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CONSTRUCTION AGREEMENT
36TH STREET YARD OFFICE FACILITY RELOCATION

TABLE OF CONTENTS

ARTICLE I - DEFINED TERMS 2

ARTICLE II – DESIGN 5

 2.1 Design and Approved Plans..... 5

 2.2 Changes to Approved Plans, Requests for Information, Submittals and Shop Drawings..... 5

 2.3 Engineering Data. 6

ARTICLE III – WORK; RIGHTS OF ENTRY; INSURANCE 6

 3.1 Work Defined..... 6

 3.2 Performance of Work; City's Cost. 6

 3.3 Grants of Licenses; Rights of Entry..... 7

 3.4 Mechanics' Liens..... 7

 3.5 Project Representatives..... 8

 3.6 Construction Schedule. 8

 3.7 Conflicts..... 9

 3.8 City Insurance. 10

ARTICLE IV – CONTRACTORS; PERMITS; UTILITIES..... 10

 4.1 Contractors..... 10

 4.2 Permits and Licenses; Laws, Ordinances, Governmental Rules and Regulations. 11

 4.3 Utilities..... 12

 4.4 Third Party Work and Additional Costs. 12

ARTICLE V - RIGHT TO STOP WORK..... 12

 5.1 Work Stoppage..... 12

ARTICLE VI – UPRR WORK COSTS AND PAYMENTS..... 13

 6.1 Reimbursements..... 13

 6.2 Payments by City. 13

 6.3 Cooperation and Diligence; Project Representative. 14

 6.4 Funding. 14

ARTICLE VII –COMPLETION; POST-COMPLETION OBLIGATIONS..... 15

 7.1 Inspection; Completion of Work. 15

 7.2 As-Builts. 16

 7.3 Bills of Sale..... 16

 7.4 Warranty Matters. 16

ARTICLE VIII - INTENTIONALLY OMITTED 16

ARTICLE IX – INTENTIONALLY DELETED..... 16

ARTICLE X - TERMINATION 16

 10.1 Termination Date; Restoration..... 16

ARTICLE XI - ADDITIONAL PROVISIONS 17

 11.1 Appropriations. 17

 11.2 Status..... 17

 11.3 When Rights and Remedies Not Waived..... 17

 11.4 Audits..... 17

 11.5 Venue and Governing Law. 18

 11.6 Conflict of Interest. 18

 11.7 Reasonableness of Consent or Approval. 18

 11.8 No Third Party Beneficiary..... 18

 11.9 Notices. 18

 11.10 Prohibited Interests. 19

 11.11 No Third Party Rights..... 20

 11.12 Severability. 20

 11.13 Whole Agreement. 20

 11.14 Captions and Headings. 20

 11.15 Successors and Assigns..... 20

 11.16 Time of Essence; Force Majeure Event. 20

 11.17 No Personal Liability. 21

 11.18 Survivability..... 21

 11.19 Remedies..... 21

 11.20 No Other Construction on UPRR Relocated Property or Current Facilities
 Property..... 21

 11.21 Separate Counterparts. 21

 11.22 Electronic Signature and Electronic Records. 21

EXHIBITS

- Exhibit A** Approved Plans
- Exhibit B** UPRR-UPRR Relocation Parcel depiction
- Exhibit C** Construction Schedule
- Exhibit D** UPRR Work and City Work not otherwise shown in Approved Plans, including Public Art
- Exhibit E** Current Form of Contractor's ROE Agreement
- Exhibit F** Oversight Access Permit
- Exhibit G** Current Form of Environmental ROE

CONSTRUCTION AGREEMENT-
36TH STREET YARD OFFICE FACILITY RELOCATION

THIS CONSTRUCTION AGREEMENT – 36TH STREET YARD OFFICE FACILITY RELOCATION (this "**Agreement**" or "**Construction Agreement**") is made as of the Effective Date (defined below), by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("**UPRR**") and CITY AND COUNTY OF DENVER, a home rule municipal corporation of the State of Colorado ("**City**").

RECITALS

A. In connection with Regional Transportation District's ("**RTD**") construction of the segment of its FasTracks Passenger Rail Network known as the East Corridor, City desires to construct an overpass for pedestrian use (the "**Overpass**") and certain related facilities (collectively, the "**Overpass Project**" or "**Ped Bridge Project**"), which will impact a portion of UPRR's 36th Street Yard facilities (including UPRR's existing 36th Street Yard office building), which facilities are part of UPRR's Greeley Subdivision in the City and County of Denver, Colorado.

