

INTERGOVERNMENTAL AGREEMENT

(38th and Blake Station/UPRR Relocation)

THIS INTERGOVERNMENTAL AGREEMENT (“IGA” or “Agreement”) is made and entered as of the Effective Date (defined below), by and between the **CITY AND COUNTY OF DENVER**, a home rule city and municipal corporation of the State of Colorado organized pursuant to Article XX of the Colorado Constitution (“City”), and the **REGIONAL TRANSPORTATION DISTRICT** (“RTD”), a political subdivision of the State of Colorado organized pursuant to the Regional Transportation District Act, C.R.S. §§ 32-9-101, *et seq.* The City and RTD may hereinafter be referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

- A.** RTD is authorized by the Regional Transportation District Act, C.R.S. §§ 32-9-101, *et seq.* (the “RTD Act”), to develop, maintain, and operate a mass transportation system for the benefit of the inhabitants of its District, as defined by the RTD Act.
- B.** The City is authorized by its Charter and C.R.S. §§ 29-1-201 *et seq.*, and RTD is authorized by the RTD Act and C.R.S. §§ 29-1-201 *et seq.*, to enter into this IGA.
- C.** Pursuant to the Colorado Constitution, Article XIV, Section 18(2)(a), and C.R.S. §§ 29-1-203 *et seq.*, both RTD and the City may cooperate or contract with each other to provide any function, service, or facility lawfully authorized to each, and any such contract may provide for sharing of costs.
- D.** RTD is constructing a new Commuter Rail line and associated improvements connecting Denver International Airport with a central intermodal facility at Denver Union Station (the “East Rail Line”).
- E.** RTD was approved by the FTA for the Eagle Project which includes the East Rail Line as part of the New Starts Program (the “Eagle Project”).
- F.** The Parties have previously entered into an Intergovernmental Agreement (Denver-RTD FasTracks East Corridor), as amended (“East Corridor IGA”) relating to the Parties’ rights, duties and obligations arising out of the East Rail Line including construction and operation of a station at 38th and Blake.
- G.** The Parties desire to enter into this Agreement in order to implement Paragraph 7.f of the East Corridor IGA so that RTD need not provide a second pedestrian bridge over 38th Street and instead the City will relocate the UPRR and build a second pedestrian bridge in the vicinity of 35th Street or 36th Street pursuant to the terms of this Agreement in order to improve access to the station platform.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I. GENERAL.

1.1. Recitals. The recitals set forth above are incorporated herein by this reference.

1.2. Scope of the Agreement. The Parties have previously entered into various other agreements which remain in effect until terminated and are not voided by this IGA; provided, however, that this Agreement supplements the East Corridor IGA. By entering into this Agreement, the Parties do not intend to terminate, modify, waive, or amend their rights in any other agreement between the Parties, other than as expressly set forth herein. To the extent there are any conflicts or inconsistencies between this IGA and any existing agreements, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: (1) this IGA; (2) the East Corridor IGA; and (3) other existing, applicable agreements between the Parties.

1.3. Exhibits. The following exhibits are attached and incorporated into this IGA by this reference:

Exhibit A	Depiction of 38 th & Blake Station Work
Exhibit B	Depiction of UPRR Relocation Work
Exhibit C	Depiction of the 2 nd Ped. Bridge Work
Exhibit D	Legal description of the RTD-UPRR Relocation Parcel
Exhibit E	Bus Routes East of the 38 th & Blake Station
Exhibit F	Temporary Construction Easement
Exhibit G	Form of RTD-UPRR Parcel Deed
Exhibit H-1	Form of Permanent Non-Exclusive Access Easement Agreement
Exhibit H-2	Form of Easement (Parking Lot Sanitary Facilities)
Exhibit I	Form of RTD Crossing Agreement
Exhibit J	Federal Requirements
Exhibit K	Notice of Final Acceptance for RTD-UPRR Relocation Work
Exhibit L	Reverter Quitclaim Deed for RTD-UPRR Relocation Parcel
Exhibit M	Form of Third Party Access to the RTDC Commuter Rail Right of Way

To the extent that there are inconsistencies between the exhibits and the language in this IGA, the language in the IGA shall take precedence.

1.4. Defined Terms. Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the East Corridor IGA, as applicable. The following is a non-exhaustive list of the key defined terms used in this IGA.

2nd Ped. Bridge means the pedestrian/bicycle bridge to be constructed and operated by the City over the UPRR and RTD tracks in the vicinity of 35th or 36th Streets, including without

limitation all vertical circulation, walks, plazas and other elements and appurtenances necessary to construct and achieve full functionality of the 2nd Ped. Bridge and to provide pedestrian and bicycle access between the 2nd Ped. Bridge and the 38th & Blake Station, all as generally depicted in **Exhibit C**.

2nd Ped. Bridge Work means the design and construction of the 2nd Ped. Bridge.

38th & Blake Station means a station near 38th and Blake Streets to be constructed and operated by RTD and the Concessionaire pursuant to the Concession Agreement.

38th & Blake Station Work means the design and construction by RTD and the Concessionaire of the 38th and Blake Station including but not limited to the platform and future platform extension, parking lot (other than the UPRR Relocation Work on the RTD-UPRR Relocation Parcel), 38th Street Pedestrian Bridge, improvements for the Central Corridor Extension, related pedestrian and bicycle improvements, and other appurtenances as generally depicted in **Exhibit A**.

38th Street Ped. Bridge means the pedestrian/bicycle bridge to be constructed by RTD and the Concessionaire over the UPRR and RTD tracks at 38th Street as part of the 38th & Blake Station Work.

Central Corridor Extension means the RTD project, described in the Environmental Evaluation dated February 2010 and adopted by the RTD Board of Directors on February 9, 2010, to bring the light rail across Blake St. into the 38th & Blake Station area connecting the light rail and commuter rail platforms as generally depicted in **Exhibit A**.

Design Criteria means Attachment 7 of the Concession Agreement and the Design Basis Manual.

FTA means the Federal Transit Administration.

FTA Requirements means any demands, conditions, qualifications and/or requirements set out by the Federal Transit Administration concerning RTD's obligations set forth in this Agreement.

PUC means the Colorado Public Utilities Commission.

RTD-UPRR Relocation Parcel means certain real property located on a portion of the north parking lot at the 38th & Blake Station owned by RTD as legally described in **Exhibit D**.

UPRR means the Union Pacific Railroad Company.

UPRR Agreements means the agreements between UPRR and the City concerning the UPRR Relocated Facilities and the UPRR Relocation Work.

UPRR Relocated Facilities means the UPRR maintenance/operations building and associated parking currently located at approximately 36th and Wazee ("UPRR Exchange

Parcel”) that the City intends to move to the RTD-UPRR Relocation Parcel and the UPRR-UPRR Relocation Parcel as depicted in **Exhibit B**.

UPRR Relocation Work means the design, construction and relocation by the City and its contractors of the UPRR Relocated Facilities and associated parking, utilities and other appurtenances from its current location at approximately 36th and Wazee onto the RTD-UPRR Relocation Parcel and the UPRR-UPRR Relocation Parcel located on and adjacent to a portion of the north parking lot at the 38th & Blake Station as depicted in **Exhibit B**.

UPRR-UPRR Relocation Parcel means certain real property owned by UPRR located adjacent to the RTD-UPRR Relocation Parcel on which a portion of the UPRR Relocated Facilities will be located.

II. EAGLE PROJECT.

2.1. 38th & Blake Station Work. No other work anticipated by this Agreement will unreasonably interfere with or delay the 38th & Blake Station Work from completion by commencement of revenue service on the East Rail Line. Any easements granted to the City by UPRR, or actions by the City related thereto, shall not cause UPRR to alter, amend or otherwise change the FasTracks Project – Property Transfer and Railroad Relocation Agreement, dated effective June 24, 2009 (as amended) together with any agreements executed in connection therewith (“Purchase and Sale Agreement”) between RTD and UPRR that addresses the easement UPRR will convey to RTD for the 38th Street Bridge, which is part of the 38th & Blake Station Work, unless agreed to by RTD and UPRR.

2.2. Bus Routes. RTD’s current and planned bus routes and bus stops are depicted on **Exhibit E**. If prior to 2020, the City requests a change to bus routes and bus stops as depicted on **Exhibit E**, the City shall not charge RTD for the cost of street improvements required to accommodate the requested change or ask RTD to make those improvements. In addition, if RTD changes its routes due to the UPRR Relocation Work, the City will not charge RTD for the cost of street improvements required to accommodate the RTD change or ask RTD to make those improvements.

2.3. Regulatory Compliance. RTD is responsible for compliance with zoning, site development plans and other regulatory requirements necessary to complete the 38th & Blake Station Work in accordance with the East Corridor IGA except as set forth in this Section 2.3. The City is responsible for compliance with regulatory requirements necessary to complete the UPRR Relocation Work. In addition, with RTD’s cooperation as a joint applicant, if necessary, the City will be responsible for obtaining and paying for any zone lot amendment or zoning use permit for the RTD-UPRR Relocation Parcel if necessary to complete the UPRR Relocation Work. Further, if the Site Development Plan must be recorded prior to closing of the transactions anticipated in Section 3.2 in order to complete the UPRR Relocation Work and RTD has reviewed and approved the Site Development Plan, RTD shall sign the Site Development Plan for the UPRR Relocation Work.

III. UPRR RELOCATED FACILITIES.

3.1 UPRR Relocation Work. The City will complete the UPRR Relocation Work, including but not limited to any environmental remediation, in accordance with the UPRR Agreement to which RTD will not be a party or otherwise legally bound. RTD has no responsibility for the UPRR Relocation Work or for costs associated therewith, except that RTD shall review and approve the design plans and specifications as set forth in Section 8.1.

3.2 Property Conveyances.

A. Environmental Documents Disclosure. RTD has already provided to the City copies of all environmental information, including soil reports, relating to the RTD-UPRR Relocation Parcel and the Easement Areas (defined below) of which it has actual knowledge. The City may disclose the environmental information provided by RTD that relates to the RTD-UPRR Relocation Parcel and the Easement Areas to the UPRR.

B. City Inspection. To the extent not already completed and subject to the terms, conditions and limitations of this Section and after first obtaining a Right of Entry, for a period of ninety (90) calendar days after the Effective Date (the “Inspection Period”), the City shall have the right to enter upon the RTD-UPRR Relocation Parcel and Easement Areas to inspect such parcels, including investigation of the physical condition, geotechnical investigation, and environmental investigation, including performing a Phase 1 Study, Phase 2 Study, if necessary, soil sampling, and any other intrusive sampling or monitoring of the land and buildings deemed necessary by the City or UPRR, at the City’s sole option and expense. The City may disclose the information it obtains as a result of its investigation to the UPRR. UPRR may enter onto the RTD-UPRR Relocation Parcel and the Easement Areas upon obtaining a right of access from Denver Transit Partners pursuant to the then-current Third Party Access to the RTDC Commuter Rail Right of Way (“Third Party Access”) for the purpose of overseeing the City’s due diligence work.

C. Title Matters Not Shown by the Public Records. RTD has delivered to the City copies of all survey(s), leases, easements, liens or other title matters not shown by the public records pertaining to the RTD-UPRR Relocation Parcel and the Easement Areas of which RTD has actual knowledge. The City may disclose any survey, title and other property information relating to the RTD-UPRR Relocation Parcel and Easement Areas disclosed by RTD to the UPRR. During the Inspection Period and after first obtaining a Right of Entry, the City shall have the right to inspect the RTD-UPRR Relocation Parcel and Easement Areas to investigate if any third party has any right in the parcel not shown by the public records (such as an unrecorded easement, unrecorded lease, or boundary line discrepancy).

D. Title Review. No later than seven (7) calendar days after the Effective Date, the City may obtain a title commitment for the RTD-UPRR Relocation Parcel and Easement Areas and copies of exception documents shown thereon.

E. Elect to Close. If the City elects to close on either or both of the RTD-UPRR Relocation Parcel and Easement Areas, the City shall deliver to RTD written notice of its intent to close (“Notice to Close”) within seven (7) calendar days after the end of the Inspection Period

or sooner, whereby the City waives the timeframes set forth in Sub-sections 3.2.B, 3.2.C and 3.2.D. If the City does not timely deliver to RTD such Notice to Close, the City shall promptly repay any funds paid by RTD to the City as set forth in Section 6.1 and this Agreement, including RTD's obligations to convey property and pay funds, shall terminate immediately.

F. Conveyance. If the City timely delivers the Notice to Close as set forth in Section 3.2E, then within thirty (30) calendar days or as soon as reasonably practicable after RTD received such notice, RTD shall convey either or all of the following, as set forth in the Notice to Close: (i) the RTD-UPRR Relocation Parcel to the City by a quitclaim deed in substantially the form set forth in **Exhibit G** ("Deed") together with a legal description of the RTD-UPRR Relocation Parcel substantially as provided in **Exhibit D**; (ii) a permanent, non-exclusive easement reasonably necessary for access for fire emergency vehicles and for secondary vehicle access to the RTD-UPRR Relocation Parcel ("Permanent Access Easement"), in substantially the form as set forth in **Exhibit H-1**; and (iii) a permanent, non-exclusive easement for an eight inch pipeline for sanitary sewage and the right to allow a private sanitary sewage service line connecting to the RTD-UPRR Relocation Parcel ("Sanitary Easement"), in substantially the form as set forth in **Exhibit H-2**; provided, however, that RTD shall have no obligation to complete the conveyance until RTD and its contractor receive site plan approval for the redesigned 38th & Blake Station. The City's Manager of Public Works and RTD shall agree upon the legal descriptions for the Permanent Access Easement and the Sanitary Easement, and such legal descriptions must be attached to the respective easement prior to conveyance and will be collectively known in this Agreement as the "Easement Areas". RTD makes no representations or warranties as to the condition or title of the RTD-UPRR Relocation Parcel, the Easement Areas or any other RTD property and the City is solely responsible for conducting any due diligence reviews, including but not limited to environmental and title reviews. The property conveyances made pursuant to this Section 3.2 will be without monetary compensation but all costs to convey are at the City's sole cost and expense. The City shall be responsible for any costs of environmental remediation of the RTD-UPRR Relocation Parcel and Easement Areas generated by the UPRR Relocation Work as required by any regulatory body, without recourse to RTD.

3.3 Possibility of Reverter. Upon the fifth anniversary following the recording of the RTD-UPRR Relocation Parcel Deed, the RTD-UPRR Relocation Parcel shall automatically revert back to RTD, and the City, at the City's sole cost and expense and to the reasonable satisfaction of RTD, shall remove all improvements and return the property to substantially the same condition as when RTD originally conveyed the RTD-UPRR Relocation Parcel, unless the City's Manager of Public Works and UPRR have previously notified RTD that the UPRR Relocation Work is complete and UPRR has accepted the UPRR Relocation Work, the substantially final form of which is set forth in **Exhibit K**, attached hereto and incorporated herein ("Notice of Final Acceptance"). Within ten (10) business days after receipt of such Notice of Final Acceptance, RTD shall execute and record a Quitclaim Deed, the substantially final form of which is set forth in **Exhibit L**, attached hereto and incorporated herein ("RTD-UPRR Relocation Parcel Reverter Quitclaim Deed") quitclaiming to the City and UPRR all of its reversionary and other interests in the RTD-UPRR Relocation Parcel in the Denver County real property records.

IV. 2ND PED. BRIDGE.

4.1. 2nd Ped. Bridge Work. The City shall complete the 2nd Ped. Bridge Work and the City thereafter will own and maintain the 2nd Ped. Bridge in accordance with the terms of the Crossing Agreement. RTD has no responsibility for the 2nd Ped. Bridge, for the 2nd Ped. Bridge Work or for costs associated therewith except as specifically provided in this Agreement, including the attached Crossing Agreement. RTD will have no obligation to acquire property or property interests for the 2nd Ped. Bridge or the 2nd Ped. Bridge Work.

4.2. Design. The specific location of the 2nd Ped. Bridge will be determined as part of the design process. The design of the 2nd Ped. Bridge must, at a minimum, satisfy the following requirements: (i) conform to the Design Criteria and generally recognized professional engineering standards; (ii) comply with all applicable federal safety standards; (iii) meet all applicable state and local code requirements; and (iv) the bottom of the 2nd Ped. Bridge with all necessary attachments shall be a minimum of 30 feet above the top of the rail, a minimum of 2 feet above existing or planned wires, and a minimum of 10 feet horizontal clearance from any existing OCS poles substantially in compliance with **Exhibit C**. The City will invite RTD to participate in all design meetings for the 2nd Ped. Bridge. RTD shall have the right to review and approve the design plans and specifications for the 2nd Ped. Bridge as set forth in Section 8.2 of this Agreement. The City will not commence construction of the 2nd Ped. Bridge until RTD has reviewed and approved the 100% design plans and specifications.

4.3. 2nd Ped. Bridge Crossing Agreement. If necessary to implement the 2nd Ped. Bridge, the City, at its sole cost and expense, shall identify and deliver to RTD legal descriptions of any RTD aerial rights necessary to construct the 2nd Ped. Bridge. Within thirty (30) calendar days or as soon as reasonably practicable after RTD approves the legal description, the Parties will execute a Pedestrian Overpass Crossing Agreement for the 2nd Ped. Bridge (“RTD Crossing Agreement”), substantially in the form of Pedestrian Overpass Crossing Agreement attached as **Exhibit I**; provided, however, that RTD shall have no obligation to convey any aerial rights or to execute the RTD Crossing Agreement until the City has obtained PUC approval or conditional approval to implement the 2nd Ped. Bridge. The RTD Crossing Agreement and the RTD Crossing Agreement area shall NOT include any permanent touchdown rights but shall include aerial rights as identified in the legal description approved by RTD. RTD’s execution of the RTD Crossing Agreement or any property conveyances made pursuant to this Section 4.3 will be without monetary compensation but all costs to convey are at the City’s sole cost and expense.

4.4 PUC Orders. The City shall be solely responsible for obtaining, including but not limited to preparing and applying for all PUC orders necessary for the 2nd Ped. Bridge including all costs associated with such PUC applications. RTD will provide information and documentation relating to the commuter rail modifications and operations necessary to submit the applications and otherwise reasonably cooperate with the City on PUC matters relating to the 2nd Ped. Bridge.

V. FEDERAL MATTERS.

5.1 Compliance with Federal Requirements. The Parties expressly acknowledge and agree that the 38th & Blake Station Work, acquisitions of property necessary to complete the 38th & Blake Station Work, the 2nd Ped. Bridge Work, and the RTD payments are to be paid for, in part, by federal funding and/or credit assistance. Accordingly, the Parties agree to comply with the applicable provisions of the FTA Full Funding Grant Agreement, the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. § 4601 et seq. (the “Uniform Act”), the Uniform Act’s implementing regulations at 49 CFR Part 24, Section 1113 of the Federal Moving Ahead for Progress in the 21st Century Act (“MAP-21”) codified at 23 U.S.C. § 149 and its implementing regulations (“CMAQ”) as administered by the Denver Regional Council of Governments (“DRCOG”), Federal Transit Administration Circular 5010 Grants Management-General, and the FTA Requirements.

5.2 RTD Payments. The RTD payments described in Sections 6.1 and 6.2 shall occur as set forth therein, but if the FTA or DRCOG objects to the RTD Payments, the Parties shall work cooperatively and in good faith to resolve the concerns prior to making any further payments. RTD’s approval of or payment for an invoice shall not be considered a review of the City’s federal funding compliance practices or an approval of such practices and shall in no way relieve the City of its responsibility to ensure its own compliance with any applicable requirements. In the event any amount paid by RTD with federal funds is later determined to be ineligible for federal funding by any federal agency, the City shall reimburse RTD the full amount of those funds paid to the City and any interest or penalties.

5.3 Property Conveyances. The property conveyances described in Sections 3.2 and 4.3 herein shall occur as set forth herein but if the FTA objects to the property conveyances, the Parties shall work cooperatively and in good faith to resolve the FTA’s concerns prior to making any property conveyances.

5.4 Federal Procurement Requirements.

A. General Federal Requirements. The 2nd Ped. Bridge Work is subject to, and the City shall comply with the terms and conditions set forth in **Exhibit J, Federal Requirements**, which includes FTA Circular 4220.1F. Sections 1.1, 1.5, 2.1, and 3 of Exhibit J do not apply to work self-performed by the City. The City shall provide RTD the opportunity to review and approve the solicitation for the construction contract, the construction contract and any subsequent amendments to the design contract for the 2nd Ped. Bridge for compliance with the federal requirements set out in this Agreement, and the parties will determine a DBE goal for construction once a scope of work is available. The City shall provide to RTD copies of all executed contracts and subcontracts not later than 30 calendar days from execution thereof. If RTD or FTA should issue findings following an audit of this IGA or any such contracts for compliance with the Federal Requirements, the City agrees to use good faith efforts to seek City Council approval of amendments to any such contracts in order to respond to the audit findings.

B. Retainage and Bonds. The City shall comply with the applicable provisions of C.R.S. § 24-91-101 *et seq.* and C.R.S. § 38-26-101 *et seq.* in the procurement, administration and closeout of applicable construction contracts awarded for the 2nd Ped. Bridge Work. The City

shall ensure that RTD is an obligee on all public works bonds obtained by the City's contractors for construction of the 2nd Ped. Bridge. The City shall forward to RTD executed copies of such bonds and all contracts and subcontracts for design, construction, materials or otherwise that are entered into with respect to the 2nd Ped. Bridge.

C. Permits. The City shall be solely responsible to obtain permits necessary to implement the 2nd Ped. Bridge. The City shall forward to RTD executed copies of such permits and approvals received by it.

D. Reporting. The City shall provide to RTD a quarterly report consisting of a brief narrative about the current status of the 2nd Ped. Bridge Work, specifically advising of any change in milestone dates from the previous reporting period, and advising of the status of achievement of the following milestones for its contract(s):

- (A) bid date or estimated date;
- (B) contractor on board date;
- (C) final design completion date;
- (D) construction completion date;
- (E) contract completion date; and
- (F) major milestone completion dates.

VI. RTD PAYMENTS.

6.1 First Payment. As of the Effective Date, RTD agrees to reimburse the City up to Five Hundred Thousand Dollars (\$500,000) in federal funds, if authorized for such purpose, for costs incurred by the City to design and construct the 2nd Ped. Bridge. If the City has not completed design of the 2nd Ped. Bridge (including receiving RTD approval of the design) by December 31, 2015, the City must promptly repay any amounts paid by RTD pursuant to this Section 6.1, up to Two Hundred Fifty Thousand Dollars (\$250,000).

6.2 Second Payment. RTD agrees to reimburse the City up to One Million Dollars (\$1,000,000) in federal funds, if authorized for such purpose, for costs incurred by the City to construct the 2nd Ped. Bridge. All invoices for payment pursuant to this Section 6.2 must be received and approved by RTD no later than the time frames required by the funding source of such Second Payment. If federal funds are not available or authorized for the purpose identified in this Agreement, despite the Parties' good-faith efforts, the Parties shall cooperate in good faith to seek other funding sources.

6.3 Invoicing. The City must submit an invoice to RTD seeking reimbursement for the amounts set forth in Sections 6.1 and 6.2. Each invoice must include an itemized list of services and/or goods supplied, with the contractor's invoice and evidence of payment by the City attached. RTD will reimburse the City for all approved invoices within sixty (60) calendar days after RTD receives the invoice.

6.4 Betterments. Any additional work beyond the work reflected in the Public Infrastructure (35th/36th Pedestrian Bridge) Plans dated 6/9/14 and the installation of additional wi-fi antennas to address interference because of the 2nd Ped. Bridge, if needed, to be performed by RTD or its contractor and requested by the City will be a request for a Betterment, as that term is defined in the East Corridor IGA. The City has agreed that the UPRR Relocation Work or the 2nd Ped. Bridge Work has caused RTD additional work to redesign the 38th & Blake Station and to construct the redesigned station and this will be treated as a Betterment (“Yard Office Betterment”). The cost for such Yard Office Betterment up to One Hundred Fifty Thousand Dollars (\$150,000) has been approved by the City and RTD shall apply an offset credit against the Second Payment. For any other Betterments requested by the City, RTD will submit an invoice to the City for any costs incurred by RTD or its contractor to implement the Betterment. The City shall pay the invoice within sixty (60) calendar days after its receipt of the invoice.

VII. TEMPORARY RIGHTS.

7.1 Temporary Construction Easement. If necessary, the City may obtain a non-exclusive, temporary construction easement (“TCE”) from RTD substantially in the form attached as **Exhibit F**, which TCE shall be subject to the City first obtaining a right of entry from Denver Transit Partners (“DTP”), which form of Third Party Access to the RTDC Commuter Rail Right of Way is attached here to as Exhibit M and incorporated herein and attached as Exhibit C to the TCE, for the UPRR Relocation Work to be performed on RTD property outside of the RTD-UPRR Relocation Parcel. A TCE granted pursuant to this Section 7.1, if any, shall be granted without monetary compensation to RTD; provided, however, that the City shall be responsible for all costs and expenses concerning compliance with the terms and conditions of the TCE. In performing any work pursuant to the TCE, the City shall coordinate with RTD and DTP to ensure that the City and its contractors do not interfere with the 38th & Blake Station Work.

VIII. DESIGN REVIEW AND APPROVAL.

8.1. UPRR Relocated Facilities. RTD and RTD’s Concessionaire shall have the right to review and RTD shall have the right to approve, which reviews and approvals shall be timely and not unreasonably withheld, the design of the UPRR Relocation Work as approved by UPRR solely to ensure compliance with this IGA and the East Corridor IGA and in addition, to ensure there are no adverse impacts to the 38th & Blake Station or the 38th & Blake Station Work.

8.2. 2nd Ped. Bridge. RTD shall have the right to review and approve, which review and approvals shall be timely and not unreasonably withheld, design of the 2nd Ped. Bridge. Reasonableness in design approval includes, but is not limited to, costs incurred as a result of the 2nd Ped. Bridge’s impacts on the then-existing or designed RTD system. The City shall submit design plans and specifications to RTD at the 30%, 60% and 100% IFC design levels. In relation to the 30% and 60% design levels, RTD will review and respond within thirty (30) calendar days of receipt unless otherwise agreed by the Parties. In relation to the 100% IFC design level, RTD will review and respond within ten (10) business days of receipt unless otherwise agreed by the Parties. The City shall timely resolve RTD’s comments including without limitation ensuring that the design contract allows sufficient time for the design firm and the City to address and resolve RTD’s comments. In accordance with the RTD Crossing Agreement, the City shall not

commence construction of the 2nd Ped. Bridge, and RTD shall not have any obligation to convey any property interest concerning the 2nd Ped. Bridge until RTD has reviewed and approved the design plans and specifications for the 2nd Ped. Bridge.

IX. NOTICES.

9.1. Except as may be specifically required herein, all communications required by this IGA shall be made in writing, via U.S. First Class Post, e-mail or facsimile, to the following individuals (or their delegates):

To the City: City and County of Denver
 Manager, Public Works
 201 W. Colfax Ave., Dept. 608
 Denver, CO 80202
 Phone: (720) 865-8710
 Facsimile: (720) 865-8795

With a copy to: Denver City Attorney's Office
 201 W. Colfax, Dept. 1207
 Denver, CO 80202
 Attn: Karen Aviles
 Phone: (720) 865-8772
 Facsimile: (720) 913-3180

 Director of the Division of Real Estate
 201 W. Colfax, Dept 1010
 Denver, CO 80202

To RTD: Eagle Project Director
 Regional Transportation District
 1670 Broadway, Suite 2700
 Denver, Colorado 80202
 Phone: (303) 299-2173

With a copy to: RTD General Counsel
 1600 Blake St. BLK-23
 Denver, CO 80202
 Attn: Jenifer Ross-Amato
 Phone: (303) 299-2479
 Fax: (303) 299-2217

Said notice information may be changed or additions made at the discretion of each Party by written communication to the other Party.

X. DISPUTES.

10.1. Resolution. Disputes concerning this IGA shall be initially resolved between the RTD Deputy Assistant General Manager for Capital Programs and the City's FasTracks Liaison. If

these persons are unable to resolve the dispute, they shall document the basis for dispute, either independently or together, and forward such information to senior management in accordance with the following escalation process: (i) RTD's Assistant General Manager, Capital Programs and the City's Manager of Public Works, and then (ii) RTD's General Manager and the City's Mayor.

10.2. Notice of Claims. The Parties will promptly notify each other of any claims relating to this Agreement, and will mutually cooperate in resolving such claims. The Parties will negotiate to determine whether and what equitable adjustments may be required if a change in approved plans is deemed necessary.

XI. MISCELLANEOUS.

11.1. Approval by City Council and RTD Board. This IGA, and each and every of its provisions and terms, is expressly subject to, and shall not be or become effective or binding on the City or RTD until approved by the City Council, if such approval is required by the City Charter, and the RTD Board, respectively, in accordance with each Party's internal procedures and signed by the Parties.

11.2. Appropriation by City Council and RTD Board. Unless already appropriated as set forth herein, this IGA does not commit any present funding by either Party. The obligations of the Parties under this IGA shall extend only to monies appropriated for the purpose of this IGA by the RTD Board and/or Denver's City Council, as appropriate, subject to each entity's legally required budgeting, authorization, and appropriation process. The Parties acknowledge that they do not through this IGA irrevocably pledge present cash reserved for payments in future years, and that this IGA is not intended to create a multiple fiscal year direct or indirect debt or obligation of the Parties.

11.3. Governing Law; Venue. This IGA shall be interpreted and enforced according to the laws of the State of Colorado, the Charter and ordinances of the City, applicable provisions of federal law, and the applicable rules and regulations promulgated under any of them. Venue for any action hereunder shall be in the Denver District Court, City and County of Denver, State of Colorado.

11.4. Colorado Open Records Act. The Parties acknowledge that the City and RTD are subject to the provisions of the Colorado Open Records Act, Colorado Revised Statutes §24-72-201 *et seq.*, and agree that they will fully cooperate with each other, and RTD will require its Concessionaire to cooperate with the City, in the event of a request or lawsuit arising under such act for the disclosure of any materials or information which either party asserts is confidential and exempt from disclosure. Any other provision of this IGA notwithstanding, including exhibits, attachments and other documents incorporated by reference, all materials, records and information provided by each Party to the other shall be considered confidential by the Parties only to the extent provided in the Open Records Act, and each Party agrees that any disclosure of information by the other consistent with the provisions of the Open Records Act shall result in no liability of the other Party.

11.5. Inspection of Records.

A. The Parties agree that, at the cost of the requesting Party, any duly authorized representative of RTD or the City, including the City Auditor, or any internal or external auditor of the City or RTD shall, until the expiration of three (3) years after the final reconciliation or payment under this IGA, have access to and the right to copy any books, documents, papers, and records involving transactions and work related to this IGA.

B. In connection with any work performed hereunder on items of work toward which federal funds may be received, the City, RTD, and their authorized representatives shall have access to any books, documents, papers, and records for the purpose of making audit, examination, excerpts and transcriptions.

11.6. Information Furnished by Parties. Each Party will furnish to the other available information concerning any matters that may be necessary or useful in connection with the work to be performed under this IGA. However, the City and RTD do not guarantee the accuracy of such information, and each party shall be responsible for the verification of the information provided by the other.

11.7. No Third-Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this IGA, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties hereto, and nothing contained in this IGA shall give or allow any such claim or right of action by any other or third person under this IGA, including RTD's Concessionaire, RTD contractors, the City's contractors, and UPRR. The City and RTD are not joint ventures of one another, or that any officer, employee, agent, or contractor of one Party is an officer, employee, agent, or contractor of the other Party for the purposes of unemployment compensation, workers compensation, or any other purpose whatsoever.

11.8. No Discrimination in Employment. In connection with the performance of work under this IGA, the Parties agree not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation, terms, conditions or privileges of employment against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability.

11.9. Compliance with All Laws and Regulations.

A. All of the work performed under this IGA by either Party shall comply with all applicable laws, rules, regulations and codes of the United States and the State of Colorado and with the charter, ordinances, and rules and regulations of the City and County of Denver. All work performed under this IGA shall comply with all applicable patent, trademark and copyright laws, rules, regulations and codes of the United States. The Parties agree that they will not utilize any protected patent, trademark or copyright in performance of work under this IGA unless the Party has obtained proper permission and all releases and other necessary documents.

B. Nothing herein shall constitute a mandatory charge, requirement, or liability in any ensuing fiscal year beyond the then current fiscal year. No provision of this IGA shall be construed or interpreted as a delegation by the City or RTD of its governmental powers.

11.10. Changes in Law. This IGA is subject to such modifications as may be required by changes in City, state or federal law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this IGA on the effective date of such change as if fully set forth herein.

11.11. Conflicts of Interest. The Parties agree that no employee of either Party shall have any personal or beneficial interest whatsoever in the services or property described herein and RTD further agrees not to hire, or contract for services with, any employee or officer of Denver which would be in violation of the Denver Revised Municipal Code, Chapter 2, Article IV, Code of Ethics, or Denver City Charter provisions C5.13 and C5.14. No officer, employee or agent of RTD, nor any member of the RTD Board, nor any member of Congress, nor any other public official or employee of the governing body of the locality or localities included within the district, during his or her tenure, or for one (1) year thereafter, shall have any personal pecuniary or property interest, direct or indirect, in this Agreement or the proceeds hereof.

11.12. Liability. The Parties agree that both Parties, their officers, officials, and employees, are relying on, and do not waive or intend to waive by any provisions of this, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 to 120 (“CGIA”), or otherwise available to either party of their officers, officials and employees. As between the Parties, and without either the City or RTD waiving any of the rights and protections provided under the CGIA, each Party hereto shall be responsible for its own negligence and that of its agents and employees in the performance of this IGA. If either Party is given notice of claim or suit against or involving the other arising from the implementation of this IGA or the design or construction of the project, it agrees to give the other Party prompt written notice of such claim or suit.

11.13. Assignment; Successors. Except as set forth herein each Party agrees not to assign, pledge, transfer or sublet its rights in this IGA, in whole or in part, nor grant any license or concession hereunder, except as otherwise provided herein, without the prior written consent of the other party. Consent of the City shall be evidenced by a written letter from the Manager of Public Works. This IGA shall be binding upon and extend to the successors and assigns of the respective Parties. RTD acknowledges that the RTD-UPRR Relocation Parcel will be conveyed to UPRR by the City.

11.14. Professional Responsibility. The Parties and their contractors shall faithfully perform the work required under this IGA in accordance with standard of care, skill, training, diligence, and judgment provided by highly competent professionals who perform work of a similar nature to the work described in this IGA.

11.15. Taxes, Charges and Penalties. The Parties shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by the Denver Revised Municipal Code.

11.16. Severability. To the extent that this IGA may be executed and performance of the obligations of the Parties may be accomplished within the intent of the IGA, the terms of the IGA are severable, and should any term or provision hereof be declared invalid or become

inoperative for any reason, such invalidity or failure shall not affect the validity of any other terms or provision hereof.

11.17. Force Majeure. Neither party shall be liable in damages or have the right to terminate this IGA for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions, wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

11.18. Waiver. In no event shall any performance by a Party under this IGA constitute or be construed to be a waiver by that Party of any breach of term, covenant, condition, or right stated in this IGA or applicable law, or of any default which may then exist on the part of the other Party. The tender of any such performance when a breach or default exists shall not impair or prejudice any right or remedy available to a Party with respect to such breach or default. No assent, express or implied, to any breach of a term, covenant, or condition of this IGA shall be construed as a waiver of any other term, or the same term upon a subsequent breach.

11.19. Paragraph Headings. The captions and headings set forth in this IGA are for convenience of reference only and shall not be construed so as to define or limit its terms and provisions.

11.20. Counterparts. This IGA may be executed in counterparts. Signatures on separate originals shall constitute and be of the same effect as signatures on the same original. Electronic and faxed signatures shall constitute original signatures.

11.21. Authority. The Parties represent and assure that each possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action necessary, to enter into this Agreement. The person or persons signing and executing this Agreement on behalf of both Parties, represent that he/she has been fully authorized to execute this Agreement on behalf of their jurisdiction and to validly and legally bind their jurisdiction to all the terms, performances and provisions herein set forth.

11.22. Electronic Signatures and Electronic Records. The Parties consent to the use of electronic signatures for execution of this Agreement. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by either Party in the manner specified by that Party. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record solely on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

11.23. IGA Effective Date, Term and Termination. The Effective Date of this IGA shall be the last date this IGA was executed by one of the Parties as evidenced by the date set forth on the signature pages hereto. The Term of this IGA shall commence on the Effective Date, and shall remain in effect until final inspection and acceptance of the 2nd Ped. Bridge Work by the City or until all obligations pursuant to this Agreement are satisfied, whichever is later. All provisions

of this IGA that provide rights or create responsibilities for the Parties after termination shall survive termination of this IGA.

11.24. Reasonableness of Consent or Approval. Required approvals or consents shall not be unreasonably withheld, conditioned, or delayed.

11.25. Cooperation. The Parties shall cooperate and work in good faith to complete all work under this IGA.

11.26. Status of Parties. The Parties agree that the status of each Party shall be that of an independent contractor to the other, and it is not intended, nor shall it be construed, that one Party or any officer, employee, agent or contractor of such Party is an employee, officer, or agent of the other Party for purposes of unemployment compensation, workers' compensation, or for any purpose whatsoever.

[End of Page; Signature Page Follows]

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of: _____.

