non-emergency maintenance issues on or near the RTDC system.
- Management of maintenance forces ensuring completion of repairs including gathering information concerning the nature and extent of the maintenance issue, entering information and all updates in Maintenance/Operations Management system, and providing documentation within the required contractual time period.
- Opening and closing of Service Requests for the maintenance department and/or vendors for maintenance issues.
- Contact and dispatch of maintenance departments or vendors as necessary.

- Follow up communications with the responding departments regarding status updates and completion of repairs.
- Notification of the Facilities Supervisor for all emergency maintenance issues.
- Notification of the Operations Control Center personnel of status of maintenance issues that may impact revenue train service.
- Communication and documentation of maintenance issues that impact customers using the PANMS system.
- Perform the work of other classifications of employees for which the employee is qualified as determined by the Company in its sole discretion.
- All other duties assigned by the Company in its sole discretion as Operations Control Coordinators work.

Facilities

Employees engaged in the testing, maintenance, repair and inspection of buildings, structures and facilities to ensure compliance with DTO facility maintenance and safety standards will be known as **Facilities Maintainers.** Facilities Maintainers duties include but are not limited to:

- Inspection of buildings, structures and facilities to ensure compliance with DTO facility maintenance and safety standards
- Performance of landscaping, sprinkler maintenance, crack repairs in asphalt and concrete, graffiti removal, painting, changing light bulbs, repairing lighting fixtures, snow removal, trash removal, building modifications, and all other facility maintenance that does not require the attention of a specialist or licensed craftsman.
- Repair boundary fencing and barriers
- Maintenance, inspection and replacement and repair of signs, such as mile posts, speed restriction signs, resume speed signs, crossing and station signs, warning signs, and signs attached to buildings or other structures (except billboards)
- Identification and repair of all conditions that require attention in accordance with this Rule.
- Complete and maintain all records of completed inspections and repairs using AssetWorks Equipment Focus and other software tools.
- Perform the work of other classifications of employees for which the employee is qualified as determined by the Company in its sole discretion.
- All other work assigned by the Company in its sole discretion as Facilities Maintainer work.

Traction Power

Employees engaged in the testing, maintenance, repair and inspection of the traction power system including all overhead wires, substations, and catenary structures will be known as **Traction Power Technicians** and **Traction Power Apprentices.** The duties of these employees include but are not limited to:

- Operation, maintenance, troubleshooting, replacement, and repair of power substations including but not limited to: power transformers, protection relays, circuit breakers,

switchboards, overhead catenary, and all electrical components of the traction power system.

- Troubleshooting and testing tasks on electrical and electronic components and circuits to locate defects. Repairs and/or replacement of defective components, conductors, and equipment.
- Execution of switching orders according to the power necessity, rack-in/rack-out 25kv circuit breakers.
- Overhead catenary inspections and all preventive maintenance including catenary line tensioning, electrical tests, adjustments and repairs on the traction electrification system including 25kv disconnect switches, surge arresters, insulators, arms, poles, and grounding systems.
- Entering of up-to-date, accurate records of performed duties into the electronic records-keeping database
- Operation Maintenance-of-Way **(MOW)** equipment necessary to perform job duties following approved training practices and procedures.
- Perform the work of other classifications of employees for which the employee is qualified as determined by the Company in its sole discretion.
- All other work assigned by the Company in its sole discretion as Traction Power Technician's work.

Track

Employees engaged in the testing, maintenance, repair, and inspection of all tracks on the mainline, sidings, and in all yards, will be known as **Track Maintainers, Track Inspectors, and Track Apprentices.** The duties of the Track Maintainer include but are not limited to:

- Maintenance, inspection, testing, replacement, and repair and of all trackway features including ballast, sub-ballast, rails, guard rails, switch stands, switch points, frogs, ties, tie plates, spikes, anchors, joints, gauge rods, derails, bolt installation and removal; rail clips, PANDROL clips, track bolts, lags, and other fastening hardware, culverts, retaining walls, turntables, and drainage systems
- Ballast unloading, regulating, equalizing, and stabilizing, track and switch undercutting, cribbing between ties, track surfacing, and lining.
- Construction of track panels.
- Road crossing installation and renewal work
- Removal of dust, dirt, grease, snow, ice, and waste material from right of way, tracks, switches and structures (right of way)
- Cleaning, sandblasting, and painting of machines, equipment, bridges, turntables, platforms, walkways, handrails, buildings, and other equipment to prevent corrosion
- Bending, cutting, and replacement of rail sections
- Welding, grinding, burning, and cutting if trained for this role (See Note)
- Operation of all equipment, on-track and otherwise, necessary for all trackway features. (See Note)
- Loading and unloading of work trucks and cleaning and maintenance of work areas
- Concrete and masonry work (cut, demo, pour, finish) as needed

- Maintenance and clearing of culverts and track drains and systems
- Perform weed and vegetation control and removal on the right of way.
- Perform the work of other classifications of employees for which the employee is qualified as determined by the Company in its sole discretion.
- All other work assigned by the Company in its sole discretion as Track Maintainer's work.

The duties of a Track Inspector include but are not limited to:

- Performance of scheduled and unscheduled inspections of railroad track, infrastructure, and equipment in accordance with the FRA requirements in Title 49 Part 213 Subpart A-F.
- Performance of timely repairs of track defects to comply with FRA Class 4 track standards.
- Preparation of detailed reports on the condition of all inspected items in accordance with FRA requirement with recommendations for routine and essential maintenance using AssetWorks LinearFocus module
- Documentation of inspection findings, measurements, test results, and completed repairs into AssetWorks LinearFocus database
- Use of electronic and mechanical measuring and recording equipment as part of the inspection process
- All other work assigned by the Company in its sole discretion as Track Inspector's work

Signal and Communications

Employees engaged in the testing, maintenance, replacement, and repair and inspection of signal system components including highway grade crossing equipment, signal signage (crossbucks, number of tracks signs, etc.), track circuits, switch machines, train to wayside communication systems, vital/non-vital processors, wayside detection devices, positive train control (PTC), signals, interlockings, signal circuit wiring, signal storage batteries, signal storage battery charging systems, power generators for signal systems, switch heaters, and all other signal and communication apparatus in accordance with state regulations and FRA Parts 234 and 236 will be known as **Signal Maintainer/Technicians**, and **Signal Apprentices**. The duties of these employees include but are not limited to:

- Performing required safety inspections and tests of signal system components and train control equipment in accordance with state regulations and FRA Parts 234 and 236.
- Performing preventive maintenance of signal system components and train control equipment in accordance with state regulations and FRA Parts 234 and 236.
- Diagnosis, troubleshooting and repair of all signal system and train control malfunctions.
- Documentation and reporting of all work and inspections in accordance with railroad, state, and FRA requirements
- Maintaining up to date and accurate records of inspections, repairs, calibrations, and tests in the Asset Works Linear Focus module.