B. To accommodate the construction of the Overpass Project and as contemplated in the Property Agreement (defined below), the parties have agreed to (i) permit UPRR's existing 36th Street Yard office building ("**Current Facilities**") and related facilities (collectively, the "**UPRR Relocated Facilities**"), upon the election of UPRR, to be removed by the City from its current location ("**Current Facilities Property**") and relocated to a new site, a portion of which is currently owned by RTD (the RTD-UPRR Relocation Parcel, as defined below) and a portion of which is currently owned by UPRR (the UPRR-UPRR Relocation Parcel, as defined below, and collectively with the RTD-UPRR Relocation Parcel, the "**UPRR Relocation Property**") and (ii) exchange other property interests owned by UPRR (the "**Flyover Easement**", as defined below) and temporary construction rights related to the Overpass Project for the RTD-UPRR Relocation Parcel. In connection therewith, the City's Manager of Public Works agrees to facilitate UPRR's initiation of the process to vacate a portion of Wazee Street and to recommend to City Council that it approve such vacation.

C. City has represented to UPRR that City has acquired or will acquire the right to possess, construct upon and use the RTD-UPRR Relocation Parcel pursuant to the RTD/City IGA (defined below).

D. The parties now desire to set forth their understanding and agreement with respect to the removal and relocation of the UPRR Relocated Facilities on the terms and conditions set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE I - DEFINED TERMS

Capitalized terms used but not otherwise defined herein shall have the meaning ascribed thereto in the Property Agreement.

"**Agreement**" or "**Construction Agreement**" shall mean this Construction Agreement - 36th Street Yard Office Facility Relocation.

and "**Approved Plans**" shall mean the 100% Designs and Plans and Specifications, the cover sheet of which is attached hereto, ~~together with additional comments by UPRR which are to be incorporated therein, as **Exhibit A** and the entire set of Approved Plans and UPRR comments which are incorporated herein~~ (and which Approved Plans are on file with the City Project Manager).

"**AREMA Standards**" shall have the meaning set forth in Section 4.1.4 below.

"**City**" shall mean City and County of Denver, a home rule city and a municipal corporation of the State of Colorado, and its successors and assigns.

"**City Project Manager**" shall mean the person designated by the City's Manager of Public Works to manage the UPRR Relocation Work.

"**City Rights**" shall mean all of City's rights to own, possess, construct upon and use the RTD-UPRR Relocation Parcel.

"**City Work**" shall mean all Work to be performed by the City or through its Contractors, show on the Approved Plans and other City work that is not UPRR Work as set forth on **Exhibit D**, attached hereto and incorporated herein.

"**Closing**" shall have the meaning set forth in the Property Agreement.

"**Contractor**" shall mean any contractor who performs Work, whether engaged by or on behalf of City or UPRR, including subcontractors and suppliers.

"**Contractor's ROE Agreement**" shall have the meaning set forth in Section 3.3.2 below.

"**Costs**" shall mean all actual costs, fees and expenses of the City Work and the UPRR Work, including without limitation, consultants' fees and disbursements, Customary Additives, and overtime expenses approved by City's Project Manager.

"**Current Facilities Property**" shall have the meaning set forth in the Property Agreement.

"**Customary Additives**" shall mean elements of cost added to billings that generally are calculated as a percentage of direct labor costs and are intended to compensate for, without limitation, paid holidays, vacation and personal leave days, health and welfare benefits, payroll taxes and administrative and supervisory expenses that include direct and general overhead,

inclusive of a customary additive for special administrative costs related to billing preparation, and are subject to periodic changes depending upon industry practices.

"**Deed for RTD-UPRR Relocation Parcel**" shall mean the deed whereby City conveys to UPRR fee interest in the RTD-UPRR Relocation Parcel in the form of Deed attached as **Exhibit G** to the Property Agreement.

"**Effective Date**" shall mean the date on the City signature page.