CITY AND COUNTY OF DENVER

ATTEST:

By: _____

Clerk and Recorder, Ex-Officio Clerk
of the City and County of Denver

By: _____
Michael Hancock
Mayor

APPROVED AS TO FORM:

Denver City Attorney,

By: _____
Assistant City Attorney

REGISTERED AND COUNTERSIGNED:

By: _____
Manager of Finance

By: _____
Auditor

“CITY”

**REGIONAL TRANSPORTATION
DISTRICT**

Approved as to Legal Form for RTD:

By: _____
Phillip A. Washington
General Manager

By: _____
Jenifer M. Ross-Amato
Associate General Counsel

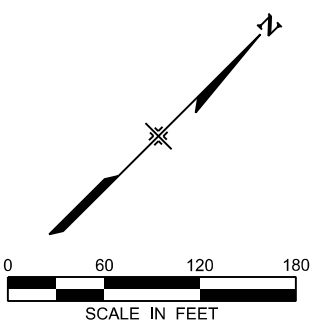
Date: _____

EXHIBIT A

Depiction of 38th & Blake Station Work

(Pages follow)

EXHIBIT A



Year 2030 Parking Per East Corridor EIS (Underground detention at station will be required)

Year 2016 Parking Facility (200 total required in conjunction with lot on Blake)

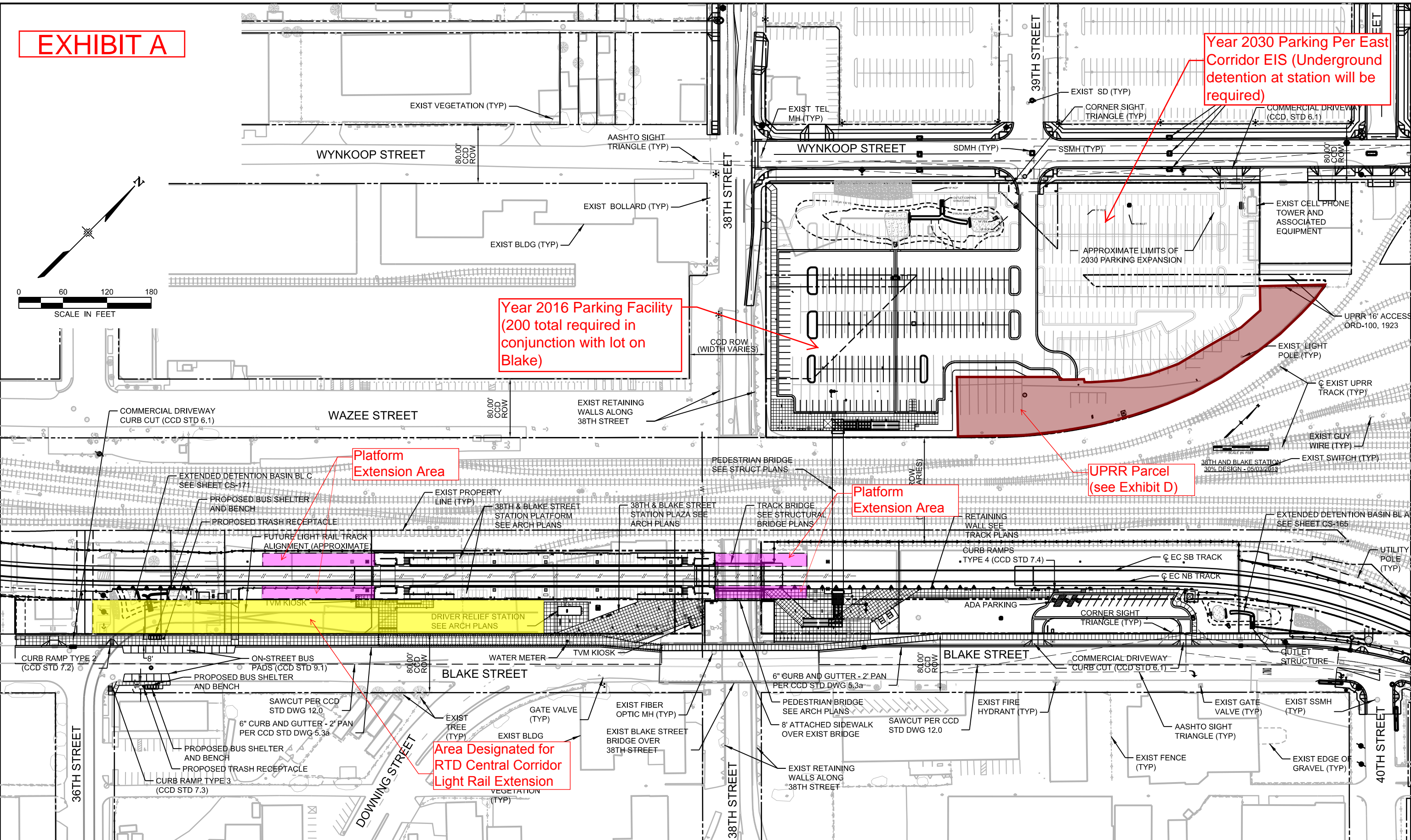
UPRR Parcel (see Exhibit D)

Platform Extension Area

Platform Extension Area

Area Designated for RTD Central Corridor Light Rail Extension

c:\pwworking\rd_eagle_p3\jbauechler\dms4122217B-09.01F_EC-C-CS-110.dgn 7/29/2013 USER: JBuechler

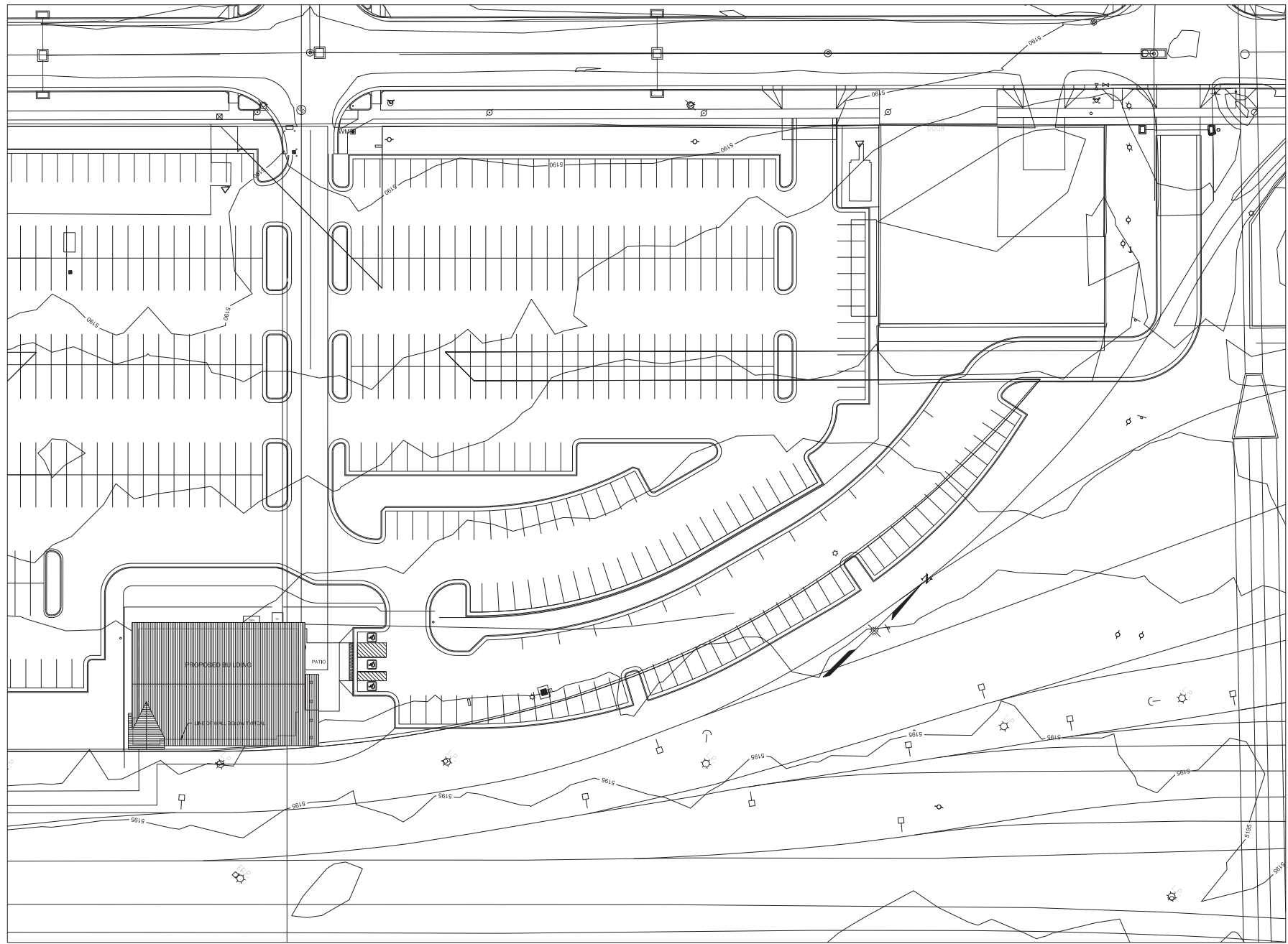


DESIGNED BY: _____ DATE: _____		CHECKED BY: _____ DATE: _____			EAST CORRIDOR 38TH AND BLAKE STATION SITE PLAN	SHEET REFERENCE NUMBER: EX-001
DRAWN BY: _____ DATE: _____		APPROVED BY: _____ DATE: _____				
NO.	REVISIONS	BY	DATE			

EXHIBIT B

Depiction of UPRR Relocation Work

(Pages follow)



1 SITE PLAN
1" = 200'

EXHIBIT B

OZ
ARCHITECTURE
3003 Larimer Street
Denver, Colorado 80205
phone 303.861.5704
www.ozarch.com

0000 **HGL** 0000
000 000
00 00
Engineering & Surveying, LLC
NEW MEXICO CHART. SURV. REG. NO. 10001 03/11/2010
COLORADO, CO. REG. NO. 10001 03/11/2010

UNION PACIFIC RAILROAD YARD OFFICE
39TH AND WALNUT ST., DENVER, COLORADO

PROJ. NO. S11122.00
DRAWN: GT
CHECKED: DJE
APPROVED:
DATE: 11-07-13
REVISIONS

© OZ ARCHITECTURE

UNION PACIFIC RAILROAD
YARD OFFICE
ISSUED FOR:
DESIGN
DEVELOPMENT/PROGRESS
SET
SHEET TITLE:
SITE PLAN

SCALE: 1" = 200'
SHEET NUMBER
C1.00

10/1/2013

EXHIBIT C

Depiction of the 2nd Ped. Bridge Work

(Pages follow)

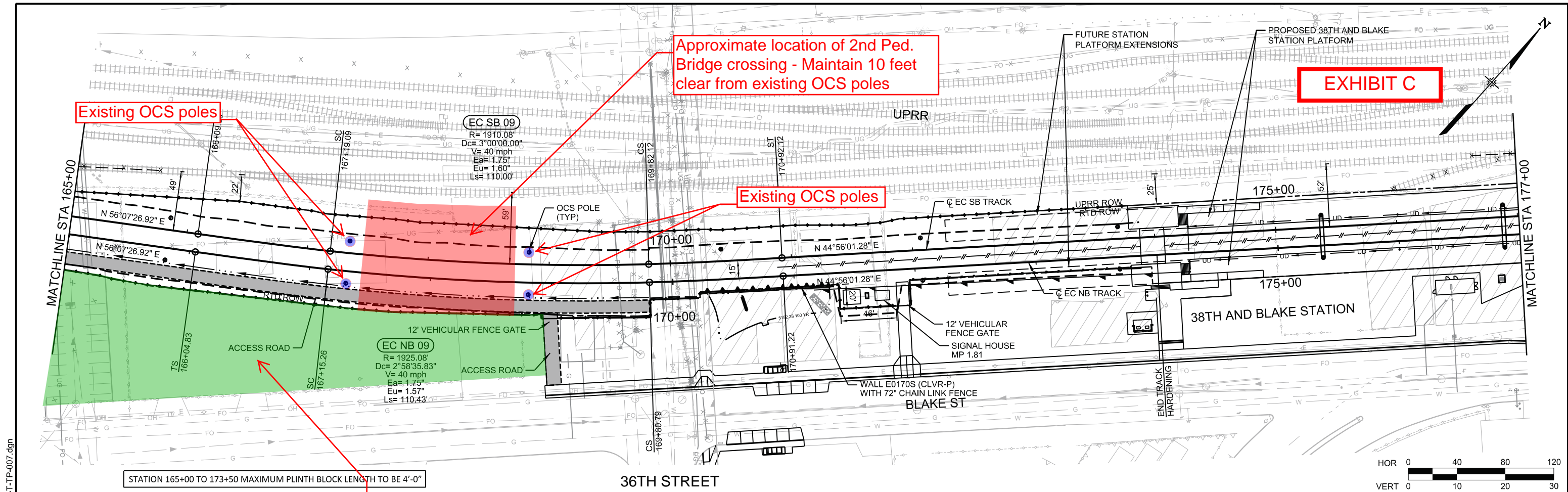
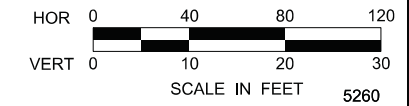
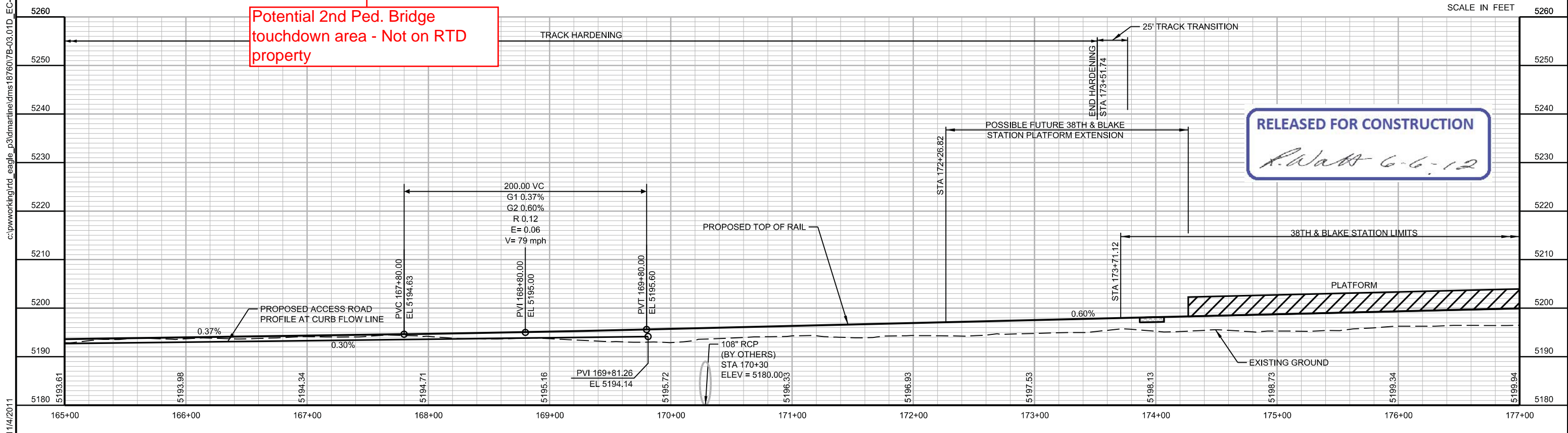


EXHIBIT C

STATION 165+00 TO 173+50 MAXIMUM PLINTH BLOCK LENGTH TO BE 4'-0"

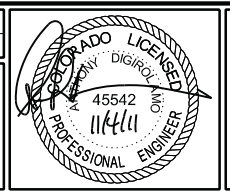


Potential 2nd Ped. Bridge touchdown area - Not on RTD property



NO.	REVISIONS	BY	DATE
0	ISSUED FOR CONSTRUCTION, CDRL #7B-03.01D, REV 0	AD	11/04/11

DESIGNED BY: ACS	DATE: 05/09/11	CHECKED BY: CPR	DATE: 11/03/11
DRAWN BY: NJB	DATE: 05/09/11	APPROVED BY: CJB	DATE: 11/04/11



EAST CORRIDOR
 TRACK PLAN AND PROFILE
 STA 165+00 TO STA 177+00

SHEET REFERENCE NUMBER:
 TP-007

11/4/2011 11:42:11 USER: dmartine c:\pwworking\rd_eagle_p3\dmartine\dms187607B-03.01D_EC-T-TP-007.dgn

EXHIBIT D

Legal Description of the RTD-UPRR Relocation Parcel

(Pages follow)

38th & BLAKE IGA EXHIBIT D

**RTD-UPRR RELOCATION PARCEL
LEGAL DESCRIPTION**

STA. 181+ TO STA. 187+

FOR

EAST CORRIDOR COMMUTER RAIL PROJECT

38th & BLAKE IGA EXHIBIT D

Date: May 9, 2013

DESCRIPTION

Being a portion of Block 29, ST VINCENT'S ADDITION recorded May 23, 1874, and a portion of Block 18, RIVERSIDE ADDITION recorded January 31, 1871, both in the City and County of Denver Clerk and Recorder's Office, located in the Southwest Quarter of Section 23, Township 3 South, Range 68 West of the Sixth Principal Meridian, City and County of Denver, Colorado, being more particularly described as follows:

COMMENCING at the 20 foot by 20 foot Range Point at 38th Street and Wynkoop Street (a 2-1/2" aluminum rock cap. LS 24942) WHENCE the 20 foot by 20 foot Range Point at 39th Street and Wynkoop Street (a #8 rebar) bears N44°54'49"E a distance of 397.18 feet (basis of bearing – assumed);

THENCE N61°04'22"E a distance of 720.11 feet to the westerly corner of Lot 28 of said Block 29 and the POINT OF BEGINNING;

THENCE N44°47'57"E coincident with the northwesterly line of lots 28 through 31 inclusive of said Block 29 a distance of 89.50 feet;

THENCE along the arc of a curve to the right, having a central angle of 36°07'56", a radius of 537.96 feet, a chord bearing of S11°50'37"W a distance of 333.66 feet, and an arc distance of 339.25 feet;

THENCE along the arc of a curve to the right, tangent with the last described curve, having a central angle of 15°00'00", a radius of 695.73 feet, a chord bearing of S37°24'35"W a distance of 181.62 feet, and an arc distance of 182.14 feet;

THENCE S44°54'35"W tangent with the last described curve a distance of 46.54 feet;

THENCE N45°07'51"W a distance of 79.94 feet;

THENCE N44°52'09"E a distance of 139.43 feet;

THENCE N87°47'57"E a distance of 3.41 feet;

THENCE N44°52'09"E a distance of 30.00 feet;

THENCE S77°46'32"E a distance of 4.16 feet;

THENCE N44°52'09"E tangent with the following described curve a distance of 19.46 feet;

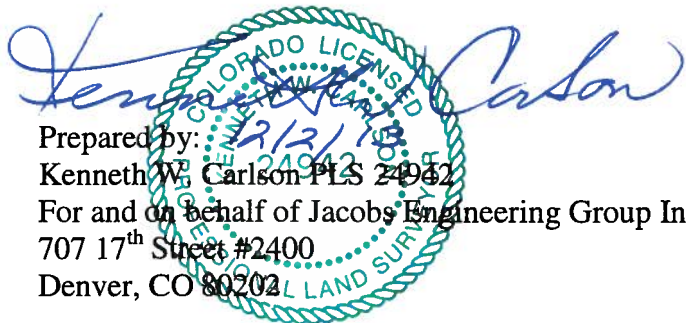
THENCE along the arc of a curve to the left, having a central angle of 30°00'00", a radius of 248.00 feet, a chord bearing of N29°52'07"E a distance of 128.37 feet, and an arc distance of 129.85 feet;

THENCE N14°52'09"E tangent with the last described curve a distance of 80.41 feet;

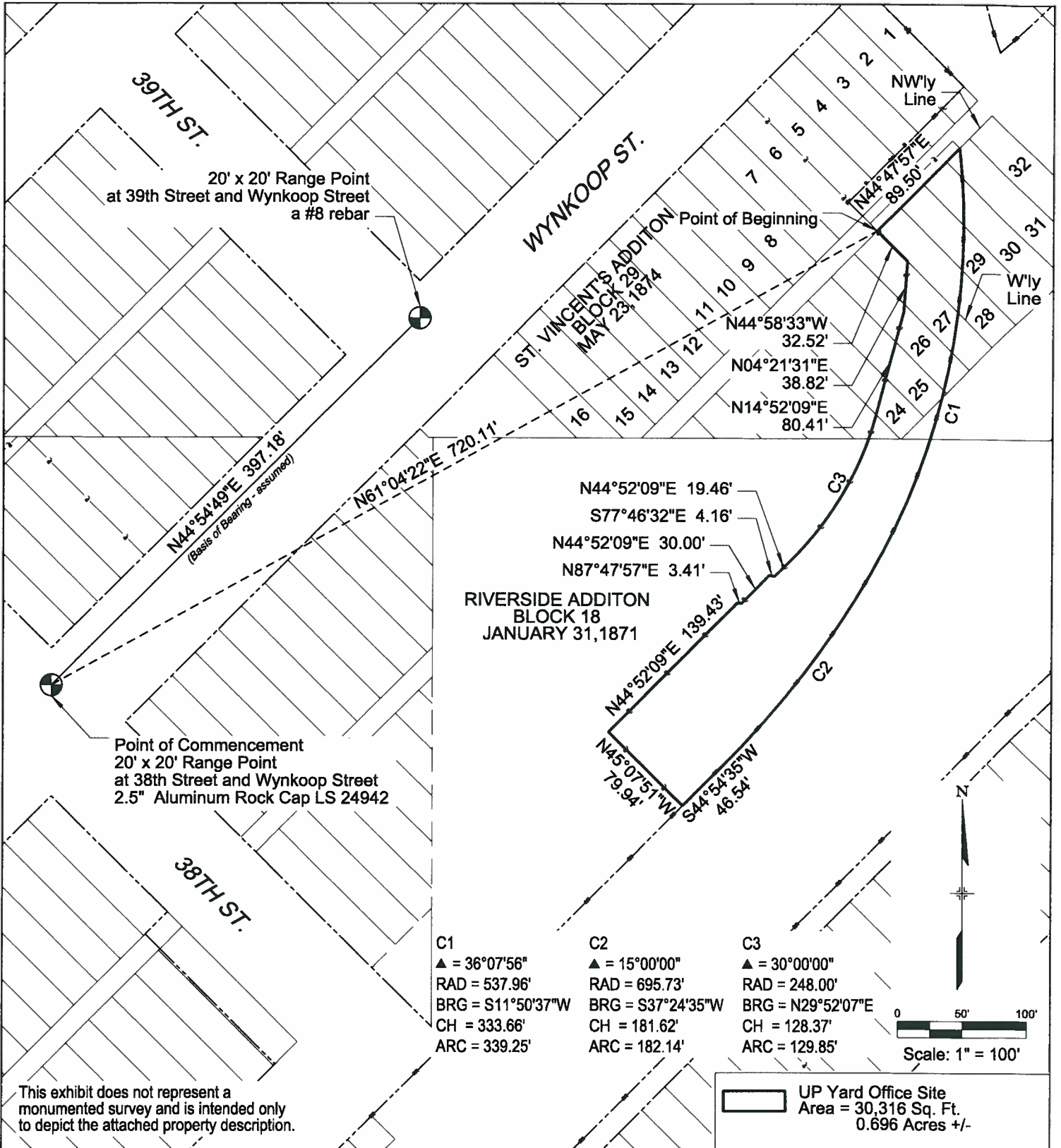
THENCE N04°21'31"E a distance of 38.82 feet;

THENCE N44°58'33"W a distance of 32.52 feet to the POINT OF BEGINNING.

Containing 30,316 square feet, (0.696 Acres), more or less.


Prepared by: Kenneth W. Carlson PLS 24942
For and on behalf of Jacobs Engineering Group Inc.
707 17th Street #2400
Denver, CO 80202

38th & BLAKE IGA EXHIBIT D



This exhibit does not represent a monumented survey and is intended only to depict the attached property description.

JACOBS PROJECT NO. #VXV72120

CLIENT PROJECT NO.

REVISION DESCRIPTION

DRAWN JSX DATE 05-09-13 SCALE 1" = 100'

JACOBS

707 17th Street, Suite 2400, Denver CO 80202

(303) 620-5740 Fax (303) 620-5798

THIS MATERIAL AND ANY ASSOCIATED ELECTRONIC DATA WAS PREPARED BY JACOBS FOR THE PROJECT INDICATED. ANY REUSE OR MODIFICATION WITHOUT THE WRITTEN CONSENT OF JACOBS SHALL BE AT THE SOLE RISK OF THE USER.

City and County of Denver, Colorado
SW 1/4 Sec. 23, T3S, R68W, 6th P.M.

TITLE:

FasTracks
EAST CORRIDOR COMMUTER RAIL

REVISION:

DRAWING NO.

SHEET NO.

UP Yard Office.DGN

1 of 1

EXHIBIT E

Current and proposed bus routes and stops at the 38th & Blake Station

(Pages follow)

38th & Blake Station Pedestrian Access Recommendation

When designing a rail station, convenient access for pedestrians and passengers transferring between bus and rail should be considered. To provide the most direct and convenient access to pedestrians, it is recommended that buses serve a stop as close to the rail platform as possible. At many planned and existing RTD rail stations, the most convenient bus to rail interface is provided by accommodating bus gates in a designated area within the park-n-ride. However, this is not the case at the 38th & Blake Station.

On-Street bus access is favored at the 38th & Blake Station for two reasons. First, the on-street bus stops are more convenient for pedestrians transferring between bus and rail. If the bus stops were located in the park-n-ride northeast of the tracks, passengers would be required to walk a longer distance to transfer between bus and rail (approximately two blocks, plus a trip up and down the pedestrian bridge), making transfers for riders less appealing. Second, the on-street bus stops work better for bus routing with the 38th & Blake Station design. If the bus stops were located in the park-n-ride, all routes would have to divert into the parking facility which would likely result in longer travel times for both passengers transferring to rail and those staying on the bus. An increase in bus travel time is often accepted when buses serve a park-n-ride. However, this is not desirable when a bus drop-off within the park-n-ride would create a more onerous transfer from bus to rail as would be the case at the 38th & Blake Station.

Given the grid street network and the grade separation of 38th Street and Blake Street, several bus routing options have been considered for the station. The routes shown in the attached graphic are the most likely to be implemented once the station opens. The routing shown in the figure allows for all planned bus routes (12, 44, and 61) to serve the 38th & Blake Station via the Blake Street bus stops which have been included in the station design. To even further improve pedestrian access for transferring passengers, the bus stops could be moved farther northeast along Blake Street. However, limited sight distance on Blake Street over 38th Street creates challenges for locating the bus stops closer to the rail platform. In conclusion, the on-street bus stops at the 38th & Blake Station will allow for the most convenient bus/rail transfers and efficient bus routing.

38th & BLAKE IGA EXHIBIT E

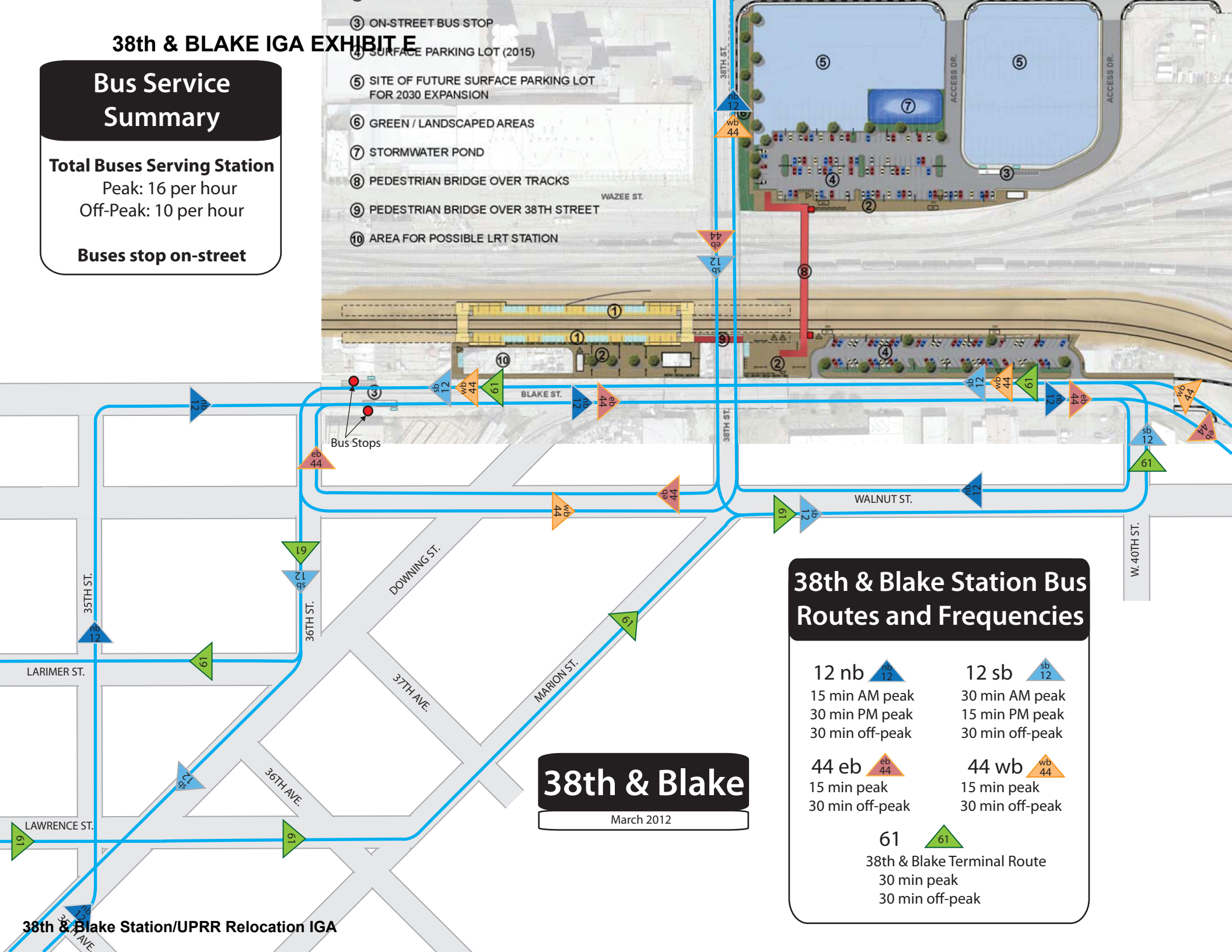
Bus Service Summary

Total Buses Serving Station






Peak: 16 per hour
Off-Peak: 10 per hour

Buses stop on-street

- ③ ON-STREET BUS STOP
- ④ SURFACE PARKING LOT (2015)
- ⑤ SITE OF FUTURE SURFACE PARKING LOT FOR 2030 EXPANSION
- ⑥ GREEN / LANDSCAPED AREAS
- ⑦ STORMWATER POND
- ⑧ PEDESTRIAN BRIDGE OVER TRACKS
- ⑨ PEDESTRIAN BRIDGE OVER 38TH STREET
- ⑩ AREA FOR POSSIBLE LRT STATION



38th & Blake Station Bus Routes and Frequencies

12 nb 	12 sb 
15 min AM peak	30 min AM peak
30 min PM peak	15 min PM peak
30 min off-peak	30 min off-peak
44 eb 	44 wb 
15 min peak	15 min peak
30 min off-peak	30 min off-peak
61 	
38th & Blake Terminal Route	
30 min peak	
30 min off-peak	

38th & Blake
March 2012

EXHIBIT F

TEMPORARY CONSTRUCTION EASEMENT

(pages to follow)

TEMPORARY CONSTRUCTION EASEMENT
(38th and Blake Station/UPRR Relocation Work)

This Temporary Construction Easement (this “Easement”) is made as of the Effective Date (defined below), between the Regional Transportation District whose legal address is 1600 Blake Street, Denver, Colorado 80202 (“RTD” or “Grantor”) and the City and County of Denver, a Colorado municipal corporation of the State of Colorado, whose address is 1437 Bannock Street, Denver, Colorado 80202 (the “City” or “Grantee”).

A. Grantor is the owner of certain real property located in the City and County of Denver, Colorado, located at approximately 38th and Blake Street upon which RTD, through its contractor, will construct and operate a station and its appurtenances, including a parking lot (the “Property”).

B. Denver Transit Partners, LLC (“DTP”) leases the Property for purposes of designing, constructing, operating and maintaining a rail line known as the East Rail Line for mass transit purposes on behalf of RTD.

C. The City intends to move the Union Pacific Railroad Company (“UPRR”) maintenance/operations building and associated parking (“UPRR 36th Yard Office”) currently located at approximately 36th and Wazee to certain real property owned by UPRR and certain adjacent real property located on a portion of the north parking lot at the 38th & Blake Station owned by RTD (“RTD-UPRR Relocation Parcel”) and a certain permanent non-exclusive access easement area (“Permanent Access Easement Area”) (collectively, the “Project”). The RTD-UPRR Relocation Parcel and the Permanent Access Easement Area are intended to be conveyed to the City pursuant to an Intergovernmental Agreement between the parties.

C. In connection with the Project, the City requires temporary construction rights to portions of the Property for the purposes of constructing the Project.

NOW, THEREFORE, in consideration of the Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

I. GRANT.

A. Grantor does hereby grant to the City a non-exclusive, temporary easement across, through and under the land adjacent to the Permanent Access Easement Area and the RTD-UPRR Relocation Parcel collectively as described in **Exhibit A**, attached hereto and incorporated herein by this reference (the “TCE Area”) for the purposes of constructing the Project on the RTD-UPRR Relocation Parcel and the Permanent Access Easement Area.

B. RETAINED RIGHTS. Grantor retains all rights to use, convey and enjoy the TCE Area, subject to the rights granted to the City herein. In addition, Grantor retains the right to allow its contractors access to the TCE Area for construction,

maintenance and operation of the 38th & Blake Station, RTD's rail system and other RTD facilities.

II. TERM. The term of this Easement shall commence at 7:00 am on [•] and expire at 5:00 pm on [•], unless sooner terminated as provided herein (the "Term"). The Covenants and Release provided in paragraphs III and IV shall survive termination of this Easement.

III. COVENANTS OF GRANTEE.

A. The Grantee's use of the TCE Area shall be as set forth herein and shall not interfere with the Grantor's or its contractor's ability to use the TCE Area, except as specifically set forth in the project plans approved by RTD. The Grantee's use of the TCE Area shall not interfere with existing utilities or other facilities installed on or adjacent to the TCE Area, except as specifically set forth in the project plans approved by RTD. Grantee shall obtain, or cause to be obtained, all necessary regulatory permits prior to commencing activities on the TCE Area.

B. The Grantee shall not disturb or alter the TCE Area, except as approved by RTD in the project plans. Grantee shall, at its sole cost and expense, remove all excess dirt, equipment and/or materials and restore the TCE Area and any disturbed adjacent property and facilities of RTD and any improvements thereon after any disturbance, to the satisfaction of RTD except as set forth in the project plans approved by RTD. If, at the expiration or earlier termination of this Easement, Grantee fails to restore the TCE Area as set forth herein, Grantor shall have the right to sue the Grantee for specific performance. In addition, Grantor shall have the right to complete such work and/or cause any equipment and materials to be moved from the TCE Area and stored, and charge the cost to Grantee.

C. The Grantee shall not cause or knowingly permit any Hazardous Substance to be used, stored, generated, or disposed of on or in the TCE Area by Grantee, Grantee's agents, employees, contractors, or invitees. If Hazardous Substances are used, stored, generated or disposed of on or in the TCE Area by Grantee, Grantee's agents, employees, contractors, or invitees, or if the TCE Area becomes contaminated in any manner due to the actions or inactions of the Grantee, Grantee's agents, employees, contractors, or invitees, Grantee shall cause its contractors and subcontractors to indemnify and hold harmless RTD from any and all claims, damages, fines, judgments, penalties, costs, liabilities, or losses (including, without limitation, a decrease in value of the TCE Area and any and all sums paid for settlement of claims, attorneys' fees, consultant, and expert fees) arising as a result of those actions or inactions by Grantee Grantee's agents, employees, contractors, or invitees. This indemnification includes, without limitation, any and all costs incurred because of any investigation of the site or any cleanup, removal, or restoration mandated by a federal, state or local agency or political subdivision. Without limitation of the foregoing, if Grantee, Grantee's agents, employees, contractors, or invitees use, store, generate or dispose of any Hazardous Substance on the TCE Area and that results in contamination, Grantee shall promptly, at

its sole expense, take, or cause to be taken, any and all necessary actions to return the TCE Area to the condition existing prior to the use, storage, generation or disposal of any such Hazardous Substance by Grantee. Grantee shall first obtain RTD's approval for any such remedial action. As used herein, "Hazardous Substance" means any substance that is defined as "toxic", "hazardous waste" or a "hazardous substance" or that is toxic, ignitable, reactive, or corrosive, and is regulated by any local government, the State of Colorado or the United States, including asbestos, asbestos containing material, polychlorobiphenyls ("PCB"), and petroleum, however vehicles and equipment using petroleum products may be stored and used provided that the same is in accordance with all applicable laws, rules and regulations.

D. The Grantee shall cause its contractors and subcontractors to defend, reimburse, indemnify and hold harmless RTD, its board members, agents and employees for, from and against any and all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the use of the TCE Area hereunder ("Claims"), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of RTD. This indemnity shall be interpreted in the broadest possible manner to indemnify RTD for any acts or omissions of Grantee, its contractors or subcontractors either passive or active, irrespective of fault, including RTD's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of RTD. The duty to defend and indemnify RTD shall arise at the time written notice of the Claim is first provided to RTD regardless of whether the claimant has filed suit on the Claim. The duty to defend and indemnify RTD arises even if RTD is the only party sued by claimant and/or claimant alleges that the RTD's negligence or willful misconduct was the sole cause of claimant's damages. Grantee shall cause its contractors and subcontractors to defend any and all Claims which may be brought or threatened against RTD and will pay on behalf of RTD any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of RTD shall be in addition to any other legal remedies available to RTD and shall not be considered RTD's exclusive remedy. Insurance coverage shall in no way lessen or limit the liability of the Grantee's contractors and subcontractors under this indemnification obligation. This defense and indemnification obligation of Grantee's contractors and subcontractors shall survive the termination of this Easement. Notwithstanding anything to the contrary contained herein, neither RTD nor the City waives any rights of governmental immunity provided to it pursuant to Colorado law.

E. Grantee shall ensure that each of its contractors requiring access to and entry upon the RTD property for the purposes of performing UPRR Relocation Work obtain a contractor right of entry agreement substantially in the form attached and incorporated herein as **Exhibit B** ("Contractor RoE") and obtain a then-current Third Party Access to the RTDC Commuter Rail Right of Way from DTP substantially in the form attached and incorporated herein as **Exhibit C** ("DTP Third Party Access"). The fully executed DTP Third Party Access and Contractor RoE and all supporting documentation required therein must be submitted to RTD prior to entry upon the area specified in the Contractor

RoE and in every event not less than 14 business days in advance of such entry by the Contractor or as otherwise agreed by the Parties.

IV. RELEASE. Grantee, in its non-regulatory capacity only, shall neither hold nor attempt to hold Grantor liable for any injury or damage, either proximate or remote, occurring through or caused by injury, accident or other cause to the Project or personal property of Grantee kept or stored on the TCE Area, whether by reason of the negligence or fault of the owners or occupants thereof, or by any other person or otherwise, except resulting from the negligent acts or omissions of Grantor or its employees, agents or contractors. Grantee, in its capacity as grantee and not in its capacity as a government with police and other regulatory powers, hereby waives any and all rights of recovery, claim, action or cause of action against Grantor, its agents, officers or employees, for any loss or damage to the Project and/or its personal property, or loss of use, occurring out of the use of the TCE Area, except resulting from the negligent or willful acts or omissions of Grantor or its employees, agents or contractors. Grantee represents that no insurer shall hold any right of subrogation against Grantor or its agents, officers, employees or licensees.

V. ACCESS. Permission to enter upon the TCE Area is granted solely for purposes identified in this Easement and is conditioned upon Grantee or its contractor, whomever is entering upon the area, first obtaining permission through a DTP Third Party Access to enter upon the area set forth in the DTP Third Party Access. Grantee shall, and shall require its contractors, to comply with all terms of such DTP Third Party Access. Grantee shall abide by RTD's and its contractors' safety rules and regulations pertaining to the TCE Area. Grantee shall not enter the RTD right of way or any area within 25 feet of the centerline of any RTD track. Any access by Grantee within 25 feet of the centerline of any RTD track will require that Grantee or its contractor obtain an RTD Access Permit, which in this case is the DTP Third Party Access.

VI. MAINTENANCE.

A. The City shall pay for and RTD shall not be responsible for any costs associated with the City's storage of materials, equipment, dirt, and contractor parking or any other costs hereunder. The City shall comply with all laws and regulations in its use of the TCE Area for the purposes stated herein, at its sole cost and free of mechanics' or materialmen's liens. RTD reserves the right to (i) periodically inspect the TCE Area for compliance herewith, and (ii) request that the City's Manager of Public Works remove employees, agents or contractors from the work done by or on behalf of the City whom RTD determines to be incompetent, careless, insubordinate, unsuitable, unacceptable, or for any other nondiscriminatory reason. RTD's mass transit operations across, on or along the TCE Area shall not be impaired by the City. Any equipment, tools and/or materials stored on TCE Area shall be kept at least twenty-five (25) feet from center line of any operable track. Explosives or other highly inflammable substances shall not be utilized or stored on the TCE Area without the prior approval of RTD. The City shall remove all tools, equipment and materials from the TCE Area promptly upon completion of work, and shall restore the TCE Area to the same state and condition as when entered upon.