- Perform the work of other classifications of employees for which the employee is qualified as determined by the Company in its sole discretion.
- All other work assigned by the Company in its sole discretion as signal work

Employees engaged in the testing, maintenance, repair, and inspection of the commuter railroad network and communications infrastructure, including voice, data, signal, train control, CCTV and network security services, communications office equipment, wayside or office equipment of communicating systems, will be known as **Communication Technicians** and **Communication Apprentices.** The duties of these employees include but are not limited to:

- Maintenance, inspection, testing and repair of communications systems used in train control equipment.
- Adjustment, alignment, and calibration of instruments and equipment as a result of testing.
- Troubleshooting of faulty equipment, electronic components, and circuits to locate defects and diagnose causes of malfunction
- Replacement and repair of defective wiring and components, and/or adjust of mechanical parts
- Maintenance of records of inspections, repairs, calibrations, and tests in Asset Works management system.
- Maintenance, inspection, testing and repair of Operations Control Center (OCC) system.
- Perform the work of other classifications of employees for which the employee is qualified as determined by the Company in its sole discretion.
- All other work assigned by the Company in its sole discretion as Communication's work.

If the Company determines in its sole discretion that it is necessary to use an employee in any of the classifications to perform the duties performed by another classification, the Company has the right to assign the employee to perform such duties provided that the employee is qualified to perform the duty assigned. Nothing in this Agreement shall limit the Company's right to add or merge classifications of employees following consultation with the Union and not less than thirty (30) days' notice to the Union and the impacted employees, provided all employees of such merged or additional classes shall continue to be members of the bargaining unit and shall be paid not less than their then current hourly rate of pay.

ARTICLE 32 – Miscellaneous

a) Accident Reports

Any employee involved in any accident or incident while on duty shall report as soon as possible to his/her direct supervisor said incident and any physical injury sustained by himself/herself or by others if known. Not later than by the end of the shift, the Employee shall fill out an "Unusual Occurrence report", in writing, in the form provided by the Company and shall turn-in all available names and addresses of witnesses to the accident or incident.

b) Background Checks

The Company will perform background checks on all employee candidates.

c) Personal Identification

All employees must carry and display at all times a personal identification ("ID") card, which will be provided by the Company. The ID card will be considered part of the uniform code under this Agreement. The Company will cover the replacement cost for the first ID card that is damaged or lost. Additional replacement ID cards will be charged to the employee at $10.00 per ID card.

d) Bulletin Board

The Company will make available to the Union a locked bulletin board located at the Company's facility. The Company will permit the Union or its representatives to distribute Union literature utilizing the bulletin Board. Postings may not be derogatory or offensive toward the Company or any individual employee.

ARTICLE 33 Compliance with Applicable Law

It is the intent of the Company and the Union that the provisions of this Agreement apply with all applicable laws. In the event any provision of this Agreement shall be finally held to be invalid or unenforceable, the remaining provisions of this Agreement shall not be affected thereby, but shall continue in full force and effect. It is further agreed that in the event such provision is finally held to be invalid, the parties hereto agree to meet within thirty (30) days thereafter to negotiate a modification of, or substitution for, such clause or clauses so held to be invalid.

Signed at Denver, Colorado this 8th day of February, 2018.

For Brotherhood of Railroad Signalmen:

Timothy Tarrant
Acting General Chairman, BRS

Dennis Boston
International Vice President, BRS

For Denver Transit Operators, LLC:

Roxane Stuber
Human Resource Manager, DTO

Anne Herzenberg
General Manager, DTO

V.S. Salama
Exhibit F-2

DTO-BRS Collective Bargaining Agreement

This Agreement is made this 1st day of January 2023, by and between Denver Transit Operators, LLC, hereinafter referred to as the Company or DTO, and the Brotherhood of Railroad Signalmen, hereinafter referred to as the Union or BRS.

ARTICLE 1 - Union Recognition and Management Rights

a) Recognition

The Company hereby recognizes the Union as the sole and exclusive bargaining agent for the following bargaining unit: All full-time and regular part-time Signal Maintainers and Signal Maintainer Apprentices, Track Maintainers, Track Maintainer Apprentices, Track Inspectors, Traction Power Technicians, Traction Power Technician Apprentices, Communication Technicians, Facility Maintainers, Train Dispatchers and Operations Control Coordinators, but excluding all other employees as defined in the National Labor Relations Act. "Employees" as used in this Agreement shall mean the employees for whom the Union is recognized as the bargaining representative as defined by National Labor Relations Board Case No. 27-RC- 194717.

b) Dues Checkoff

It is understood and agreed that, as a condition of employment, all persons who are hereafter employed by the Company for whom the Union is the recognized bargaining representative shall become members of the Union not later than the thirty-first (31st) day following the beginning of their employment or execution of this Agreement, whichever is later. The Company agrees to deduct the dues levied by the Union upon its members from the wages of each employee covered by this Agreement from whom the Company has received a voluntarily executed written authorization which meets the requirements of Section 302(c) of the National Labor Relations Act, as amended, authorizing such deductions. Deductions shall be made monthly and will be applied when the employee has worked at least one day in the month. Deductions will be direct deposited to the Union's account.

c) Indemnification

The Union shall indemnify and save the Company harmless against any and all claims, demands, suits, or other forms of liability (including attorneys' fees and costs of defense) which may arise out of or by reason of any action taken or not taken pursuant to Article 1.b above.

d) Management Rights

It is agreed that the Union and the employees will cooperate with the Company to liberally construe this Agreement to facilitate the Company's efficient, flexible and uninterrupted operation of its business. Except to the extent expressly abridged by a specific provision of this agreement, the Company reserves and retains, solely

and exclusively, all of its rights, power or authority to manage its business, as such existed prior to the execution of this Agreement with the Union. These rights include, but are not limited to the following: to decide all equipment to be used; to improve efficiency; to hire, lay off, recall, assign, transfer promote and demote all full and part-time employees; to determine the qualifications of employees; to determine the starting and quitting times; to establish the number of shifts; to determine and schedule the number of hours to be worked, including the determination of the necessity for overtime work; to promulgate and enforce reasonable rules and policies; to establish and enforce productivity and performance standards; to establish customer service and public relations policies; to determine the number, size, business hours and location of its establishments; to decide the processes, nature, extent, duration, character and method of operation, including the unlimited right to contract out or subcontract, to discharge or discipline for cause, except that any employee discharged or disciplined shall have recourse through the grievance procedure (except probationary employees), the establishment of run structure including any changes to routes, and the implementation of policies and procedures that may be required by the Regional Transportation District. It is understood and agreed that the foregoing statement of rights of the Company shall not be deemed to exclude other prerogatives not so enumerated and that are necessary for the normal operation of the Company's business.