"**Environmental Law(s)**" means any and all applicable laws, statutes, regulations, enforceable requirements, orders, decrees, agreements, judgments or injunctions validly issued, promulgated or entered by any court or governmental agency with jurisdiction, relating to the environment, to preservation or reclamation of natural resources, or to the management, release or threatened release of contaminants that are binding on UPRR, including, without limitation, the Hazardous Substances Transportation Act (49 U.S.C. § 1802 *et seq.*), the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 *et seq.*), as amended by the Superfund Amendments and Reauthorization Act of 1986, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 *et seq.*) and the Hazardous and Solid Waste Amendments of 1984, the Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*), as amended by the Clean Air Act Amendments of 1977, the Clean Air Act of 1970 (42 U.S.C. § 7401 *et seq.*), as amended by the Clean Air Act Amendments of 1990, the Safe Drinking Water Act (42 U.S.C. § 300f *et seq.*), the Toxic Substances Control Act of 1976 (15 U.S.C. § 2601 *et seq.*), any similar or implementing state law, and all amendments thereto and regulations or rules promulgated thereunder.

"**Environmental ROE**" shall have the meaning set forth in Section 3.3.3 hereof.

"**Flyover Easement**" shall have the meaning set forth in the Property Agreement.

"**Force Majeure Event**" shall mean any occurrence, affecting the Work or the Property, beyond a party's reasonable control and/or beyond the reasonable control of its vendors and Contractors, including but not limited to a riot, insurrection, act of terrorism or war, strikes or lockouts, derailments, wrecks, freight embargoes, inability to procure critical materials, fire, earthquake, flood, cloudburst, tornado or other phenomena of nature beyond the power of a party to foresee, accidents, or other unforeseeable circumstances (such as encountering historical artifacts or burial grounds). A rain, windstorm or other natural phenomenon of normal intensity, based on U.S. Weather Bureau reports for a particular locality and for the particular season of the year during which the Work is being prosecuted, shall not be deemed a Force Majeure Event.

"**FRA**" shall mean the Federal Railroad Administration.

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

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

"**Maximum Contract Amount**" shall have the meaning set forth in Section 3.2 below.

"**Noticed Party**" shall have the meaning set forth in Section 8.2.2 below.

"**Notifying Party**" shall have the meaning set forth in Section 8.2.2 below.

"**Overpass**" or "**Ped Bridge**" shall have the meaning set forth in Recital A above.

"**Overpass Project**" or "**Ped Bridge Project**" shall have the meaning set forth in Recital A above.

"**Prompt Payment Ordinance**" shall have the meaning in Section 6.2.

"**Property Agreement**" shall mean that certain 36th Street Yard Office Facility Property Agreement between the parties dated of even date hereof.

"**Punch list**" shall have the meaning set forth in Section 7.1.2 below.

"**RTD**" shall mean Regional Transportation District, a political subdivision of the State of Colorado, and its successors and assigns.

"**RTD/City IGA**" shall have the meaning set forth in the Property Agreement.

"**RTD-UPRR Relocation Parcel**" shall mean the property defined as such in the Property Agreement, which is to be conveyed to the City by RTD pursuant to the RTD/City IGA and then from the City to UPRR pursuant to the Property Agreement.

"**Substantial Completion**" shall have the meaning set forth in Section 7.1.2 below.

"**Tolling Conditions**" shall have the meaning set forth in Section 3.5.3 below.

"**UPRR**" shall mean Union Pacific Railroad Company, a Delaware corporation, and its successors and assigns.

"**UPRR Invoices**" shall have the meaning set forth in Section 6.3.1.1 below.

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

"**UPRR Relocated Facilities**" shall have the meaning set forth in Recital B above.

"**UPRR Relocation Property**" shall mean collectively, the UPRR-UPRR Relocation Parcel, and the RTD-UPRR Relocation Parcel.

"**UPRR-UPRR Relocation Parcel**" shall have the meaning given to such term in the Property Agreement.

"UPRR Work" shall mean that portion of the Work to be conducted by UPRR forces or UPRR Contractors, as set forth on the Preliminary Engineering Agreement, the Approved Plans and in Exhibit D.

"Work" shall have the meaning set forth in Section 3.1 below.

"Work Prerequisites" shall have the meaning set forth in Section 3.6.2 below.

ARTICLE II – DESIGN

2.1 Design and Approved Plans.

2.1.1 City and UPRR have approved the Designs and Plans and Specifications for the UPRR Relocated Facilities. Such Approved Plans are attached to this Agreement by reference as part of Exhibit A; the cover sheets (dated and initialed by both City and UPRR) for the Approved Plans are attached, and by and through such attachment the entire Approved Plans are incorporated herein by reference.