B. Grantee understands that the RTD rail catenary system is electrified twenty-four (24) hours per day. The catenary system shall be considered live at all times and cannot be de-energized except in cases of emergency.

VII. NO WARRANTY. RTD makes no representation or warranty of any kind with respect to the condition of the TCE Area. The Grantee accepts the TCE Area in its “AS-IS” condition, WITH ALL FAULTS AND AT THE GRANTEE’S OWN RISK, without any warranty, express or implied, including without limitation, any warranty of merchantability, liability, fitness or fitness for a particular purpose, all such warranties being hereby expressly disclaimed by the City. RTD does not grant or purport to grant any right not specifically set forth herein. Permission for the City or its contractors to traverse areas other than the TCE Area is the sole responsibility of the City as is procurement of any applicable regulatory permission or consent.

VIII. INSURANCE. Grantee shall cause its contractors to obtain and maintain, at no cost and expense to RTD, all the insurance required in the Contractor RoE. Grantee shall furnish to RTD, in a form satisfactory to RTD, a copy of said policy or a certificate indicating that such insurance has been issued.

IX. TOOLS AND EQUIPMENT. Grantee shall promptly remove all tools, equipment and materials from the TCE Area upon completion of the Project.

X. SURRENDER. At the expiration or earlier termination of this Easement, Grantee shall promptly quit and surrender the TCE Area in the same condition as received at the commencement of the Easement. If all or any portion of the TCE Area is not vacated at the end of the Term, RTD shall be and is hereby authorized to remove from the TCE Area and store, at the expense of Grantee, all goods, wares, merchandise and property of any kind or description (collectively, the “Goods”) which may be then occupying all or any portion of the TCE Area. All removal and/or storage charges must be paid to RTD by Grantee before the Goods will be released to the Grantee. In any event, RTD may dispose of any of the Goods as it sees fit after the expiration of thirty (30) calendar days from the end of the Term. RTD shall not be liable for any damage to or loss of the Goods sustained either during the removal, storage and/or disposal of same and RTD is hereby expressly released from any and all claims for any such loss or damage. This Section shall survive expiration or earlier termination of this Easement.

XI. ASSIGNMENT AND SUBLETTING. Neither this Easement nor any interest herein may be assigned by the City, voluntarily or involuntarily, by operation of law or otherwise.

XII. NOTICES. All notices provided for herein shall be in writing and shall be personally delivered or mailed by registered or certified United States mail, postage prepaid, return receipt requested, to the parties at the addresses given below or at such other address that may be specified by written notice in accordance with this Section:

RTD: Manager of Real Property

Grantee:

1560 Broadway, Suite 650
Denver, CO 80202

Manager of Public Works
201 W. Colfax, Dept 608
Denver, CO 80202

with a copy to:

General Counsel
1600 Blake Street
Denver, CO 80202

Denver City Attorney's Office
201 W. Colfax, Dept 1207
Denver, CO 80202

With a copy to:

Denver Transit Partners, LLC
c/o Gregory Amparano, General Manager
Denver Transit Holdings, LLC
1670 Broadway, Floor 27
Denver, Colorado 80202
(303) 297-7555

In emergency: (855) 324-5373

XIII. AMENDMENTS TO EASEMENT. No changes, alterations or modifications to any of the provisions hereof shall be effective unless contained in a written agreement signed by the RTD, and the City (if prior to the termination of the temporary construction easement granted herein). No City Council approval is needed unless required by City Charter.

XIV. WAIVER, SEVERABILITY. The failure of any party to exercise any right hereunder, 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 Easement. If any provision of this Easement is held to be unenforceable for any reason, its unenforceability shall not affect the remainder of this Easement, which shall remain in full force and effect and enforceable in accordance with its terms.

XV. GOVERNING LAW AND VENUE. This Easement shall be interpreted and enforced according to the laws of the State of Colorado. Venue for any action hereunder shall be in the Denver District Courts.

XVI. EFFECTIVE DATE. The Effective Date of this Easement shall be the last date this Easement was executed by one of the Parties as evidenced by the date set forth on the signature pages hereto.

XVII. APPROPRIATION BY CITY COUNCIL AND RTD BOARD. Unless already appropriated as set forth herein, this TCE does not commit any present funding by either Party. The obligations of the Parties under this TCE shall extend only to monies appropriated for the purpose of this TCE by the RTD Board and/or Denver's City Council, as appropriate, subject to each entity's legally required budgeting, authorization, and appropriation process. The Parties acknowledge that they do not through this TCE irrevocably pledge present cash reserved for payments in future years, and that this TCE is not intended to create a multiple fiscal year direct or indirect debt or obligation of the Parties.

XVIII. INSPECTION OF RECORDS.

a) The Parties agree that, at the cost of the requesting Party, any duly authorized representative of RTD or the City, including the City Auditor, or any internal or external auditor of the City or RTD shall, until the expiration of three (3) years after the final reconciliation or payment under this TCE, have access to and the right to copy any books, documents, papers, and records involving transactions and work related to this TCE.

b) In connection with any work performed hereunder on items of work toward which federal funds may be received, the City, RTD, and their authorized representatives shall have access to any books, documents, papers, and records for the purpose of making audit, examination, excerpts and transcriptions.

XIX. NO DISCRIMINATION IN EMPLOYMENT. In connection with the performance of work under this TCE, the Parties agree not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation, terms, conditions or privileges of employment against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability.

XX. CONFLICTS OF INTEREST. The Parties agree that no employee of either Party shall have any personal or beneficial interest whatsoever in the services or property described herein and RTD further agrees not to hire, or contract for services with, any employee or officer of Denver which would be in violation of the Denver Revised Municipal Code, Chapter 2, Article IV, Code of Ethics, or Denver City Charter provisions C5.13 and C5.14. No officer, employee or agent of RTD, nor any member of the RTD Board, nor any member of Congress, nor any other public official or employee of the governing body of the locality or localities included within the district, during his or her tenure, or for one (1) year thereafter, shall have any personal pecuniary or property interest, direct or indirect, in this Agreement or the proceeds hereof.

XXI. LIABILITY. The Parties agree that both Parties, their officers, officials, and employees, are relying on, and do not waive or intend to waive by any provisions of this, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 to 120 (“CGIA”), or otherwise available to either party of their officers, officials and employees. If either Party is given notice of claim or suit against or involving the other arising from the implementation of this TCE or the design or construction of the project, it agrees to give the other Party prompt written notice of such claim or suit. The City shall cause its contractors to promptly repair any damage to any property that is caused by the activities hereunder at no cost to RTD.

XXII. COUNTERPARTS. This TCE may be executed in counterparts. Signatures on separate originals shall constitute and be of the same effect as signatures on the same original. Electronic and faxed signatures shall constitute original signatures.

XXIII. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS. The Parties consent to the use of electronic signatures for execution of this TCE. The TCE, and any other documents requiring a signature hereunder, may be signed electronically by either Party in the manner specified by that Party. The Parties agree not to deny the legal effect or enforceability of the TCE solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record solely on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Temporary Construction Easement as of:_____.

ATTEST:

CITY AND COUNTY OF DENVER

DEBRA JOHNSON, Clerk and
Recorder, Ex-Officio Clerk of the
City and County of Denver

By: _____
Mayor

APPROVED AS TO FORM:
D. SCOTT MARTINEZ, City Attorney
for the City and County of Denver

By: _____
Assistant City Attorney

REGISTERED AND COUNTERSIGNED:

By: _____
Manager of Finance

By: _____
Auditor

“CITY”

[REGIONAL TRANSPORTATION DISTRICT

a political subdivision of the State of Colorado

By: _____

Approved as to legal form for RTD:

Associate General Counsel

EXHIBIT A
TCE Area Depiction



3003 Larimer Street
Denver, Colorado 80205
phone 303.861.5704
www.ozarch.com



Engineering & Surveying, LLC
REGISTERED SURVEYOR
REGISTERED ENGINEER

UNION PACIFIC RAILROAD YARD OFFICE

3880 WYNKOOP STREET, DENVER, COLORADO

PROJ. NO. 011100200
DRAWN: QEA
CHECKED: JM
APPROVED:
DATE: 09/20/14
REVISIONS

© OZ ARCHITECTURE

UNION PACIFIC RAILROAD
YARD OFFICE
ISSUED FOR:
100% CONSTRUCTION
DOCUMENTS

SHEET TITLE:
RESOLUTION PLAN

SCALE: 1"=20'
SHEET NUMBER

C1.1

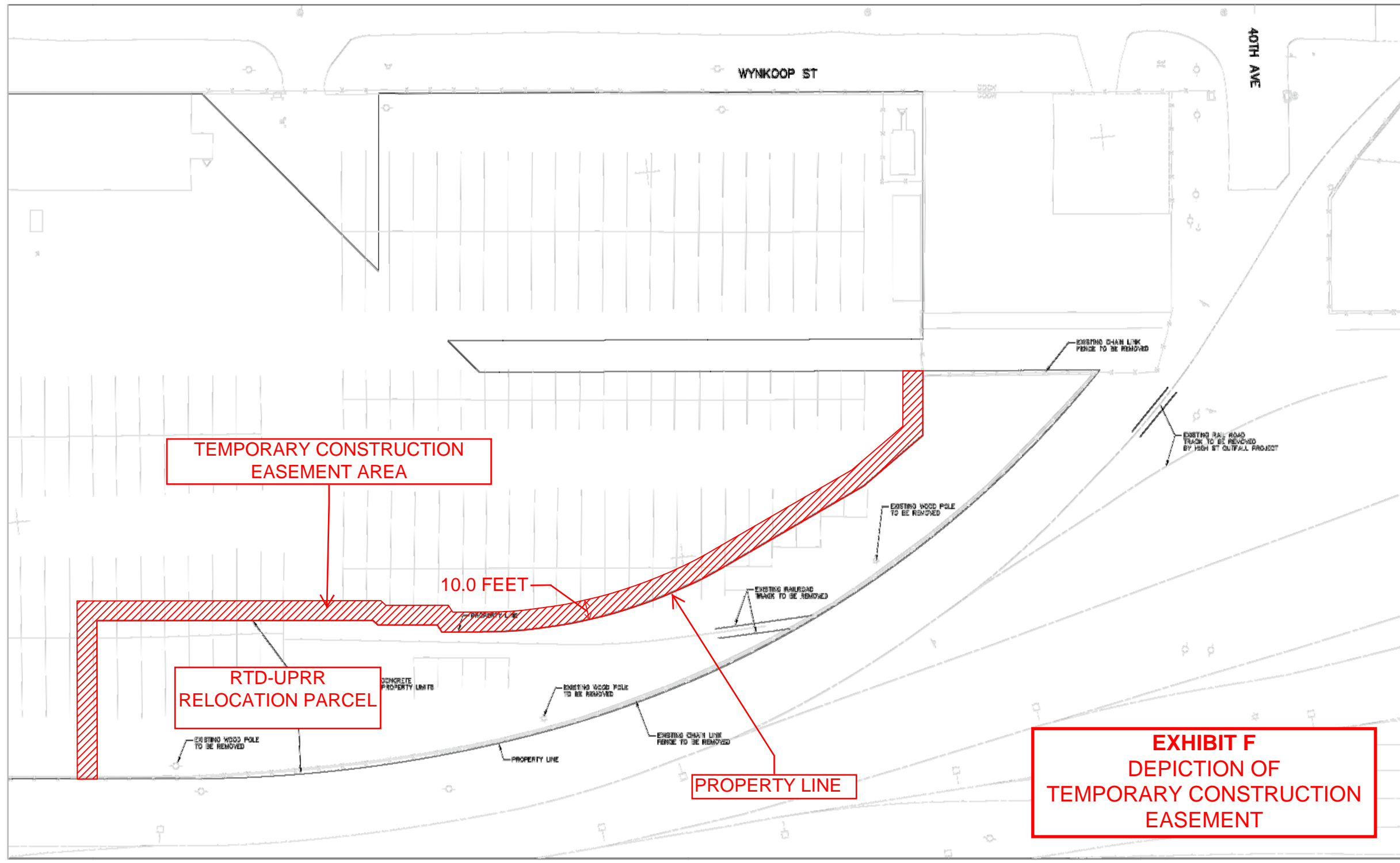


EXHIBIT F
DEPICTION OF
TEMPORARY CONSTRUCTION
EASEMENT

- LEGEND**
- PROPERTY LINE
 - EX CURB & CUTTER
 - EX CHAINLINK FENCE
 - EX METAL FENCE
 - EX WOOD FENCE

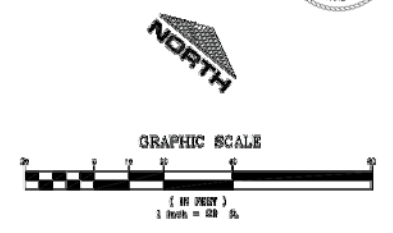


EXHIBIT B
Contractor Right of Entry
(pages follow)

CONTRACTOR’S RIGHT OF ENTRY AGREEMENT

This Contractor’s Right of Entry Agreement (“Agreement” or “Contractor’s RoE”) is made [●] by and between The Regional Transportation District, a political subdivision of the State of Colorado (“RTD” or “Licensor”), 1560 Broadway, Suite 650, Denver, Colorado 80202 and _____ (“Contractor”),

[Address].

RTD and the City and County of Denver (“City”) are parties to a certain Temporary Construction Easement dated [●], (the “TCE”) whereby RTD granted an easement to enter upon the certain RTD property shown in Exhibit A to the TCE (“TCE Area”) for the purpose of constructing and relocating the Union Pacific Railroad Company’s 36th Yard Offices and appurtenances to UPRR land and to the RTD-UPRR Relocation Parcel and a certain Permanent Access Easement Area (“Project”).

Denver Transit Partners, LLC (“DTP”) leases the TCE Area for purposes of designing, constructing, operating and maintaining the East Line commuter rail line on behalf of RTD.

The City has employed Contractor and requested RTD to permit Contractor to perform the work and RTD is agreeable thereto, subject to the following terms and conditions.

In consideration of the permission of RTD for Contractor to enter upon the TCE Area, Contractor hereby agrees as follows:

SECTION 1
RIGHT TO ENTER TCE AREA

Permission to enter upon the TCE Area is granted solely for purposes of Contractor performing work under the TCE. Contractor shall comply with all terms of the TCE applicable to its work on the TCE Area. Contractor specifically acknowledges and agrees that DTP has the full right and authority to enforce, and to cause Contractor to come into compliance with, the terms of this Agreement, and that Contractor must first obtain permission to enter upon the TCE Area from DTP and shall comply with DTP’s most-current Third Party Access to RTDC Commuter Rail Right of Way rules and procedures, the current form of which was attached to the TCE as Exhibit C (“DTP Third Party Access”).

SECTION 2
LIABILITY

Contractor shall, and shall contractually require its contractors to, indemnify, defend and hold harmless Licensor and its officers, directors, employees, agents and contractors; and Denver Transit Partners, LLC 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 Contractor's and/or its contractors' use of the TCE Area hereunder, including, but not limited to, Environmental Damages. It is the intention of the parties hereto that the indemnity from Contractor to Licensor provided for in this section indemnifies RTD, its officers, directors, and employees for their own negligence, whether that negligence is active or passive, or is the sole or a concurring cause of the injury, death or damage; provided that said indemnity shall not protect RTD from liability for death, injury or damage arising solely out of the willful misconduct, gross negligence and/or criminal actions of RTD, its officers, directors or employees. In the event of any claims made or suits filed, each party shall give the other prompt written notice thereof, and Licensor shall have the option to defend or reasonably settle the same as to claims or suits made against it, without effect as to Contractor's obligations hereunder. The provisions of this paragraph shall survive the termination, in whole or in part, of the license granted under this Agreement.

SECTION 3 INSURANCE

- A. Contractor shall procure and maintain, and shall require that any contractors and subcontractors procure and maintain, the following types of insurance, at minimum, with an insurer or insurers and in a form satisfactory to RTD:
1. Comprehensive general and automobile liability insurance with contractual liability endorsement and products and completed operations hazards included, which shall provide coverage for limits of not less than \$ 2,000,000.00 bodily injury liability and property damage liability, combined single limits.
 2. Workers' Compensation and Employers' Liability Insurance covering all employees of Contractor and its contractors, 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 the Contractor and its contractors 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 the same, a waiver of insurer's right of subrogation against RTD for payments made to or on behalf of employees of the Contractor's and contractors. Employer's Liability Insurance shall provide coverage for limits of not less than \$ 500,000.
 3. Prior to entry upon, above or adjacent to TCE Area, Contractor agrees to furnish RTD with a certificate of insurance for itself and for each of its contractor(s)' policy(ies). Contractor shall provide 30 days' advance notice of cancellation of the policy by Registered or Certified mail.
 4. Each such comprehensive general and automobile liability certificate shall have the following endorsements attached thereto:

- a) An endorsement naming each of RTD, and Denver Transit Partners, LLC additional insured;
 - b) An endorsement providing for contractual liability coverage for liability assumed by the Contractor under this Agreement;
 - c) An endorsement providing that all policy or endorsement limitation(s) relating specifically to operations on or near railroad property are eliminated;
 - d) A Broad Form Property Damage endorsement; and
 - e) An endorsement providing that in the event of reduction or exhaustion of the applicable aggregate limit or limits of liability under the primary policy or policies referred to in the certificate of insurance solely by reason of losses paid hereunder on account of occurrences during the policy period, the excess policy, if any, referred to in the certificate shall (1) in the event of reduction, apply as excess of the reduced limit of liability thereunder; and (2) in the event of exhaustion, continue in force as though it were primary insurance.
- B. Liability of Contractor under this section shall not be limited to coverage provided under said insurance policies.
- C. Only those contractors and subcontractors of Contractor whose operations are covered by insurance will be authorized to work upon or about the TCE Area.

SECTION 4 ENVIRONMENTAL OBLIGATIONS

- A. For purposes of this “Environmental Obligations” section, the terms “Activity” and “Activities” shall include any action or omission of Contractor, and/or the subsidiaries, affiliates, agents, contractors, employees, successors or assigns of Contractor.
- B. No Hazardous Material on Property. Except in strict compliance with all Environmental Requirements, Contractor shall not cause, permit or suffer any Hazardous Material (defined below) to be brought upon, treated, kept, stored, disposed of, discharged, released, produced, manufactured, generated, refined or used upon, about or beneath the TCE Area or any portion thereof by Contractor, its agents, employees, contractors, tenants or invitees, or any other person.
- C. No Violations of Environmental Requirements. Contractor, in performing the Activities shall not cause, permit or suffer the existence or the commission by Contractor, its agents, employees, contractors, or invitees, of a material violation of any Environmental Requirements upon, about or beneath the TCE Area or any portion thereof.

- D. No Environmental or Other Liens. Contractor, in performing the Activities, shall not create or suffer to exist with respect to the TCE Area, or permit any of its agents (including, but not limited to, contractors) to create or suffer to exist any lien, security interest or other charge or encumbrance of any kind, including without limitation, any lien imposed pursuant to section 107(f) of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. Section 9607(1) or any similar state statute.
- E. For purposes of this Agreement, "Hazardous Material(s)" means any and all substances, chemicals, wastes, or other materials now or from time to time hereafter:
1. 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;
 2. 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
 3. 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.
 4. "Environmental Requirements" means all applicable present and future statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, concessions, franchises, and similar items, of all governmental agencies, departments, commissions, boards, bureaus, or instrumentalities of the United States, states and political subdivisions thereof and all applicable judicial, administrative, and regulatory decrees,

judgments, and orders relating to the protection of human health or the environment, including, without limitation:

- a) All requirements, including but not limited to those pertaining to reporting, licensing, permitting, investigation, and remediation of emissions, discharges, releases, or threatened releases of Hazardous Materials, whether solid, liquid, or gaseous in nature, into the air, surface water, groundwater, or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of Hazardous Materials, whether solid, liquid, or gaseous in nature; and
 - b) All requirements pertaining to the protection of the health and safety of employees or the public.
5. "Environmental Damages" means all claims, judgments, damages, losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs, and expenses of investigation and defense of any claim, whether or not such claim is ultimately defeated, and of any good faith settlement of judgment related to Activities, of whatever kind of nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, including without limitation reasonable attorneys' fees and disbursements and consultants' fees, any of which are incurred at any time as a result of the existence of Hazardous Material upon, about, or beneath the TCE Area or migrating or threatening to migrate to or from the TCE Area, or the existence of a violation of Environmental Requirements pertaining to the TCE Area and including without limitation:
- a) Damages for personal injury, or injury to property or natural resources occurring upon or off of the TCE Area, foreseeable or unforeseeable, including, without limitation, lost profits, consequential damages, the cost of demolition and rebuilding of any improvements on real property, interest and penalties including but not limited to claims brought by or on behalf of employees of Contractor;
 - b) Fees incurred for the services of attorneys, consultants, contractors, experts, laboratories and all other costs incurred in connection with the investigation or remediation of such Hazardous Materials or violation of Environmental Requirements including, but not limited to, the preparation of any feasibility studies or reports or the performance of any cleanup, remediation, removal, response, abatement, containment, closure, restoration or monitoring work required by any federal, state or local governmental agency or political subdivision, or reasonable necessary to make full economic use of the TCE Area otherwise expended in connection with such conditions, and including without limitation any attorneys' fees, costs and expenses incurred in enforcing this Agreement or collecting any sums due hereunder; and
 - c) Liability to any third person or governmental agency to indemnify such person or agency for cost expended in connection with the items referenced in subparagraph (b) herein.

SECTION 5
SUB-CONTRACTORS

All of the limitations and obligations imposed upon the Contractor pursuant to this Agreement shall be to apply with equal force and effect to any of Contractor's sub-contractors (together "sub-contractors") performing any work on or about the TCE Area. The Contractor shall be primarily liable and responsible to Licensor for all acts or omissions of any sub-contractor employed upon or about the TCE Area pursuant hereto. Nothing herein contained shall be construed to preclude the Licensor from proceeding against the Contractor and any sub-contractor individually or collectively. Only those sub-contractors whose operations are covered by the insurance provisions hereof will be authorized to work upon the property of Licensor. In the event that any sub-contractor does not have its own insurance coverage as set forth in Section 3, hereof, Contractor shall cause such sub-contractor to be a named insured under Contractor's policies set forth in Section. No sub-contractor shall be permitted entry upon the TCE Area until proof of sub-Contractor's coverage required by Section 3 and this section is submitted to Licensor, and approved by Licensor's Risk Manager.

SECTION 6
DIGGING OR BORING

Prior to performing any digging or boring activities on the TCE Area, the Contractor shall determine if a telecommunications system or other utility is buried anywhere on or about the TCE Area in the location where Contractor will perform such digging or boring activities. If there is such a telecommunications system or other utility, Contractor will inform the owner of such telecommunications system or other utility, and take such measures in concert with the owner(s) as are necessary so as not to damage such system or utility.

SECTION 7
SAMPLES/REMOVAL

As between Licensor and Contractor only, Contractor shall be solely responsible for the lawful removal, manifesting, transport, testing and disposal of any samples or other materials removed from the TCE Area or generated as a result of Contractor's activities done pursuant to this Agreement, and shall duly and properly perform or cause to be performed any such activities that it undertakes or is required to undertake pursuant to law. Contractor releases Licensor from liability or legal obligation for, and covenants not to sue Licensor concerning, any and all materials removed from the TCE Area or generated as a result of Contractor's sampling and/or testing activities pursuant hereto.

SECTION 8
MISCELLANEOUS

A. Term and Termination. This Agreement shall be effective upon the execution by all parties hereto. The permission granted herein shall expire _____ from the date of execution of this Agreement or upon completion of the Project, whichever occurs first.

B. Assignment. The license granted herein may not be assigned by Contractor and Contractor shall not sublet the TCE Area, or any part thereof, or any interest therein, without the prior written consent of Licensor. No Licensor-approved assignment or subletting shall release Contractor from any responsibility or liability hereunder. Any subletting or assignment in violation of this Agreement shall be null and void.

C. Amendment. This Agreement may not be amended except in writing by mutual agreement of Contractor and Licensor, nor may rights be waived except by an instrument in writing signed by the party charged with such waiver.

D. Independent Contractors. It is expressly understood and agreed that Licensor and Contractor do not intend to be and shall not in any respect be deemed agents of each other, but shall be deemed to each be an independent contractor.

E. Liens. Contractor shall not permit any lien to be placed against the TCE Area arising from performance of work hereunder, and shall promptly cause any such lien to be removed.

IN WITNESS WHEREOF, the parties have duly executed this Agreement, effective the day and date first above written.

LICENSOR
REGIONAL TRANSPORTATION DISTRICT

By: _____
Assistant General Manager, Capital
Programs
Date: _____

APPROVED AS TO LEGAL FORM
FOR THE
REGIONAL TRANSPORTATION DISTRICT

Associate General Counsel
Date: _____

CONTRACTOR
[name of contractor]

By: _____
Name:
Title:
Date:

EXHIBIT C
DTP THIRD PARTY ACCESS
(pages follow)

Third Party Access to the RTDC Commuter Rail Right of Way**I. POLICY**

All parties with rights under RTD agreements to access the commuter rail right of way for the purpose of inspecting and maintaining utilities or other infrastructure, must obtain the approval of DTO before entering the right of way (ROW).

This policy and procedure addresses planned and emergency access to the right of way.

Inspection and maintenance of third-party assets should generally be performed during non-revenue hours, when trains are not running. Otherwise, track outages will be needed. Track outages affect service and require the approval of the RTD.

All scheduled outages are subject to the RTD's approval. Planned inspection and maintenance activities should be requested as far in advance as possible to enable DTO to include them in the annual Service Plan, which is subject to the RTD's approval on an annual basis but may be updated as needed throughout the year.

Third-party personnel needing access to the commuter rail right of way must:

1. Take DTO's on-track safety training and have in their possession when on the ROW a card certifying that the training was received within the past twelve months.
2. Work under the control of a DTO Employee-in-Charge. All expenses for providing the Employee in Charge to protect the third-party crews are to be paid by the third party.
3. Work in strict compliance with the schedule and limits placed on the work by the DTO Employee in Charge.
4. Wear proper personal protective equipment.
5. Strictly adhere to DTO's on-safety and work rules and directives
6. Not use a cell phone within 25' of the track
7. Not use any tools or equipment except those identified in the pre-approved work plan.
8. Repair any damage caused by the work
9. Leave the right of way in a safe condition for train operations

II. PROCEDURE FOR PLANNED ACCESS**A. Third Party Application for Access**

Third parties needing access to the commuter rail right of way must use the attached form to request the access at least 30 days in advance of the work.

Upon receipt of the application, the DTO Safety Manager will convene a meeting of representatives of the party seeking access to the right of way, the Transportation Department, The Engineering Department and the Safety Department. The review will consider the operational, engineering, financial and safety aspects of the work. The third-party representative attending the meeting should be prepared to present:

1. A description of the work to be performed
2. The proposed access location

Third Party Access to the RTDC Commuter Rail Right of Way

3. The limits of the work location
4. The anticipated duration of the work
5. The tools and equipment to be used
6. The numbers and qualifications of the personnel to be involved in the work
7. The records of DTO Safety Training for all personnel for whom access is requested.
8. Evidence of insurance for the work.

The purpose of the meeting is:

1. To develop a work plan or a list of actions necessary to complete the work.
2. To gather the data needed to support the analyses of the work.
3. Determine whether public notification will be needed.
4. Determine if the configuration of the commuter rail system will change and appropriate actions needed to mitigate safety risks.

The DTO Safety Manager will complete the work plan and the operational/safety/engineering/financial analysis, obtain signatures of approval from an authorized representative of the third party and forward these documents to the RTD for approval.

B. Implementation of Planned Access

The day before the planned third party access, the supervisor or foreman for the third party will meet or telephone the Employee in Charge for DTO to review the work plan and all associated conditions.

Before the work begins, the Employee in Charge for DTO will meet with all involved third party employees and contractors for a job briefing. The Employee in Charge will check that all employees have proper protective equipment and up-to-date training cards.

At the conclusion of the work, the supervisor for the third-party work crew will verify to the Employee in Charge for DTO that all personnel are clear. The DTO EIC will inspect the site, verifying that the right of way has been restored to its original condition, and radio the OCC to report all-clear.

III. PROCEDURE FOR EMERGENCY ACCESS

DANGER: DO NOT GET WITHIN 10 FEET OF THE OVERHEAD WIRES UNTIL AUTHORIZED BY AN ON-SITE DTO-QUALIFIED TRACTION POWER EMPLOYEE THAT THE WIRE HAS BEEN DE-ENERGIZED, TESTED DE-ENERGIZED, AND GROUNDED.

DO NOT GET WITHIN 25' OF THE NEAREST TRACK UNTIL THE DISPATCHER HAS CONFIRMED THAT ALL TRAIN MOVEMENT IN THE AREA HAS BEEN STOPPED.

1. Never enter the Right of Way without permission from the DTO Dispatcher
2. Stop outside the Right of Way.
3. Call the DTO Dispatcher to provide notification that an emergency condition exists.. (###-###-####) This conversation will be audio-recorded. The DTO Dispatcher will write down the information provided.

Third Party Access to the RTDC Commuter Rail Right of Way

- a. Name of caller, agency, emergency condition and cell phone number. An emergency condition is defined as an abnormal condition that, if not immediately remedied, could cause injury to people or major property damage.
 - b. Name of each person or people seeking permission to enter the Right of Way
 - c. Whether there is a need to get within 10' of the energized traction power components
 - d. Identification of each vehicle seeking permission to enter the Right of Way.
4. If the third party has an **urgent need to get within 10 feet of the energized traction power components**:
- a. The DTO Dispatcher will:
 - i. hold trains out of the area
 - ii. de-energize the OCS remotely
 - iii. dispatch a DTO-qualified Traction Power employee to the site
 - iv. dispatch a DTO supervisor to the site
 - b. After receiving oral permission from the DTO-qualified Traction Power Employee on site, the third-party personnel may enter the Right of Way.
5. If the third party has an **urgent need to get within 25 feet of the nearest track but no need to get within 10' of the energized traction power components**:
- a. the DTO Dispatcher will
 - i. Wait for the DTO Dispatcher to hold trains out of the area
 - ii. The DTO Dispatcher will dispatch a DTO EIC to the area.
 - b. After receiving oral permission from the DTO Dispatcher, the third-party personnel may enter the Right of Way.
6. The third-party personnel will handle the emergency
7. After the emergency is resolved, the DTO-qualified Traction Power Employee or the DTO EIC will call the DTO Dispatcher to confirm that all persons and equipment that entered the ROW are now clear. (This conversation will be audio-recorded. The dispatcher will write down this information)
8. Dispatcher will restore commuter rail operations.

Examples of emergencies are:

- Restoration of public services
- Work that affects the operation of the RTD commuter railroad
- Security threats or police actions
- Any situation that poses an immediate threat to health, safety, or property

IV. ATTACHMENTS AND FORMS

Appendix 1: RTD/DTO Commuter Rail Right of Way Access Request / Permit

V. REPORTING AND RECORD KEEPING

All data shall be made available to the RTD and FRA for inspection and copying.

The document will be reviewed and amended, if needed, based on the following conditions:

- new or expanded passenger service,
- revised operational procedures,
- revisions or annulment of the FRA waiver



Third Party Access to the RTDC Commuter Rail Right of Way

If none of the above events occurs, the RTDC Safety Manager or his/her designee will review the document annually and amend if needed.

VI. REVISION HISTORY

Number of Revision or Change	Date	Reason for Revision or Change
Revision 0.1	05/05/2014	First Draft.

VII. APPROVALS

Prepared by: _____ Date: _____
Randall Duty – DTO Systems and Infrastructure Engineer

Revised by: _____ Date: _____
Davie McCulloch – DTP Deputy Project Manager

Approved by: _____ Date: _____
Jean Claude Aurel – DTP Project Safety Manager

Approved by: _____ Date: _____
Anne Herzenberg – DTO General Manager

VIII. DISTRIBUTION

- DTP
- DTS
- DTC
- DTO



Third Party Access to the RTD Commuter Rail Right of Way

RTD/DTO Commuter Rail Right of Way Access Request / Permit
Complete all fields that are in Blue (and have asterisks)

Form with fields: *Company Representing, *Person Submitting Request, *Contact Person, *Contact Information, *Phone, *Equipment On Site, *Description of Work, *Location, *Equipment On Site, *Requested From, *To, *CRT Safety Training certification expires, *Email, *Fax.

Right of Way Access Rules:

- 1. Access permit requests will be reviewed and granted upon completion of CRT Safety Training.
2. Contractor must have Denver Transit Operators (DTO) qualified employees-in-charge on-site at each work location.
3. A copy of this completed access permit must accompany the work crew on each work site.
4. All personnel must wear required personal protective equipment (PPE) at all times.
5. Contractor must notify their assigned EIC prior to entering and when clear of any job site.
6. All active tracks must be 100% useable at all hours by the Commuter Rail trains. All rail flangeways and work areas must be cleared of debris prior to leaving the work area. Trains cannot be delayed.
7. When equipment or tools are used within the Right-of-Way that may impact safety or train operation, the Contractor must have an RTD EIC to protect and expedite train movement. EIC rates: Mon - Fri 7:00am - 5:00pm, \$XX.00/hr (8-hour minimum); Off-shift, Weekends and Holidays - \$XX.00/hr. (8-hour minimum)
8. The overhead catenary (25,000 volts ac (nominal)) is to be considered Live and Hot at all times. If de-energization is requested, Contractor must confirm with DTO Traction Power personnel prior to entry.

Please email to @rtd-denver.com OR fax to 303.299.XXXX

Requestor Confirmation and Agreement

*By checking this box, I acknowledge full understanding of RTD/DTO Access Permit rules and procedures and certify that CRT Safety training has been completed and is current.

*Requestor: Type Name Here *Date

FAILURE TO COMPLY WITH ACCESS PERMIT RULES WILL RESULT IN PERMIT REVOCATION
THE SECTION BELOW IS FOR RTD/DTO USE ONLY

Table with fields: Approved Dates of Access, Approved Time Period (military time), Approved Limits of Access, De-energize Overhead Power Required, Operating Restrictions, DTO - Safety Manager, DTO - General Manager, RTD - Senior Manager, Commuter Rail, Permit Number.

EXHIBIT G

Form of RTD-UPRR Relocation Parcel Deed

(Pages follow)

After recording return to:
Karen A. Aviles
City Attorney's Office
201 W. Colfax Avenue, Dept 1207
Denver, Colorado 80202

QUITCLAIM DEED
(RTD-UPRR Relocation Parcel)

THIS DEED ("Deed"), is granted as of this [●] day of [●],[●], by the Regional Transportation District, a political subdivision of the State of Colorado, whose legal address is 1600 Blake St., Denver, Colorado 80202 ("Grantor") to the City and County of Denver, a Colorado municipal corporation of the State of Colorado, whose legal address is 1437 Bannock Street, Denver, Colorado 80202 ("Grantee").

WITNESSETH, that Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, has remised, released, sold and QUITCLAIMED unto the Grantee and Grantee's successors and assigns, forever, all the right, title, interest, claim and demand which the Grantor has in and to the real property, together with improvements, if any, owned by the Grantor situate, lying and being in the City and County of Denver, State of Colorado, and being more particularly described on **Exhibit A** attached hereto and incorporated herein ("RTD-UPRR Relocation Parcel");

TO HAVE AND TO HOLD the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining, and all the estate, right, title, interest, and claim whatsoever of the Grantor, either in law or in equity, to the only property use, benefit, and behoof of the Grantee and its successors and assigns forever; PROVIDED HOWEVER, upon five (5) years following the recording of this Deed, all the right, title, interest, claim and demand granted herein shall automatically revert back to Grantor and Grantee, at Grantee's sole cost and expense and to the reasonable satisfaction of Grantor, shall remove all improvements and return the property to substantially the same condition as when originally conveyed, unless a Notice of Final Acceptance is executed and forwarded to RTD by the City and UPRR, in which case, RTD shall record a Quitclaim Deed for Reverter Rights within 10 days of receipt of such Notice, all as set forth in the Intergovernmental Agreement between the City and RTD dated _____ and found in City Clerk File No. _____.

IN WITNESS WHEREOF, the Grantor has caused this Quitclaim Deed to be executed on the date set forth above.

GRANTOR:

By: _____

Phillip A. Washington
General Manager

STATE OF COLORADO)
)ss.
CITY AND COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this ___ day of _____, _____ by _____ as _____ of _____.

WITNESS MY HAND AND OFFICIAL SEAL.

My commission expires: _____

Notary Public

Approved as to legal form for Grantor:

Associate General Counsel

EXHIBIT A TO QUITCLAIM DEED

LEGAL DESCRIPTION OF THE RTD-UPRR RELOCATION PARCEL

(pages to follow)

EXHIBIT H-1

Form of Permanent Non-Exclusive Access Easement Agreement

(Pages follow)

After recording return to:
RTD Manager Real Property
1560 Broadway, Denver, CO 80202

**PERMANENT NON-EXCLUSIVE ACCESS EASEMENT AGREEMENT
(38TH & Wazee – UPRR Relocated Facilities Access)**

THIS PERMANENT NON-EXCLUSIVE ACCESS EASEMENT AGREEMENT ("Agreement") is made [●] ("Effective Date") by and between the REGIONAL TRANSPORTATION DISTRICT, a political subdivision of the State of Colorado, whose legal address is 1600 Blake Street, Denver, Colorado 80202 ("Grantor" or "RTD") and the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado, whose legal address is 1437 Bannock Street, Denver, Colorado 80202 ("City"), and the UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("UPRR"). Collectively City and UPRR are "Grantee".

RTD operates a rail line known as the East Rail Line for mass transit purposes.

RTD owns property in the vicinity of 38th Street in the City and County of Denver, Colorado, as legally described and depicted in **Exhibit A**, attached hereto and incorporated herein ("RTD Property").

In connection with RTD's East Rail Line, the City intends to construct a pedestrian overpass and certain related facilities. The City's facilities will impact certain railroad facilities of UPRR. To accommodate UPRR, the City plans to relocate and construct certain replacement railroad facilities on property appurtenant to the RTD property, as legally described and depicted in **Exhibit B**, attached hereto and incorporated herein ("UPRR Property").

As part of the City's relocation of UPRR's facilities to the UPRR Property, the City will need to acquire permanent non-exclusive access to and from the UPRR Property for fire and emergency vehicles and UPRR will need to acquire secondary vehicle access, over and across the RTD property.

In consideration of the mutual promises contained herein and for the sum of \$10.00, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1. GRANT

- A. Subject to all the terms and conditions hereof, Grantor hereby grants the following easements (collectively, the "Easement") in, on, under, upon, over, through and across an access road to be built by RTD at its cost on a certain portion of the RTD Property legally described and depicted in **Exhibit C**, attached hereto and incorporated herein ("Easement Area"): (a) to the City and its successors and assigns, a perpetual, non-exclusive easement for the purposes of access for fire and emergency vehicles, and (b) to UPRR, and its successors and assigns, a perpetual, non-exclusive easement for the purpose of secondary access for vehicles that are unable to use the primary access due to their size to and from the UPRR Property.
- B. Grantor shall retain all rights to use, convey and enjoy the Easement Area that do not unreasonably interfere with Grantee's use and enjoyment of the Easement granted herein. The Easement shall be subject to existing interests, easements, leases, licenses

and permits (if any) heretofore granted, reserved or held by Grantor, its predecessors in interest, or any other person or entity affecting any of the Easement Area. Grantee shall not unreasonably interfere with Grantor's use and enjoyment of the RTD Property, nor with the needs and requirements of Grantor's tenants; provided that if Grantee uses the Easement for the purposes stated herein, such use shall not be deemed to unreasonably interfere with Grantor's use.