ARTICLE 2 - Continuity of Service

The parties agree that maintaining the continuity of service for the riding public is of the utmost importance. In emergencies and other situations that could result in a disruption of service, the Company may assign any qualified person to perform the work of any employee covered by this Agreement as part of their regular work for the duration of such emergency or other situation that could result in a disruption of service.

ARTICLE 3 - Term of Contract

This Agreement shall be effective as of January 1, 2023 and shall remain in full force and effect from said date through December 31, 2025, both inclusive. Thereafter, it shall automatically renew itself from year to year unless at least 60 days and not more than 90 days prior to the termination date or anniversary thereof, either party gives written notice to the other by Certified Mail, return receipt requested, of a desire to amend, add to, subtract from, or terminate this Agreement. In the event such notice is given, the Company, Union and employees shall have no rights beyond the term of this Agreement, and the parties shall, within a reasonable time thereafter, enter into negotiations concerning the request. This Agreement constitutes a complete understanding and settlement of any and all outstanding issues between the Company and the Union and the employees. Notwithstanding the foregoing, in the event the Company's agreement with the Regional Transportation District to operate its commuter rail service terminates, this Agreement shall terminate as of the same date.

ARTICLE 4 - Wage Rates

Effective July 1, 2022, the hourly base rates of pay of the employees covered by this Agreement shall be increased by 4.5 percent.

Effective January 1, 2023, the hourly base rates of pay of employees covered by this Agreement shall be as follows:

Position	Experience Required	Rate of Pay
Dispatchers	Level One: 2 years or less experience with DTO as a dispatcher or in a related dispatching function	$32.36
	Level Two: Between 2 and 5 years of experience with DTO as a dispatcher or in a related dispatching function	$35.31
	Level Three: 5 or more years of experience with DTO as a dispatcher or in a related dispatching function	$37.78
Operations Control Coordinators		$28.59
Track Maintainer	Level One: 3 years or less experience with DTO or in a related track maintainer function	$28.79
	Level Two: Between 3 and 5 years of experience with DTO or in a related track maintainer function	$30.59
	Level Three: Minimum of 5 years' experience with DTO or in a related track maintainer function	$32.74
Track Inspector	Level One: 2 years or less experience with DTO as a Track Maintainer or in a related track inspection function	$34.18
	Level Two: Between 2 and 5 years' experience with DTO as a Track Inspector or in a related track inspection function	$36.92
	Level Three: 5 or more years' experience with DTO as a Track Inspector or in a related track inspection function	$41.76
Signal Maintainer	Level One: (Signal Apprentice) 1 year or less experience with DTO or in a railroad signal maintenance function	$29.99
	Level Two: (Signal Maintainer) 2 or more years of experience with DTO or in a railroad signal maintenance function	$34.60
	Level Three: (Lead Signal Maintainer) 5 or more years of experience with DTO as a Signal Maintainer, or 10 years of experience in a railroad signal maintenance function	$39.55

Traction Power Technicians	Level One: (Power Apprentice) 2 years or less of experience with DTO or in a lineman and/or substation maintenance function.	$29.99
	Level Two: (Power Technicians) Between 2 and 5 years of experience with DTO as a Traction Power Technician or in a lineman and/or substation maintenance function	$38.38
	Level Three: (Power Technicians) 5 or more years of experience with DTO as a Traction Power Technician or in a lineman and/or substation maintenance function	$39.55
Communication Technician	Level One: (Communication Apprentice) 1 year or less of experience with DTO or in a communication system maintenance function	$29.99
	Level Two: (Communication Technician) Between 1 and 5 years of experience with DTO or in a communication system maintenance function	$32.09
	Level Three (Communication Technician) 5 or more years of experience with DTO or in a communication system maintenance function	$34.02
Facility Maintainer	Level One: 1 year or less of experience with DTO or in a commercial facility maintenance function	$27.68
	Level Two: 1-3 years of experience with DTO or in a commercial facility maintenance function	$28.25
	Level Three: more than 3 years of experience with DTO or in a commercial facility maintenance function.	$29.35

Third Shift Differential

Effective January 1, 2023, Employees covered by this Agreement shall be paid an additional $2.00 per hour for all hours worked on a Company scheduled third shift.

ARTICLE 5 - Wages Increases

a) Subsequent general wage increases shall be as follows

January 1, 2024 – 4.0 percent
January 1, 2025 – 4.0 percent

i. Disposition of Fractions. Rates of pay resulting from application of the Article that end in a fraction of a cent will be rounded to the nearest whole cent; fractions less than one-half cent will be dropped and fractions of one-half cent or more will be increased to a full cent.

ii. Application of Wage Increases. The increase in wages provided for in this Article shall be applied in accordance with the hourly base wage rate in effect. Special allowances and differentials not included in the hourly base

wage rate, and arbitraries representing duplicate time payments, will not be increased unless specifically agreed upon in writing signed by the Company and Union.

iii. Subject to the ratification of this Agreement by January 31, 2023, each employee of the Company covered by this Agreement shall be entitled to a lump sum signing bonus incentive of Three Hundred Fifty Dollars ($350.00). The Company will make all reasonable efforts to pay the retroactive portions of the wage increases in Article 4 and the bonus in this Article 5.b.iii on the next regularly scheduled pay date that is not less than seven (7) days after receipt of notice of the ratification of this Agreement.

ARTICLE 6 - Group Insurance and Other Benefits

a) Dental, Medical and Vision Insurance

The Company shall offer regular full-time employees the opportunity to participate in a health insurance plan, providing health, dental and vision benefits, effective on the first day of the month following commencement of full-time employment. As a condition of participation in such plan, eligible employees must agree to make the employee contribution, if any, then uniformly required by the Company under such plan for the type of coverage elected. The plan, including any employee contribution, may be changed at the discretion of the Company, provided that changes applicable to the employees covered by this Agreement shall be consistent with any changes applicable to employees not covered by this Agreement, including management employees.

b) Life Insurance

The Company shall provide life and accidental death and dismemberment insurance in the amount of $25,000 for all regular full-time employees, effective on the first day of the month following the commencement of full-time employment.

c) Short-Term Disability Insurance

The Company shall offer short-term disability coverage for purchase by all regular full-time employees, effective on the first day of the month following the commencement of full-time employment. The maximum weekly benefit shall be sixty percent (60%) of base straight-time wages, commencing with the first day of accident or hospitalization or the eighth day of illness, for a maximum of thirteen (13) weeks duration.

d) Long-Term Disability Insurance

The Company shall offer long-term disability coverage for purchase by all regular full-time employees, effective on the first day of the month following the commencement of full-time employment. The maximum monthly benefit shall be sixty percent (60%) of base straight-time wages, up to a maximum of $3,000 per

month, commencing in accordance with eligibility requirements set forth in the plan or policy.

e) Extent of Obligations

The Company may choose to arrange for funding of the foregoing benefits through insurance, self-funding, or a combination thereof. DTO reserves the right, in its sole and absolute discretion, to amend, modify or terminate, in whole or in part, any or all of the provisions of the benefit plans described herein. Further, DTO reserves the exclusive right, power and authority, in its sole and absolute discretion, to administer, apply and interpret the benefit plans described herein, and to decide all matters arising in connection with the operation or administration of such plans.