2.1.2 No City Work shall begin until the Work Prerequisites have been met to the satisfaction of both parties.

2.1.3 In no event shall any construction work of any nature whatsoever be performed on the Current Facilities Property or the UPRR-UPRR Relocation Parcel during the term of this Agreement other than the Work, nor shall the Overpass be opened to the public during the term of this Agreement.

2.2 Changes to Approved Plans, Requests for Information, Submittals and Shop Drawings.

2.2.1 Changes to Approved Plans. The parties acknowledge and agree that the Approved Plans may need to be revised from time to time. Either party may request modifications to the Approved Plans by notifying the other party (in accordance with Section 11.9 below) of such request. All requests shall be approved by the City's Project Manager and Greg Clark of UPRR (notice information included in notice section below). If either party makes a request, the other party shall respond to such request within 15 days after the request or the request shall be deemed rejected. Accordingly, the parties agree to use commercially reasonable efforts to cooperate with respect to all proposed modifications. Review and approval shall not be unreasonably withheld, conditioned or delayed. Consideration of any proposed modification, whether proposed by City or UPRR shall be subject to satisfying the Work Prerequisites.

2.2.2 Requests for Information. UPRR shall be notified of any Requests for Information the City's Projects Manager receives from its Contractor. UPRR shall make comments to such request within 5 business days of such notice or UPRR will be deemed to have no comments to such Request for Information.

2.2.3 Submittals and Shop Drawings. UPRR shall receive notice of and have the right to review Submittals and Shop Drawings to verify that they meet the Approved Plans.

UPRR shall respond to such notice within 10 business days or the Submittals or Shop Drawings shall be deemed to meet the Approved Plans.

2.3 Engineering Data. All diagrams, plans, drawings, models, prototype devices, specifications, Approved Plans, magnetic tapes, computer discs, data and notes and other writings of a technical or economic nature that are prepared by City or its Contractors, shall be and remain the property of City, provided that UPRR is hereby granted a permanent, irrevocable right to use all such materials in connection with the Work.

ARTICLE III – WORK; RIGHTS OF ENTRY; INSURANCE

3.1 Work Defined. The "**Work**" shall consist of the City Work and the UPRR Work, including any UPRR work that is part of the Preliminary Engineering Agreement or the Property Agreement. Work shall include, without limitation, the preparation and review of the Approved Plans, and all engineering, and construction and inspection work related to the Work.

3.2 Performance of Work; City's Cost. City shall perform and complete all City Work in strict accordance with the Approved Plans, at its sole cost and expense. UPRR shall perform and complete the UPRR Work, at City's sole cost and expense up to the maximum amount shown in **Exhibit D**. Each party shall provide and furnish, as part of the Work to be completed by it hereunder, all personnel and services and all required materials, equipment and other items required for performance of such Work. Subject to the requirements to pursue additional appropriations and the termination provisions set forth herein, the City Work, UPRR Work and any UPRR work performed under the Preliminary Engineering Agreement in relation to the UPRR Relocated Facilities shall not exceed Two Million Dollars (\$2,000,000) ("Maximum Contract Amount").

3.2.1 Should either party cause damage to the Work of any other party or its Contractor, the party that caused the damage agrees to repair, or to remove from the property and to replace such Work or to cause such Work to be repaired, or to be removed and replaced, all at the damaging party's sole cost and expense.

3.2.2 While the Work is in progress, City shall not allow waste materials or rubbish to accumulate on or about the property and shall comply with all of UPRR's applicable housekeeping and safety standards.

3.2.3 The City shall cause to be removed and shall reimburse UPRR for the removal of, all Hazardous Substances, waste materials and rubbish generated, disturbed or discovered in the course of, or in connection with, the City Work or the UPRR Work, respectively, and shall handle, treat, transport and dispose of such waste materials and rubbish in accordance with Environmental Laws; provided, however, that removal of any Hazardous Substances shall be required only to the extent required by, and pursuant to, any applicable Environmental Laws and provided however any such structures and materials not specifically impacted by the Work or not within the limits of the property on which the Work is being performed may remain in place, unless an obligation is otherwise imposed on the City by any applicable Environmental Laws.