- C. Grantor shall retain all rights to use, convey and enjoy the Easement Area not inconsistent with the Easement granted herein. Grantee shall be obligated to restore the surface of the Easement Area at Grantee's sole cost and expense, including the restoration of any Grantor permitted surface improvements located on or adjacent to the Easement Area that are removed, relocated, altered, damaged, or destroyed directly as a result of Grantee's use of the Easement.
- D. Grantee shall require its agents, contractors and subcontractors performing activities hereunder to comply with each of the terms and conditions of this Agreement and to acknowledge all rights reserved to Grantor hereunder.

ARTICLE 2. TERM OF EASEMENT AGREEMENT

The Easement set forth in this Agreement shall become effective upon execution by all parties as of the Effective Date.

ARTICLE 3. INITIAL CONSTRUCTION OF THE ACCESS IMPROVEMENTS

RTD will construct the access road in accordance with the 38th and Blake Station Site Development Plan approved by the City.

ARTICLE 4. RELOCATION OF EASEMENT AREA

If RTD reasonably determines that the Easement Area needs to be relocated to a new location on RTD's Property, in order for RTD's use of the Easement Area for facilities related to RTD's transit services, Grantor and Grantee shall use good faith efforts to accommodate such relocation, provided that following the relocation of the Easement Area it can still be used by Grantee for the purposes stated herein. The cost of any such relocation shall be allocated amongst Grantor and the City by separate agreement. If the Easement Area is so relocated, this Easement shall be amended to reflect the new location of the Easement Area, which new location shall be conveyed to Grantee at no cost, and all the terms, conditions and stipulations herein expressed shall apply to the new Easement Area, except as specifically modified by the parties.

ARTICLE 5. DIGGING AND BORING

Prior to performing any digging or boring activities on the Easement Area, Grantee shall determine if a telecommunications system or other utility is buried anywhere on or about the Easement Area in the location where Grantee will perform such digging or boring activities. If there is such a telecommunications facility or other utility, Grantee will inform the owner of such telecommunications system or other utility, and take such measures in concert with the owners(s) as are necessary so as not to damage such system or utility.

ARTICLE 6. NOTICES

Unless otherwise prescribed in this Agreement, any notices required to be given shall be given in writing and mailed by U.S. mail, first class postage prepaid, and addressed as follows:

If to Grantor: Regional Transportation District
1560 Broadway, Suite 650
Denver, Colorado 80202
Attn: Manager of Real Property
(303) 628-9000

With a copy to: Regional Transportation District
2701 S. Elati Street
Englewood, Colorado 80204
Attn: Senior Manager for Commuter Rail Services

In emergency: 303-299-3480

With a copy to: Denver Transit Partners, LLC
General Manager
1670 Broadway, Floor 27
Denver, Colorado 80202

In emergency: (855) 324-5373

If to City: City and County of Denver
Manager, Public Works
201 W. Colfax Ave., Dept. 608
Denver, CO 80202

With a copy to: Denver City Attorney's Office
201 W. Colfax, Dept. 1207
Denver, CO 80202

If to UPRR: Union Pacific Railroad Company
Real Estate Department
1400 Douglas Street – STOP 1690
Omaha, NE 68179

With a copy to: Union Pacific Railroad Company
Legal Department
1400 Douglas Street – STOP 1580

Omaha, NE 68179

The address to which any notice, demand, or other writing may be given may be changed by written notice given as above provided.

ARTICLE 7. NO WARRANTY

- A. Grantor does not grant nor purport to grant any right not specifically set forth herein. Permission for the Grantee or its contractors to traverse the property of any other property owners or interest-holders is the sole responsibility of Grantee as is procurement of any applicable regulatory permission or consent; provided that no additional regulatory permission or consent shall be required to be procured from Grantor except as expressly provided herein.
- B. The right to use the Easement Area granted hereunder is hereby contracted for and shall be granted with respect to the Easement Area in its "AS IS" physical condition without any warranty, express or implied. This grant is subject to all other prior granted or reserved rights and interests in the Easement Area.
- C. Grantee specifically assumes all risk of loss, damage, or destruction to any tools, equipment, or materials, if any, that Grantee or its contractor stores on the Easement Area, whether the loss, damage or destruction results from accident, act of God, the elements, severe weather, theft or vandalism.

ARTICLE 8. ENVIRONMENTAL OBLIGATIONS

Grantee shall not cause or knowingly permit any hazardous substance to be used, stored, generated, or disposed of on or in the Easement Area by Grantee, Grantee's agents, employees, contractors, or invitees. As used herein, "hazardous substance" means any substance that is defined as "toxic", "hazardous waste" or a "hazardous substance" or that is toxic, ignitable, reactive, or corrosive, and is regulated by any local government, the State of Colorado or the United States, including asbestos, asbestos containing material, polychlorobiphenyls ("PCB"), and petroleum.

ARTICLE 9. GENERAL

1. Assignment. Grantee shall have the right to assign this Agreement and the rights granted hereunder upon the prior written consent of Grantor, which shall not be unreasonably withheld.

2. Agreement Binding. This Agreement and all of the covenants, terms and conditions herein contained shall be perpetual and shall constitute covenants running with the land so as to bind upon and inure to the benefit of the parties hereto, and their respective successors and assigns.

3. Laws to Apply; 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 Easement Area are located and Grantee expressly submits itself the jurisdiction thereof.

4. 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.

5. Independent Contractors. It is expressly understood and agreed that Grantor and Grantee do not intend to be and shall not in any respect be deemed agents of each other, but shall be deemed to each to be an independent contractor.

6. Headings. The headings of the sections of this Agreement are inserted for reference purposes only and are not restrictive as to content.

7. Easement Appurtenant. This easement is an easement appurtenant benefiting the UPRR Property.

8. Liens. Grantee shall not permit any lien to be placed on the Easement Area arising from performance of work hereunder, and shall promptly cause any such lien to be removed.

9. Appropriation by City Council and RTD Board. Unless already appropriated as set forth herein, this Agreement does not commit any present funding by either the City or RTD. The obligations of the City and RTD under this Agreement shall extend only to monies appropriated for the purpose of this Agreement by the RTD Board and/or Denver's City Council, as appropriate, subject to each entity's legally required budgeting, authorization, and appropriation process. The City and RTD acknowledge that they do not through this Agreement irrevocably pledge present cash reserved for payments in future years, and that this Agreement is not intended to create a multiple fiscal year direct or indirect debt or obligation of the City or RTD.

10. Inspection of Records.

The Parties agree that, at the cost of the requesting Party, any duly authorized representative of RTD or the City, including the City Auditor, or any internal or external auditor of the City or RTD shall, until the expiration of three (3) years after the final reconciliation or payment under this Agreement, have access to and the right to copy any books, documents, papers, and records involving transactions and work related to this Agreement.

11. No Discrimination in Employment. In connection with the performance of work under this Agreement, the Parties agree not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation, terms, conditions or privileges of employment against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability.

12. Counterparts. This Agreement may be executed in counterparts. Signatures on separate originals shall constitute and be of the same effect as signatures on the same original. Electronic and faxed signatures shall constitute original signatures.

13. No Joint and Several Liability. The Parties acknowledge and agree that each Grantee shall be responsible for its obligations and responsibilities hereunder (including without limitation responsibility for maintenance, repair and damage to the Easement

Area), and if a Grantee fails to perform its obligations and responsibilities hereunder the other Grantee shall not be jointly and severally liable for such failure.

[Signature Pages to Follow]

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of: _____

CITY AND COUNTY OF DENVER:

ATTEST:

By: _____
Mayor

By: _____
Debra Johnson,
Clerk and Recorder Ex-Officio Clerk
of the City and County of Denver

APPROVED AS TO LEGAL FORM:
A. Scott Martinez , Attorney for
the City and County of Denver

By: _____
Assistant City Attorney

REGISTERED AND COUNTERSIGNED

By: _____
Manager of Finance

By: _____
Auditor

REGIONAL TRANSPORTATION DISTRICT
a political subdivision of the State of Colorado

By: _____
Phillip A. Washington
General Manager

Date Signed: _____

STATE OF _____)

COUNTY OF _____)ss

The foregoing instrument was acknowledged before me this _____ day of _____,
2013, by as _____ for Regional Transportation District, as the Grantor.
Witness my hand and official seal.

My commission expires: _____

Notary Public

Address

Approved as to legal form for RTD:

By: _____

**Exhibit A to Easement Agreement
RTD PROPERTY**

**REGIONAL TRANSPORTATION DISTRICT
STATION SITE
DESCRIPTION**

38th AND BLAKE STATION PARCEL 1
STA. 178+ TO STA. 186+

FOR

EAST CORRIDOR COMMUTER RAIL PROJECT

EXHIBIT "A"
38th and Blake Station Parcel 1
Date: February 8, 2013
DESCRIPTION

38th and Blake Station Site Parcel 1 of the RTD East Corridor Commuter Rail Project, being a portion of Block 1 of Ironton, recorded January 10, 1880, a portion of Block 29, ST VINCENT'S ADDITION recorded May 23, 1874, a portion of Block 18, RIVERSIDE ADDITION recorded January 31, 1871 and all of Wazee Street vacated by ordinance 141-1928, and that portion of 39th Street, the alley in said Block 1 of IRONTON and the alley in said Block 29 of ST VINCENT'S ADDITION vacated by ordinance _____, all in the City and County of Denver Clerk and Recorder's Office, located in the Southwest Quarter of Section 23, Township 3 South, Range 68 West of the Sixth Principal Meridian, City and County of Denver, Colorado, being more particularly described as follows:

COMMENCING at the 20 foot by 20 foot Range Point at 38th Street and Wynkoop Street (a 2-1/2" aluminum rock cap. LS 24942) WHENCE the 20 foot by 20 foot Range Point at 39th Street and Wynkoop Street (a #8 rebar) bears N44°54'49"E a distance of 397.18 feet (basis of bearing – assumed);
THENCE S63°32'52"E a distance of 63.26 feet to the westerly corner of said Block 1 and the POINT OF BEGINNING;

THENCE N44°54'49"E coincident with the northwesterly line of said Block 1 and extension thereof a distance of 377.21 feet;
THENCE N44°47'57"E coincident with the northwesterly line of said Block 29 and extension thereof a distance of 294.69 feet;
THENCE S44°58'33"E coincident with the northeasterly line of Lots 6 and 27 of said Block 29 and extension there of a distance of 173.53 feet;
THENCE S04°21'31"W a distance of 38.82 feet;
THENCE S14°52'09"W tangent with the following described curve a distance of 80.41 feet;
THENCE along the arc of a curve to the right, having a central angle of 30°00'00", a radius of 248.00 feet, a chord bearing of S29°52'07"W a distance of 128.37 feet, and an arc distance of 129.85 feet;
THENCE S44°52'09"W tangent with the last described curve a distance of 19.46 feet;
THENCE N77°46'32"W a distance of 4.16 feet;
THENCE S44°52'09"W a distance of 30.00 feet;
THENCE S87°47'57"W a distance of 3.41 feet;
THENCE S44°52'09"W a distance of 139.43 feet;
THENCE S45°07'51"E a distance of 79.94 feet;
THENCE S44°53'51"W a distance of 254.74 feet;
THENCE N45°06'57"W coincident with the southwesterly line of said Block 1 and extension thereof a distance of 346.09 feet to the POINT OF BEGINNING.

Containing 193,004 square feet, (4.431 Acres), more or less.

Prepared by:
Kenneth W. Carlson PLS 24942
For and on behalf of Jacobs Engineering Group Inc.
707 17th Street #2300, Denver, CO 80202

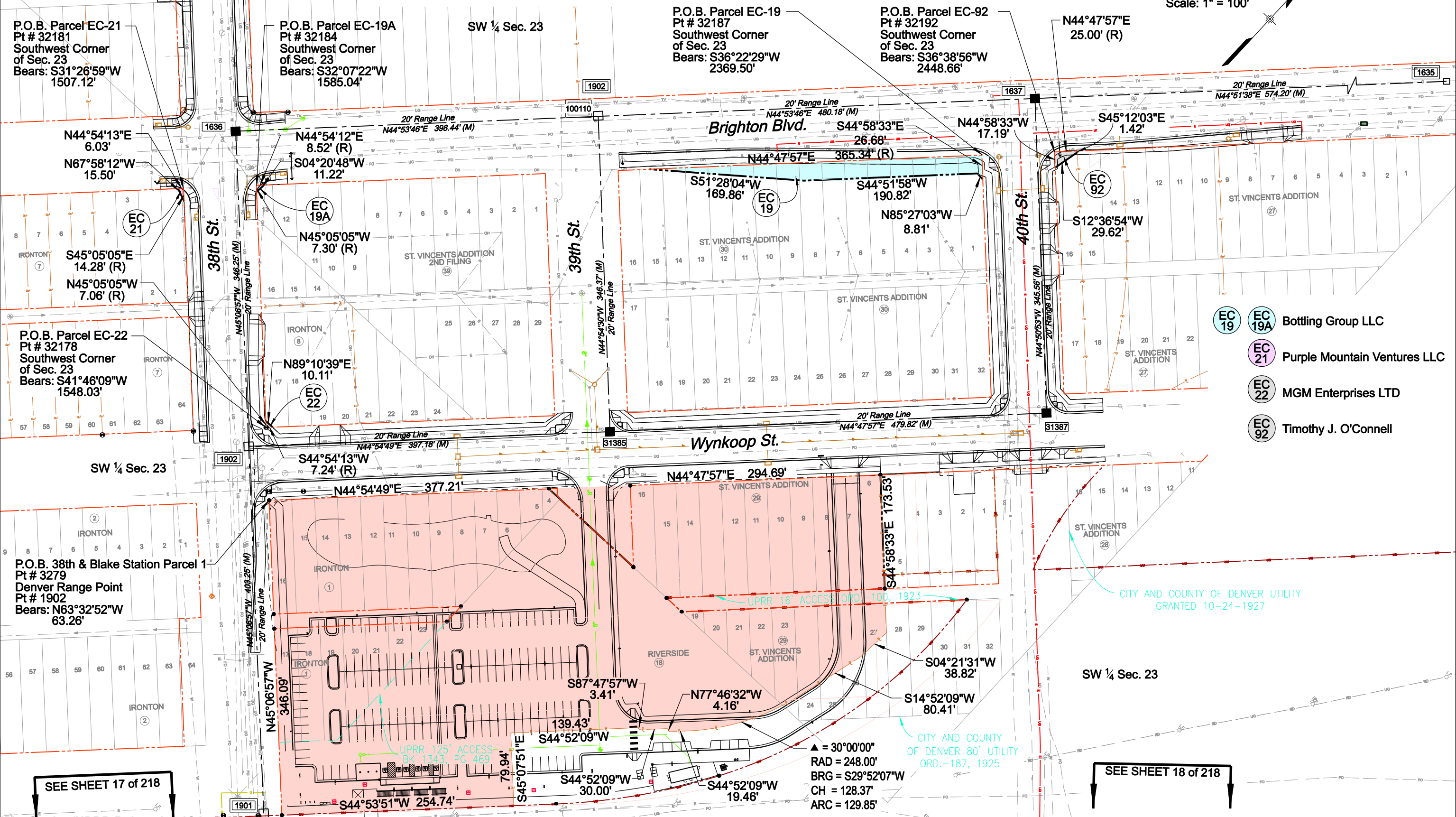
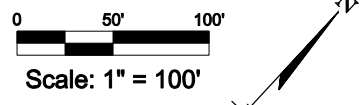
Sheet Revisions		
Date	Description	Initials
9-25-09	RFP Release	DDH
12-17-09	Added Parcel Shape EC-27, EC35, EC92	DDH
1-25-10	Removed Parcel Shape EC-19B	DDH
2-15-10	Update Design	DDH
5-27-10	Added Parcel Labels, Revised Parcel EC-18 owner	SOO
06-09-10	Change total sheets to 218	DDH
08-27-10	Removed parcels EC-27 & EC-35	SOO

Sheet Revisions		
Date	Description	Initials
10-11-10	Annotate & Pt Number UPRR Parcels	DDH
10-29-10	Removed Parcels EC-1D & EC1E,	DDH
11-14-11	Added Range Lines	DDH
03-01-12	Updated Range Lines	MAH
02-08-13	Revised 38th & Blake Station Parcel 1	MAH

Sheet Revisions		
Date	Description	Initials

Right of Way Plans				
Plan Sheet - Exhibit				
Project Number: 072120				
Project Location: RTD Fastracks East Corridor				
Project Location: Denver to Denver International Airport				
Project Code:	Last Mod. Date:	Subset Sheets:	Sheet No.:	Total No. of Sheets:
	02-08-13		19	218

SW 1/4 Section 23, Township 3 South, Range 68 West, 6th P.M.



- EC 19 Bottling Group LLC
- EC 19A Bottling Group LLC
- EC 21 Purple Mountain Ventures LLC
- EC 22 MGM Enterprises LTD
- EC 92 Timothy J. O'Connell

▲ = 30°00'00"
RAD = 248.00'
BRG = S29°52'07"W
CH = 128.37'
ARC = 129.85'

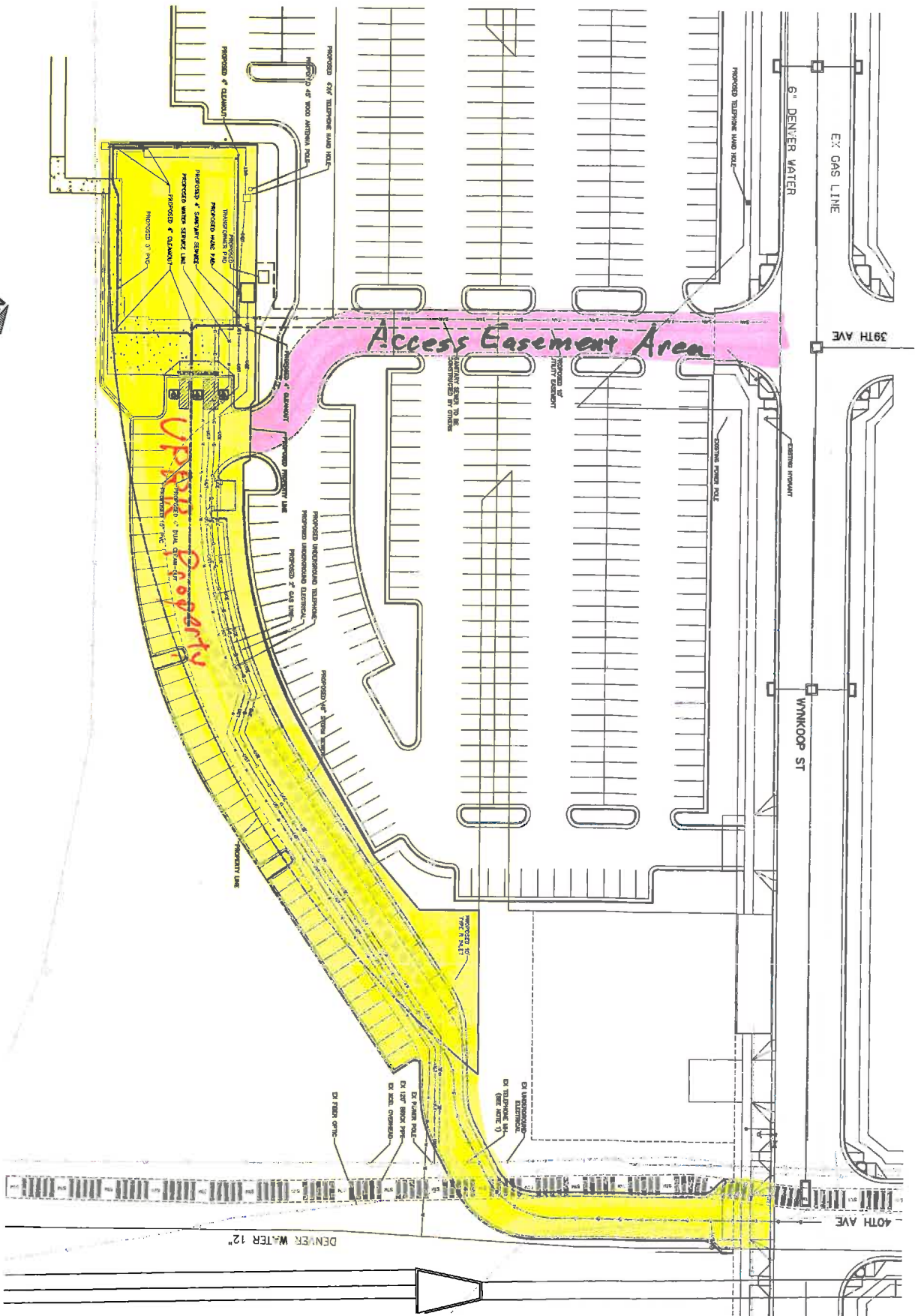
CITY AND COUNTY OF DENVER 80' UTILITY ORD.-187, 1925

SEE SHEET 18 of 218

SEE SHEET 17 of 218

3/8/2013 3:53:46 PM K:\072120_Fastracks\East Corridor\Drawings\Exhibit\Blake Station_Site_Minus_UPRR\EC-VR-PL014PLN.dgn

**Exhibit B to Easement Agreement
UPRR PROPERTY**



- NOTES:**
1. ADJUST THIS TO MATCH PROPERTY SURVEY
 2. ANY UTILITIES (GAS, ELECTRIC, TELEPHONE, ETC.) SERVICE EXISTENT WITH PROPERTY SHALL REMAIN



UNION PACIFIC RAILROAD
 YARD OFFICE
 3880 WYNKOOP STREET
 DENVER, CO 80202
 PROJECT NO. 12-0000000000
 SHEET TITLE
 UTILITY PLAN
 DATE
 12/13/11
 SCALE
 1"=40'
 SHEET NUMBER
 C1.3

PROJECT NO. 12-0000000000
 DRAWN BY
 J. G. S. / J. H.
 DATE
 12/13/11
 REVISIONS

UNION PACIFIC RAILROAD YARD OFFICE

3880 WYNKOOP STREET, DENVER, COLORADO



ARCHITECT:
 3000 Larimer Street
 Denver, CO 80202
 P: 303.467.3700
 F: 303.467.3700
 www.hol.com

**Exhibit C to Easement Agreement
EASEMENT AREA**

**REGIONAL TRANSPORTATION DISTRICT
STATION SITE
DESCRIPTION**

**38th AND BLAKE STATION
ACCESS EASEMENT
STA. 182+ TO STA. 184+**

FOR

EAST CORRIDOR COMMUTER RAIL PROJECT

EXHIBIT "A"
38th and Blake Station Site
Access Easement
Date: July 25, 2014
DESCRIPTION

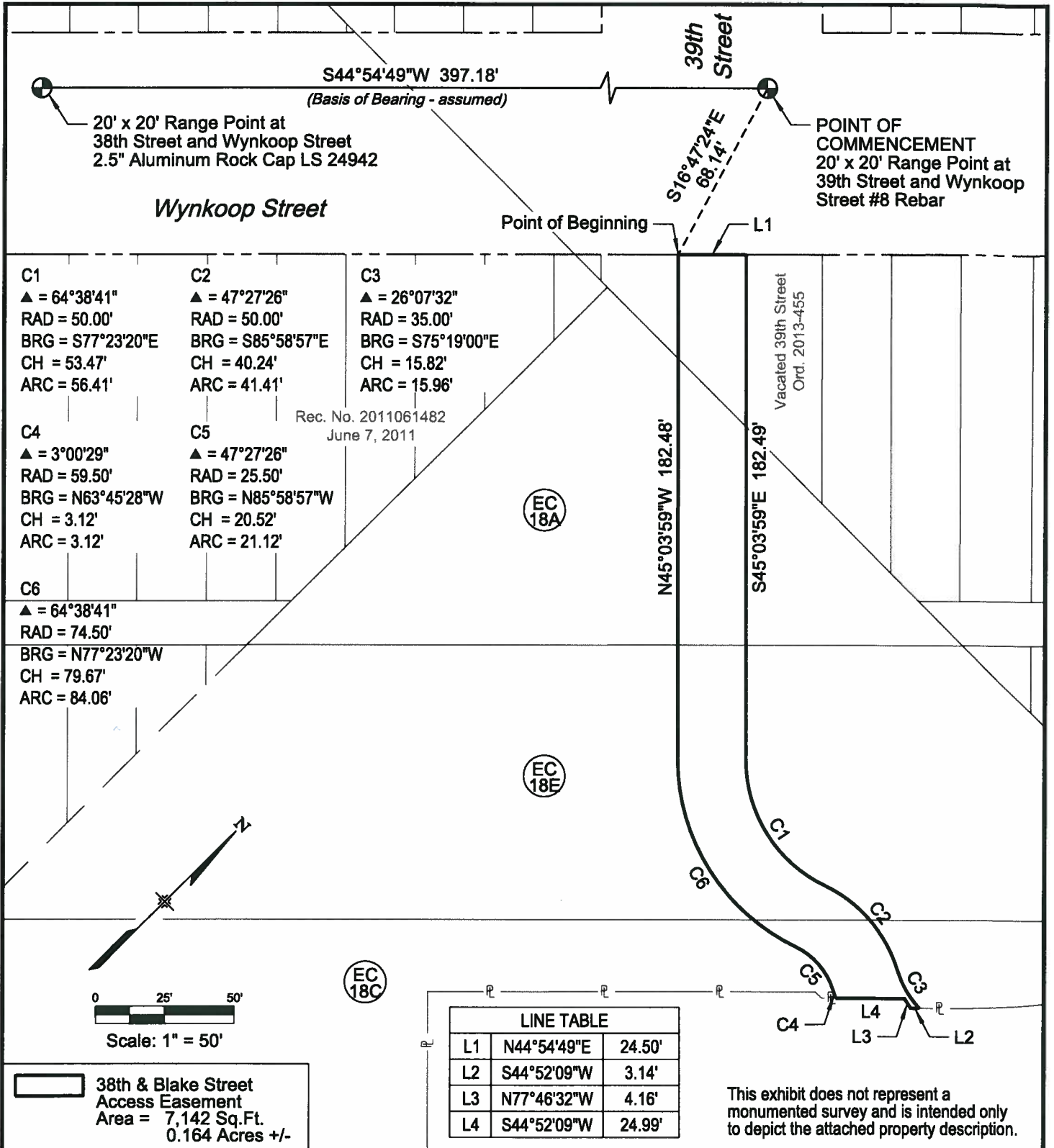
38th and Blake Station Site Access Easement of the RTD East Corridor Commuter Rail Project, being a portion of tracts of land described as parcels EC-18A, EC-18C and EC-18E at Reception No. 2011061482 recorded June 7, 2011 and a portion of 39th Street vacated by Ordinance 2013-455, all in the City and County of Denver Clerk and Recorder's Office, located in the Southwest Quarter of Section 23, Township 3 South, Range 68 West of the Sixth Principal Meridian, City and County of Denver, Colorado, being more particularly described as follows:

COMMENCING at the 20 foot by 20 foot Range Point at 39th Street and Wynkoop Street (a #8 rebar) WHENCE the 20 foot by 20 foot Range Point at 38th Street and Wynkoop Street (a 2-1/2" aluminum rock cap. LS 24942) bears S44°54'49"W a distance of 397.18 feet (basis of bearing – assumed); THENCE S16°47'24"E a distance of 68.14 feet to the northwesterly line of said vacated 39th and the POINT OF BEGINNING;

THENCE N44°54'49"E, coincident with said northwesterly line, a distance of 24.50 feet;
THENCE S45°03'59"E, tangent with the following described curve, a distance of 182.49 feet;
THENCE along the arc of a curve to the left, having a central angle of 64°38'41", a radius of 50.00 feet, a chord bearing of S77°23'20"E a distance of 53.47 feet, and an arc distance of 56.41 feet;
THENCE along the arc of a curve to the right, tangent with the last described curve, having a central angle of 47°27'26", a radius of 50.00 feet, a chord bearing of S85°58'57"E a distance of 40.24 feet, and an arc distance of 41.41 feet;
THENCE along the arc of a curve to the left, tangent with the last described curve, having a central angle of 26°07'32", a radius of 35.00 feet, a chord bearing of S75°19'00"E a distance of 15.82 feet, and an arc distance of 15.96 feet;
THENCE S44°52'09"W, non-tangent with the last described curve, a distance of 3.14 feet;
THENCE N77°46'32"W a distance of 4.16 feet;
THENCE S44°52'09"W, non-tangent with the following described curve, a distance of 24.99 feet;
THENCE along the arc of a curve to the right, having a central angle of 3°00'29", a radius of 59.50 feet, a chord bearing of N63°45'28"W a distance of 3.12 feet, and an arc distance of 3.12 feet;
THENCE along the arc of a curve to the left, tangent with the last described curve, having a central angle of 47°27'26", a radius of 25.50 feet, a chord bearing of N85°58'57"W a distance of 20.52 feet, and an arc distance of 21.12 feet;
THENCE along the arc of a curve to the right, tangent with the last described curve, having a central angle of 64°38'41", a radius of 74.50 feet, a chord bearing of N77°23'20"W a distance of 79.67 feet, and an arc distance of 84.06 feet;
THENCE N45°03'59"W tangent with the last described curve a distance of 182.48 feet to the POINT OF BEGINNING.

Containing 7,142 square feet, (0.164 Acres), more or less.

Prepared by:
Kenneth W. Carlson PLS 24942
For and on behalf of Jacobs Engineering Group Inc.
707 17th Street #2400
Denver, CO 80202



JACOBS PROJECT NO.	WXV7414
CLIENT PROJECT NO.	072120
REVISION DESCRIPTION	
DRAWN	JSX
DATE	07/23/14
SCALE	1"=50'

JACOBS

707 17th Street 2400 Denver, CO. 80202
(303) 820-5240 Fax (303) 820-4842

THIS MATERIAL AND ANY ASSOCIATED ELECTRONIC DATA WAS PREPARED BY JACOBS ENGINEERING GROUP INC. FOR THE PROJECT INDICATED. ANY REUSE OR MODIFICATION WITHOUT THE WRITTEN CONSENT OF ENGINEERING GROUP INC. SHALL BE AT THE SOLE RISK OF THE USER.

RTD East Corridor Commuter Rail
City and County of Denver, Colorado
SW 1/4 Sec. 23, T3S, R68W, 6th P.M.

TITLE: Exhibit "A"
38th & Blake Street Access Easement

REVISION:	DRAWING NO. 38thandBlakeAccessEsmt.dgn	SHEET NO. 1 of 1
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EXHIBIT H-2

Form of Easement (Parking Lot Sanitary Facilities)

(Pages follow)

After recording return to:
Manager Real Property
1560 Broadway, Denver, CO 80202

EASEMENT

(RTD 38th/Blake Station Parking Lot Public and Private Sanitary Facilities)

KNOW ALL PEOPLE BY THESE PRESENTS:

That the REGIONAL TRANSPORTATION DISTRICT, a political subdivision of the State of Colorado, ("Grantor"), for and in consideration of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby grant and convey to the CITY AND COUNTY OF DENVER, a home rule city and municipal corporation of the State of Colorado ("City"), its successors and assigns, a permanent, non-exclusive easement ("Easement") to locate, install, construct, inspect, operate, maintain, repair, remove, replace, and reconstruct an eight inch (8") pipeline for sanitary sewage and related purposes, including related underground and surface facilities and appurtenances thereto ("Public Improvements"), and the right to allow one private sanitary sewage service line, connection and related facilities and appurtenances to a facility owned and operated by the Union Pacific Railroad Company substantially as described and depicted in **Exhibit B** attached hereto ("Private Improvements") (collectively the Public Improvements and the Private Improvements are the "Sanitary Improvements"), into, within, upon, through and under the following described parcel of land ("Easement Property"):

See Exhibit A attached hereto

Pursuant to a separately recorded document, RTD has granted to the City a permanent, nonexclusive easement in, on, under, upon, over, through and across an access road, which the City, Union Pacific Railroad Company and their respective contractors, successors and assigns, may use also for ingress and egress to the Easement Property for purposes of inspecting, operating, repairing, removing, replacing, reconstructing, and maintaining the Sanitary Improvements.

Grantor covenants and agrees that, effective as of the date of this Easement, the Grantor shall not erect, install, place, or permit any building or structure upon the Easement Property, except for the access road and related improvements to be constructed by RTD or its contractor, or as otherwise approved by the City's Manager of Public Works in writing, or as otherwise provided in this Easement. If RTD determines that the Easement Property and thereby the Sanitary Improvement need to be relocated to a new location on RTD's property, in order for RTD's use of the Easement Property for facilities related to RTD's transit services, Grantor and Grantee shall use good faith efforts to accommodate such relocation. The cost of any relocation of the Sanitary Improvements shall be allocated amongst Grantor and Grantee by separate agreement. If the Easement Property is so relocated, Grantor shall grant to Grantee easement rights in the new location for no monetary consideration and this Easement shall be amended to reflect the new location of the Easement Property

**Exhibit H-2 to 38th & Blake IGA
Form of Sanitary Easement**

and all the terms, conditions and stipulations herein expressed shall apply to the new Easement Property, except as specifically modified by the parties.

Except as otherwise provided herein, Grantor, its successors and assigns, reserves the right to fully use and enjoy the Easement Property, so long as such use and enjoyment shall not interfere with the location, installation, construction, inspection, operation, maintenance, repair, removal, replacement, and reconstruction of the Sanitary Improvements.

In the event the terms of this Easement are violated, such violation shall promptly be corrected by Grantor within ninety (90) days of receipt of written notice from the City or within the time designated in such notice. If Grantor does not correct the violation within the time designated in such notice, the City may elect to correct or eliminate such violation and to collect the costs thereof from Grantor based on invoices and other evidence of the cost of such repairs provided to Grantor, which the Grantor shall pay unless disputed as incorrect or duplicative, subject to appropriation.

The City shall maintain the Public Improvements at its sole cost and expense. The City shall repair and restore to a condition similar to what it was prior to the City's activities, any structure, improvement, paving, landscaping or other feature that the City's Manager of Public Works has approved, whether now or hereafter existing on or a part of the Easement Property, or Grantor's adjacent property, which is damaged, altered or changed by the City during or as a result of the location, installation, construction, inspection, operation, maintenance, repair, removal, replacement, relocation or reconstruction of the Public Improvements or the exercise or performance of any of the City's rights or obligations under this Easement, except to the extent the Easement Property is necessarily modified to accommodate the Public Improvements or as otherwise agreed to by Grantor. All obligations of the City hereunder are subject to the prior appropriation of monies expressly made by the City Council for such purposes and paid into the Treasury of the City.

The City shall cause the Private Improvements to be maintained at no cost to Grantor. The City shall cause the repair and restore to a condition similar to what it was prior to the activities related to the Private Improvements, any structure, improvement, paving, landscaping or other feature that the City's Manager of Public Works has approved, whether now or hereafter existing on or a part of the Easement Property, or Grantor's adjacent property, which is damaged, altered or changed during or as a result of the location, installation, construction, inspection, operation, maintenance, repair, removal, replacement, relocation or reconstruction of the Private Improvements or the exercise or performance of any of the City's rights or obligations under this Easement, except to the extent the Easement Property is necessarily modified to accommodate the Private Improvements or as otherwise agreed to by Grantor.

The provisions of this Easement shall inure to the benefit of and bind the successors and assigns of the Grantor and City. All covenants stated in this Easement shall apply to and run with the land.

Prior to performing any digging or boring activities on the Easement Property, Grantee shall determine if a telecommunications system or other utility is buried anywhere on or about the Easement Property in the location where Grantee will perform such digging or boring activities. If there is such a

telecommunications facility or other utility, Grantee will inform the owner of such telecommunications system or other utility, and take such measures in concert with the owners(s) as are necessary so as not to damage such system or utility.

Any notices required to be given shall be given in writing and mailed by U.S. mail, first class postage prepaid, and addressed as follows:

If to Grantor: Regional Transportation District
1560 Broadway, Suite 650
Denver, Colorado 80202
Attn: Manager of Real Property
(303) 628-9000

With a copy to: Denver Transit Partners, LLC
General Manager
1670 Broadway, Floor 27
Denver, Colorado 80202
In emergency: (855) 324-5373

If to City: City and County of Denver
Manager, Public Works
201 W. Colfax Ave., Dept. 608
Denver, CO 80202

With a copy to: Denver City Attorney's Office
201 W. Colfax, Dept. 1207
Denver, CO 80202

The address to which any notice, demand, or other writing may be given may be changed by written notice given as above provided.

Grantee shall contractually require its contractors working in the Easement Property to, indemnify, defend and hold harmless Grantor and its officers, directors, employees, agents and contractors and Denver Transit Partners, LLC 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 Grantee's and/or its contractors' use of the Easement Property or other the RTD property hereunder.

Grantor does not grant nor purport to grant any right not specifically set forth herein. Permission for the Grantee or its contractors to traverse the property of any other property owners or interest-holders is the sole responsibility of Grantee as is procurement of any applicable regulatory permission or

consent; provided that no additional regulatory permission or consent shall be required to be procured from Grantor except as expressly provided herein.

The right to use the Easement Property granted hereunder is hereby contracted for and shall be granted with respect to the Easement Property in its "AS IS" physical condition without any warranty, express or implied. This grant is subject to all other prior granted or reserved rights and interests in the Easement Property.

Grantee specifically assumes all risk of loss, damage, or destruction to any tools, equipment, or materials, if any, that Grantee or its contractor stores on the Easement Property, whether the loss, damage or destruction results from accident, act of God, the elements, severe weather, theft or vandalism.

Grantee shall require that any contractors and subcontractors working in the Easement Property to procure and maintain, the following types of insurance, at minimum, with an insurer or insurers and in a form satisfactory to RTD:

1. Comprehensive general and automobile liability insurance with contractual liability endorsement and products and completed operations hazards included, which shall provide coverage for limits of not less than \$ 1,000,000.00 bodily injury liability and property damage liability, combined single limits.
2. Workers' Compensation and Employers' Liability Insurance covering all employees of Grantee and its contractors, wherever they may be in the United States of America so long as they are engaged in the work covered by this Easement. The policy or policies shall cover the entire liability of the Grantee and its contractors 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 the same, a waiver of insurer's right of subrogation against RTD for payments made to or on behalf of employees of the Grantee's and contractors. Employer's Liability Insurance shall provide coverage for limits of not less than \$ 500,000.
3. Prior to entry upon, above or adjacent to the Easement Property, Grantee agrees to furnish RTD with the required certificate of insurance. Grantee shall cause its contractors to provide 30 days' advance notice of cancellation of the policy by Registered or Certified mail.
4. Each such comprehensive general and automobile liability certificate shall have the following endorsements attached thereto:
 - a) An endorsement naming each of RTD and Denver Transit Partners, LLC additional insured;
 - b) An endorsement providing for contractual liability coverage for liability assumed by the Grantee under this Agreement;

- c) An endorsement providing that all policy or endorsement limitation(s) relating specifically to operations on or near railroad property are eliminated;
- d) A Broad Form Property Damage endorsement; and
- e) An endorsement providing that in the event of reduction or exhaustion of the applicable aggregate limit or limits of liability under the primary policy or policies referred to in the certificate of insurance solely by reason of losses paid hereunder on account of occurrences during the policy period, the excess policy, if any, referred to in the certificate shall (1) in the event of reduction, apply as excess of the reduced limit of liability thereunder; and (2) in the event of exhaustion, continue in force as though it were primary insurance.

Only those contractors and subcontractors of Grantee whose operations are covered by insurance will be authorized to work upon or about the Easement Property.