ARTICLE 7 - Vacations

Each regular full-rime employee who has earned vacation in accordance with the accrual and continuous service with the Company requirements set forth below shall be eligible to receive the following amount of vacation time off with pay during the succeeding anniversary year at the employee's regular straight-time hourly rate:

Years of Continuous Service	Weeks of Vacation
1 to 7 years	2
8 to 16 years	3
17 to 24 years	4
25 to 29 years	5

Employees with less than 8 years' service earn vacation at a rate of 3.077 hours per two-week pay period.

Employees with 8 years of service, but less than 17 years of service earn vacation at a rate of 4.615 hours per two-week pay period.

Employees with 17 years of service, but less than 25 years of service earn vacation at a rate of 6.153 hours per two-week pay period.

Employees with 25 years or more years of service earn vacation at a rate of 7.692 hours per two-week pay period.

Employees who meet the above two requirements: (1) length of continuous service with the Company; and (2) number of hours worked to accrue vacation, shall be entitled to receive a vacation. Requests for vacation time off will be granted, so far as practical, in order to ensure orderly and unhindered operations, the final right to allotment of vacations is exclusively reserved to and vested solely in the Company, and the Company may require an employee to defer taking a vacation which the Company determines would interfere with the efficient operation of the business. Vacation time must generally be scheduled and taken in weekly blocks, except for unusual situations where the Company agrees to make an exception and grant a single day vacation within its sole and absolute discretion. Any request for a single day vacation must be made to the

Department Manager not less than 48 hours in advance of the requested vacation day except for emergency or extenuating circumstances. All requests for single day vacation shall be subject to the requirements of the service. Vacation may be carried over from year to year up to a maximum amount of twice the employee's annual vacation allotment. The Company will determine how many employees may be on vacation at any given time and will provide a schedule of available vacation weeks from which employees will, in seniority order, select their vacations. In seniority order, each employee will have the opportunity to select one week's vacation for the coming year. When all eligible employees have had the opportunity to select one week's vacation, eligible employees will be given the opportunity, in seniority order, to select a second week's vacation. Under no circumstance may an employee take more than two consecutive weeks of vacation without the approval of both the Department Manager and Human Resource Manager.

ARTICLE 8 - Holidays

New Year's Day	President's Day
Memorial Day	Independence Day
Labor Day	Thanksgiving Day
Christmas Day	

Holiday Pay

Holiday pay for non-exempt regular full-time employees will be calculated based on the non-exempt employee's straight-time hourly rate of pay (as of the date of the holiday) time eight (8) hours the employee would otherwise have worked on that day. Benefited part-time employees' hours will be calculated based on the non-exempt employee's straight-time hourly rate of pay as of the date of the holiday) times six (6) hours the employee would otherwise have worked on that day. Exempt employees shall be paid one day's pay as holiday pay.

Generally, if a recognized holiday falls during an eligible employee's paid absence (such as a vacation or approved sick time) holiday pay will be provided instead of the paid time-off benefit that would otherwise have been applied.

Payment of holiday pay is granted to employees who are actively employed on the holiday and both the scheduled workday before and the scheduled workday after a holiday to include approved sick, vacation and excused absence days. Employees who are absent from work for unpaid leave such as FMLA and leave of absence will not be granted holiday pay. Holiday pay is not included in the calculation of weekly overtime.

ARTICLE 9 - Sick Leave

Each regular full-time employee employed prior to July 1 shall be allowed up to five (5) days of paid time off for illness in the following year. Each eligible full-time employee employed between July 1 and December 31 shall be allowed up to three (3) days of paid time off for illness in the following year and up to five (5) days in succeeding years. Accumulated but unused paid time off for illness shall not roll-over to any succeeding year. Use of paid time off for illness shall be in

accordance with the Company's policy as established from time-to-time in the Company's sole discretion.

ARTICLE 10 - 401(k)

The Company shall continue to offer employees the opportunity to participate in a Section 401(k) Plan, subject to the eligibility and other requirements of the Plan.

ARTICLE 11 - Bereavement Leave

Employees are eligible for up to three consecutive days off with pay at the employee's regular hourly rate of pay at 8 hours per day when a death occurs in the employee's family (spouse, parent, child, including step parent, step child, brother, sister, parent-in-law, brother-in-law, sister-in-law, and grandchildren, grandparents, grandparents-in-law). If more than three days is required, other paid or unpaid time off may be approved.

ARTICLE 12 - Jury Duty

An employee required to perform jury duty will be granted unconditional leave of absence for the duration of the duty. Pay status of Jury Duty for employees will be placed on administrative leave with compensation for the duration of duty. The Company will pay the difference between the amount paid by the court and the employee's regular hourly rate of pay, at 8 hours per day, regardless of the employee's run pay. Benefits will continue uninterrupted for the duration of paid leave associated with jury duty.

It is the employee's responsibility to notify his supervisor promptly upon receipt of a jury summons and subsequent notice of selection to serve as juror. The employee may be required to submit evidence of the summons and selection notice. Additionally, the employee should regularly notify his supervisor of the status of the duty and the anticipated duration of the trial, if reasonably possible.

Upon return to work from an absence due to jury duty, the employee must provide a note from the court confirming the dates the employee was in attendance for duty. In the absence of such a document or the ability to produce such a document, the employee's status for the time off will revert to unexcused leave.

ARTICLE 13 - Overtime

The Company will pay overtime at a rate of 1.5 x the base hourly rate for all worked over 40 per week.

ARTICLE 14 - Pay Day

Employees will be paid via direct deposit every two weeks on Thursdays for work performed during the two-week period ending the Saturday before pay day.