3.3 Grants of Licenses; Rights of Entry.

3.3.1 City hereby grants to UPRR and UPRR hereby accepts a license to use the City Rights for the purposes of exercising UPRR's rights and performing UPRR's obligations contained in this Agreement and the Property Agreement, including without limitation, the right to inspect all construction work. City hereby represents to UPRR that City has sufficient legally enforceable rights in and to the City Rights to grant this license to UPRR and for UPRR to use this license in the manner described herein, except as otherwise set forth in the RTD/City IGA or the Property Agreement.

3.3.2 City shall cause (a) the City's "general" Contractor to execute UPRR's then standard Contractor's Right of Entry Agreement (a "**Contractor's ROE Agreement**"); (b) such Contractor to require its Contractors (i.e., subcontractors) to comply therewith (exclusive of the insurance provisions contained therein), prior to commencing any Work on the UPRR-UPRR Relocation Parcel and the Current Facilities Property; and (c) the Contractors to comply with any system interface and/or other construction procedures and protocols adopted by UPRR pertaining to the prosecution of the Work on such property. The current form of Contractor's ROE Agreement is attached hereto as **Exhibit E** and incorporated herein. City shall also notify UPRR, and shall cause the Contractors to comply with the Contractor's ROE Agreement provisions set forth above, prior to any entry onto any portion of such property that is within twenty-five (25) feet of any UPRR track(s), or near enough to any UPRR track(s) that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any UPRR track(s) (whether on or adjacent to such property). In connection with City's inspection of the Contractors' work, prior to entering the UPRR-UPRR Relocation Parcel or the Current Facilities Property, City shall execute the form of access permit attached hereto as **Exhibit F** and incorporated herein.

3.3.3 If demolition of the Current Facilities is performed pursuant to Section 7.1.2 hereof, the City shall (a) cause its Contractor performing the demolition work to obtain the then current form of Contractor's ROE Agreement; and (b) cause its Contractor performing any environmental testing or work on the Current Facilities to obtain the then current form of the Environmental ROE, the current form of which is attached hereto as **Exhibit G** and incorporated herein ("**Environmental ROE**").

3.4 Mechanics' Liens. City covenants and agrees to pay in full for all materials joined or affixed to, by the City or its Contractor's, the UPRR-UPRR Relocation Parcel, the RTD-UPRR Relocation Parcel, Access Easement, Sanitary Sewer Easement or other UPRR property and to pay in full all persons who perform labor upon such property, and not to permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against such property for any work done or materials furnished thereon at the instance or request or on behalf of City up to the Maximum Contract Amount, subject to the requirements to pursue additional appropriations and the termination provisions set forth herein. Any amounts above the Maximum Contract Amount shall be subject to appropriation. UPRR Work pursuant to this Agreement shall not be considered work done for City hereunder to the extent that City has fully paid for such work pursuant to this Agreement.

3.5 Project Representatives.

3.5.1 Each party will keep the other party's project representative informed on all Work, such as (i) any changes in the construction schedule, and/or (ii) any changes or modifications to the Work. The project representatives will provide coordination with the parties during construction. City shall provide a minimum of twenty-one (21) days' prior notice of the dates of any entry onto the Property. The parties' project representatives may be contacted as follows:

UPRR:
Greg Clark PE
Facility & Utility Design Program Manager
Union Pacific Railroad Company
1400 Douglas Street
Omaha, NE 68179
Office 402-544-3270
Fax 402-501-3033

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

With copies to:
Project Manager
Department of Public Works
201 W. Colfax, Dept 506
Denver, Co 80202

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

3.5.2 UPRR's project representative is hereby given authority, on behalf of UPRR, to give approvals and to take action to the extent necessary for the orderly and expeditious prosecution of the Work, but the project representative shall not have authority to amend, modify or terminate this Agreement. UPRR's project representative shall have the right, by giving written notice to the City's Project Manager from time to time, to delegate his/her responsibilities to other UPRR representatives in connection with specific portions of the Work.

3.6 Construction Schedule.

3.6.1 It is the intent of the parties, and each party shall use all reasonable efforts, to complete the Work according to the construction schedule for the Work attached hereto as Exhibit C, as shall be modified from time to time as mutually agreed upon by the parties.