Grantee shall not cause or knowingly permit any hazardous substance to be used, stored, generated, or disposed of on or in the Easement Property by Grantee, Grantee's agents, employees, contractors, or invitees. If hazardous substances are used, stored, generated or disposed of on or in the Easement Property, or if the Easement Property becomes contaminated in any manner due to the actions or inactions of the Grantee, Grantee's agents, employees, contractors, or invitees Grantee shall cause its contractors and subcontractors to indemnify and hold harmless RTD from any and all claims, damages, fines, judgments, penalties, costs, liabilities, or losses (including, without limitation, a decrease in value of the property and any and all sums paid for settlement of claims, attorneys' fees, consultant, and expert fees) arising as a result of those actions or inactions by Grantee, Grantee's agents, employees, contractors, or invitees. This indemnification includes, without limitation, any and all costs incurred because of any investigation of the site or any cleanup, removal, or restoration mandated by a federal, state or local agency or political subdivision. without limitation of the foregoing, if Grantee, Grantee's agents, employees, contractors, or invitees causes or permits the presence of any hazardous property on the Easement Property and that results in contamination, Grantee shall promptly, at no cost to Grantor, cause its contractor to take any and all necessary actions to return the Easement Property to the condition existing prior to the presence of any such hazardous substance. Grantee shall first obtain RTD's approval for any such remedial action. as used herein, "hazardous substance" means any substance that is defined as "toxic", "hazardous waste" or a "hazardous substance" or that is toxic, ignitable, reactive, or corrosive, and is regulated by any local government, the State of Colorado or the United States, including asbestos, asbestos containing material, polychlorobiphenyls ("PCB"), and petroleum.

Signed and delivered this _____ day of _____, 2014.

GRANTOR: Regional Transportation District

By: _____

Printed Name: Phillip A. Washington

Title: General Manager and CEO

STATE OF COLORADO)
) ss.
CITY AND COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by _____ as _____.

My commission expires: _____.

WITNESS my hand and official seal.

Notary Public

Approved as to Legal Form:

EXHIBIT A

Easement Property Legal Description

(pages to follow)

EXHIBIT "A"
38th and Blake Station Site
Sanitary Easement
Date: June 4, 2014
DESCRIPTION

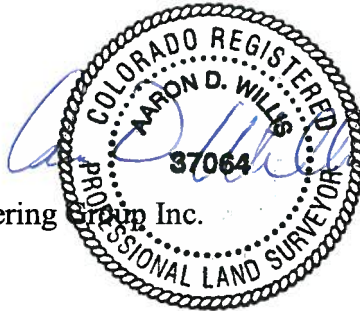
38th and Blake Station Site Sanitary Easement of the RTD East Corridor Commuter Rail Project, being a portion of tracts of land described as parcels EC-18A, EC-18C and EC-18E at Reception No. 2011061482 recorded June 7, 2011 and a portion of 39th Street vacated by Ordinance 2013-455, all in the City and County of Denver Clerk and Recorder's Office, located in the Southwest Quarter of Section 23, Township 3 South, Range 68 West of the Sixth Principal Meridian, City and County of Denver, Colorado, being more particularly described as follows:

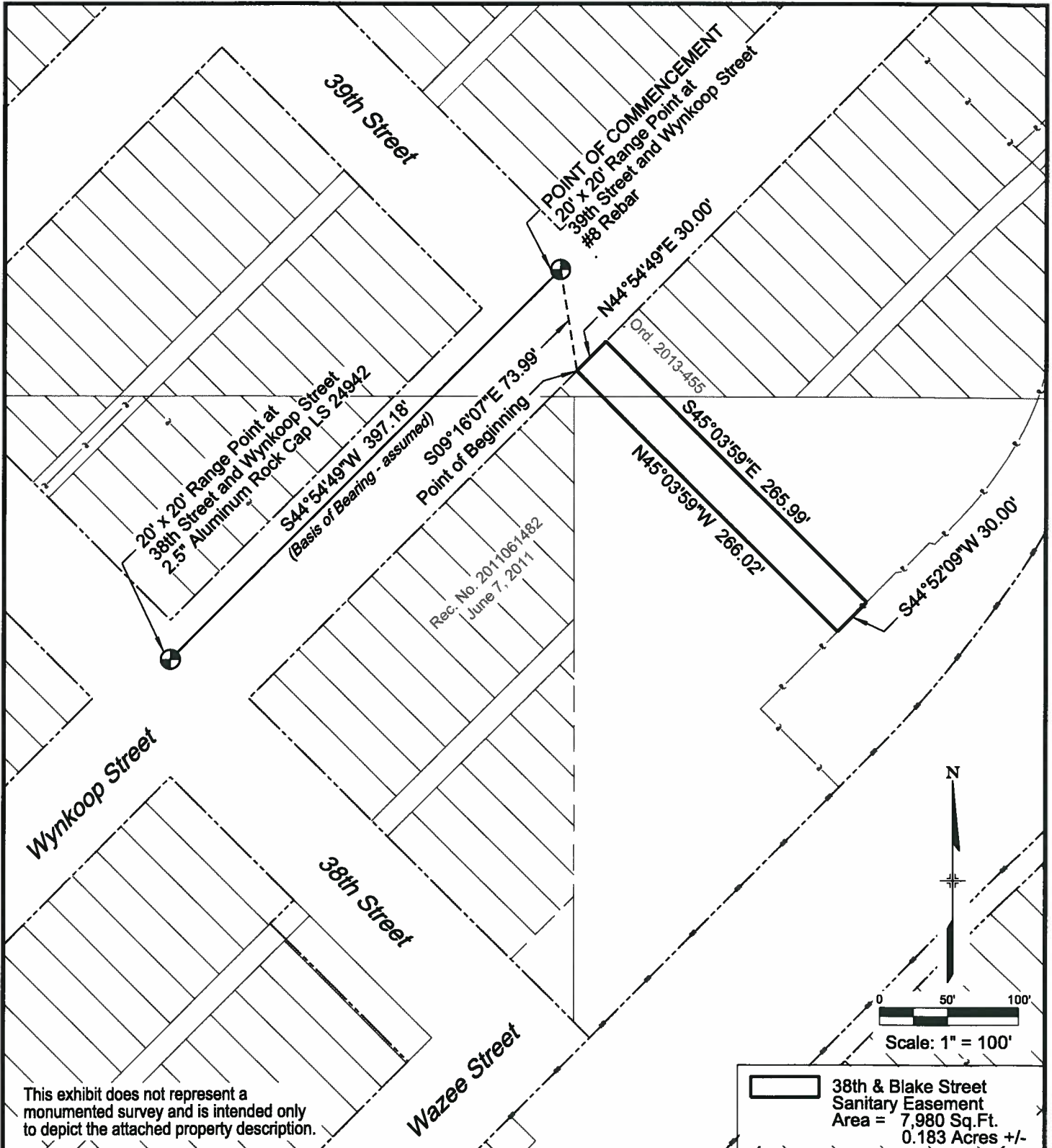
COMMENCING at the 20 foot by 20 foot Range Point at 39th Street and Wynkoop Street (a #8 rebar) WHENCE the 20 foot by 20 foot Range Point at 38th Street and Wynkoop Street (a 2-½" aluminum rock cap. LS 24942) bears S44°54'49"W a distance of 397.18 feet (basis of bearing – assumed);
THENCE S09°16'07"E a distance of 73.99 feet to the northwesterly line of vacated 39th Street as described in said Ordinance and the POINT OF BEGINNING;

THENCE N44°54'49"E, coincident with said northwesterly line, a distance of 30.00 feet;
THENCE S45°03'59"E a distance of 265.99 feet;
THENCE S44°52'09"W a distance of 30.00 feet;
THENCE N45°03'59"W a distance of 266.02 feet to the POINT OF BEGINNING.

Containing 7,980 square feet, (0.183 Acres), more or less.

Prepared by:
Aaron D. Willis PLS 37064
For and on behalf of Jacobs Engineering Group Inc.
707 17th Street #2400
Denver, CO 80202





This exhibit does not represent a monumented survey and is intended only to depict the attached property description.

38th & Blake Street Sanitary Easement
 Area = 7,980 Sq.Ft.
 0.183 Acres +/-

JACOBS PROJECT NO.	WVXV7414		
CLIENT PROJECT NO.	072120		
REVISION DESCRIPTION			
DRAWN	JSX	DATE	06/05/14
		SCALE	1"=100'

JACOBS
 707 17th Street 2400 Denver, CO. 80202
 (303) 820-5240 Fax (303) 820-4842

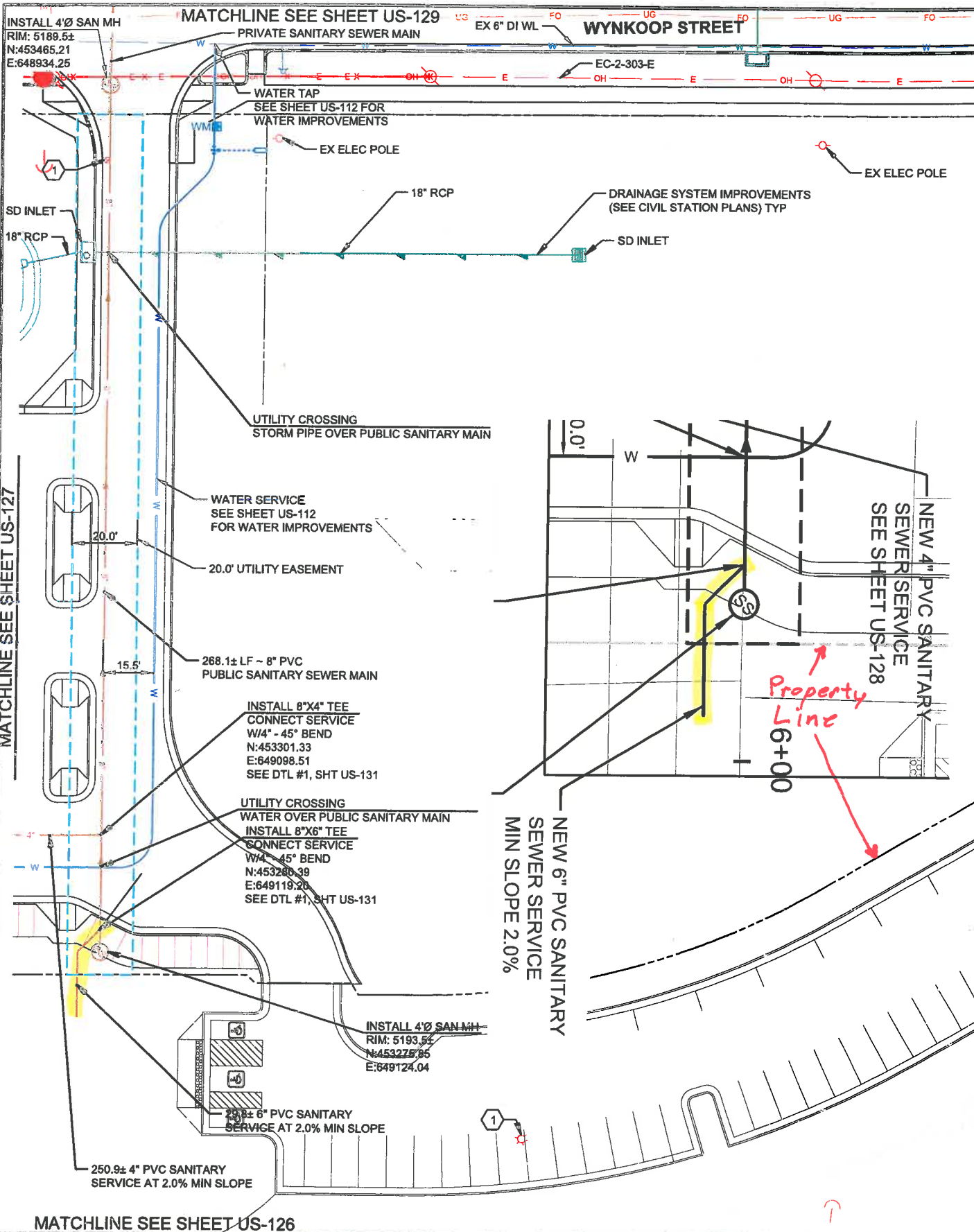
THIS MATERIAL AND ANY ASSOCIATED ELECTRONIC DATA WAS PREPARED BY JACOBS ENGINEERING GROUP INC. FOR THE PROJECT INDICATED. ANY REUSE OR MODIFICATION WITHOUT THE WRITTEN CONSENT OF ENGINEERING GROUP INC. SHALL BE AT THE SOLE RISK OF THE USER.

RTD East Corridor Commuter Rail
 City and County of Denver, Colorado
 SW 1/4 Sec. 23, T3S, R68W, 6th P.M.

TITLE: Exhibit "A"
 38th & Blake Street Sanitary Easement

REVISION:	DRAWING NO.	SHEET NO.
	38thandBlakeSanEsmt.dgn	1 of 1

EXHIBIT B
PRIVATE IMPROVEMENTS
(pages to follow)



c:\pwworking\jrd_eagle_p3\jrbuechler\dms1160417B-09.01F_EC-U-US-126.dgn

5/21/2014

USER: JBuechler

NO.	REVISIONS	BY	DATE
1	DCN-FHDR-00418, SHEET REVISED IN ENTIRETY	JAB	04/21/14
0	ISSUED FOR CONSTRUCTION, CDRL #7B-09.01F, REV 0	JAB	10/02/12

DESIGNED BY: AAB	DATE: 01/10/14	CHECKED BY: JAB	DATE:
DRAWN BY: MS	DATE: 01/10/14	APPROVED BY: JEK	DATE:

EXHIBIT I

Form of RTD Crossing Agreement

(Pages follow)

NEW PEDESTRIAN BRIDGE CROSSING AGREEMENT

BETWEEN THE
REGIONAL TRANSPORTATION DISTRICT
AND THE
CITY AND COUNTY OF DENVER

COVERING
THE CONSTRUCTION, INSTALLATION AND MAINTENANCE OF
A NEW CITY PEDESTRIAN OVERPASS CROSSING STRUCTURE

AT OR NEAR
THE INTERSECTION OF 35TH STREET AND WAZEE
STREET WITHIN THE CITY AND COUNTY OF
DENVER, COLORADO

NEW PEDESTRIAN BRIDGE CROSSING AGREEMENT

THIS AGREEMENT (“Agreement”) is made and entered into as of the Effective Date (defined below), by and between **REGIONAL TRANSPORTATION DISTRICT**, a political subdivision of the State of Colorado organized pursuant to the Regional Transportation District Act, C.R.S. §§ 32-9-101, *et seq.* to be addressed at 1600 Blake St., Denver, CO 80202 (“Railroad” or “RTD”) and **the CITY AND COUNTY OF DENVER**, a home rule city and municipal corporation of the State of Colorado, to be addressed at 1437 Bannock, Denver, CO 80202 (“City”).

RECITALS:

The City desires to undertake the construction of a pedestrian overpass and its elements and appurtenances (the “2nd Ped. Bridge”), to carry pedestrian and bicycle traffic over UPRR tracks and Railroad’s track(s) on Railroad’s East Line near the intersection of 35th Street and Wazee and 35th and Blake in the City and County of Denver as shown on the Railroad Location Print marked **Exhibit A** and described in the Legal Description and Illustrative Print of the Legal Description marked **Exhibit A-1** attached hereto and hereby made a part hereof (the “Crossing Area”). The City’s Detailed Prints/Plans of the 2nd Ped. Bridge are marked **Exhibit A-2**, attached hereto and hereby made a part hereof. In addition, certain matters relating to the 2nd Ped. Bridge are set forth in an Intergovernmental Agreement (38th and Blake Station/UPRR Relocation) between the Railroad and the City (“RTD/City IGA”).

The Railroad and the City are entering into this Agreement to cover the above.

AGREEMENT:

NOW, THEREFORE, it is mutually agreed by and between the parties hereto as follows:

SECTION 1. EXHIBITS B AND D

The General Terms and Conditions marked **Exhibit B**, and the Railroad’s Coordination Requirements marked **Exhibit D**, are attached hereto and hereby made a part hereof.

SECTION 2. RAILROAD GRANTS RIGHT

For and in consideration of the sum of **TEN DOLLARS (\$10.00)** and in further consideration of the City’s agreement to perform and comply with the terms of this Agreement, the receipt and sufficiency of which are hereby acknowledged, the Railroad will grant to the City within thirty (30) calendar days of the Effective Date, subject to the terms and conditions set forth in the RTD/City IGA, a permanent aerial easement including the right to construct, maintain and repair the 2nd Ped. Bridge over and across the Crossing Area, which permanent aerial easement shall be in substantially the form of Permanent Aerial Easement set forth in **Exhibit F**, attached hereto and incorporated herein (“Permanent Aerial Easement”). In addition

to the Permanent Aerial Easement, the City shall obtain from RTD the temporary right to construct the 2nd Ped. Bridge over additional RTD property legally described in **Exhibit C** (“Temporary Construction Area”) pursuant to a Temporary Construction Agreement attached hereto as **Exhibit E** and incorporated herein (“Temporary Construction Easement”). In addition, the City shall, and shall cause its Contractors, to obtain from RTD the temporary right to construct the 2nd Ped. Bridge over additional RTD property legally described in **Exhibit C** (“Temporary Construction Area”) pursuant to a Contractor’s Right of Entry Agreement described in Section 4 below, for no additional consideration to RTD, in accordance with this Agreement including the General Terms and Conditions, which is **Exhibit B** to this Agreement; provided, however, that the City shall also, and require its Contractors to, first obtain a right of access from Denver Transit Partners to enter the Temporary Construction Area pursuant to the then-current Third Party Access to the RTDC Commuter Rail Right of Way rules and procedures (“DTP Third Party Access”), the current form of which is attached hereto as Exhibit C to the Temporary Construction Easement.

SECTION 3. DEFINITION OF CONTRACTOR AND 2ND PED. BRIDGE WORK

For purposes of this Agreement the term “Contractor” shall mean the contractor or contractors hired by the City to perform any work to implement the 2nd Ped. Bridge in the Crossing Area or Temporary Construction Area (“2nd Ped. Bridge Work”) and shall also include the Contractor’s subcontractors and the Contractor’s and subcontractor’s respective employees, officers and agents, and others acting under its or their authority.

SECTION 4. CONTRACTOR'S RIGHT OF ENTRY AGREEMENT – INSURANCE

- A. Prior to Contractor performing any work within the Crossing Area or other Railroad property and any subsequent maintenance or repair work, or any other work required by this Agreement, the City shall require the Contractor to:
- Execute the Railroad’s then-current Contractor’s Right of Entry Agreement, the form of which is attached hereto as Exhibit B to the Temporary Construction Easement (“Contractor’s RoE”);
 - Obtain the then-current insurance required in the Contractor’s Right of Entry Agreement;
 - Provide such insurance policies, certificates, binders and/or endorsements to the Railroad; and
 - Obtain the then-current right of access from Denver Transit Partners pursuant to the Third Party Access to the RTDC Commuter Rail Right of Way rules and procedures (“DTP Third Party Access”), the form of which is attached hereto as Exhibit C to the Temporary Construction Easement.
- B. Under no circumstances will the Contractor be allowed on the Railroad’s property without first executing the Contractor’s RoE, receiving the DTP Third Party Access from Denver Transit Partners or the contractor operating the commuter rail on behalf of Railroad, and obtaining the insurance set forth therein and also providing to the Railroad the insurance policies, binders, certificates and/or endorsements described therein.
- C. All insurance correspondence, binders, policies, certificates and/or endorsements shall be sent to:

Eagle Project Director
Regional Transportation District
1670 Broadway, Suite 2700
Denver, Colorado 80202

With a copy to: RTD General Counsel
1600 Blake St. BLK-23
Denver, CO 80202

- D. If the City's own employees will be performing any of the 2nd Ped. Bridge Work, the City may self-insure all or a portion of the insurance coverage subject to the Railroad's prior review and approval.

SECTION 5. NO 2ND PED. BRIDGE EXPENSES TO BE BORNE BY RAILROAD

Except as otherwise set forth in Article VI of the RTD/City IGA, the City agrees that no 2nd Ped. Bridge costs and expenses are to be borne by the Railroad. Any work performed by the Railroad in support of the 2nd Ped. Bridge will be billed pursuant to Section 6 below. The work will include any engineering plan review, inspections, flagging, or adjustments to the Railroad facilities.

SECTION 6. WORK TO BE PERFORMED BY RAILROAD; BILLING SENT TO CITY; CITY'S PAYMENT OF BILLS

If, pursuant to the RTD/City IGA or other agreement between the parties, Railroad performs any work on the 2nd Ped. Bridge and the scope and cost of which is approved by the City's Manager of Public Works, the following shall apply:

- A. All costs incurred by the Railroad are to be paid by the City or the City's Contractor as determined by the Railroad and the City. If it is determined that the Railroad will be billing the Contractor directly for such costs, the City agrees that it will pay the Railroad for any flagging costs that have not been paid by any Contractor within thirty (30) days of the Contractor's receipt of billing.
- B. The Railroad shall send progressive billing to the City during the 2nd Ped. Bridge Work, and final billing to the City within one hundred eighty (180) days after receiving written notice from the City that all 2nd Ped. Bridge Work affecting the Railroad's property has been completed.
- C. The City agrees to reimburse the Railroad within thirty (30) days of its receipt of billing from the Railroad for one hundred percent (100%) of all actual costs incurred by the Railroad in connection with the 2nd Ped. Bridge Work including, but not limited to, all actual costs of engineering review (including preliminary engineering review costs incurred by Railroad prior to the Effective Date of this Agreement), construction inspection, flagging (unless flagging costs are to be billed directly to the Contractor), procurement of materials, equipment rental, manpower and deliveries to the job site and all direct and indirect overhead labor/construction costs including Railroad's standard additive rates.

SECTION 7. PLANS AND CHANGE ORDERS

- A. Railroad's review and approval of all design, plans and specifications of the 2nd Ped. Bridge, along with construction of the 2nd Ped. Bridge based thereon, shall be addressed as set forth in the RTD/City IGA. As of the Effective Date, the final one hundred percent (100%) completed plans have been approved in writing by the Railroad are hereinafter referred to as the "Ped. Bridge Approved Plans" or "Plans". The Ped. Bridge Approved Plans are hereby made a part of this Agreement by reference.
- B. No change orders shall be made unless the Railroad has consented to such change orders in writing, which consent shall not be unreasonably withheld. Railroad shall review any change order within 5 business days provided that for any change order that requires a variance from the design requirements in the RTD/City IGA, Railroad shall review such change order within 21 business days. Except for those change orders requiring a design variance from the design requirements in the RTD/City IGA, if no response is received within the 5-business-day timeframe, the change order shall be deemed approved by Railroad.
- C. The Railroad's review and approval of the Plans will in no way relieve the City or the Contractor from their responsibilities, obligations and/or liabilities under this Agreement, and will be given with the understanding that the Railroad makes no representations or warranty as to the validity, accuracy, legal compliance or completeness of the Plans and that any reliance by the City or Contractor on the Plans is at the risk of the City and Contractor.

SECTION 8. NON-RAILROAD IMPROVEMENTS

If, pursuant to the RTD/City IGA or other agreement between the parties, Railroad performs any work on Non-Railroad Improvements relating to the 2nd Ped. Bridge and the scope and cost of which is approved by the City's Manager of Public Works, the following shall apply:

- A. Submittal of plans and specifications for protecting, encasing, reinforcing, relocating, replacing, removing and abandoning in place all non-railroad owned facilities (the "Non Railroad Facilities") affected by the 2nd Ped. Bridge Work including, without limitation, utilities, fiber optics, pipelines, wire lines, communication lines and fences is required under Section 8. The Non Railroad Facilities plans and specifications shall comply with Railroad's standard specifications and requirements. Railroad has no obligation to supply additional land for any Non Railroad Facilities and does not waive its right to assert preemption defenses, challenge the right-to-take, or pursue compensation in any condemnation action, regardless if the submitted Non Railroad Facilities plans and specifications comply with Railroad's standard specifications and requirements. Railroad has no obligation to permit any Non Railroad Facilities to be abandoned in place or relocated on Railroad's property.
- B. Upon Railroad's approval of submitted Non Railroad Facilities plans and specifications, Railroad will attempt, prior to the City's issuance of a Notice to Proceed, to incorporate them into new agreements or supplements of existing agreements with Non Railroad Facilities owners or operators. Railroad may use its standard terms and conditions, including, without limitation, its standard license fee and administrative charges when requiring supplements or new agreements for Non Railroad Facilities. Non Railroad Facilities work shall not commence before a supplement or new agreement has been fully executed by Railroad and the Non Railroad Facilities owner or operator, or before

Railroad and City mutually agree in writing to (i) deem the approved Non Railroad Facilities plans and specifications to be Plans pursuant to Section 8B, (ii) deem the Non Railroad Facilities part of the Structure, and (iii) supplement this Agreement with terms and conditions covering the Non Railroad Facilities.

SECTION 9. RAILROAD'S COORDINATION REQUIREMENTS

The City, at no cost to RTD, shall ensure that the Contractor complies with all of the terms and conditions contained in the Railroad's Coordination Requirements that are described in **Exhibit D**, attached hereto and hereby made a part hereof, and other special guidelines and/or requirements that the Railroad may provide to the City for this 2nd Ped. Bridge Work.

SECTION 10. CONDITIONS TO BE MET BEFORE CITY CAN COMMENCE WORK

Neither the City nor the City's Contractor may commence work within the Crossing Area or on any other Railroad property until:

- (i) The Railroad and the City have executed this Agreement.
- (ii) The Railroad has provided to the City the Railroad's written approval of the Plans.
- (iii) Each Contractor has executed Railroad's Contractor's Right of Entry Agreement and has obtained and/or provided to the Railroad the insurance policies, certificates, binders, and/or endorsements required under the Contractor's Right of Entry Agreement.
- (iv) Each Contractor has given the advance notice(s) required under the Contractor's Right of Entry Agreement to the Railroad Representative named in the Contractor's Right of Entry Agreement.
- (v) The City and each Contractor has received a DTP Third Party Access.

SECTION 11. FUTURE PROJECTS

Future projects involving substantial maintenance, repair, reconstruction, renewal and/or demolition of the 2nd Ped. Bridge shall not commence until Railroad and the City agree on the plans for such future projects, cost allocations, right of entry terms and conditions and temporary construction rights, terms and conditions.

SECTION 12. ASSIGNMENT; SUCCESSORS AND ASSIGNS

- A. City shall not assign this Agreement without the prior written consent of Railroad.
- B. Subject to the provisions of Paragraph A above, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of Railroad and City.

SECTION 13. APPROPRIATION

All obligations of the City or RTD under this Agreement are subject to the prior appropriation and deposit or encumbrance of funds expressly made by the City's City Council or RTD's Board of Directors for the performance or completion of any work or obligation herein. For the City, the City's Manager of Public Works shall include any such costs in its amended

budget for the then-current fiscal year or in the annual budget for the next fiscal year to be submitted to City Council.

SECTION 14. COUNTERPARTS

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

SECTION 15. ABANDONMENT

If City, its successors and assigns, shall abandon the 2nd Ped. Bridge, or any portion thereof, for the purpose set forth herein for a continuous period of twelve (12) months, then this Agreement and the rights granted herein shall cease automatically and terminate. The Permanent Aerial Easement will have a similar abandonment provision.

SECTION 16. TERM; TERMINATION; WAIVER OF BREACH

- A. This Agreement shall be effective as of the date first herein written (“Effective Date”), and shall remain in full force and effect until terminated as herein provided, or until the 2nd Ped. Bridge is abandoned as set forth above. Notwithstanding anything to the contrary contained herein, in the event that (i) the City does not commence construction on the portion of the 2nd Ped. Bridge located on the Crossing Area within twelve (12) months after the recording of the Permanent Aerial Easement; (ii) the recording of the Permanent Aerial Easement does not occur by December 15, 2015, or (iii) the City does not complete the 2nd Ped. Bridge within two (2) years after commencement thereof, this Agreement shall automatically terminate.
- B. Railroad may terminate this Agreement by giving City written notice of termination if City defaults under any obligation of City under this Agreement (or the rights herein granted) and, if after written notice is given by Railroad to City specifying a default under this Agreement, City fails either to immediately begin to cure the default, or to complete the cure expeditiously but in any event within thirty (30) days after the default notice is given. A waiver by Railroad of a breach of City of any covenant or condition of this Agreement shall not impair the right of Railroad to avail itself of any subsequent breach thereof. If the City shall fail, refuse or neglect to perform and abide by the terms of this Agreement, the Railroad, in addition to any other rights and remedies, may perform any work which in the judgment of the Railroad is necessary to place the 2nd Ped. Bridge and appurtenances in such condition as will not menace, endanger or interfere with the Railroad’s facilities or operations or jeopardize the Railroad employees; and the City will reimburse the Railroad for the expenses thereof.
- C. Railroad may also terminate this Agreement by giving City written notice of termination if safety and operational needs of Railroad are materially affected or impaired by City’s use of the 2nd Ped. Bridge, and Railroad and City cannot come to any mutual agreement or understanding as to how City, at City’s sole cost and expense, will eliminate such material effect or impairment.
- D. Termination of this Agreement shall not affect any rights, obligations or liabilities of the parties, accrued or otherwise, which may have arisen prior to termination.
- E. The City will surrender peaceable possession of the Crossing Area upon termination of this Agreement.

SECTION 17. REMOVAL OF STRUCTURE UPON TERMINATION OR ABANDONMENT

Within one hundred eighty (180) days after termination of this Agreement or City's abandonment of the 2nd Ped. Bridge, the City, at its sole cost and expense, shall remove all of the 2nd Ped. Bridge and its improvements from the Railroad's right-of-way and restore the Crossing Area including Railroad's right-of-way to its original condition, failing in which Railroad may perform such activities at the expense of City.

SECTION 18. LIABILITY.

The City shall cause its Contractors to, save, protect, defend, indemnify and hold harmless Railroad, and its respective affiliates, and their respective officers, agents and employees, against and from any and all liability, loss, damages, claims, demands, costs and expenses, fines and penalties of whatsoever nature, including court costs and attorney's fees, arising from and growing out of any injury or death of persons whomsoever (including officers, agents and employees of Railroad or the City and of any contractor as well as other persons) or loss of or damage to property whatsoever (including property of or in the custody of Railroad, the City or any contractor as well as other property).

SECTION 19. OPERATIONS AND MAINTENANCE.

- A. The City, at its sole cost and expense, shall operate, maintain, repair and renew, or cause to be maintained, repaired and renewed, the 2nd Ped. Bridge, including, but not limited to, pedestrian protective railing, barrier or fencing, the superstructure, substructure, piers, abutments, walls, approaches and all backfill, grading and drainage required by reason of the 2nd Ped. Bridge, as well as all graffiti removal or over-painting involving the 2nd Ped. Bridge. The City shall perform such duties in accordance with all applicable laws, rules and regulations, including but not limited to Exhibits B and D and Sections 9 and 10 of this Agreement. The City will be charged for all reasonable costs for system shut down or other direct impacts to Railroad's system arising directly out of the operation or maintenance of the 2nd Ped. Bridge in accordance with Section 6. The City shall provide Railroad with an inspection report by a Colorado Licensed Professional Engineer prior to the 2nd Ped. Bridge opening for pedestrian traffic, and every three (3) years thereafter. The City shall complete reasonable repairs within one (1) year after the date of the reports or such longer period as the parties agree in writing. If such repairs are not timely completed to the reasonable satisfaction of Railroad, then Railroad may undertake such repairs and City shall reimburse Railroad for all costs to complete such repairs in accordance with Section 6.
- B. RTD, at its sole cost and expense, shall maintain, repair and renew, or cause to be maintained, repaired and renewed, the communication and signal facilities or other Railroad-specific facilities installed on or below the 2nd Ped. Bridge at the request of the Railroad or owned by the Railroad on the 2nd Ped. Bridge in accordance with the Plans.

SECTION 20. SCOPE OF THE AGREEMENT.

The Parties have previously entered into the RTD/City IGA and other Agreements applicable

hereto, which remain in effect until terminated as provided therein and are not voided by this Agreement. By entering into this Agreement, the Parties do not intend to terminate, modify, waive, or amend their rights in any other agreement between the Parties, other than as expressly set forth herein. To the extent there are any conflicts or inconsistencies between this Agreement and any existing agreements, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: (1) this Agreement; and (2) the RTD/City IGA.

SECTION 21. MISCELLANEOUS

A. Approval by City Council and RTD Board. This Agreement, and each and every of its provisions and terms, is expressly subject to, and shall not be or become effective or binding on the City or RTD until approved by the City Council, if such approval is required by the City Charter, and the RTD Board, respectively, in accordance with each Party's internal procedures and signed by the Parties.

B. Appropriation by City Council and RTD Board. Unless already appropriated as set forth herein, this Agreement does not commit any present funding by either Party. The obligations of the Parties under this Agreement shall extend only to monies appropriated for the purpose of this Agreement by the RTD Board and/or Denver's City Council, as appropriate, subject to each entity's legally required budgeting, authorization, and appropriation process. The Parties acknowledge that they do not through this Agreement irrevocably pledge present cash reserved for payments in future years, and that this Agreement is not intended to create a multiple fiscal year direct or indirect debt or obligation of the Parties.

C. Governing Law; Venue. This Agreement shall be interpreted and enforced according to the laws of the State of Colorado, the Charter and ordinances of the City, applicable provisions of federal law, and the applicable rules and regulations promulgated under any of them. Venue for any action hereunder shall be in the Denver District Court, City and County of Denver, State of Colorado.

D. Colorado Open Records Act. The Parties acknowledge that the City and RTD are subject to the provisions of the Colorado Open Records Act, Colorado Revised Statutes §24-72-201 *et seq.*, and agree that they will fully cooperate with each other, and RTD will require its Concessionaire to cooperate with the City, in the event of a request or lawsuit arising under such act for the disclosure of any materials or information which either party asserts is confidential and exempt from disclosure. Any other provision of this Agreement notwithstanding, including exhibits, attachments and other documents incorporated by reference, all materials, records and information provided by each Party to the other shall be considered confidential by the Parties only to the extent provided in the Open Records Act, and each Party agrees that any disclosure of information by the other consistent with the provisions of the Open Records Act shall result in no liability of the other Party.

E. Inspection of Records.

The Parties agree that, at the cost of the requesting Party, any duly authorized representative of RTD or the City, including the City Auditor, or any internal or external auditor of the City or RTD shall, until the expiration of three (3) years after the final reconciliation or payment under this Agreement, have access to and the right to copy any books, documents, papers, and records involving transactions and work related to this Agreement.

In connection with any work performed hereunder on items of work toward which federal funds may be received, the City, RTD, and their authorized representatives shall have access to any books, documents, papers, and records for the purpose of making audit, examination, excerpts and transcriptions.

F. No Third-Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties hereto, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person under this Agreement, including RTD's Concessionaire, RTD contractors, the City's contractors, and UPRR. The City and RTD are not joint ventures of one another, or that any officer, employee, agent, or contractor of one Party is an officer, employee, agent, or contractor of the other Party for the purposes of unemployment compensation, workers compensation, or any other purpose whatsoever.

G. No Discrimination in Employment. In connection with the performance of work under this Agreement, the Parties agree not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation, terms, conditions or privileges of employment against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability.

H. Compliance with All Laws and Regulations.

All of the work performed under this Agreement by either Party shall comply with all applicable laws, rules, regulations and codes of the United States and the State of Colorado and with the charter, ordinances, and rules and regulations of the City and County of Denver. All work performed under this Agreement shall comply with all applicable patent, trademark and copyright laws, rules, regulations and codes of the United States. The Parties agree that they will not utilize any protected patent, trademark or copyright in performance of work under this Agreement unless the Party has obtained proper permission and all releases and other necessary documents.

I. Nothing herein shall constitute a mandatory charge, requirement, or liability in any ensuing fiscal year beyond the then current fiscal year. No provision of this Agreement shall be construed or interpreted as a delegation by the City or RTD of its governmental powers.

J. Changes in Law. This Agreement is subject to such modifications as may be required by changes in City, state or federal law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this Agreement on the effective date of such change as if fully set forth herein.

K. Conflicts of Interest. The Parties agree that no employee of either Party shall have any personal or beneficial interest whatsoever in the services or property described herein and RTD further agrees not to hire, or contract for services with, any employee or officer of Denver which would be in violation of the Denver Revised Municipal Code, Chapter 2, Article IV, Code of Ethics, or Denver City Charter provisions C5.13 and C5.14. No officer, employee or agent of RTD, nor any member of the RTD Board, nor any member of Congress, nor any other public official or employee of the governing body of the locality or localities included within the district, during his or her tenure, or for one (1) year thereafter, shall have any personal pecuniary or property interest, direct or indirect, in this Agreement or the proceeds hereof.

L. Liability. The Parties agree that both Parties, their officers, officials, and employees, are relying on, and do not waive or intend to waive by any provisions of this, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 to 120 (“CGIA”), or otherwise available to either party of their officers, officials and employees. As between the Parties, and without either the City or RTD waiving any of the rights and protections provided under the CGIA, each Party hereto shall be responsible for its own negligence and that of its agents and employees in the performance of this Agreement. If either Party is given notice of claim or suit against or involving the other arising from the implementation of this Agreement or the design or construction of the project, it agrees to give the other Party prompt written notice of such claim or suit.

M. Assignment; Successors. Except as set forth herein each Party agrees not to assign, pledge, transfer or sublet its rights in this Agreement, in whole or in part, nor grant any license or concession hereunder, except as otherwise provided herein, without the prior written consent of the other party. Consent of the City shall be evidenced by a written letter from the Manager of Public Works. This Agreement shall be binding upon and extend to the successors and assigns of the respective Parties.

N. Professional Responsibility. The Parties and their contractors shall faithfully perform the work required under this Agreement in accordance with standard of care, skill, training, diligence, and judgment provided by highly competent professionals who perform work of a similar nature to the work described in this Agreement.

O. Severability. To the extent that this Agreement may be executed and performance of the obligations of the Parties may be accomplished within the intent of the Agreement, the terms of the Agreement are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other terms or provision hereof.

P. Force Majeure. Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions, wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

Q. Waiver. In no event shall any performance by a Party under this Agreement constitute or be construed to be a waiver by that Party of any breach of term, covenant, condition, or right stated in this Agreement or applicable law, or of any default which may then exist on the part of the other Party. The tender of any such performance when a breach or default exists shall not impair or prejudice any right or remedy available to a Party with respect to such breach or default. No assent, express or implied, to any breach of a term, covenant, or condition of this Agreement shall be construed as a waiver of any other term, or the same term upon a subsequent breach.

R. Paragraph Headings. The captions and headings set forth in this Agreement are for convenience of reference only and shall not be construed so as to define or limit its terms and provisions.

S. Counterparts. This Agreement may be executed in counterparts. Signatures on separate originals shall constitute and be of the same effect as signatures on the same original. Electronic and faxed signatures shall constitute original signatures.

T. Authority. The Parties represent and assure that each possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action necessary, to enter into this Agreement. The person or persons signing and executing this Agreement on behalf of both Parties, represent that he/she has been fully authorized to execute this Agreement on behalf of their jurisdiction and to validly and legally bind their jurisdiction to all the terms, performances and provisions herein set forth.

V. Reasonableness of Consent or Approval. Required approvals or consents shall not be unreasonably withheld, conditioned, or delayed.

W. Cooperation. The Parties shall cooperate and work in good faith to complete all work under this IGA.

X. Status of Parties. The Parties agree that the status of each Party shall be that of an independent contractor to the other, and it is not intended, nor shall it be construed, that one Party or any officer, employee, agent or contractor of such Party is an employee, officer, or agent of the other Party for purposes of unemployment compensation, workers' compensation, or for any purpose whatsoever.

Y. Electronic Signatures and Electronic Records. The Parties consent to the use of electronic signatures for execution of this Agreement. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by either Party in the manner specified by that Party. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record solely on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

[End of Page; Signature Page Follows]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of _____.