ARTICLE 15 - Seniority

Seniority means the length of continuous service of an employee covered by this Agreement. The seniority rosters as of the date of this Agreement are attached hereto as Exhibit 1. For employees hired after the date of this Agreement, seniority shall be established based upon the date the employee commences employment. The date the employee commences employment with the Company shall be listed on the seniority roster. Continuous service of an employee shall be broken, all seniority rights lost, by termination of employment. When two or more employees are physically present and compensated as a regular employee on the same day, they shall be ranked in alphabetical order by order of their last names. Any tie shall be decided in favor of the employee with the highest sum of the last four digits of his or her social security number. For the purposes of work bids, displacement rights, overtime call and vacation selection only, the employee's seniority date shall be the date the employee commences employment in their job classification. The date an employee commences employment in a particular job classification shall also be reflected on the seniority roster.

The Company shall post a copy of the seniority roster effective as of each January 1st for covered employees to review and provide a copy of such roster to the General Chairman. Any employee who wishes to protest a roster that the employee believes is inaccurate shall submit such protest in writing within 60 days of the posted date of the annual roster. Such written protests must be presented to the Company's Human Resource Manager and the General Chairman in the form of either a written letter or electronic mail. Employees who are not in active service when the annual roster is posted shall have sixty (60) days from their return to active service date within which to protest a seniority roster. Roster protests will be considered through consultation between the Company's Human Resource Manager and General Chairman. Company's Human Resource Manager and General Chairman agree on an inaccuracy, an amended roster will be posted.

ARTICLE 16 - Work Bids

Work Bids will take place approximately 3 times per year, coinciding with the RTD's regular network schedule changes. However, the Company may conduct work bids more or less frequently to accommodate maintenance, special service requirements, or other needs.

Employees will select work in order of seniority from a list of weekly duties, each described by:

- work days
- regular days off
- report time for each work day
- off time for each work day
- weekly scheduled work hours
- special notes

ARTICLE 17 - Part-Time Employees

The Company may hire part-time employees as needed after consultation and agreement with the Union in order to meet the needs of service. Part-time employees will not be used if any employee represented in this bargaining unit is furloughed, or use of part time employees results in the layoff of a full-time employee. Part-time employees shall be members of the Union and shall be paid the

same hourly rate as regular full-time employees. Except for provisions that apply only to full-time employees, this Agreement applies to part-time employees.

ARTICLE 18 - Reporting for Duty and Signing out.

Employees are required to sign-in and to sign-out at the location designated by the Company. Any employee who signs in or out for others shall be subject to disciplinary action. An employee must not sign-in more than 10 min before report time or any later than the report time.

ARTICLE 19 - Grievance Procedure

Any and all disputes and differences whatsoever, regarding the interpretation, application or meaning of this Agreement, between the Company on the one hand, and the Union or any employees of the Company represented by the Union on the other hand, shall be exclusively settled in the following manner and there shall be no interruption of the business.

The grievance procedure shall be as follows:

STEP 1: Any employee who believes that he/she has a justifiable complaint must first present and discuss the grievance with his or her proper supervisor. The employee's Union representative may file a grievance on Employees behalf if multiple Employees wish to present and discuss the same grievance. A Union representative may be present with the employee, or the employee may present the grievance alone, as the employee may elect. The time limit for the presentation and discussion of a grievance shall be seven (7) business days, following the date the employee knew or could reasonably have had knowledge of the event which gave rise to the grievance. The employee shall be given a full opportunity to present the grievance to his or her proper supervisor, including providing supporting documents. This Step 1 discussion shall be attended and facilitated by the Company's HR Manager or delegate. The discussion shall be recorded and a transcript (auto- generated by the recording program) will be made of all statements, and documents made a matter of record during the Step 1 discussion.

At the conclusion of the Step I discussion, the supervisor and the Union representative or employee, shall promptly, but in no event later than seven (7) business days following the date of the Step 1 discussion, complete and sign the Step I Disposition Form to be furnished to the Union General Chairman by email or USPS. In cases where discipline is assessed, the aforementioned recording, transcript and supporting documents will accompany the Disposition Form. Such Disposition Form shall show the nature of the complaint, the date of the discussion, the name(s) of the grievant(s), the decision of the supervisor and the response of the Union representative to such discussion and decision.

The settlement of a grievance at the Step I discussion shall not constitute a precedent.

STEP 2: If the matter is not settled at Step 1, and the Union wishes to appeal, the grievance must be reduced to writing and shall be referred to the General Manager, or his or her authorized representative. Such written grievance must be received by the Company within seven (7) business days of the date the Step 1 Disposition Form is furnished to the Union.

The appealed grievance shall be discussed at a mutually convenient time between the General Manager of the Company and the designated Union representative, or their authorized representatives, within seven (7) business days following the date upon which the Company received the Step 1 Disposition Form with the Union's appeal noted thereon, or the written appeal, as the case may be. At the conclusion of the Step 2 discussion, the General Manager of the Company and the designated Union representative, or their authorized representatives, shall promptly, but in no event later than seven (7) business days or such other deadline as may be mutually agreed upon by the Company and the Union following the date of the Step 2 discussion, complete and sign the Step 2 Disposition Form to be provided by the Union; if such a form is not provided, the Director of Human Resources of the Company, or his or her authorized representative, shall nevertheless answer the appeal within said period. The Step 2 Disposition Form shall contain a statement of the facts of the case, as alleged by the Union representatives; the relief sought, and the contract provisions relied upon; the decision of the Company representative; and the response of the Union representative to such decision. Any settlement at Step 2 shall constitute a precedent and shall be binding upon the Company, the Union and the aggrieved employee or employees.

STEP 3: If the grievance is not settled in Step 2, and when the Union representative has indicated his or her desire to appeal the grievance in the space provided for Union response on the Step 2 Disposition Form, the Union, but not an individual employee or employees, may submit the dispute to arbitration by serving a written request to arbitrate upon the Company by certified mail, return receipt requested, within seven (7) business days or such other deadline as may be mutually agreed upon by the Company and the Union following the timely completion of the Step 2 Disposition Form.

The parties shall then select an arbitrator. If the parties fail to agree on the selection of an arbitrator, such arbitrator shall be selected from a list of at least nine (9) arbitrators residing or working in the Denver Metropolitan area provided by the Federal Mediation and Conciliation Service. If one of the arbitrators on the list is not mutually acceptable, the parties will select an arbitrator within seven (7) business days of receipt of the panel by alternately striking names, and the last remaining name shall be selected. An arbitrable matter must involve the meaning and application of a specific provision of this Agreement. The provisions of this Agreement shall be the sole source of any rights, which either party may assert in arbitration. The arbitrator shall have no power to amend, add to, subtract from, or change the terms of this Agreement, and shall be authorized only to interpret the existing provisions of this Agreement and apply them to the specific facts of the grievance or dispute. The decision of the arbitrator shall be based wholly on the

evidence and arguments presented to him or her by the parties in the presence of each other, and ex parte arbitration hearings and awards are void. The decision of the arbitrator within the limits herein prescribed shall be final and binding on all parties to the dispute, including the employee or employees involved. The fee and expenses of the arbitrator shall be borne equally by the Company and the Union. No other joint expenses shall be incurred except by mutual written agreement of the parties.