ATTEST:

CITY AND COUNTY OF DENVER

DEBRA JOHNSON, Clerk and Recorder, Ex-Officio Clerk of the City and County of Denver

By: _____
Mayor

APPROVED AS TO FORM:
D. SCOTT MARTINEZ, City Attorney for the City and County of Denver

By: _____
Assistant City Attorney

REGISTERED AND COUNTERSIGNED:

By: _____
Manager of Finance

By: _____
Auditor

“CITY”

**APPROVED AS TO LEGAL FORM FOR
RTD:**

**REGIONAL TRANSPORTATION
DISTRICT**

By _____
Associate General Counsel

By _____

LIST OF EXHIBITS

- Exhibit A Railroad Location Print
- Exhibit A-1 Legal Description & Illustrative Print of
Legal Description for “Crossing Area”
- Exhibit A-2 RTD Approved 100% 2nd Ped. Bridge
Plans
- Exhibit B General Terms & Conditions
- Exhibit C Temporary Construction Area Legal
Description
- Exhibit D Railroad’s Coordination Requirements
- Exhibit E Railroad’s Current Temporary
Construction Easement
- Exhibit F Railroad’s Form of Permanent Aerial
Easement

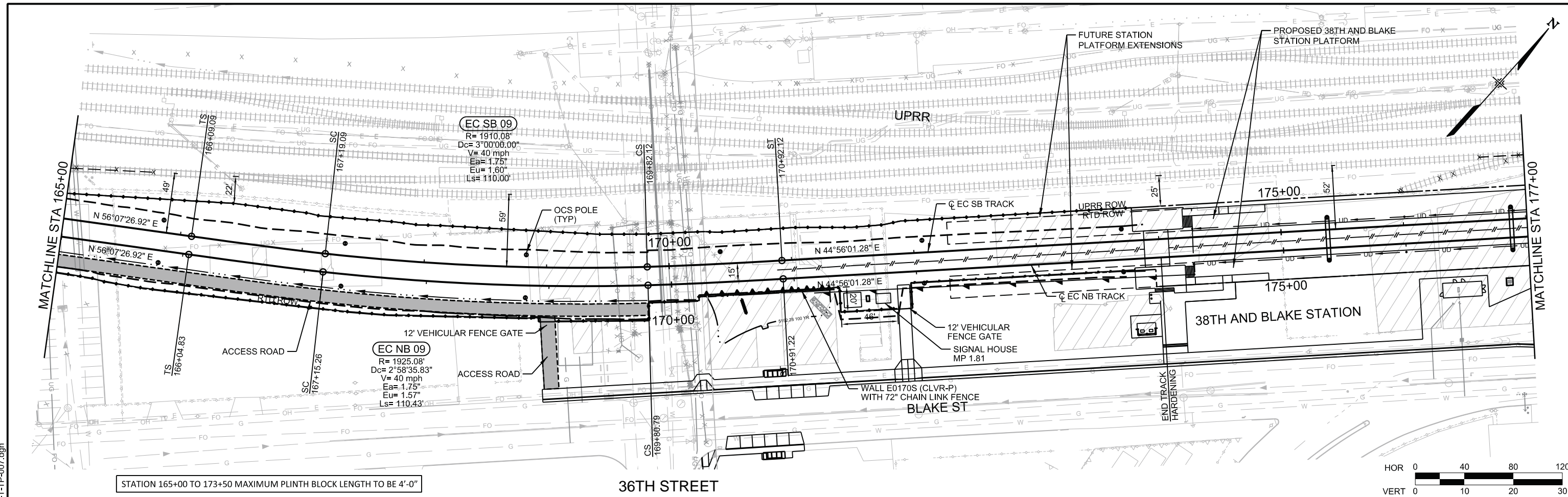
EXHIBIT A

To New Pedestrian Bridge Crossing Agreement

Cover Sheet for the
Railroad Location Print

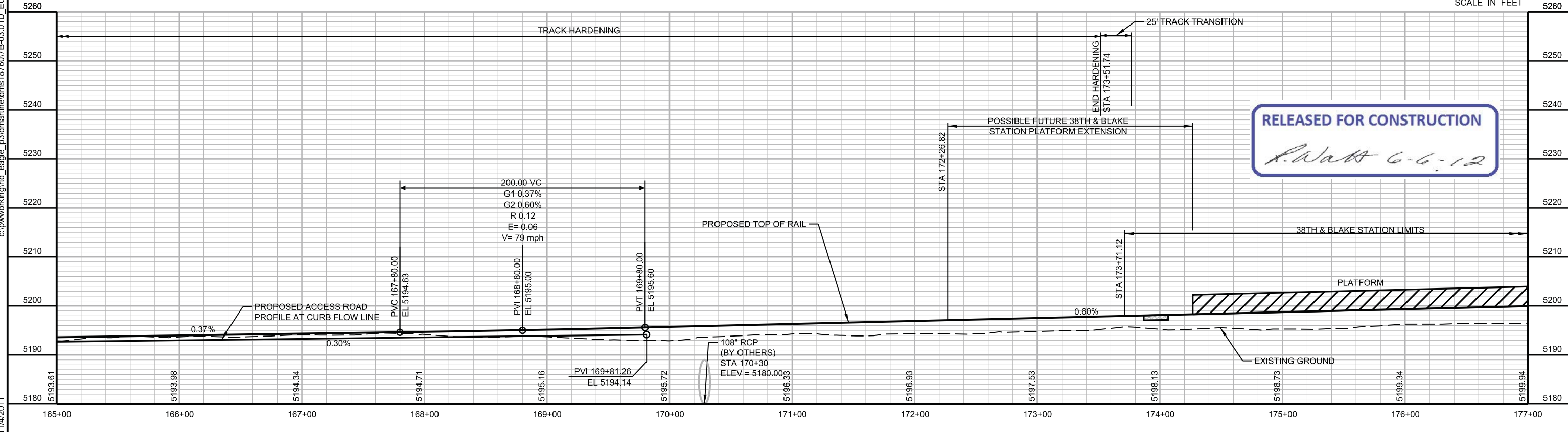
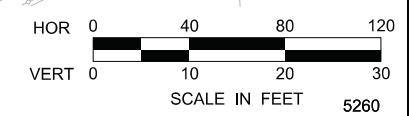
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11/4/2011 USER: dmarline



STATION 165+00 TO 173+50 MAXIMUM PLINTH BLOCK LENGTH TO BE 4'-0"

36TH STREET

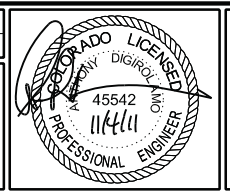


RELEASED FOR CONSTRUCTION
A. Watt 6-6-12

NO.	REVISIONS	BY	DATE
0	ISSUED FOR CONSTRUCTION, CDRL #7B-03.01D, REV 0	AD	11/04/11

DESIGNED BY: ACS	DATE: 05/09/11	CHECKED BY: CPR	DATE: 11/03/11
DRAWN BY: NJB	DATE: 05/09/11	APPROVED BY: CJB	DATE: 11/04/11

FASTTRACKS
FLUORHDR
GLOBAL DESIGN CONSULTANTS



EAST CORRIDOR
TRACK PLAN AND PROFILE
STA 165+00 TO STA 177+00

SHEET REFERENCE NUMBER:
TP-007

EXHIBIT A-1

To New Pedestrian Bridge Crossing Agreement

Cover Sheet for the
Crossing Area Legal Description

EXHIBIT "A"

Permanent Easement Number: PE-A22

PAGE 1 OF 3

MAY 08, 2014

A TRACT OF LAND CONTAINING 3,232 SQUARE FEET, MORE OR LESS, LOCATED WITHIN A PORTION OF LOT'S 28-29, BLOCK 13, H. WITTER'S ADDITION AND LOT'S 4-5, RIVERSIDE ADDITION TO DENVER, ALSO IN THE NORTHWEST ONE-QUARTER OF SECTION 26 AND THE SOUTHWEST ONE-QUARTER OF SECTION 23, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, SAID TRACT MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND DENVER RANGE MONUMENT (2-1/2" ALUMINUM CAP, "PLS 24942") LOCATED AT THE INTERSECTION OF BLAKE ST. (80' ROW) AND 35TH ST. (80' ROW), FROM WHENCE A FOUND DENVER RANGE MONUMENT (2-1/2" ALUMINUM CAP, "PLS 24942") LOCATED AT THE INTERSECTION OF BLAKE ST. (80' ROW) AND 36TH ST. (80' ROW) BEARS N44°53'36"E, A DISTANCE OF 478.27 FEET AND FROM WHENCE THE NORTHWEST CORNER OF SAID SECTION 26 BEARS N55°56'22"W, A DISTANCE OF 639.42 FEET;

THENCE N32°04'33"E, A DISTANCE OF 340.61 FEET TO A POINT ON THE SOUTHEASTERLY PROPERTY LINE OF A PARCEL OF LAND DESCRIBED AS RTD PARCEL NO. EC-9-REV2, RECORDED AT RECEPTION NO. 2011147287, CITY AND COUNTY OF DENVER RECORDS AND THE **POINT OF BEGINNING**;

THENCE N45°03'55"W, A DISTANCE OF 74.36 FEET TO A POINT ON THE SOUTHEASTERLY PROPERTY LINE OF A PARCEL OF LAND DESCRIBED AS RTD PARCEL EC-9R RECORDED AT RECEPTION NO. 2011147287, CITY AND COUNTY OF DENVER RECORDS;

THENCE CONTINUING N45°03'55"W, A DISTANCE OF 12.84 FEET TO THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD (R.O.W. VARIES);

THENCE ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD AND THE ARC OF A CURVE TO LEFT HAVING A RADIUS OF 934.00 FEET, A CENTRAL ANGLE OF 02°16'30", A CHORD BEARING N48°39'27"E, A DISTANCE OF 37.08 FEET WITH AN ARC LENGTH OF 37.08 FEET;

THENCE DEPARTING SAID SOUTHEASTERLY RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD S45°03'55"E, A DISTANCE OF 14.57 FEET TO THE NORTHWESTERLY PROPERTY LINE OF SAID PARCEL OF LAND DESCRIBED AS RTD PARCEL NO. EC-9-REV2, RECORDED AT RECEPTION NO. 2011147287, CITY AND COUNTY OF DENVER RECORDS;

THENCE CONTINUING S45°03'55"E, A DISTANCE OF 73.16 FEET TO THE SOUTHEASTERLY PROPERTY LINE OF SAID PARCEL OF LAND DESCRIBED AS RTD PARCEL NO. EC-9-REV2, RECORDED AT RECEPTION NO. 2011147287, CITY AND COUNTY OF DENVER RECORDS;

EXHIBIT "A"
Permanent Easement Number: PE-A22
PAGE 2 OF 3
MAY 08, 2014

THENCE ALONG SAID SOUTHEASTERLY PROPERTY LINE S49°28'12"W, A DISTANCE OF 37.12 FEET TO THE **POINT OF BEGINNING**.

THE ABOVE DESCRIBED PROPERTY CONTAINS 3,232 SQUARE FEET OR 0.074 ACRES, MORE OR LESS.

BASIS OF BEARINGS: ALL BEARINGS ARE BASED ON A LINE BETWEEN THE NORTHWEST CORNER OF SECTION 26, T.3S., R.68W., 6TH P.M. (FOUND STONE) AND THE WEST ONE-QUARTER CORNER OF SECTION 23, T.3S., R.68W., 6TH P.M. (FOUND 3-1/2" ALUMINUM CAP STAMPED "PLS 24961, 2008) HAVING A BEARING OF N00°03'50"E.

PREPARED BY: RICHARD D. MUNTEAN, CO PLS 38189
FOR AND ON BEHALF OF:
105 WEST, INC.
2140 S. IVANHOE ST., STE G5
DENVER, CO 80222

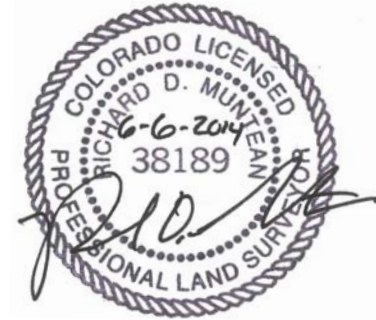


EXHIBIT A

THIS EXHIBIT IS A GRAPHIC DEPICTION OF THE PARCEL DESCRIBED ON THE ATTACHED LEGAL DESCRIPTION AND IS NOT INTENDED TO INCLUDE SURVEY PLAT REQUIREMENTS AS DEFINED IN CRS 38-51-106.

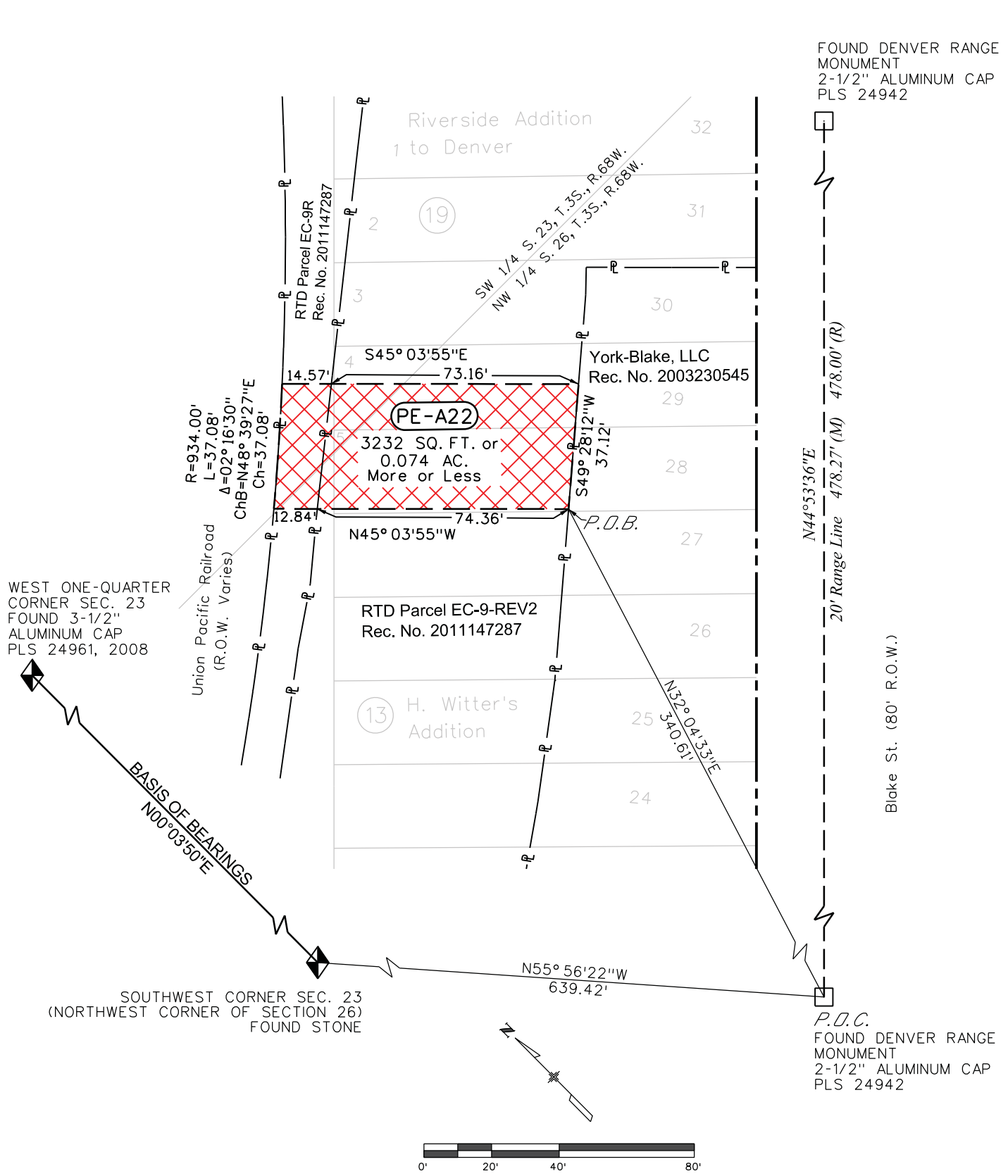


EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION

Job No.: 129-0003
Scale: 1" = 40'
Date: May 08, 2014
Page 3 of 3
Drawn By: SDB

PERMANENT EASEMENT NO. PE-A22
A PART OF BLOCK 13, LOTS 28-29, H. WITTER'S ADDITION
AND BLOCK 19, LOTS 4-5, RIVERSIDE ADDITION TO DENVER
SECTIONS 23 & 26, T. 3 S., R. 68 W., 6TH P.M.
CITY & COUNTY OF DENVER, COLORADO

105WEST
INCORPORATED
2140 S. Ivanhoe St., STE G5
Denver, CO 80222

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EXHIBIT A-2

To New Pedestrian Bridge Crossing Agreement
Cover Sheet for the
RTD-approved 100% 2nd Ped. Bridge Plans

EXHIBIT B

To New Pedestrian Bridge Crossing Agreement
Cover Sheet for the
General Terms and Conditions

EXHIBIT B

TO NEW PEDESTRIAN BRIDGE CROSSING AGREEMENT

GENERAL TERMS AND CONDITIONS

SECTION 1 - CONDITIONS AND COVENANTS

- A. The Railroad makes no covenant or warranty of title for quiet possession or against encumbrances. The City (hereinafter referred to as "Licensee") shall not use or permit use of the Crossing Area or the Temporary Construction Area for any purposes other than those described in this Agreement. Without limiting the foregoing, the Licensee shall not use or permit use of the Crossing Area and Temporary Construction Area for railroad purposes, or for gas, oil or gasoline pipe lines. Any lines constructed on the Railroad's property by or under authority of the Licensee for the purpose of conveying electric power or communications incidental to the Licensee's use of the Temporary Construction Area or the Crossing Area for 2nd Ped. Bridge purposes shall be constructed in accordance with the specifications and requirements of, and with the approval of, the Railroad, and in such manner as not adversely to affect communication or signal lines of the Railroad or its licensees now or hereafter located upon said property. Other than for public pedestrian or bicycle use of the 2nd Ped. Bridge, no nonparty shall be admitted by the Licensee to use or occupy any part of the Railroad's property without the Railroad's written consent in accordance with Railroad's access requirements. Nothing herein shall obligate the Railroad to give such consent.
- B. The right hereby granted is subject to any existing encumbrances and rights (whether public or private), recorded or unrecorded, and also to any renewals thereof. The Licensee shall not damage, destroy or interfere with the Crossing Area or the Temporary Construction Area or rights of nonparties in, upon or relating to the Crossing Area or the Temporary Construction Area, unless the Licensee at its own expense settles with and obtains releases from such nonparties.
- C. The Railroad reserves the right to use and to grant to others the right to use the Crossing Area and the Temporary Construction Area for any purpose not inconsistent with the right hereby granted, including, but not by way of limitation, the right to construct, reconstruct, maintain, operate, repair, alter, renew and replace tracks, facilities and appurtenances on the Temporary Construction Area and the Crossing Area and the right to cross the Crossing Area and the Temporary Construction Area with all kinds of equipment. The Railroad further reserves the right, at its sole expense, to attach signal, communication or power lines and other Railroad facilities to the 2nd Ped. Bridge, provided that such attachments shall comply with Licensee's specifications and will not interfere with the Licensee's use of the Crossing Area and provided that the City's Manager of Public Works consents in writing to such attachments. Unless otherwise agreed by the parties, Railroad shall repair, at its expense, any damage caused by Railroad in its installation of such Railroad facilities to the 2nd Ped. Bridge.
- D. So far as it lawfully may do so, the Licensee will assume, bear and pay all taxes and assessments of whatsoever nature or kind (whether general, local or special) levied or assessed upon or against the 2nd Ped. Bridge.
- E. If any property or rights other than the right hereby granted are necessary for the construction, maintenance and use of the 2nd Ped. Bridge and its appurtenances, or for the performance of any work in connection with the 2nd Ped. Bridge Work, the Licensee will acquire all such other property and rights at its own expense and without expense to the Railroad.

SECTION 2 - CONSTRUCTION OF BRIDGE

- A. The Licensee, at its expense, will apply for and obtain all public authority required by law, ordinance, rule or regulation for the 2nd Ped. Bridge Work, and will furnish the Railroad upon request with satisfactory evidence that such authority has been obtained.
- B. Except as may be otherwise specifically provided herein, the Licensee, at its expense, will furnish all necessary labor, material and equipment, and shall construct and complete the 2nd Ped. Bridge and all appurtenances thereof. The appurtenances shall include, without limitation, all necessary and proper drainage facilities, guard rails or barriers on the 2nd Ped. Bridge, or other safety features as designated by the Railroad, all as set forth in the Ped. Bridge Approved Plans. Upon completion of the 2nd Ped. Bridge Work, the Licensee shall remove from the Temporary

Construction Area all temporary structures and false work, and will leave the Crossing Area and Temporary License Area in a condition satisfactory to the Railroad.

- C. All construction work of the Licensee upon the Temporary Construction Area (including, but not limited to, construction of the 2nd Ped. Bridge and all appurtenances and all related and incidental work) shall be performed and completed in a manner satisfactory to the Eagle Project Director of the Railroad or his authorized representative and in compliance with the Plans, the Railroad's Minimum Coordination Requirements set forth in **Exhibit D** and other guidelines furnished by the Railroad.
- D. All construction work of the Licensee shall be performed diligently and completed within a reasonable time. No part of the 2nd Ped. Bridge Work shall be suspended, discontinued or unduly delayed without the Railroad's written consent, and subject to such reasonable conditions as the Railroad may specify. It is understood that the Railroad's tracks at and in the vicinity of the work will be in constant or frequent use during progress of the work and that movement or stoppage of trains, engines or cars may cause delays in the work of the Licensee. The Licensee hereby assumes the risk of any such delays and agrees that no claims for damages on account of any delay shall be made against the Railroad by the Licensee and/or the Contractor.

SECTION 3 - INJURY AND DAMAGE TO PROPERTY

If the Licensee, in the performance of any work contemplated by this Agreement or by the failure to do or perform anything for which the Licensee is responsible under the provisions of this Agreement, shall injure, damage or destroy any property of the Railroad or of any other person lawfully occupying or using the property of the Railroad, such property shall be replaced or repaired by the Licensee at the Licensee's own expense, or by the Railroad at the expense of the Licensee, and to the satisfaction of the Railroad's Eagle Project Director.

SECTION 4 - RAILROAD MAY USE CONTRACTORS TO PERFORM WORK

[INTENTIONALLY OMITTED]

SECTION 5 - MAINTENANCE AND REPAIRS

[INTENTIONALLY OMITTED]

SECTION 6 - SAFETY MEASURES; PROTECTION OF RAILROAD COMPANY OPERATIONS

It is understood and recognized that safety and continuity of the Railroad's operations and communications are of the utmost importance; and in order that the same may be adequately safeguarded, protected and assured, and in order that accidents may be prevented and avoided, it is agreed with respect to all of said work of the Licensee that the work will be performed in a safe manner and in conformity with the following standards:

- A. **Definitions.** All references in this Agreement to the Licensee shall also include the Contractor and their respective officers, agents and employees, and others acting under its or their authority; and all references in this Agreement to work of the Licensee shall include work within the Crossing Area and the Temporary Construction Area and areas authorized under a Contractor's ROE.
- B. **Entry on to Railroad's Property by Licensee.** If the Licensee's employees need to enter Railroad's property in order to perform an inspection of the 2nd Ped. Bridge, minor maintenance or other activities, the Licensee shall first provide at least ten (10) working days advance notice to the Railroad Representative. Notwithstanding anything in this Section 6, in the case of an emergency, the City shall notify Railroad immediately upon learning of an emergency. The Parties shall cooperate in good faith to address the emergency. With respect to such entry on to Railroad's property, the Licensee shall require its contractors to release, defend and indemnify the Railroad from and against any loss, damage, injury, liability, claim, cost or expense incurred by any person including, without limitation, the Licensee's employees, or damage to any property or equipment (collectively the "Loss") that arises from the presence or activities of Licensee's employees on Railroad's property, except to the extent that any Loss is caused by the sole direct negligence of Railroad.
- C. **Flagging.**

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

(ii) The reimbursement for flagging costs will be determined by the Concession Agreement between Railroad and its Concessionaire.

D. **Compliance With Laws.** The Licensee shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The Licensee shall use only such methods as are consistent with safety, both as concerns the Licensee, the Licensee's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The Licensee (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration regulations shall be followed when work is performed on the Railroad's premises. If any failure by the Licensee to comply with any such laws, regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Railroad, the Licensee shall reimburse the Railroad for any such fine, penalty, cost, or charge, including without limitation attorney's fees, court costs and expenses.

E. **No Interference or Delays.** The Licensee shall not do, suffer or permit anything which will or may obstruct, endanger, interfere with, hinder or delay maintenance or operation of the Railroad's tracks or facilities, or any power, communication or signal lines, installations or any appurtenances thereof, or the operations of others lawfully occupying or using the Railroad's property or facilities.

F. **Supervision.** The Licensee, at its own expense, shall adequately police and supervise all work to be performed by the Licensee, and shall not inflict injury to persons or damage to property for the safety of whom or of which the Railroad may be responsible, or to property of the Railroad. The responsibility of the Licensee for safe conduct and adequate policing and supervision of the construction and maintenance of the 2nd Ped. Bridge shall not be lessened or otherwise affected by the Railroad's approval of plans and specifications, or by the Railroad's collaboration in performance of any work, or by the presence at the work site of the Railroad's representatives, or by compliance by the Licensee with any requests or recommendations made by such representatives. If a representative of the Railroad is assigned to the 2nd Ped. Bridge Work, the Licensee will give due consideration to suggestions and recommendations made by such representative for the safety and protection of the Railroad's property and operations.

G. **Suspension of Work.** If at any time the Licensee's engineers or the Chief Engineer of the Railroad or their respective representatives shall be of the opinion that any work of the Licensee is being or is about to be done or prosecuted without due regard and precaution for safety and security, the Licensee shall immediately suspend the work until suitable, adequate and proper protective measures are adopted and provided.

H. **Removal of Debris.** The Licensee shall not cause, suffer or permit material or debris to be deposited or cast upon, or to slide or fall upon any property or facilities of the Railroad; and any such material and debris shall be promptly removed from the Railroad's property by the Licensee at the Licensee's own expense or by the Railroad at the expense of the Licensee. The Licensee shall not cause, suffer or permit any snow to be plowed or cast upon the Railroad's property during snow removal from the Crossing Area or the Temporary Construction Area.

I. **Explosives.** The Licensee shall not discharge any explosives on or in the vicinity of the Crossing Area or the Temporary Construction Area without the prior consent of the Railroad's Chief Engineer, which shall not be given if, in the sole discretion of the Railroad's Chief Engineer, such discharge would be dangerous or would interfere with the Railroad's property or facilities. For the purposes hereof, the "vicinity of the Crossing Area or the Temporary

Construction Area " shall be deemed to be any place on the Railroad's property or in such close proximity to the Railroad's property that the discharge of explosives could cause injury to the Railroad's employees or other persons, or cause damage to or interference with the facilities or operations on the Railroad's property. The Railroad reserves the right to impose such conditions, restrictions or limitations on the transportation, handling, storage, security and use of explosives as the Railroad, in the Railroad's sole discretion, may deem to be necessary, desirable or appropriate.

- J. **Excavation.** Except as shown on the Plans or otherwise approved by Railroad, the Licensee shall not excavate from existing slopes nor construct new slopes which are excessive and may create hazards of slides or falling rock, or impair or endanger the clearance between existing or new slopes and the tracks of the Railroad. The Licensee shall not do or cause to be done any work which will or may disturb the stability of any area or adversely affect the Railroad's tracks or facilities. The Licensee, at its own expense, shall install and maintain adequate shoring and cribbing for all excavation and/or trenching performed by the Licensee in connection with construction, maintenance or other work. The shoring and cribbing shall be constructed and maintained with materials and in a manner approved by the Railroad's Eagle Project Director to withstand all stresses likely to be encountered, including any stresses resulting from vibrations caused by the Railroad's operations in the vicinity.
- K. **Drainage.** Pursuant to the Plans, the Licensee, at the Licensee's own expense, shall provide and maintain suitable facilities for draining the 2nd Ped. Bridge and its appurtenances, and shall not suffer or permit drainage water therefrom to flow or collect upon property of the Railroad. The Licensee, at the Licensee's own expense, shall provide adequate passageway for the waters of any streams, bodies of water and drainage facilities (either natural or artificial, and including water from the Railroad's culvert and drainage facilities), so that said waters may not, because of any facilities or work of the Licensee, be impeded, obstructed, diverted or caused to back up, overflow or damage the property of the Railroad or any part thereof, or property of others. If not shown in the Plans, the Licensee shall obtain approval of all drainage plans from the Railroad's Eagle Project Director. The Licensee shall not obstruct or interfere with existing ditches or drainage facilities.
- L. **Notice.** Before commencing any work, the Licensee shall cause its contractors to provide the advance notice that is required herein and obtain a Contractor's Right of Entry from RTD and an access permit from Denver Transit Partners or the contractor operating the railroad on behalf of RTD, the current form of which is the Third Party Access to the RTDC Commuter Rail Right of Way, attached to the Temporary Construction Easement as Exhibit C ("DTP Third Party Access").
- M. **Fiber Optic Cables.** Fiber optic cable systems may be buried on the Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Licensee shall telephone the Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Railroad's property to be used by the Licensee. If it is, Licensee will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Crossing Area or the Temporary Construction Area.

SECTION 7 - INTERIM WARNING DEVICES

If at any time it is determined by a competent authority, by the Licensee, or by agreement between the parties, that new or improved train activated warning devices should be installed at the Crossing Area or the Temporary Construction Area, the Licensee shall install adequate temporary warning devices or signs and impose appropriate vehicular control measures to protect the motoring public until the construction or reconstruction of the 2ND Ped. Bridge has been completed.

SECTION 8 - OTHER RAILROADS

All protective provisions of this Agreement shall inure to the benefit of the Railroad and any other railroad company lawfully using the Railroad's property or facilities.

EXHIBIT C

To New Pedestrian Bridge Crossing Agreement
Temporary Crossing Area Legal Description

EXHIBIT "A"
Temporary Easement Number: TE-22
PAGE 1 OF 3
MAY 08, 2014

A TRACT OF LAND CONTAINING 8,072 SQUARE FEET, MORE OR LESS, LOCATED WITHIN A PORTION OF LOT'S 26-29, BLOCK 13, H. WITTER'S ADDITION AND LOT'S 4-5, RIVERSIDE ADDITION TO DENVER, ALSO IN THE NORTHWEST ONE-QUARTER OF SECTION 26 AND THE SOUTHWEST ONE-QUARTER OF SECTION 23, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, SAID TRACT MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND DENVER RANGE MONUMENT (2-1/2" ALUMINUM CAP, "PLS 24942") LOCATED AT THE INTERSECTION OF BLAKE ST. (80' ROW) AND 35TH ST. (80' ROW), FROM WHENCE A FOUND DENVER RANGE MONUMENT (2-1/2" ALUMINUM CAP, "PLS 24942") LOCATED AT THE INTERSECTION OF BLAKE ST. (80' ROW) AND 36TH ST. (80' ROW) BEARS N44°53'36"E, A DISTANCE OF 478.27 FEET AND FROM WHENCE THE NORTHWEST CORNER OF SAID SECTION 26 BEARS N55°56'22"W, A DISTANCE OF 639.42 FEET;

THENCE N29°32'22"E, A DISTANCE OF 298.71 FEET TO A POINT ON THE SOUTHEASTERLY PROPERTY LINE OF A PARCEL OF LAND DESCRIBED AS RTD PARCEL EC-9-REV2, RECORDED AT RECEPTION NO. 2011147287, CITY AND COUNTY OF DENVER RECORDS AND THE **POINT OF BEGINNING**;

THENCE N45°03'55"W, A DISTANCE OF 76.86 FEET TO A POINT ON THE SOUTHEASTERLY PROPERTY LINE OF A PARCEL OF LAND DESCRIBED AS RTD PARCEL EC-9R RECORDED AT RECEPTION NO. 2011147287, CITY AND COUNTY OF DENVER RECORDS;

THENCE N82°09'38"W, A DISTANCE OF 16.31 FEET TO THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD (R.O.W. VARIES);

THENCE ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD AND THE ARC OF A CURVE TO LEFT HAVING A RADIUS OF 934.00 FEET, A CENTRAL ANGLE OF 06°14'46", A CHORD BEARING N50°00'09"E, A DISTANCE OF 101.77 FEET WITH AN ARC LENGTH OF 101.82 FEET;

THENCE DEPARTING SAID SOUTHEASTERLY RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD S45°03'55"E, A DISTANCE OF 15.32 FEET TO THE NORTHWESTERLY PROPERTY LINE OF SAID PARCEL OF LAND DESCRIBED AS RTD PARCEL NO. EC-9-REV2, RECORDED AT RECEPTION NO. 2011147287, CITY AND COUNTY OF DENVER RECORDS;

THENCE CONTINUING S45°03'55"E, A DISTANCE OF 72.82 FEET TO THE SOUTHEASTERLY PROPERTY LINE OF SAID PARCEL OF LAND DESCRIBED AS RTD PARCEL EC-9-REV2, RECORDED AT RECEPTION NO. 2011147287, CITY AND COUNTY OF DENVER RECORDS;

EXHIBIT "A"
Temporary Easement Number: TE-22
PAGE 2 OF 3
MAY 08, 2014

THENCE ALONG SAID SOUTHEASTERLY PROPERTY LINE S49°28'12"W, A DISTANCE OF 91.82 FEET TO THE **POINT OF BEGINNING**.

THE ABOVE DESCRIBED PROPERTY CONTAINS 8,072 SQUARE FEET OR 0.185 ACRES, MORE OR LESS.

BASIS OF BEARINGS: ALL BEARINGS ARE BASED ON A LINE BETWEEN THE NORTHWEST CORNER OF SECTION 26, T.3S., R.68W., 6TH P.M. (FOUND STONE) AND THE WEST ONE-QUARTER CORNER OF SECTION 23, T.3S., R.68W., 6TH P.M. (FOUND 3-1/2" ALUMINUM CAP STAMPED "PLS 24961, 2008) HAVING A BEARING OF N00°03'50"E.

PREPARED BY: RICHARD D. MUNTEAN, CO PLS 38189
FOR AND ON BEHALF OF:
105 WEST, INC.
2140 S. IVANHOE ST., STE G5
DENVER, CO 80222



EXHIBIT A

THIS EXHIBIT IS A GRAPHIC DEPICTION OF THE PARCEL DESCRIBED ON THE ATTACHED LEGAL DESCRIPTION AND IS NOT INTENDED TO INCLUDE SURVEY PLAT REQUIREMENTS AS DEFINED IN CRS 38-51-106.

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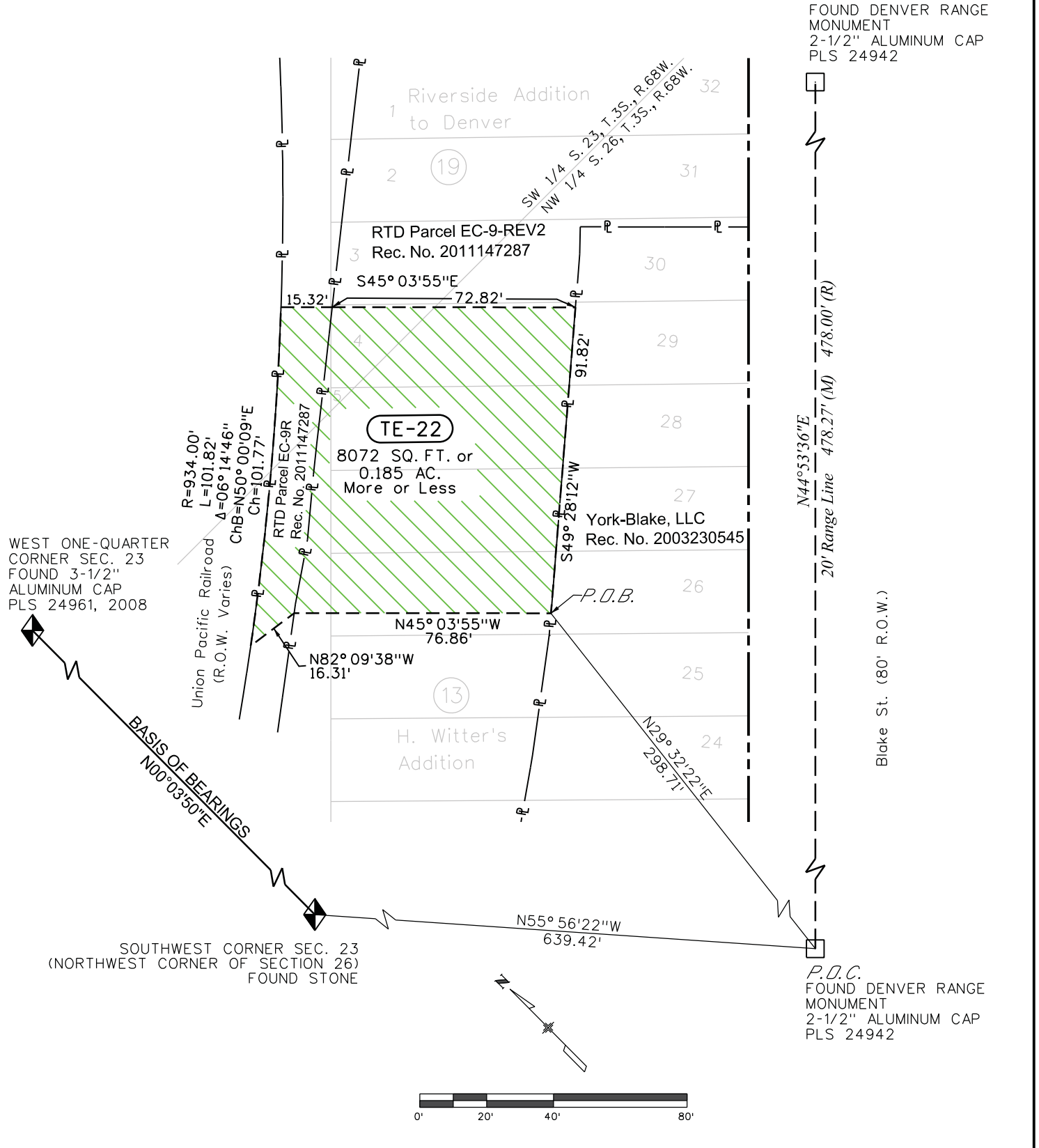


EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION

Job No.: 129-0003
Scale: 1" = 40'
Date: May 08, 2014
Page 3 of 3
Drawn By: SDB

TEMPORARY EASEMENT NO. TE-22
 A PART OF BLOCK 13, LOTS 4-5, RIVERSIDE ADDITION TO DENVER
 AND BLOCK 19, LOTS 26-29, H. WITTER'S ADDITION
 SECTIONS 23 & 26, T. 3 S., R. 68 W., 6TH P.M.
 CITY & COUNTY OF DENVER, COLORADO

105WEST
 INCORPORATED
 2140 S. Ivanhoe St., STE G5
 Denver, CO 80222

EXHIBIT D

To New Pedestrian Bridge Crossing Agreement
Cover Sheet for the
Railroad's Coordination Requirements

Third Party Access to the RTDC Commuter Rail Right of Way**I. POLICY**

All parties with rights under RTD agreements to access the commuter rail right of way for the purpose of inspecting and maintaining utilities or other infrastructure, must obtain the approval of DTO before entering the right of way (ROW).