Time Limits

Failure of the Union to file or appeal a grievance within the time limits herein shall bar said grievance. Failure of the Company to answer a grievance or an appeal to a grievance within the time limits herein shall result in the grievance being allowed as presented. The time limits may be extended by mutual agreement of the parties and must be in writing.

ARTICLE 20 - No Strikes or Lockouts

a) Strikes

During the term of this Agreement, neither the Union, nor any of its members, officers, stewards, agents or representatives, nor any employee, shall instigate, authorize, call, support, sanction, encourage, maintain, or in any way take part or participate in any strike, sympathy strike, walkout, work stoppage, work slowdown, work curtailment, refusal to cross picket line(s), cessation or interruption of work or production, or in any picketing of the Company's premises for any reason (or the premises or facilities of any of the Company's customers or suppliers because of any dispute between the Company and the Union or any of the Company's employees).

b) Union Responsibility

The Union agrees that it will use its best efforts to prevent any acts forbidden in this Article and that in the event any such acts take place or are engaged in by any employee or group of employees, the Union further agrees it will use its best efforts to cause an immediate cessation thereof. If the Union immediately takes steps in good faith to end any stoppages, strikes, picketing, intentional slowdown or suspension of work, the Company agrees that it will not bring action against the Union to establish responsibility for such wildcat or unauthorized conduct.

c) Discipline for Violations

The Company in its sole discretion may terminate the employment of or otherwise discipline any employee - or employees who engage in any act forbidden in this Article. In any arbitration over such discharge or discipline, the sole issue shall be the factual question of whether or not the employee engaged in any forbidden act.

Employees will not be disciplined for refusing to enter Company property when there is a reasonable fear for the Employee's safety.

d) No Lockouts

The Company will not lock out employees during the term of this Agreement.

ARTICLE 21 - Controlled Substance Testing

Employees shall be subject to the Company's policies on controlled substance testing.

ARTICLE 22 - Probationary Period

New employees will be in a probationary period during the first ninety (90} days of employment. During the probationary period, an employee will not have rights under Rule 19 Grievance Procedure.

ARTICLE 23 - Training Program

Employees requiring training will go through a training program that the Company develops in consultation with the Union. The Company will be responsible for the curriculum and implementation of the training. Employees selected by the Company in its sole discretion to serve as instructors as part of any formal Company training program shall be paid an allowance equal to $1.00 per hour in addition to hourly wages while serving as an instructor. The obligations of the instructor shall be established by the Company in writing as part of the training program. This allowance will be in addition to any hours worked including overtime.

ARTICLE 24 - 40 Hour Week

All full-time employees shall regularly be scheduled for at least forty (40) hours per week.

ARTICLE 25 - Subject to Call

Employees assigned to the following departments recognize the possibility of emergencies in the operation of the carrier and are subject to call; traction power, signal and communications, and track.

Employees assigned to or filling positions will notify their supervisor of their residence and telephone number and will respond as promptly as conditions will permit, when called for service outside of regular assigned working hours. Employees who desire to be off "subject to call" will notify their supervisor that they will not be available for calls, and will advise him when they expect to return. Unless registered absent, as above, the regular assignees, or employees filling such positions, will be called in seniority order for trouble on the assigned section or territory in the craft and class involved. In the event the regular assignee is not available, or needs assistance, other available employees covered by the Agreement will be called in seniority order from the class involved. In the event of a serious emergency, the Company may determine in its discretion that the needs of service require that all employees shall be subject to call. A minimum of three hours at the employee's base wage rate shall be paid to any employee who responds to call pursuant to this Article. To the extent the three hour minimum results in over 40 hours worked in that week, the employee shall be paid at the overtime rate set forth at Article 13.

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ARTICLE 26 - Attending Court Hearing, Inquest or Investigation

Employees attending court, hearing, inquest, investigation, or giving a deposition or stenographic statement in connection with legal proceedings as a witness on behalf of the Company at the direction of the Company, will be paid for the time actually lost on his or her assignments each day. Necessary expenses, including necessary travel expenses, will be paid when away from home.

Employees attending court, hearing, inquest, or investigation as a witness on behalf of the Company, or giving a deposition or stenographic statement in connection with legal proceedings at the direction of the Company, when no time is lost, will be paid at the base hourly rate of the last service worked. Necessary expenses, including necessary travel expenses, will be paid when away from home.

Any witness fees and mileage allowance will be remitted to the Company, by the employee, promptly after receipt.

If an Employee is summoned to testify as a witness in any civil or criminal proceeding, he/she should contact his/her manager for a determination of whether an absence from duty will be excused and the circumstances thereof.

ARTICLE 27 - Displacement Rights

Employees whose positions have been abolished, who have been off by reason of force reductions, or who have been displaced, must assert displacement rights if they desire to do so or if they are required to do so by the provisions of this agreement within three days from the effective date* of abolishment, lay off, or displacement unless a leave of absence has been granted under the provisions of this agreement.

*Note: The effective date as noted is defined as the first workday immediately following the last workday of the affected employee.

When two or more positions are abolished on the same date, the employees affected will be given preference in exercising displacement rights in the order of their seniority.

Except as otherwise provided in this agreement, an employee returning to duty after leave of absence, vacation, sickness, jury duty, disability, involuntary military service or suspension shall return to his former position or may exercise displacement to any position in any classification advertised during his absence which was awarded to a junior employee.

ARTICLE 28 - Leave of Absence to Serve in Union Position

An employee holding a full time elected or appointed official position with the Brotherhood of Railroad Signalmen will be granted a leave of absence, while holding such positions, for the tenure of their office. Such positions will be bulletined as permanent. An employee who ceases to hold such position will have thirty 30 calendar days from the termination dates on such position, to exercise his or her seniority rights in accordance with the rules of this agreement. Employees who

held full time elected or appointed official positions with the Brotherhood of Railroad Signalmen will be granted a leave of absence to attend the Union's annual meeting and its regular convention.