This policy and procedure addresses planned and emergency access to the right of way.

Inspection and maintenance of third-party assets should generally be performed during non-revenue hours, when trains are not running. Otherwise, track outages will be needed. Track outages affect service and require the approval of the RTD.

All scheduled outages are subject to the RTD's approval. Planned inspection and maintenance activities should be requested as far in advance as possible to enable DTO to include them in the annual Service Plan, which is subject to the RTD's approval on an annual basis but may be updated as needed throughout the year.

Third-party personnel needing access to the commuter rail right of way must:

1. Take DTO's on-track safety training and have in their possession when on the ROW a card certifying that the training was received within the past twelve months.
2. Work under the control of a DTO Employee-in-Charge. All expenses for providing the Employee in Charge to protect the third-party crews are to be paid by the third party.
3. Work in strict compliance with the schedule and limits placed on the work by the DTO Employee in Charge.
4. Wear proper personal protective equipment.
5. Strictly adhere to DTO's on-safety and work rules and directives
6. Not use a cell phone within 25' of the track
7. Not use any tools or equipment except those identified in the pre-approved work plan.
8. Repair any damage caused by the work
9. Leave the right of way in a safe condition for train operations

II. PROCEDURE FOR PLANNED ACCESS**A. Third Party Application for Access**

Third parties needing access to the commuter rail right of way must use the attached form to request the access at least 30 days in advance of the work.

Upon receipt of the application, the DTO Safety Manager will convene a meeting of representatives of the party seeking access to the right of way, the Transportation Department, The Engineering Department and the Safety Department. The review will consider the operational, engineering, financial and safety aspects of the work. The third-party representative attending the meeting should be prepared to present:

1. A description of the work to be performed
2. The proposed access location

Third Party Access to the RTDC Commuter Rail Right of Way

3. The limits of the work location
4. The anticipated duration of the work
5. The tools and equipment to be used
6. The numbers and qualifications of the personnel to be involved in the work
7. The records of DTO Safety Training for all personnel for whom access is requested.
8. Evidence of insurance for the work.

The purpose of the meeting is:

1. To develop a work plan or a list of actions necessary to complete the work.
2. To gather the data needed to support the analyses of the work.
3. Determine whether public notification will be needed.
4. Determine if the configuration of the commuter rail system will change and appropriate actions needed to mitigate safety risks.

The DTO Safety Manager will complete the work plan and the operational/safety/engineering/financial analysis, obtain signatures of approval from an authorized representative of the third party and forward these documents to the RTD for approval.

B. Implementation of Planned Access

The day before the planned third party access, the supervisor or foreman for the third party will meet or telephone the Employee in Charge for DTO to review the work plan and all associated conditions.

Before the work begins, the Employee in Charge for DTO will meet with all involved third party employees and contractors for a job briefing. The Employee in Charge will check that all employees have proper protective equipment and up-to-date training cards.

At the conclusion of the work, the supervisor for the third-party work crew will verify to the Employee in Charge for DTO that all personnel are clear. The DTO EIC will inspect the site, verifying that the right of way has been restored to its original condition, and radio the OCC to report all-clear.

III. PROCEDURE FOR EMERGENCY ACCESS

DANGER: DO NOT GET WITHIN 10 FEET OF THE OVERHEAD WIRES UNTIL AUTHORIZED BY AN ON-SITE DTO-QUALIFIED TRACTION POWER EMPLOYEE THAT THE WIRE HAS BEEN DE-ENERGIZED, TESTED DE-ENERGIZED, AND GROUNDED.

DO NOT GET WITHIN 25' OF THE NEAREST TRACK UNTIL THE DISPATCHER HAS CONFIRMED THAT ALL TRAIN MOVEMENT IN THE AREA HAS BEEN STOPPED.

1. Never enter the Right of Way without permission from the DTO Dispatcher
2. Stop outside the Right of Way.
3. Call the DTO Dispatcher to provide notification that an emergency condition exists.. (###-###-####) This conversation will be audio-recorded. The DTO Dispatcher will write down the information provided.

Third Party Access to the RTDC Commuter Rail Right of Way

- a. Name of caller, agency, emergency condition and cell phone number. An emergency condition is defined as an abnormal condition that, if not immediately remedied, could cause injury to people or major property damage.
 - b. Name of each person or people seeking permission to enter the Right of Way
 - c. Whether there is a need to get within 10' of the energized traction power components
 - d. Identification of each vehicle seeking permission to enter the Right of Way.
4. If the third party has an **urgent need to get within 10 feet of the energized traction power components**:
- a. The DTO Dispatcher will:
 - i. hold trains out of the area
 - ii. de-energize the OCS remotely
 - iii. dispatch a DTO-qualified Traction Power employee to the site
 - iv. dispatch a DTO supervisor to the site
 - b. After receiving oral permission from the DTO-qualified Traction Power Employee on site, the third-party personnel may enter the Right of Way.
5. If the third party has an **urgent need to get within 25 feet of the nearest track but no need to get within 10' of the energized traction power components**:
- a. the DTO Dispatcher will
 - i. Wait for the DTO Dispatcher to hold trains out of the area
 - ii. The DTO Dispatcher will dispatch a DTO EIC to the area.
 - b. After receiving oral permission from the DTO Dispatcher, the third-party personnel may enter the Right of Way.
6. The third-party personnel will handle the emergency
7. After the emergency is resolved, the DTO-qualified Traction Power Employee or the DTO EIC will call the DTO Dispatcher to confirm that all persons and equipment that entered the ROW are now clear. (This conversation will be audio-recorded. The dispatcher will write down this information)
8. Dispatcher will restore commuter rail operations.

Examples of emergencies are:

- Restoration of public services
- Work that affects the operation of the RTD commuter railroad
- Security threats or police actions
- Any situation that poses an immediate threat to health, safety, or property

IV. ATTACHMENTS AND FORMS

Appendix 1: RTD/DTO Commuter Rail Right of Way Access Request / Permit

V. REPORTING AND RECORD KEEPING

All data shall be made available to the RTD and FRA for inspection and copying.

The document will be reviewed and amended, if needed, based on the following conditions:

- new or expanded passenger service,
- revised operational procedures,
- revisions or annulment of the FRA waiver



Third Party Access to the RTDC Commuter Rail Right of Way

If none of the above events occurs, the RTDC Safety Manager or his/her designee will review the document annually and amend if needed.

VI. REVISION HISTORY

Number of Revision or Change	Date	Reason for Revision or Change
Revision 0.1	05/05/2014	First Draft.

VII. APPROVALS

Prepared by: _____ Date: _____
Randall Duty – DTO Systems and Infrastructure Engineer

Revised by: _____ Date: _____
Davie McCulloch – DTP Deputy Project Manager

Approved by: _____ Date: _____
Jean Claude Aurel – DTP Project Safety Manager

Approved by: _____ Date: _____
Anne Herzenberg – DTO General Manager

VIII. DISTRIBUTION

- DTP
- DTS
- DTC
- DTO



Third Party Access to the RTD Commuter Rail Right of Way

RTD/DTO Commuter Rail Right of Way Access Request / Permit

Complete all fields that are in Blue (and have asterisks)

Form with fields: *Company Representing, *Person Submitting Request, *Contact Person, *Contact Information, *Phone, *Equipment On Site, *Description of Work, *Location, *Requested From, *To, *CRT Safety Training certification expires, *Email, *Fax.

Right of Way Access Rules:

- 1. Access permit requests will be reviewed and granted upon completion of CRT Safety Training.
2. Contractor must have Denver Transit Operators (DTO) qualified employees-in-charge on-site at each work location.
3. A copy of this completed access permit must accompany the work crew on each work site.
4. All personnel must wear required personal protective equipment (PPE) at all times.
5. Contractor must notify their assigned EIC prior to entering and when clear of any job site.
6. All active tracks must be 100% useable at all hours by the Commuter Rail trains. All rail flangeways and work areas must be cleared of debris prior to leaving the work area. Trains cannot be delayed.
7. When equipment or tools are used within the Right-of-Way that may impact safety or train operation, the Contractor must have an RTD EIC to protect and expedite train movement. EIC rates: Mon - Fri 7:00am - 5:00pm, \$XX.00/hr (8-hour minimum); Off-shift, Weekends and Holidays - \$XX.00/hr. (8-hour minimum)
8. The overhead catenary (25,000 volts ac (nominal)) is to be considered Live and Hot at all times. If de-energization is requested, Contractor must confirm with DTO Traction Power personnel prior to entry.

Please email to @rtd-denver.com OR fax to 303.299.XXXX

Requestor Confirmation and Agreement

*By checking this box, I acknowledge full understanding of RTD/DTO Access Permit rules and procedures and certify that CRT Safety training has been completed and is current.

*Requestor: Type Name Here *Date

FAILURE TO COMPLY WITH ACCESS PERMIT RULES WILL RESULT IN PERMIT REVOCATION THE SECTION BELOW IS FOR RTD/DTO USE ONLY

Table with 3 columns: Field Name, From, To. Fields include: Approved Dates of Access, Approved Time Period (military time), Approved Limits of Access, De-energize Overhead Power Required, Operating Restrictions, DTO - Safety Manager, DTO - General Manager, RTD - Senior Manager, Commuter Rail, Permit Number.

EXHIBIT E

To New Pedestrian Bridge Crossing Agreement
Cover Sheet for the

Railroad's Then-Current Temporary
Construction Easement

TEMPORARY CONSTRUCTION EASEMENT

(38th and Blake Station/2nd Ped. Bridge Work)

This Temporary Construction Easement (this “Easement”) is made as of the Effective Date (defined below), between the Regional Transportation District whose legal address is 1600 Blake Street, Denver, Colorado 80202 (“RTD” or “Grantor”) and the City and County of Denver, a Colorado municipal corporation of the State of Colorado, whose address is 1437 Bannock Street, Denver, Colorado 80202 (the “City” or “Grantee”).

A. Grantor is the owner of certain real property located in the City and County of Denver, Colorado, located at approximately 38th and Blake Street upon which RTD, through its contractor, will construct and operate a station and its appurtenances, including a parking lot (the “Property”).

B. Denver Transit Partners, LLC (“DTP”) leases the Property for purposes of designing, constructing, operating and maintaining a rail line known as the East Rail Line for mass transit purposes on behalf of RTD.

C. The City desires to undertake the construction of a pedestrian overpass and its elements and appurtenances (the “2nd Ped. Bridge”), to carry pedestrian and bicycle traffic over UPRR tracks and RTD’s track(s) on RTD’s East Line near the intersection of 35th Street and Wazee and 35th and Blake (collectively, the “Project”).

D. In connection with the Project, the City requires temporary construction rights to portions of the Property for the purposes of constructing the Project.

NOW, THEREFORE, in consideration of the Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

I. GRANT.

A. Grantor does hereby grant to the City a non-exclusive, temporary easement across, through and under the land described in **Exhibit A**, attached hereto and incorporated herein by this reference (the “TCE Area”) for the purposes of constructing the Project.

B. RETAINED RIGHTS. Grantor retains all rights to use, convey and enjoy the TCE Area, subject to the rights granted to the City herein. In addition, Grantor retains the right to allow its contractors access to the TCE Area for construction, maintenance and operation of RTD’s rail system and other RTD facilities.

II. TERM. The term of this Easement shall commence at 7:00 am on [•] and expire at 5:00 pm on [•], unless sooner terminated as provided herein (the “Term”). The Covenants and Release provided in paragraphs III and IV shall survive termination of this Easement.

III. COVENANTS OF GRANTEE.

A. The Grantee's use of the TCE Area shall be as set forth herein and shall not interfere with the Grantor's or its contractor's ability to use the TCE Area, except as specifically set forth in the project plans approved by RTD. The Grantee's use of the TCE Area shall not interfere with existing utilities or other facilities installed on or adjacent to the TCE Area, except as specifically set forth in the project plans approved by RTD. Grantee shall obtain, or cause to be obtained, all necessary regulatory permits prior to commencing activities on the TCE Area.

B. The Grantee shall not disturb or alter the TCE Area, except as approved by RTD in the project plans. Grantee shall, at its sole cost and expense, remove all excess dirt, equipment and/or materials and restore the TCE Area and any disturbed adjacent property and facilities of RTD and any improvements thereon after any disturbance, to the satisfaction of RTD except as set forth in the project plans approved by RTD. If, at the expiration or earlier termination of this Easement, Grantee fails to restore the TCE Area as set forth herein, Grantor shall have the right to sue the Grantee for specific performance. In addition, Grantor shall have the right to complete such work and/or cause any equipment and materials to be moved from the TCE Area and stored, and charge the cost to Grantee.

C. The Grantee shall not cause or knowingly permit any Hazardous Substance to be used, stored, generated, or disposed of on or in the TCE Area by Grantee, Grantee's agents, employees, contractors, or invitees. If Hazardous Substances are used, stored, generated or disposed of on or in the TCE Area by Grantee, Grantee's agents, employees, contractors, or invitees, or if the TCE Area becomes contaminated in any manner due to the actions or inactions of the Grantee, Grantee's agents, employees, contractors, or invitees, Grantee shall cause its contractors and subcontractors to indemnify and hold harmless RTD from any and all claims, damages, fines, judgments, penalties, costs, liabilities, or losses (including, without limitation, a decrease in value of the TCE Area and any and all sums paid for settlement of claims, attorneys' fees, consultant, and expert fees) arising as a result of those actions or inactions by Grantee Grantee's agents, employees, contractors, or invitees. This indemnification includes, without limitation, any and all costs incurred because of any investigation of the site or any cleanup, removal, or restoration mandated by a federal, state or local agency or political subdivision. Without limitation of the foregoing, if Grantee, Grantee's agents, employees, contractors, or invitees use, store, generate or dispose of any Hazardous Substance on the TCE Area and that results in contamination, Grantee shall promptly, at its sole expense, take, or cause to be taken, any and all necessary actions to return the TCE Area to the condition existing prior to the use, storage, generation or disposal of any such Hazardous Substance by Grantee. Grantee shall first obtain RTD's approval for any such remedial action. As used herein, "Hazardous Substance" means any substance that is defined as "toxic", "hazardous waste" or a "hazardous substance" or that is toxic, ignitable, reactive, or corrosive, and is regulated by any local government, the State of Colorado or the United States, including asbestos, asbestos containing material, polychlorobiphenyls ("PCB"), and petroleum, however vehicles and equipment using petroleum products may be stored and used provided that the same is in accordance with all applicable laws, rules and regulations.

D. The Grantee shall cause its contractors and subcontractors to defend, reimburse, indemnify and hold harmless RTD, its board members, agents and employees for, from and against any and all liabilities, claims, judgments, suits or demands for damages to persons or

property arising out of, resulting from, or relating to the use of the TCE Area hereunder (“Claims”), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of RTD. This indemnity shall be interpreted in the broadest possible manner to indemnify RTD for any acts or omissions of Grantee, its contractors or subcontractors either passive or active, irrespective of fault, including RTD’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of RTD. The duty to defend and indemnify RTD shall arise at the time written notice of the Claim is first provided to RTD regardless of whether the claimant has filed suit on the Claim. The duty to defend and indemnify RTD arises even if RTD is the only party sued by claimant and/or claimant alleges that the RTD’s negligence or willful misconduct was the sole cause of claimant’s damages. Grantee shall cause its contractors and subcontractors to defend any and all Claims which may be brought or threatened against RTD and will pay on behalf of RTD any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of RTD shall be in addition to any other legal remedies available to RTD and shall not be considered RTD’s exclusive remedy. Insurance coverage shall in no way lessen or limit the liability of the Grantee’s contractors and subcontractors under this indemnification obligation. This defense and indemnification obligation of Grantee’s contractors and subcontractors shall survive the termination of this Easement. Notwithstanding anything to the contrary contained herein, neither RTD nor the City waives any rights of governmental immunity provided to it pursuant to Colorado law.

E. Grantee shall ensure that each of its contractors requiring access to and entry upon the RTD property for the purposes of performing UPRR Relocation Work obtain a contractor right of entry agreement substantially in the form attached and incorporated herein as **Exhibit B** (“Contractor RoE”) and obtain a then-current Third Party Access to the RTDC Commuter Rail Right of Way from DTP substantially in the form attached and incorporated herein as **Exhibit C** (“DTP Third Party Access”). The fully executed DTP Third Party Access and Contractor RoE and all supporting documentation required therein must be submitted to RTD prior to entry upon the area specified in the Contractor RoE and in every event not less than 14 business days in advance of such entry by the Contractor or as otherwise agreed by the Parties.

IV. RELEASE. Grantee, in its non-regulatory capacity only, shall neither hold nor attempt to hold Grantor liable for any injury or damage, either proximate or remote, occurring through or caused by injury, accident or other cause to the Project or personal property of Grantee kept or stored on the TCE Area, whether by reason of the negligence or fault of the owners or occupants thereof, or by any other person or otherwise, except resulting from the negligent acts or omissions of Grantor or its employees, agents or contractors. Grantee, in its capacity as grantee and not in its capacity as a government with police and other regulatory powers, hereby waives any and all rights of recovery, claim, action or cause of action against Grantor, its agents, officers or employees, for any loss or damage to the Project and/or its personal property, or loss of use, occurring out of the use of the TCE Area, except resulting from the negligent or willful acts or omissions of Grantor or its employees, agents or contractors. Grantee represents that no insurer shall hold any right of subrogation against Grantor or its agents, officers, employees or licensees.

V. ACCESS. Permission to enter upon the TCE Area is granted solely for purposes identified in this Easement and is conditioned upon Grantee or its contractor, whomever is

entering upon the area, first obtaining permission through a DTP Third Party Access to enter upon the area set forth in the DTP Third Party Access. Grantee shall, and shall require its contractors, to comply with all terms of such DTP Third Party Access. Grantee shall abide by RTD's and its contractors' safety rules and regulations pertaining to the TCE Area. Grantee shall not enter the RTD right of way or any area within 25 feet of the centerline of any RTD track. Any access by Grantee within 25 feet of the centerline of any RTD track will require that Grantee or its contractor obtain an RTD Access Permit, which in this case is the DTP Third Party Access.

VI. MAINTENANCE.

A. The City shall pay for and RTD shall not be responsible for any costs associated with the City's storage of materials, equipment, dirt, and contractor parking or any other costs hereunder. The City shall comply with all laws and regulations in its use of the TCE Area for the purposes stated herein, at its sole cost and free of mechanics' or materialmen's liens. RTD reserves the right to (i) periodically inspect the TCE Area for compliance herewith, and (ii) request that the City's Manager of Public Works remove employees, agents or contractors from the work done by or on behalf of the City whom RTD determines to be incompetent, careless, insubordinate, unsuitable, unacceptable, or for any other nondiscriminatory reason. RTD's mass transit operations across, on or along the TCE Area shall not be impaired by the City. Any equipment, tools and/or materials stored on TCE Area shall be kept at least twenty-five (25) feet from center line of any operable track. Explosives or other highly inflammable substances shall not be utilized or stored on the TCE Area without the prior approval of RTD. The City shall remove all tools, equipment and materials from the TCE Area promptly upon completion of work, and shall restore the TCE Area to the same state and condition as when entered upon.

B. Grantee understands that the RTD rail catenary system is electrified twenty-four (24) hours per day. The catenary system shall be considered live at all times and cannot be de-energized except in cases of emergency.

VII. NO WARRANTY. RTD makes no representation or warranty of any kind with respect to the condition of the TCE Area. The Grantee accepts the TCE Area in its "AS-IS" condition, WITH ALL FAULTS AND AT THE GRANTEE'S OWN RISK, without any warranty, express or implied, including without limitation, any warranty of merchantability, liability, fitness or fitness for a particular purpose, all such warranties being hereby expressly disclaimed by the City. RTD does not grant or purport to grant any right not specifically set forth herein. Permission for the City or its contractors to traverse areas other than the TCE Area is the sole responsibility of the City as is procurement of any applicable regulatory permission or consent.

VIII. INSURANCE. Grantee shall cause its contractors to obtain and maintain, at no cost and expense to RTD, all the insurance required in the Contractor RoE. Grantee shall furnish to RTD, in a form satisfactory to RTD, a copy of said policy or a certificate indicating that such insurance has been issued.

IX. TOOLS AND EQUIPMENT. Grantee shall promptly remove all tools, equipment and materials from the TCE Area upon completion of the Project.

X. SURRENDER. At the expiration or earlier termination of this Easement, Grantee shall promptly quit and surrender the TCE Area in the same condition as received at the commencement of the Easement. If all or any portion of the TCE Area is not vacated at the end of the Term, RTD shall be and is hereby authorized to remove from the TCE Area and store, at the expense of Grantee, all goods, wares, merchandise and property of any kind or description (collectively, the “Goods”) which may be then occupying all or any portion of the TCE Area. All removal and/or storage charges must be paid to RTD by Grantee before the Goods will be released to the Grantee. In any event, RTD may dispose of any of the Goods as it sees fit after the expiration of thirty (30) calendar days from the end of the Term. RTD shall not be liable for any damage to or loss of the Goods sustained either during the removal, storage and/or disposal of same and RTD is hereby expressly released from any and all claims for any such loss or damage. This Section shall survive expiration or earlier termination of this Easement.

XI. ASSIGNMENT AND SUBLETTING. Neither this Easement nor any interest herein may be assigned by the City, voluntarily or involuntarily, by operation of law or otherwise.

XII. NOTICES. All notices provided for herein shall be in writing and shall be personally delivered or mailed by registered or certified United States mail, postage prepaid, return receipt requested, to the parties at the addresses given below or at such other address that may be specified by written notice in accordance with this Section:

RTD: Manager of Real Property
1560 Broadway, Suite 650
Denver, CO 80202

Grantee:
Manager of Public Works
201 W. Colfax, Dept 608
Denver, CO 80202

with a copy to:

General Counsel
1600 Blake Street
Denver, CO 80202

Denver City Attorney’s Office
201 W. Colfax, Dept 1207
Denver, CO 80202

With a copy to:

Denver Transit Partners, LLC
c/o Gregory Amparano, General Manager
Denver Transit Holdings, LLC
1670 Broadway, Floor 27
Denver, Colorado 80202
(303) 297-7555

In emergency: (855) 324-5373

XIII. AMENDMENTS TO EASEMENT. No changes, alterations or modifications to any of the provisions hereof shall be effective unless contained in a written agreement signed by the RTD, and the City (if prior to the termination of the temporary construction easement granted herein). No City Council approval is needed unless required by City Charter.

XIV. WAIVER, SEVERABILITY. The failure of any party to exercise any right hereunder, 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 Easement. If any

provision of this Easement is held to be unenforceable for any reason, its unenforceability shall not affect the remainder of this Easement, which shall remain in full force and effect and enforceable in accordance with its terms.

XV. GOVERNING LAW AND VENUE. This Easement shall be interpreted and enforced according to the laws of the State of Colorado. Venue for any action hereunder shall be in the Denver District Courts.

XVI. EFFECTIVE DATE. The Effective Date of this Easement shall be the last date this Easement was executed by one of the Parties as evidenced by the date set forth on the signature pages hereto.

XVII. APPROPRIATION BY CITY COUNCIL AND RTD BOARD. Unless already appropriated as set forth herein, this TCE does not commit any present funding by either Party. The obligations of the Parties under this TCE shall extend only to monies appropriated for the purpose of this TCE by the RTD Board and/or Denver's City Council, as appropriate, subject to each entity's legally required budgeting, authorization, and appropriation process. The Parties acknowledge that they do not through this TCE irrevocably pledge present cash reserved for payments in future years, and that this TCE is not intended to create a multiple fiscal year direct or indirect debt or obligation of the Parties.

XVIII. INSPECTION OF RECORDS.

a) The Parties agree that, at the cost of the requesting Party, any duly authorized representative of RTD or the City, including the City Auditor, or any internal or external auditor of the City or RTD shall, until the expiration of three (3) years after the final reconciliation or payment under this TCE, have access to and the right to copy any books, documents, papers, and records involving transactions and work related to this TCE.

b) In connection with any work performed hereunder on items of work toward which federal funds may be received, the City, RTD, and their authorized representatives shall have access to any books, documents, papers, and records for the purpose of making audit, examination, excerpts and transcriptions.

XIX. NO DISCRIMINATION IN EMPLOYMENT. In connection with the performance of work under this TCE, the Parties agree not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation, terms, conditions or privileges of employment against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability.

XX. CONFLICTS OF INTEREST. The Parties agree that no employee of either Party shall have any personal or beneficial interest whatsoever in the services or property described herein and RTD further agrees not to hire, or contract for services with, any employee or officer of Denver which would be in violation of the Denver Revised Municipal Code, Chapter 2, Article IV, Code of Ethics, or Denver City Charter provisions C5.13 and C5.14. No officer, employee or agent of RTD, nor any member of the RTD Board, nor any member of Congress, nor any other public official or employee of the governing body of the locality or localities included within the

district, during his or her tenure, or for one (1) year thereafter, shall have any personal pecuniary or property interest, direct or indirect, in this Agreement or the proceeds hereof.

XXI. LIABILITY. The Parties agree that both Parties, their officers, officials, and employees, are relying on, and do not waive or intend to waive by any provisions of this, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 to 120 (“CGIA”), or otherwise available to either party of their officers, officials and employees. If either Party is given notice of claim or suit against or involving the other arising from the implementation of this TCE or the design or construction of the project, it agrees to give the other Party prompt written notice of such claim or suit. The City shall cause its contractors to promptly repair any damage to any property that is caused by the activities hereunder at no cost to RTD.

XXII. COUNTERPARTS. This TCE may be executed in counterparts. Signatures on separate originals shall constitute and be of the same effect as signatures on the same original. Electronic and faxed signatures shall constitute original signatures.

XXIII. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS. The Parties consent to the use of electronic signatures for execution of this TCE. The TCE, and any other documents requiring a signature hereunder, may be signed electronically by either Party in the manner specified by that Party. The Parties agree not to deny the legal effect or enforceability of the TCE solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record solely on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Temporary Construction Easement as of:_____.

ATTEST:

CITY AND COUNTY OF DENVER

_____ By: _____
DEBRA JOHNSON, Clerk and Mayor
Recorder, Ex-Officio Clerk of the
City and County of Denver

APPROVED AS TO FORM:
D. SCOTT MARTINEZ, City Attorney
for the City and County of Denver

By: _____
Assistant City Attorney

REGISTERED AND COUNTERSIGNED:

By: _____
Manager of Finance

By: _____
Auditor

“CITY”

[REGIONAL TRANSPORTATION DISTRICT

a political subdivision of the State of Colorado

By: _____

Approved as to legal form for RTD:

Associate General Counsel

EXHIBIT A
TCE Area Legal Description

(pages follow)

EXHIBIT B
Contractor Right of Entry
(pages follow)

CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

This Contractor's Right of Entry Agreement ("Agreement" or "Contractor's RoE") is made [●] by and between The Regional Transportation District, a political subdivision of the State of Colorado ("RTD" or "Licensor"), 1560 Broadway, Suite 650, Denver, Colorado 80202 and _____ ("Contractor"), [Address].

RTD and the City and County of Denver ("City") are parties to a certain Temporary Construction Easement dated [●], (the "TCE") whereby RTD granted an easement to enter upon the certain RTD property shown in Exhibit A to the TCE ("TCE Area") for the purpose of constructing and relocating the Union Pacific Railroad Company's 36th Yard Offices and appurtenances to UPRR land and to the RTD-UPRR Relocation Parcel and a certain Permanent Access Easement Area ("Project").

Denver Transit Partners, LLC ("DTP") leases the TCE Area for purposes of designing, constructing, operating and maintaining the East Line commuter rail line on behalf of RTD.

The City has employed Contractor and requested RTD to permit Contractor to perform the work and RTD is agreeable thereto, subject to the following terms and conditions.

In consideration of the permission of RTD for Contractor to enter upon the TCE Area, Contractor hereby agrees as follows:

SECTION 1 RIGHT TO ENTER TCE AREA

Permission to enter upon the TCE Area is granted solely for purposes of Contractor performing work under the TCE. Contractor shall comply with all terms of the TCE applicable to its work on the TCE Area. Contractor specifically acknowledges and agrees that DTP has the full right and authority to enforce, and to cause Contractor to come into compliance with, the terms of this Agreement, and that Contractor must first obtain permission to enter upon the TCE Area from DTP and shall comply with DTP's most-current Third Party Access to RTDC Commuter Rail Right of Way rules and procedures, the current form of which was attached to the TCE as Exhibit C ("DTP Third Party Access").

SECTION 2 LIABILITY

Contractor shall, and shall contractually require its contractors to, indemnify, defend and hold harmless Licensor and its officers, directors, employees, agents and contractors; and Denver Transit Partners, LLC 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 Contractor's and/or its contractors' use of the TCE Area hereunder, including,

but not limited to, Environmental Damages. It is the intention of the parties hereto that the indemnity from Contractor to Licensor provided for in this section indemnifies RTD, its officers, directors, and employees for their own negligence, whether that negligence is active or passive, or is the sole or a concurring cause of the injury, death or damage; provided that said indemnity shall not protect RTD from liability for death, injury or damage arising solely out of the willful misconduct, gross negligence and/or criminal actions of RTD, its officers, directors or employees. In the event of any claims made or suits filed, each party shall give the other prompt written notice thereof, and Licensor shall have the option to defend or reasonably settle the same as to claims or suits made against it, without effect as to Contractor's obligations hereunder. The provisions of this paragraph shall survive the termination, in whole or in part, of the license granted under this Agreement.

SECTION 3 INSURANCE

- A. Contractor shall procure and maintain, and shall require that any contractors and subcontractors procure and maintain, the following types of insurance, at minimum, with an insurer or insurers and in a form satisfactory to RTD:
1. Comprehensive general and automobile liability insurance with contractual liability endorsement and products and completed operations hazards included, which shall provide coverage for limits of not less than \$5,000,000.00 bodily injury liability and property damage liability, combined single limits.
 2. Workers' Compensation and Employers' Liability Insurance covering all employees of Contractor and its contractors, 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 the Contractor and its contractors 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 the same, a waiver of insurer's right of subrogation against RTD for payments made to or on behalf of employees of the Contractor's and contractors. Employer's Liability Insurance shall provide coverage for limits of not less than \$ 500,000.
 3. Prior to entry upon, above or adjacent to TCE Area, Contractor agrees to furnish RTD with a certificate of insurance for itself and for each of its contractor(s)' policy(ies). Contractor shall provide 30 days' advance notice of cancellation of the policy by Registered or Certified mail.
 4. Each such comprehensive general and automobile liability certificate shall have the following endorsements attached thereto:
 - a) An endorsement naming each of RTD, and Denver Transit Partners, LLC additional insured;
 - b) An endorsement providing for contractual liability coverage for liability assumed by the Contractor under this Agreement;
 - c) An endorsement providing that all policy or endorsement limitation(s) relating specifically to operations on or near railroad property are eliminated;

- d) A Broad Form Property Damage endorsement; and
 - e) An endorsement providing that in the event of reduction or exhaustion of the applicable aggregate limit or limits of liability under the primary policy or policies referred to in the certificate of insurance solely by reason of losses paid hereunder on account of occurrences during the policy period, the excess policy, if any, referred to in the certificate shall (1) in the event of reduction, apply as excess of the reduced limit of liability thereunder; and (2) in the event of exhaustion, continue in force as though it were primary insurance.
- B. Liability of Contractor under this section shall not be limited to coverage provided under said insurance policies.
- C. Only those contractors and subcontractors of Contractor whose operations are covered by insurance will be authorized to work upon or about the TCE Area.

SECTION 4 ENVIRONMENTAL OBLIGATIONS

- A. For purposes of this “Environmental Obligations” section, the terms “Activity” and “Activities” shall include any action or omission of Contractor, and/or the subsidiaries, affiliates, agents, contractors, employees, successors or assigns of Contractor.
- B. No Hazardous Material on Property. Except in strict compliance with all Environmental Requirements, Contractor shall not cause, permit or suffer any Hazardous Material (defined below) to be brought upon, treated, kept, stored, disposed of, discharged, released, produced, manufactured, generated, refined or used upon, about or beneath the TCE Area or any portion thereof by Contractor, its agents, employees, contractors, tenants or invitees, or any other person.
- C. No Violations of Environmental Requirements. Contractor, in performing the Activities shall not cause, permit or suffer the existence or the commission by Contractor, its agents, employees, contractors, or invitees, of a material violation of any Environmental Requirements upon, about or beneath the TCE Area or any portion thereof.
- D. No Environmental or Other Liens. Contractor, in performing the Activities, shall not create or suffer to exist with respect to the TCE Area, or permit any of its agents (including, but not limited to, contractors) to create or suffer to exist any lien, security interest or other charge or encumbrance of any kind, including without limitation, any lien imposed pursuant to section 107(f) of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. Section 9607(1)) or any similar state statute.
- E. For purposes of this Agreement, “Hazardous Material(s)” means any and all substances, chemicals, wastes, or other materials now or from time to time hereafter:
- 1. 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;

2. 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

3. 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.

4. "Environmental Requirements" means all applicable present and future statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, concessions, franchises, and similar items, of all governmental agencies, departments, commissions, boards, bureaus, or instrumentalities of the United States, states and political subdivisions thereof and all applicable judicial, administrative, and regulatory decrees, judgments, and orders relating to the protection of human health or the environment, including, without limitation:

- a) All requirements, including but not limited to those pertaining to reporting, licensing, permitting, investigation, and remediation of emissions, discharges, releases, or threatened releases of Hazardous Materials, whether solid, liquid, or gaseous in nature, into the air, surface water, groundwater, or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of Hazardous Materials, whether solid, liquid, or gaseous in nature; and
- b) All requirements pertaining to the protection of the health and safety of employees or the public.

5. "Environmental Damages" means all claims, judgments, damages, losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs, and expenses of investigation and defense of any claim, whether or not such claim is ultimately defeated, and of any good faith settlement of judgment related to Activities, of whatever kind of nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, including without limitation reasonable attorneys' fees

and disbursements and consultants' fees, any of which are incurred at any time as a result of the existence of Hazardous Material upon, about, or beneath the TCE Area or migrating or threatening to migrate to or from the TCE Area, or the existence of a violation of Environmental Requirements pertaining to the TCE Area and including without limitation:

- a) Damages for personal injury, or injury to property or natural resources occurring upon or off of the TCE Area, foreseeable or unforeseeable, including, without limitation, lost profits, consequential damages, the cost of demolition and rebuilding of any improvements on real property, interest and penalties including but not limited to claims brought by or on behalf of employees of Contractor;
- b) Fees incurred for the services of attorneys, consultants, contractors, experts, laboratories and all other costs incurred in connection with the investigation or remediation of such Hazardous Materials or violation of Environmental Requirements including, but not limited to, the preparation of any feasibility studies or reports or the performance of any cleanup, remediation, removal, response, abatement, containment, closure, restoration or monitoring work required by any federal, state or local governmental agency or political subdivision, or reasonable necessary to make full economic use of the TCE Area otherwise expended in connection with such conditions, and including without limitation any attorneys' fees, costs and expenses incurred in enforcing this Agreement or collecting any sums due hereunder; and
- c) Liability to any third person or governmental agency to indemnify such person or agency for cost expended in connection with the items referenced in subparagraph (b) herein.

SECTION 5 SUB-CONTRACTORS

All of the limitations and obligations imposed upon the Contractor pursuant to this Agreement shall be to apply with equal force and effect to any of Contractor's sub-contractors (together "sub-contractors") performing any work on or about the TCE Area. The Contractor shall be primarily liable and responsible to Licensor for all acts or omissions of any sub-contractor employed upon or about the TCE Area pursuant hereto. Nothing herein contained shall be construed to preclude the Licensor from proceeding against the Contractor and any sub-contractor individually or collectively. Only those sub-contractors whose operations are covered by the insurance provisions hereof will be authorized to work upon the property of Licensor. In the event that any sub-contractor does not have its own insurance coverage as set forth in Section 3, hereof, Contractor shall cause such sub-contractor to be a named insured under Contractor's policies set forth in Section. No sub-contractor shall be permitted entry upon the TCE Area until proof of sub-Contractor's coverage required by Section 3 and this section is submitted to Licensor, and approved by Licensor's Risk Manager.

SECTION 6 DIGGING OR BORING

Prior to performing any digging or boring activities on the TCE Area, the Contractor shall

determine if a telecommunications system or other utility is buried anywhere on or about the TCE Area in the location where Contractor will perform such digging or boring activities. If there is such a telecommunications system or other utility, Contractor will inform the owner of such telecommunications system or other utility, and take such measures in concert with the owner(s) as are necessary so as not to damage such system or utility.

SECTION 7 SAMPLES/REMOVAL

As between Licensor and Contractor only, Contractor shall be solely responsible for the lawful removal, manifesting, transport, testing and disposal of any samples or other materials removed from the TCE Area or generated as a result of Contractor's activities done pursuant to this Agreement, and shall duly and properly perform or cause to be performed any such activities that it undertakes or is required to undertake pursuant to law. Contractor releases Licensor from liability or legal obligation for, and covenants not to sue Licensor concerning, any and all materials removed from the TCE Area or generated as a result of Contractor's sampling and/or testing activities pursuant hereto.

SECTION 8 MISCELLANEOUS

A. Term and Termination. This Agreement shall be effective upon the execution by all parties hereto. The permission granted herein shall expire _____ from the date of execution of this Agreement or upon completion of the Project, whichever occurs first.

B. Assignment. The license granted herein may not be assigned by Contractor and Contractor shall not sublet the TCE Area, or any part thereof, or any interest therein, without the prior written consent of Licensor. No Licensor-approved assignment or subletting shall release Contractor from any responsibility or liability hereunder. Any subletting or assignment in violation of this Agreement shall be null and void.

C. Amendment. This Agreement may not be amended except in writing by mutual agreement of Contractor and Licensor, nor may rights be waived except by an instrument in writing signed by the party charged with such waiver.

D. Independent Contractors. It is expressly understood and agreed that Licensor and Contractor do not intend to be and shall not in any respect be deemed agents of each other, but shall be deemed to each be an independent contractor.

E. Liens. Contractor shall not permit any lien to be placed against the TCE Area arising from performance of work hereunder, and shall promptly cause any such lien to be removed.

IN WITNESS WHEREOF, the parties have duly executed this Agreement, effective the day and date first above written.

LICENSOR
REGIONAL TRANSPORTATION DISTRICT

By: _____
Assistant General Manager, Capital
Programs
Date: _____

APPROVED AS TO LEGAL FORM
FOR THE
REGIONAL TRANSPORTATION DISTRICT

Associate General Counsel
Date: _____

CONTRACTOR
[name of contractor]

By: _____
Name:
Title:
Date:

Exhibit C to Temporary Construction Easement

DTP Third Party Access

(pages follow)

Third Party Access to the RTDC Commuter Rail Right of Way**I. POLICY**

All parties with rights under RTD agreements to access the commuter rail right of way for the purpose of inspecting and maintaining utilities or other infrastructure, must obtain the approval of DTO before entering the right of way (ROW).

This policy and procedure addresses planned and emergency access to the right of way.

Inspection and maintenance of third-party assets should generally be performed during non-revenue hours, when trains are not running. Otherwise, track outages will be needed. Track outages affect service and require the approval of the RTD.

All scheduled outages are subject to the RTD's approval. Planned inspection and maintenance activities should be requested as far in advance as possible to enable DTO to include them in the annual Service Plan, which is subject to the RTD's approval on an annual basis but may be updated as needed throughout the year.