ARTICLE 29 - Job Abandonment

Employees who are absent for three (3) consecutive working days without providing proper notification to his or her Supervisor will be considered as having resigned from service. Such absence will not be deemed job abandonment if the employee is incapable of providing notification due to of either physical incapacity or circumstances beyond their control which prevented such notification. The employee must provide documented evidence to substantiate the reason for providing notification. If the Company refuses to accept such documented evidence, the employee or his representative may appeal such action in accordance with Rule 19 Grievances Procedure.

ARTICLE 30 - Tools/Company Issued Equipment

The Company will furnish the employees uniforms, tools and equipment as are necessary to perform their work. When tools and other Company issued equipment become worn to the extent they are unsafe, the railroad will furnish appropriate replacements.

Employees will be held responsible for the proper use and care of tools furnished by the Company, and when they leave the service of the railroad, will turn over to their supervisor all tools furnished them by the Company. Employee shall be responsible for the cost of any tools not returned upon separation from employment.

ARTICLE 31 - Contracting Out

The Company may not contract out work normally performed by an employee in this bargaining unit if any employee is furloughed, or the contracting out results in the layoff of an employee.

ARTICLE 32 - Scope

This agreement governs the rates of pay, hours of service, and working conditions of all employees working as Company employees listed in the following departments and engaged in the following duties, which may be changed by the Company in its sole discretion:

Operations Control Center

Employees engaged in the control and monitoring of all rail movement within Company's territory from a central Operations Control Center in accordance with schedules, railroad operating rules and procedures and FRA regulations will be known as Dispatchers. Dispatchers' duties include but are not limited to:

- Direct and coordinate rail traffic by using a computerized train control system to select the proper routing of trains.
- Monitor train movements, remotely control track switches, traction power, and signals.
- Application and remove blocking devices.
- Issue all track permits and authorities.

- Energize and de-energize traction power for maintenance and emergency purposes.
- Coordinate and prioritize on-track work on the track, signal, structures and traction power infrastructure with the efficient movement of scheduled trains.
- Maintain detailed and accurate records of train movements, permits and authorities and unusual events or incidents using manual processes and computerized software applications.
- Management of unexpected events and emergency situations to protect the public, railroad employees, and railroad property.
- Notify and coordinate all internal personnel and external emergency responders and direct the activities associated with emergency situations.
- Coordinate alternate revenue service during emergencies.
- Communicate by telephone, radio and intercom with field personnel, supervisors and other staff to coordinate and monitor train and on-track equipment movements, maintenance activity and requests for power control.
- Record and relay reports of equipment and infrastructure defects using computerized software applications.
- Perform the work of other classifications of employees for which the employee is qualified as determined by the Company in its sole discretion.
- All other work assigned by the Company in its sole discretion as Dispatcher's work.

Employees responsible for taking incoming maintenance calls, emails and maintenance system service requests from DTO personnel, RTD and/or vendors. This includes the notification, documentation, and management of all response efforts from DTO maintenance and vendors for routine and emergency maintenance issues to ensure completion of repairs will be known as **Operations Control Coordinators**. Operations Control Coordinator's duties include but are not limited to:

- Receive emergency and non-emergency maintenance issues on or near the RTDC system.
- Management of maintenance forces ensuring completion of repairs including gathering information concerning the nature and extent of the maintenance issue, entering information and all updates in Maintenance/Operations Management system, and providing documentation within the required contractual time period.
- Opening and closing of Service Requests for the maintenance department and/or vendors for maintenance issues.
- Contact and dispatch of maintenance departments or vendors as necessary.
- Follow up communications with the responding departments regarding status updates and completion of repairs.
- Notification of the Facilities Supervisor for all emergency maintenance issues.
- Notification of the Operations Control Center personnel of status of maintenance issues that may impact revenue train service.
- Communication and documentation of maintenance issues that impact customers using the PANMS system.
- Perform the work of other classifications of employees for which the employee is qualified as determined by the Company in its sole discretion.
- All other duties assigned by the Company in its sole discretion as Operations Control Coordinators work.

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Facilities

Employees engaged in the testing, maintenance, repair and inspection of buildings, structures and facilities to ensure compliance with DTO facility maintenance and safety standards will be known as **Facilities Maintainers**. Facilities Maintainers duties include but are not limited to:

- Inspection of buildings, structures and facilities to ensure compliance with DTO facility maintenance and safety standards.
- Performance of landscaping, sprinkler maintenance, crack repairs in asphalt and concrete, graffiti removal, painting, changing light bulbs, repairing lighting fixtures, snow removal, trash removal, building modifications, and all other facility maintenance that does not require the attention of a specialist or licensed craftsman.
- Repair boundary fencing and barriers.
- Maintenance, inspection and replacement and repair of signs, such as mile posts, speed restriction signs, resume speed signs, crossing and station signs, warning signs, and signs attached to buildings or other structures (except billboards).
- Identification and repair of all conditions that require attention in accordance with this Rule.
- Complete and maintain all records of completed inspections and repairs using AssetWorks Equipment Focus and other software tools.
- Perform the work of other classifications of employees for which the employee is qualified as determined by the Company in its sole discretion.
- All other work assigned by the Company in its sole discretion as Facilities Maintainer work.

Traction Power

Employees engaged in the testing, maintenance, repair and inspection of the traction power system including all overhead wires, substations, and catenary structures will be known as **Traction Power Technicians** and **Traction Power Apprentices**. The duties of these employees include but are not limited to:

- Operation, maintenance, troubleshooting, replacement, and repair of power substations including but not limited to: power transformers, protection relays, circuit breakers, switchboards, overhead catenary, and all electrical components of the traction power system.
- Troubleshooting and testing tasks on electrical and electronic components and circuits to locate defects. Repairs and/or replacement of defective components, conductors, and equipment.
- Execution of switching orders according to the power necessity, rack-in/rack-out 25kv circuit breakers.
- Overhead catenary inspections and all preventive maintenance including catenary line tensioning, electrical tests, adjustments and repairs on the traction electrification system including 25kv disconnect switches, surge arresters, insulators, arms, poles, and grounding systems.
- Entering of up-to-date, accurate records of performed duties into the electronic records- keeping database.

- Operation Maintenance-of-Way **(MOW)** equipment necessary to perform job duties following approved training practices and procedures.
- Perform the work of other classifications of employees for which the employee is qualified as determined by the Company in its sole discretion.
- All other work assigned by the Company in its sole discretion as Traction Power Technician's work.