Third-party personnel needing access to the commuter rail right of way must:

1. Take DTO's on-track safety training and have in their possession when on the ROW a card certifying that the training was received within the past twelve months.
2. Work under the control of a DTO Employee-in-Charge. All expenses for providing the Employee in Charge to protect the third-party crews are to be paid by the third party.
3. Work in strict compliance with the schedule and limits placed on the work by the DTO Employee in Charge.
4. Wear proper personal protective equipment.
5. Strictly adhere to DTO's on-safety and work rules and directives
6. Not use a cell phone within 25' of the track
7. Not use any tools or equipment except those identified in the pre-approved work plan.
8. Repair any damage caused by the work
9. Leave the right of way in a safe condition for train operations

II. PROCEDURE FOR PLANNED ACCESS**A. Third Party Application for Access**

Third parties needing access to the commuter rail right of way must use the attached form to request the access at least 30 days in advance of the work.

Upon receipt of the application, the DTO Safety Manager will convene a meeting of representatives of the party seeking access to the right of way, the Transportation Department, The Engineering Department and the Safety Department. The review will consider the operational, engineering, financial and safety aspects of the work. The third-party representative attending the meeting should be prepared to present:

1. A description of the work to be performed
2. The proposed access location

Third Party Access to the RTDC Commuter Rail Right of Way

3. The limits of the work location
4. The anticipated duration of the work
5. The tools and equipment to be used
6. The numbers and qualifications of the personnel to be involved in the work
7. The records of DTO Safety Training for all personnel for whom access is requested.
8. Evidence of insurance for the work.

The purpose of the meeting is:

1. To develop a work plan or a list of actions necessary to complete the work.
2. To gather the data needed to support the analyses of the work.
3. Determine whether public notification will be needed.
4. Determine if the configuration of the commuter rail system will change and appropriate actions needed to mitigate safety risks.

The DTO Safety Manager will complete the work plan and the operational/safety/engineering/financial analysis, obtain signatures of approval from an authorized representative of the third party and forward these documents to the RTD for approval.

B. Implementation of Planned Access

The day before the planned third party access, the supervisor or foreman for the third party will meet or telephone the Employee in Charge for DTO to review the work plan and all associated conditions.

Before the work begins, the Employee in Charge for DTO will meet with all involved third party employees and contractors for a job briefing. The Employee in Charge will check that all employees have proper protective equipment and up-to-date training cards.

At the conclusion of the work, the supervisor for the third-party work crew will verify to the Employee in Charge for DTO that all personnel are clear. The DTO EIC will inspect the site, verifying that the right of way has been restored to its original condition, and radio the OCC to report all-clear.

III. PROCEDURE FOR EMERGENCY ACCESS

DANGER: DO NOT GET WITHIN 10 FEET OF THE OVERHEAD WIRES UNTIL AUTHORIZED BY AN ON-SITE DTO-QUALIFIED TRACTION POWER EMPLOYEE THAT THE WIRE HAS BEEN DE-ENERGIZED, TESTED DE-ENERGIZED, AND GROUNDED.

DO NOT GET WITHIN 25' OF THE NEAREST TRACK UNTIL THE DISPATCHER HAS CONFIRMED THAT ALL TRAIN MOVEMENT IN THE AREA HAS BEEN STOPPED.

1. Never enter the Right of Way without permission from the DTO Dispatcher
2. Stop outside the Right of Way.
3. Call the DTO Dispatcher to provide notification that an emergency condition exists.. (###-###-####) This conversation will be audio-recorded. The DTO Dispatcher will write down the information provided.

Third Party Access to the RTDC Commuter Rail Right of Way

- a. Name of caller, agency, emergency condition and cell phone number. An emergency condition is defined as an abnormal condition that, if not immediately remedied, could cause injury to people or major property damage.
 - b. Name of each person or people seeking permission to enter the Right of Way
 - c. Whether there is a need to get within 10' of the energized traction power components
 - d. Identification of each vehicle seeking permission to enter the Right of Way.
4. If the third party has an **urgent need to get within 10 feet of the energized traction power components**:
- a. The DTO Dispatcher will:
 - i. hold trains out of the area
 - ii. de-energize the OCS remotely
 - iii. dispatch a DTO-qualified Traction Power employee to the site
 - iv. dispatch a DTO supervisor to the site
 - b. After receiving oral permission from the DTO-qualified Traction Power Employee on site, the third-party personnel may enter the Right of Way.
5. If the third party has an **urgent need to get within 25 feet of the nearest track but no need to get within 10' of the energized traction power components**:
- a. the DTO Dispatcher will
 - i. Wait for the DTO Dispatcher to hold trains out of the area
 - ii. The DTO Dispatcher will dispatch a DTO EIC to the area.
 - b. After receiving oral permission from the DTO Dispatcher, the third-party personnel may enter the Right of Way.
6. The third-party personnel will handle the emergency
7. After the emergency is resolved, the DTO-qualified Traction Power Employee or the DTO EIC will call the DTO Dispatcher to confirm that all persons and equipment that entered the ROW are now clear. (This conversation will be audio-recorded. The dispatcher will write down this information)
8. Dispatcher will restore commuter rail operations.

Examples of emergencies are:

- Restoration of public services
- Work that affects the operation of the RTD commuter railroad
- Security threats or police actions
- Any situation that poses an immediate threat to health, safety, or property

IV. ATTACHMENTS AND FORMS

Appendix 1: RTD/DTO Commuter Rail Right of Way Access Request / Permit

V. REPORTING AND RECORD KEEPING

All data shall be made available to the RTD and FRA for inspection and copying.

The document will be reviewed and amended, if needed, based on the following conditions:

- new or expanded passenger service,
- revised operational procedures,
- revisions or annulment of the FRA waiver



Third Party Access to the RTDC Commuter Rail Right of Way

If none of the above events occurs, the RTDC Safety Manager or his/her designee will review the document annually and amend if needed.

VI. REVISION HISTORY

Number of Revision or Change	Date	Reason for Revision or Change
Revision 0.1	05/05/2014	First Draft.

VII. APPROVALS

Prepared by: _____ Date: _____
Randall Duty – DTO Systems and Infrastructure Engineer

Revised by: _____ Date: _____
Davie McCulloch – DTP Deputy Project Manager

Approved by: _____ Date: _____
Jean Claude Aurel – DTP Project Safety Manager

Approved by: _____ Date: _____
Anne Herzenberg – DTO General Manager

VIII. DISTRIBUTION

- DTP
- DTS
- DTC
- DTO



Third Party Access to the RTD Commuter Rail Right of Way

RTD/DTO Commuter Rail Right of Way Access Request / Permit

Complete all fields that are in Blue (and have asterisks)

Form with fields: *Company Representing, *Person Submitting Request, *Contact Person, *Contact Information, *Phone, *Equipment On Site, etc.

Right of Way Access Rules:

- 1. Access permit requests will be reviewed and granted upon completion of CRT Safety Training.
2. Contractor must have Denver Transit Operators (DTO) qualified employees-in-charge on-site at each work location.
...
8. The overhead catenary (25,000 volts ac (nominal)) is to be considered Live and Hot at all times.

Please email to @rtd-denver.com OR fax to 303.299.XXXX

Requestor Confirmation and Agreement

*By checking this box, I acknowledge full understanding of RTD/DTO Access Permit rules and procedures and certify that CRT Safety training has been completed and is current.

*Requestor: Type Name Here *Date

FAILURE TO COMPLY WITH ACCESS PERMIT RULES WILL RESULT IN PERMIT REVOCATION THE SECTION BELOW IS FOR RTD/DTO USE ONLY

Table with fields: Approved Dates of Access, Approved Time Period, Approved Limits of Access, De-energize Overhead Power Required, Operating Restrictions, and Permit Number.

EXHIBIT F

To New Pedestrian Bridge Crossing Agreement
Cover Sheet for the
Railroad's Form of Easement

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Real Property Manager
Regional Transportation District
Susan Altes, Manager
1560 Broadway, Suite 650
Denver, Colorado 80202

PERMANENT AERIAL EASEMENT
(35th/36th Street Pedestrian Bridge Overpass Structure)

KNOW ALL PEOPLE BY THESE PRESENT:

This easement is granted by REGIONAL TRANSPORTATION DISTRICT, a political subdivision of the State of Colorado organized pursuant to the Regional Transportation District Act, C.R.S. §§ 32-9-101, *et seq.*, hereinafter called “Grantor” or “RTD”, to the CITY AND COUNTY OF DENVER, a Colorado home rule city and municipal corporation, whose address is 1437 Bannock Street, Denver, CO 80202, hereinafter called “Grantee” or “City”. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor does hereby grant, bargain, and convey to Grantee, and their respective successors and assigns, a permanent nonexclusive aerial easement (“**Aerial Easement**”) to construct, reconstruct, maintain, repair, replace and use, and allow its invitees to use, a new pedestrian overpass structure (“2nd Ped. Bridge”) for the purpose of pedestrian and non-motorized bicycle ingress and egress above certain real property located in the City and County of Denver, State of Colorado, as such real property is more particularly described as follows (the “**Aerial Easement Area**” or “**Crossing Area**”):

The area that is expressly limited vertically (a) above a plane parallel with and thirty (30) feet above the top of the rail of the highest of Grantor’s trackage facilities located on the real property described in **Exhibit A** attached hereto and (b) below a plane parallel with and fifty-five (55) feet above the top of the rail of the highest of Grantor’s trackage facilities located on the real property described in **Exhibit A**.

Grantee shall not install, or permit the installation of, any utility facilities, including water, telecommunications, gas or electrical lines, except as are appurtenant to the 2nd Ped. Bridge and as shown on Plans approved by Grantor. This grant is made subject to the prior and continuing right and obligation of Grantor, its successors and assigns, to use all or any portion of the real property described in **Exhibit A** that is above or below the Aerial Easement Area for Grantor’s own purposes, which may include, but are not limited to construction, reconstruction, maintenance, repair, use and operation of existing and future transportation, communication and pipeline facilities and appurtenances in such real property above or below the Aerial Easement

Area, as well as the right for itself and its successors, assigns, contractors, permittees and mass transit system patrons (permittees and mass transit system patrons collectively, "Permittees"), the non-exclusive right to traverse the 2nd Ped. Bridge and otherwise enter, exit, re-enter, occupy, and use the 2nd Ped. Bridge.

Without limiting the foregoing, this grant is subject to the terms and conditions of that certain New Pedestrian Overpass Crossing Agreement between Grantor and Grantee dated of even date herewith and recorded concurrently herewith.

Grantee shall operate and maintain the 2nd Ped. Bridge in accordance with the New Pedestrian Overpass Crossing Agreement.

If Grantee, its successors and assigns, shall abandon the 2nd Ped. Bridge or Aerial Easement Area, or any portion thereof, for the purpose set forth herein for a continuous period of twelve (12) months, then the Aerial Easement and the rights granted herein shall cease automatically and terminate. In such circumstances, the Grantee, if so requested by Grantor, within ten (10) calendar days after such request, shall execute and deliver to Grantor a quitclaim and release document in recordable form acceptable to Grantor. Within ninety (90) calendar days after termination of the Aerial Easement, the City, at its sole cost and expense, shall remove all of the Structure and its improvements from the Aerial Easement Area and restore the Aerial Easement Area including but not limited to Grantor's right-of-way to its original condition, failing in which Grantor may perform such activities at the expense of Grantee.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Grantor has hereto set their hands on this ____ day of _____, 20____.

REGIONAL TRANSPORTATION DISTRICT

ATTEST:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

ACKNOWLEDGMENT

STATE OF COLORADO)
)ss
COUNTY OF DENVER)

On this ____ Day of _____ 20____, before me _____, a Notary Public in and for said County and State, personally appeared _____ and _____ who are the _____ and _____ respectively, of the Regional Transportation District and who are personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to in the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

My commission expires: _____

CITY AND COUNTY OF DENVER:

ATTEST:

By: _____
Debra Johnson,
Clerk and Recorder Ex-Officio Clerk
of the City and County of Denver

APPROVED AS TO LEGAL FORM:
D, Scott Martinez , Attorney for
the City and County of Denver

By: _____
Assistant City Attorney

By: _____
Mayor

REGISTERED AND COUNTERSIGNED

By: _____
Manager of Finance

By: _____
Auditor

EXHIBIT A
(To Permanent Aerial Easement)

Aerial Easement Area Legal Description

EXHIBIT J

Federal Requirements

(Pages follow)

FEDERAL REQUIREMENTS

The City shall comply with and perform its obligations under this IGA in accordance with the following requirements and provisions, as applicable, and ensure that (where relevant) this Exhibit is incorporated into and appended to each contract or subcontract entered into for the work to be performed under this IGA:

1. FEDERAL REQUIREMENTS APPLICABLE TO ARCHITECTURAL AND ENGINEERING CONTRACTS AND SUBCONTRACTS

1.1 Disadvantaged Business Enterprises Requirements

In accordance with Section 3 of this Exhibit.

1.2 Incorporation of FTA Terms

The provisions of this IGA include, in part, certain Standard Terms and Conditions required by the United States Department of Transportation (**DOT**), whether or not expressly set forth in the IGA provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 01, 2008, as may be amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in the IGA. The City shall not perform any act, fail to perform any act, or refuse to comply with any RTD requests which would cause RTD to be in violation of the FTA terms and conditions. The incorporation of FTA terms has unlimited flow down.

1.3 Federal Changes

All applicable FTA regulations, policies, procedures and directives, as may be amended or promulgated from time to time during the term of this IGA.

1.4 No Government Obligation to Third Parties

The City acknowledges and agrees that, notwithstanding any concurrence by the Federal Government in or approval of the IGA or the solicitation or award of the underlying contracts or subcontracts, absent the express written consent by the Federal Government, the Federal Government is not a party to this IGA or such contracts and subcontracts and shall not be subject to any obligations or liabilities to RTD, the City, or any other party (whether or not a party to the IGAs or other contracts) pertaining to any matter resulting from the IGA.

1.5 Selection of Architects and Engineers (Brooks Act)

All applicable provisions of 40 U.S.C. § 1101, *et seq.* The City shall use competitive proposal procedures based on the Brooks Act when contracting for architectural and engineering services as defined in 40 U.S.C. § 1101.

1.6 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)".

1.7 Lobbying

31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995) and 31 U.S.C. 3801, *et seq.*

1.8 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.

1.9 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 project.

1.10 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.

1.11 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.*

1.12 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.

1.13 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 City shall report all violations thereof to RTD, to FTA and to the appropriate Environmental Protection Agency Regional Office.

1.14 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 City shall report all violations to RTD, to FTA and to the appropriate Environmental Protection Agency Regional Office.

1.15 Access to Records and Reports.

- (a) For a period of three years following final payment, the City shall maintain, preserve and make available to RTD, the FTA Administrator, the Comptroller General of the United States, and any of their authorized representatives, access at all reasonable times to any books, documents, papers and records of the City which are directly pertinent to this work for the purposes of making audits, examinations, excerpts and transcriptions. The City also agrees, pursuant to 49 CFR 633.17, to provide the FTA Administrator or his or her authorized representatives, including any project management oversight contractor, access to City's records and sites pertaining to a major capital project, defined at 49 U.S.C. § 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. §§ 5307, 5309 or 5311.
- (b) The City shall maintain and RTD shall have the right to examine and audit all records and other evidence sufficient to reflect properly all prices, costs or rates negotiated and invoiced in performance of this work. This right of examination shall include inspection at all reasonable times of the City's offices engaged in performing the work.
- (c) If this Contract is completely or partially terminated, the City shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement. The City shall make available records relating to appeals or to litigation or the settlement of claims arising under or relating to work until such appeals, litigation, or claims are finally resolved.

2. FEDERAL REQUIREMENTS APPLICABLE TO CONSTRUCTION CONTRACTS AND SUBCONTRACTS

2.1 Disadvantaged Business Enterprises Requirements

In accordance with Section 3 of this Exhibit.

2.2 Incorporation of FTA Terms

The provisions of this IGA include, in part, certain Standard Terms and Conditions required by the United States Department of Transportation (**DOT**), whether or not expressly set forth in the IGA provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 01, 2008, as may be amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in the IGA. The City shall not perform any act, fail to perform any act, or refuse to comply with any RTD requests which would cause RTD to be in violation of the FTA terms and conditions. The incorporation of FTA terms has unlimited flow down.

2.3 FTA regulations and policies

All applicable FTA regulations, policies, procedures and directives, as may be amended from time to time during the term of this IGA.

2.4 No Government Obligation to Third Parties

The City acknowledges and agrees that, notwithstanding any concurrence by the Federal Government in or approval of the IGA or the solicitation or award of the underlying contracts or subcontracts, absent the express written consent by the Federal Government, the Federal Government is not a party to this IGA or such contracts and subcontracts and shall not be subject to any obligations or liabilities to RTD, the City, or any other party (whether or not a party to the IGAs or other contracts) pertaining to any matter resulting from the IGA.

2.5 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)".

2.6 Lobbying

31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995) and 31 U.S.C. 3801, *et seq.*

2.7 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.

2.8 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 project.

2.9 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.

2.10 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.*

2.11 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.

2.12 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 City shall report all violations thereof to RTD, to FTA and to the appropriate Environmental Protection Agency Regional Office.

2.13 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 City shall report all violations to RTD, to FTA and to the appropriate Environmental Protection Agency Regional Office.

2.14 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.

2.15 Seismic Safety Requirements

The standards for Seismic Safety required in USDOT Seismic Safety Regulations, 49 CFR Part 41j.

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. The City shall obtain Buy America certifications from each contractor, supplier and vendor and shall provide copies of such certifications to RTD.

2.18 Cargo Preference Requirements

All applicable requirements of 42 U.S.C. 1241 and 46 CFR 381.

2.19 Access to Records and Reports.

- (a) For a period of three years following final payment, the City shall maintain, preserve and make available to RTD, the FTA Administrator, the Comptroller General of the United States, and any of their authorized representatives, access at all reasonable times to any books, documents, papers and records of the City which are directly pertinent to this work for the purposes of making audits, examinations, excerpts and transcriptions. The City also agrees, pursuant to 49 CFR 633.17, to provide the FTA Administrator or his or her authorized representatives, including any project management oversight contractor, access to City's records and sites pertaining to a major capital project, defined at 49 U.S.C. § 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. §§ 5307, 5309 or 5311.
- (b) The City shall maintain and RTD shall have the right to examine and audit all records and other evidence sufficient to reflect properly all prices, costs or rates

negotiated and invoiced in performance of this work. This right of examination shall include inspection at all reasonable times of the City's offices engaged in performing the work.

- (c) If this Contract is completely or partially terminated, the City shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement. The City shall make available records relating to appeals or to litigation or the settlement of claims arising under or relating to work until such appeals, litigation, or claims are finally resolved.

2.20 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 States Department of Labor.

(a) Davis-Bacon –

(1) *Minimum wages.* (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto as Annex 1 and made a part of this IGA, regardless of any contractual relationship which may be alleged to exist between the City and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in §5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the City and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics,

including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the City and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the City, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the City shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the City does not make payments to a trustee or other third person, the City may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the City, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the City to set aside in a separate account assets for the meeting of

obligations under the plan or program.

(2) *Withholding.* RTD shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the City under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the City or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, RTD may, after written notice to the City, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) *Payrolls and basic records.* (i) Payrolls and basic records relating thereto shall be maintained by the City during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the City shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. The City, if employing apprentices or trainees under approved programs, shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The City shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Federal Transit Administration if the agency is a party to the contract, but if the agency is not such a party, the City will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form

desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The City is responsible for the submission of copies of payrolls by all subcontractors. The City and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Federal Transit Administration if the agency is a party to the contract, but if the agency is not such a party, the City will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the Federal Transit Administration, the City, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the City or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the City or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The City or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the City or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the City, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or

guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) *Apprentices and trainees* — (i) *Apprentices*. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the City as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where the City is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the City's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the City will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) *Trainees*. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be

paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the City will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) *Equal employment opportunity.* The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) *Compliance with Copeland Act requirements.* The City shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) *Subcontracts.* The City or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as RTD may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The City shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) *Contract termination: debarment.* A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of this IGA, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) *Compliance with Davis-Bacon and Related Act requirements.* All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) *Disputes concerning labor standards.* Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the City (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) *Certification of eligibility.* (i) The City certifies that neither it (nor he or she) nor any person or firm who has an interest in the City's firm is a person or firm ineligible to be

awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) Contract Work Hours and Safety Act Provisions –

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics (which terms are expanded to include watchmen and guards by 29 CFR 5.5(b)) shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (b)(1) of this section the City and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the City and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) *Withholding for unpaid wages and liquidated damages.* RTD shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the City or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) *Subcontracts.* The City or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The City shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in §5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that the City or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the City or subcontractor for inspection, copying, or transcription by authorized representatives of RTD and the Department of Labor, and the City or subcontractor will permit such representatives to interview employees during working hours on the job.

3. DISADVANTAGED BUSINESS ENTERPRISES PROGRAMS

(a) The City shall comply with all requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises (“DBEs”) in Department of Transportation Financial Assistance Programs in the performance of the work. The goal for participation of DBEs is 25%.

(b) The City shall not discriminate on the basis of race, color, national origin, or sex in the performance of this IGA. RTD's commitment to the DBE goal is not intended to, and shall not be used as a justification to, discriminate against any qualified company or group of companies.

(c) The City shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted IGA. Failure by the City to carry out these requirements is a material breach of this IGA, which may result in the termination of this IGA or such other remedy as RTD deems appropriate in accordance with 49 CFR 26.13(b). Each subcontract for the work shall include the assurance in this paragraph in accordance with 49 CFR 26.13(b).

(d) The City shall cooperate with RTD with regard to maximum utilization of DBEs and will use its best efforts to insure that DBEs shall have the maximum practicable opportunity to compete for subcontract Work under this IGA. The City shall assist RTD in verifying compliance with the DBE requirements of this IGA by submitting or requiring its prime subcontractor to submit the forms attached as Annex 2. Upon completion of the work, the City shall submit a summary of payments, by subcontract, made to all subcontractors to RTD's Business Opportunity and Outreach Officer.

(e) Prompt Payment of DBE Subcontractors

The City shall ensure that:

- (i) its contractor shall pay its DBE subcontractors for satisfactory performance of their contracts, as that concept is described in 49 C.F.R. 26.29(c), no later than 30 days from receipt of each payment a duly submitted invoice for payment, regardless of whether such the City has been paid for such invoice;
- (ii) 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 contractor; and
- (iii) the contractor makes prompt and full payment of any retainage kept by contractor to its DBE subcontractors within 30 days after such DBE's work has been satisfactorily completed.

(f) Defaulting DBE Subcontractors/Termination of Subcontracts

- (i) The City shall not terminate a DBE subcontractor performing work related to this IGA without RTD's prior written consent, which RTD is prohibited from providing unless the City has shown good cause, as that term is described in 49 C.F.R. 26.53(f)(3), to terminate the DBE subcontractor.
- (ii) The City shall require that its contractors not terminate a DBE subcontractor performing work related to this IGA without RTD's prior written consent, which RTD is prohibited from providing unless the City has shown good cause, as that term is described in 49 C.F.R. 26.53(f)(3), to terminate the DBE subcontractor.
- (iii) The City will follow the notice and opportunity for response identified in 49 C.F.R. 26.53(f)(4) and (5). The City shall make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work.

(g) RTD will follow the procedures set forth in 49 CFR. 26.53 and Appendix A to 49 CFR Part 26 in determining whether the City has demonstrated good faith efforts in meeting the DBE Goals.

(h) The City shall submit, or require that its prime subcontractor submit, at least monthly a participation report (a ***DBE Participation Report***) in the form set out in Annex 2. At the completion of the work, the City shall submit to RTD a summary of payments made to all DBEs.

Annex 1

Wage Determinations Applicable to the Work

Element of the Work	Wage Determination to be Applied
[Roadway, Heavy, Building, etc]	City) – General Decision Number: [●] ¹ <i>(see attached)</i>

¹ This should be the wage determination included in the Concession Agreement if Eagle Project scope will be performed by a City/County instead of RTD. If other work, this should be the wage determination as of the date of the City/County issuance of RFP for the work.

Annex 2 – DBE Forms

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: _____
 Signature: _____

Telephone: _____
 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.

SEID 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 Forms

SCHEDULE OF DBE SUBCONTRACTOR PARTICIPATION

NAME OF CONTRACTOR:

Regarding: [*].

Total cost of the DBE work: US\$ _____

NAME AND ADDRESS OF DBE	TYPE OF WORK (ELECTRICAL, PAVING, ETC.) AND CONTRACT ITEMS OR PART THEREOF TO BE PERFORMED BY DBE	PROJECTED START & COMPLETION DATES FOR DBE	AGREED PRICE TO BE PAID TO DBE

1. A current DBE certification for each listed DBE must accompany this enclosure. Failure to provide proof of current DBE certification for any or all listed DBEs will eliminate such listed DBE's participation, and work performed by such DBE will not count towards satisfaction of the DBE goal. If additional pages are required to list all contracted DBEs, photocopy this enclosure as required to make a complete list.

2. Contracts with DBEs for materials or supplies will be counted toward the DBE goal 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.

Annex 2 – DBE Forms

LETTER OF INTENT TO PERFORM AS A SUBCONTRACTOR

Regarding: [*]

The undersigned _____
 (the **Contractor**) intends to engage the undersigned DBE to perform work in
 connection with the IGA pursuant to a contract (the **DBE Contract**) between the
 Contractor and the DBE as [check one]:

_____ an individual _____ a corporation
 _____ a partnership _____ a joint venture

The DBE status of the undersigned DBE is confirmed on the attached schedule of
 DBE participation and represents a company that is certified as of the date on
 which the DBE Contract is executed.

Item	Projected Commencement Date	Projected Completion Date	COST

_____ % of the Dollar value of the DBE Contract will be sublet and/or awarded to
 non- DBE contractors and/or non- DBE suppliers.

 NAME OF CONTRACTOR NAME OF DBE

 SIGNATURE SIGNATURE

 TITLE DATE TITLE DATE

Annex 2 – DBE Forms

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 City is required to make copies of this form, send a copy with their initial contact to each contractor and subcontractor (both DBEs and non-DBEs) and require each contractor and subcontractor to return a completed form with its bid.

Firm Name: _____

Firm Address (Office Reporting): _____

Status as a DBE or Non-DBE (check one):

DBE _____ Non-DBE _____

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: _____

Annex 2 – DBE Forms

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 _____:

Annex 2 – DBE Forms

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															

Annex 2 – DBE Forms

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

Annex 2 – DBE Forms

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

Annex 2 – DBE Forms

DBE UNAVAILABILITY CERTIFICATION

I, _____, _____,
Name Title

of _____ (**Contractor**), certify that Contractor made the following efforts to meet the DBE goal on the [*]:

[please attach any additional efforts that do not fit on this form]

- A Contractor 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

Work Categories	Type of Bid (Subcontractor or Supplier)	Contractor's Estimated Budget	Additional Comments

- Made efforts to assist interested DBEs in obtaining bonding, lines of credit, insurance or any necessary equipment, supplies, materials, etc.
- *[List any specific offers made]*

Annex 2 – DBE Forms

- Solicited the following DBEs

Date Contacted	Name of DBE Firm	Contact Person	Phone #	Work Category

- Followed up with initial contacts

Date	Name of DBE	Phone #	Bidding (Yes or No)	Additional Comments

- Contacted the following other agencies, organizations in recruitment of DBEs 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 goals.

Signature: _____

Date: _____

Exhibit K

Notice of Final Acceptance

(Pages follow)

TO:
Regional Transportation District
Eagle Project Director
1670 Broadway, Suite 2700
Denver, Colorado 80202

RTD General Counsel
1600 Blake St. BLK-23
Denver, CO 80202

**Notice of Final Acceptance
(RTD-UPRR Relocation Parcel)**

The City and County of Denver (“City”) through its Manager of Public Works and the Union Pacific Railroad Company (“UPRR”) hereby give notice to the Regional Transportation District (“RTD”) that the UPRR Relocation Work as described in the Intergovernmental Agreement between RTD and the City dated _____, and found in City Clerk File No. _____ (“RTD IGA”), has been completed and accepted by UPRR.

Pursuant to the RTD IGA, RTD is to execute and record the Reverter Quitclaim Deed relating to the RTD-UPRR Relocation Parcel within 10 days after receipt of this Notice.

City and County of Denver

Union Pacific Railroad Company

Manager of Public Works

Title:

Exhibit L

Reverter Quitclaim Deed – RTD-UPRR Parcel

(Pages follow)

After recording return to:
Karen A. Aviles
City Attorney's Office
201 W. Colfax Avenue, Dept 1207
Denver, Colorado 80202

REVERTER QUITCLAIM DEED
(RTD-UPRR Relocation Parcel)

THIS DEED ("Deed"), is granted as of this [●] day of [●],[●], by the Regional Transportation District, a political subdivision of the State of Colorado, whose legal address is 1600 Blake St., Denver, Colorado 80202 ("Grantor" or "RTD")) to the City and County of Denver, a Colorado municipal corporation of the State of Colorado, whose legal address is 1437 Bannock Street, Denver, Colorado 80202 and the Union Pacific Railroad Company, a _____, whose legal address is _____ ("UPRR") (collectively "Grantee").

WHEREAS, in that Quitclaim Deed recorded at Reception No. _____ on _____ in the Denver County real property records ("Quitclaim Deed"), RTD retained a right of reverter whereby the RTD-UPRR Relocation Parcel as described in **Exhibit A**, attached hereto and incorporated herein would automatically revert back to RTD unless certain conditions were met; and

WHEREAS those conditions have been met so that the RTD-UPRR Relocation Parcel is NOT to automatically revert back to RTD.

NOW THEREFORE, Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, has remised, released, sold and QUITCLAIMED unto the Grantee and Grantee's successors and assigns, forever, all of its right, title, interest, claim and demand which the Grantor has in and to the reverter relating to the RTD-UPRR Relocation Parcel as set forth in the Quitclaim Deed.

IN WITNESS WHEREOF, the Grantor has caused this Reverter Quitclaim Deed to be executed on the date set forth above.

GRANTOR:

By: _____
Phillip A. Washington
General Manager

STATE OF COLORADO)
)ss.
CITY AND COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this ___ day of _____, _____ by _____ as _____ of _____.

WITNESS MY HAND AND OFFICIAL SEAL.

My commission expires: _____

Notary Public

Approved as to legal form for Grantor:

Associate General Counsel

EXHIBIT A TO REVERTER QUITCLAIM DEED

LEGAL DESCRIPTION OF THE RTD-UPRR RELOCATION PARCEL

(pages to follow)

Exhibit M

Form of Third Party Access to the RTDC Commuter Rail Right of Way

(Pages follow)

Third Party Access to the RTDC Commuter Rail Right of Way**I. POLICY**

All parties with rights under RTD agreements to access the commuter rail right of way for the purpose of inspecting and maintaining utilities or other infrastructure, must obtain the approval of DTO before entering the right of way (ROW).

This policy and procedure addresses planned and emergency access to the right of way.

Inspection and maintenance of third-party assets should generally be performed during non-revenue hours, when trains are not running. Otherwise, track outages will be needed. Track outages affect service and require the approval of the RTD.

All scheduled outages are subject to the RTD's approval. Planned inspection and maintenance activities should be requested as far in advance as possible to enable DTO to include them in the annual Service Plan, which is subject to the RTD's approval on an annual basis but may be updated as needed throughout the year.

Third-party personnel needing access to the commuter rail right of way must:

1. Take DTO's on-track safety training and have in their possession when on the ROW a card certifying that the training was received within the past twelve months.
2. Work under the control of a DTO Employee-in-Charge. All expenses for providing the Employee in Charge to protect the third-party crews are to be paid by the third party.
3. Work in strict compliance with the schedule and limits placed on the work by the DTO Employee in Charge.
4. Wear proper personal protective equipment.
5. Strictly adhere to DTO's on-safety and work rules and directives
6. Not use a cell phone within 25' of the track
7. Not use any tools or equipment except those identified in the pre-approved work plan.
8. Repair any damage caused by the work
9. Leave the right of way in a safe condition for train operations

II. PROCEDURE FOR PLANNED ACCESS**A. Third Party Application for Access**

Third parties needing access to the commuter rail right of way must use the attached form to request the access at least 30 days in advance of the work.

Upon receipt of the application, the DTO Safety Manager will convene a meeting of representatives of the party seeking access to the right of way, the Transportation Department, The Engineering Department and the Safety Department. The review will consider the operational, engineering, financial and safety aspects of the work. The third-party representative attending the meeting should be prepared to present:

1. A description of the work to be performed
2. The proposed access location

Third Party Access to the RTDC Commuter Rail Right of Way

3. The limits of the work location
4. The anticipated duration of the work
5. The tools and equipment to be used
6. The numbers and qualifications of the personnel to be involved in the work
7. The records of DTO Safety Training for all personnel for whom access is requested.
8. Evidence of insurance for the work.

The purpose of the meeting is:

1. To develop a work plan or a list of actions necessary to complete the work.
2. To gather the data needed to support the analyses of the work.
3. Determine whether public notification will be needed.
4. Determine if the configuration of the commuter rail system will change and appropriate actions needed to mitigate safety risks.

The DTO Safety Manager will complete the work plan and the operational/safety/ engineering/financial analysis, obtain signatures of approval from an authorized representative of the third party and forward these documents to the RTD for approval.

B. Implementation of Planned Access

The day before the planned third party access, the supervisor or foreman for the third party will meet or telephone the Employee in Charge for DTO to review the work plan and all associated conditions.

Before the work begins, the Employee in Charge for DTO will meet with all involved third party employees and contractors for a job briefing. The Employee in Charge will check that all employees have proper protective equipment and up-to-date training cards.

At the conclusion of the work, the supervisor for the third-party work crew will verify to the Employee in Charge for DTO that all personnel are clear. The DTO EIC will inspect the site, verifying that the right of way has been restored to its original condition, and radio the OCC to report all-clear.

III. PROCEDURE FOR EMERGENCY ACCESS

DANGER: DO NOT GET WITHIN 10 FEET OF THE OVERHEAD WIRES UNTIL AUTHORIZED BY AN ON-SITE DTO-QUALIFIED TRACTION POWER EMPLOYEE THAT THE WIRE HAS BEEN DE-ENERGIZED, TESTED DE-ENERGIZED, AND GROUNDED.

DO NOT GET WITHIN 25' OF THE NEAREST TRACK UNTIL THE DISPATCHER HAS CONFIRMED THAT ALL TRAIN MOVEMENT IN THE AREA HAS BEEN STOPPED.

1. Never enter the Right of Way without permission from the DTO Dispatcher
2. Stop outside the Right of Way.
3. Call the DTO Dispatcher to provide notification that an emergency condition exists.. (###-###-####) This conversation will be audio-recorded. The DTO Dispatcher will write down the information provided.

Third Party Access to the RTDC Commuter Rail Right of Way

- a. Name of caller, agency, emergency condition and cell phone number. An emergency condition is defined as an abnormal condition that, if not immediately remedied, could cause injury to people or major property damage.
 - b. Name of each person or people seeking permission to enter the Right of Way
 - c. Whether there is a need to get within 10' of the energized traction power components
 - d. Identification of each vehicle seeking permission to enter the Right of Way.
4. If the third party has an **urgent need to get within 10 feet of the energized traction power components**:
- a. The DTO Dispatcher will:
 - i. hold trains out of the area
 - ii. de-energize the OCS remotely
 - iii. dispatch a DTO-qualified Traction Power employee to the site
 - iv. dispatch a DTO supervisor to the site
 - b. After receiving oral permission from the DTO-qualified Traction Power Employee on site, the third-party personnel may enter the Right of Way.
5. If the third party has an **urgent need to get within 25 feet of the nearest track but no need to get within 10' of the energized traction power components**:
- a. the DTO Dispatcher will
 - i. Wait for the DTO Dispatcher to hold trains out of the area
 - ii. The DTO Dispatcher will dispatch a DTO EIC to the area.
 - b. After receiving oral permission from the DTO Dispatcher, the third-party personnel may enter the Right of Way.
6. The third-party personnel will handle the emergency
7. After the emergency is resolved, the DTO-qualified Traction Power Employee or the DTO EIC will call the DTO Dispatcher to confirm that all persons and equipment that entered the ROW are now clear. (This conversation will be audio-recorded. The dispatcher will write down this information)
8. Dispatcher will restore commuter rail operations.

Examples of emergencies are:

- Restoration of public services
- Work that affects the operation of the RTD commuter railroad
- Security threats or police actions
- Any situation that poses an immediate threat to health, safety, or property

IV. ATTACHMENTS AND FORMS

Appendix 1: RTD/DTO Commuter Rail Right of Way Access Request / Permit

V. REPORTING AND RECORD KEEPING

All data shall be made available to the RTD and FRA for inspection and copying.

The document will be reviewed and amended, if needed, based on the following conditions:

- new or expanded passenger service,
- revised operational procedures,
- revisions or annulment of the FRA waiver



Third Party Access to the RTDC Commuter Rail Right of Way

If none of the above events occurs, the RTDC Safety Manager or his/her designee will review the document annually and amend if needed.

VI. REVISION HISTORY

Number of Revision or Change	Date	Reason for Revision or Change
Revision 0.1	05/05/2014	First Draft.

VII. APPROVALS

Prepared by: _____ Date: _____
Randall Duty – DTO Systems and Infrastructure Engineer

Revised by: _____ Date: _____
Davie McCulloch – DTP Deputy Project Manager

Approved by: _____ Date: _____
Jean Claude Aurel – DTP Project Safety Manager

Approved by: _____ Date: _____
Anne Herzenberg – DTO General Manager

VIII. DISTRIBUTION

- DTP
- DTS
- DTC
- DTO



Third Party Access to the RTD Commuter Rail Right of Way

RTD/DTO Commuter Rail Right of Way Access Request / Permit

Complete all fields that are in Blue (and have asterisks)

Form with fields: *Company Representing, *Person Submitting Request, *Contact Person, *Contact Information, *Phone, *Equipment On Site, *Description of Work, *Location, *Equipment On Site, *Requested From, *To, *CRT Safety Training certification expires, *Email, *Fax.

Right of Way Access Rules:

- 1. Access permit requests will be reviewed and granted upon completion of CRT Safety Training.
2. Contractor must have Denver Transit Operators (DTO) qualified employees-in-charge on-site at each work location.
3. A copy of this completed access permit must accompany the work crew on each work site.
4. All personnel must wear required personal protective equipment (PPE) at all times.
5. Contractor must notify their assigned EIC prior to entering and when clear of any job site.
6. All active tracks must be 100% useable at all hours by the Commuter Rail trains. All rail flangeways and work areas must be cleared of debris prior to leaving the work area. Trains cannot be delayed.
7. When equipment or tools are used within the Right-of-Way that may impact safety or train operation, the Contractor must have an RTD EIC to protect and expedite train movement. EIC rates: Mon - Fri 7:00am - 5:00pm, \$XX.00/hr (8-hour minimum); Off-shift, Weekends and Holidays - \$XX.00/hr. (8-hour minimum)
8. The overhead catenary (25,000 volts ac (nominal)) is to be considered Live and Hot at all times. If de-energization is requested, Contractor must confirm with DTO Traction Power personnel prior to entry.

Please email to @rtd-denver.com OR fax to 303.299.XXXX

Requestor Confirmation and Agreement

*By checking this box, I acknowledge full understanding of RTD/DTO Access Permit rules and procedures and certify that CRT Safety training has been completed and is current.

*Requestor: Type Name Here *Date

FAILURE TO COMPLY WITH ACCESS PERMIT RULES WILL RESULT IN PERMIT REVOCATION THE SECTION BELOW IS FOR RTD/DTO USE ONLY

Table with fields: Approved Dates of Access, Approved Time Period (military time), Approved Limits of Access, De-energize Overhead Power Required, Operating Restrictions, DTO - Safety Manager, DTO - General Manager, RTD - Senior Manager, Commuter Rail, Permit Number.