Track

Employees engaged in the testing, maintenance, repair, and inspection of all tracks on the mainline, sidings, and in all yards, will be known as **Track Maintainers, Track Inspectors, and Track Apprentices**. The duties of the Track Maintainer include but are not limited to:

- Maintenance, inspection, testing, replacement, and repair and of all trackway features including ballast, sub-ballast, rails, guard rails, switch stands, switch points, frogs, ties, tie plates, spikes, anchors, joints, gauge rods, derails, bolt installation and removal; rail clips, PANDROL clips, track bolts, lags, and other fastening hardware, culverts, retaining walls, turntables, and drainage systems.
- Ballast unloading, regulating, equalizing, and stabilizing, track and switch undercutting, cribbing between ties, track surfacing, and lining.
- Construction of track panels.
- Road crossing installation and renewal work.
- Removal of dust, dirt, grease, snow, ice, and waste material from right of way, tracks, switches and structures (right of way).
- Cleaning, sandblasting, and painting of machines, equipment, bridges, turntables, platforms, walkways, handrails, buildings, and other equipment to prevent corrosion.
- Bending, cutting, and replacement of rail sections.
- Welding, grinding, burning, and cutting if trained for this role. (See Note)
- Operation of all equipment, on-track and otherwise, necessary for all trackway features. (See Note)
- Loading and unloading of work trucks and cleaning and maintenance of work areas.
- Concrete and masonry work (cut, demo, pour, finish) as needed.
- Maintenance and clearing of culverts and track drains and systems.
- Perform weed and vegetation control and removal on the right of way.
- Perform the work of other classifications of employees for which the employee is qualified as determined by the Company in its sole discretion.
- All other work assigned by the Company in its sole discretion as Track Maintainer's work.

The duties of a Track Inspector include but are not limited to:

- Performance of scheduled and unscheduled inspections of railroad track, infrastructure, and equipment in accordance with the FRA requirements in Title 49 Part 213 Subpart A- F.
- Performance of timely repairs of track defects to comply with FRA Class 4 track standards.

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- Preparation of detailed reports on the condition of all inspected items in accordance with FRA requirement with recommendations for routine and essential maintenance using AssetWorks LinearFocus module.
- Documentation of inspection findings, measurements, test results, and completed repairs into AssetWorks LinearFocus database.
- Use of electronic and mechanical measuring and recording equipment as part of the inspection process.
- All other work assigned by the Company in its sole discretion as Track Inspector's work.

Signal and Communications

Employees engaged in the testing, maintenance, replacement, and repair and inspection of signal system components including highway grade crossing equipment, signal signage (crossbucks, number of tracks signs, etc.), track circuits, switch machines, train to wayside communication systems, vital/non-vital processors, wayside detection devices, positive train control (PTC), signals, interlockings, signal circuit wiring, signal storage batteries, signal storage battery charging systems, power generators for signal systems, switch heaters, and all other signal and communication apparatus in accordance with state regulations and FRA Parts 234 and 236 will be known as **Signal Maintainer/Technicians,** and **Signal Apprentices**. The duties of these employees include but are not limited to:

- Performing required safety inspections and tests of signal system components and train control equipment in accordance with state regulations and FRA Parts 234 and 236.
- Performing preventive maintenance of signal system components and train control equipment in accordance with state regulations and FRA Parts 234 and 236.
- Diagnosis, troubleshooting and repair of all signal system and train control malfunctions.
- Documentation and reporting of all work and inspections in accordance with railroad, state, and FRA requirements.
- Maintaining up to date and accurate records of inspections, repairs, calibrations, and tests in the Asset Works Linear Focus module.
- Perform the work of other classifications of employees for which the employee is qualified as determined by the Company in its sole discretion.
- All other work assigned by the Company in its sole discretion as signal work.

Employees engaged in the testing, maintenance, repair, and inspection of the commuter railroad network and communications infrastructure, including voice, data, signal, train control, CCTV and network security services, communications office equipment, wayside or office equipment of communicating systems, will be known as **Communication Technicians and Communication Apprentices**. The duties of these employees include but are not limited to:

- Maintenance, inspection, testing and repair of communications systems used in train control equipment.
- Adjustment, alignment, and calibration of instruments and equipment as a result of testing.

- Troubleshooting of faulty equipment, electronic components, and circuits to locate defects and diagnose causes of malfunction.
- Replacement and repair of defective wiring and components, and/or adjust of mechanical parts.
- Maintenance of records of inspections, repairs, calibrations, and tests in Asset Works management system.
- Maintenance, inspection, testing and repair of Operations Control Center (OCC) system.
- Perform the work of other classifications of employees for which the employee is qualified as determined by the Company in its sole discretion.
- All other work assigned by the Company in its sole discretion as Communication's work.

If the Company determines in its sole discretion that it is necessary to use an employee in any of the classifications to perform the duties performed by another classification, the Company has the right to assign the employee to perform such duties provided that the employee is qualified to perform the duty assigned. Nothing in this Agreement shall limit the Company's right to add or merge classifications of employees following consultation with the Union and not less than thirty (30) days' notice to the Union and the impacted employees, provided all employees of such merged or additional classes shall continue to be members of the bargaining unit and shall be paid not less than their then current hourly rate of pay.

ARTICLE 33 - Miscellaneous

a) Accident Reports

Any employee involved in any accident or incident while on duty shall report as soon as possible to his/her direct supervisor said incident and any physical injury sustained by himself/herself or by others if known. Not later than by the end of the shift, the Employee shall fill out an "Unusual Occurrence report", in writing, in the form provided by the Company and shall tum-in all available names and addresses of witnesses to the accident or incident.

b) Background Checks

The Company will perform background checks on all employee candidates.

c) Personal Identification

All employees must carry and display at all times a personal identification ("ID") card, which will be provided by the Company. The ID card will be considered part of the uniform code under this Agreement. The Company will cover the replacement cost for the first ID card that is damaged or lost. Additional replacement ID cards will be charged to the employee at $10.00 per ID card.

d) Bulletin Board

The Company will make available to the Union a locked bulletin board located at the Company's facility. The Company will permit the Union or its representatives to distribute Union literature utilizing the bulletin Board. Postings may not be derogatory or offensive toward the Company or any individual employee.

ARTICLE 34 - Compliance with Applicable Law

It is the intent of the Company and the Union that the provisions of this Agreement apply with all applicable laws. In the event any provision of this Agreement shall be finally held to be invalid or unenforceable, the remaining provisions of this Agreement shall not be affected thereby, but shall continue in full force and effect. It is further agreed that in the event such provision is finally held to be invalid, the parties hereto agree to meet within thirty (30) days thereafter to negotiate a modification of, or substitution for, such clause or clauses so held to be invalid.

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V.S. Salama
Exhibit F-2

Signed at Denver, Colorado this 9th day of March, 2023.

For Brotherhood of Railroad Signalmen:

Jeremy Huckabee
General Chairman, BRS

For Denver Transit Operators, LLC:

Paul Kenney
General Manager, DTO

Timothy Tarrant
International Vice President, BRS

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