3.6.2 The parties recognize that commencement of the Work will be influenced by many factors beyond the control of either or both of the parties. These factors (the "Work

Prerequisites") include, without limitation: (i) the timing of the Work, (ii) completing all necessary environmental reviews, (iii) estimating Work costs, labor force availability and seasonal weather changes that can increase the time required for certain construction activities; (iv) resolution by City to UPRR's satisfaction in its reasonable discretion of all title matters identified by UPRR that may affect the RTD-UPRR Relocation Parcel; (v) City obtaining all applicable permits and approvals for the Work and UPRR's intended uses on the UPRR Property; and (vi) the City has obtained sufficient legally enforceable rights in and to the City Rights. In no event shall City have the right to commence the construction Work until the Work Prerequisites have been met to the reasonable satisfaction of both parties to this Agreement. Without limiting any rights of UPRR to stop or delay the Work as provided in this Agreement, UPRR shall have no liability whatsoever for failing to commence the UPRR Work prior to the Work Prerequisites having been satisfied in UPRR's reasonable discretion.

3.6.3 As the Work proceeds, the construction schedule may be impacted by Force Majeure Events or by other factors (collectively, the Force Majeure Events and other factors are hereinafter referred to as the "**Tolling Conditions**") beyond the control of either or both of the parties. Neither party shall be liable for default or delay in performance actually caused by a Force Majeure Event or other Tolling Condition that is not within the control of such party. These Tolling Conditions may include, without limitation: delays necessitated by any environmental testing and remediation; permitting issues; scheduling or supply problems not caused by the benefited party; delays in the Work being performed by the other party; any Work stoppage under Article V; delays in approval of change orders, including without limitation delays in approval of changes orders for revised cost estimates; expiration or termination of required insurance coverage; testing, special handling and/or remediation requirements for any soils or groundwater in the construction area; demobilization/mobilization scheduling impacts due to other construction schedule delays; and/or a material default by the other party under this Agreement, any Contractor's ROE Agreement or the Property Agreement. In the event of any Tolling Condition, the party whose performance is delayed or stopped shall notify the other party thereof in writing promptly after the commencement of such occurrence, setting forth the full particulars in connection therewith, and shall promptly give written notice to the other party of the cessation of such occurrence.

3.6.4 In the event of a Force Majeure Event causing an unforeseen catastrophic railroad emergency within UPRR's system, UPRR reserves the right to reallocate those of its labor forces assigned to perform the UPRR Work when UPRR believes in good faith that such reallocation is necessary to provide for the immediate restoration of the railroad operations of UPRR or its affiliates or to protect persons or property on or near any property owned by UPRR or any related railroad. UPRR shall reassign such labor forces to again perform UPRR Work when, in its good faith opinion, such emergency condition no longer exists. In no event shall UPRR be liable for any additional costs or expenses for the Work or any additional work required in connection therewith resulting from any such reallocation of its labor forces.

3.7 Conflicts. The Work shall be performed and completed in compliance with the terms and conditions of this Agreement and Approved Plans, and in compliance with the terms of the Property Agreement. The order of precedence of the foregoing documents shall be as follows in resolving any conflict: (a) this Agreement and the Approved Plans and (b) the Property Agreement.

3.8 City Insurance.

3.8.1 At all times during the term of this Agreement and prior to any entry upon the UPRR-UPRR Relocation Parcel or the Current Facilities Property, City shall cause its Contractors to procure and maintain, the insurance coverages required by the Contractor's ROE Agreement and shall comply with (and cause its Contractors to comply with) the insurance requirements set forth in the Contractor's ROE Agreement.

ARTICLE IV – CONTRACTORS; PERMITS; UTILITIES

4.1 Contractors. Each party shall supervise the operations of its Contractors, who shall be competent and qualified field personnel, to ensure their compliance with the terms of this Agreement.

4.1.1 Each party shall comply with, and shall cause its employees and all its vendors and Contractors to abide by, its health, safety, environmental, security and work rules, regulations and requirements in force on the UPRR-UPRR Relocation Parcel, RTD-UPRR Relocation Parcel and the Current Facilities Property, including but not limited to the provisions of the latest applicable Occupational Safety and Health Administration requirements, including but not limited to 29 CFR Parts 1910 and 1926, as applicable. Each party shall be solely responsible for providing, or if such party will not be performing the Work, causing its Contractors to provide, workers' compensation or similar insurance to employees performing Work, all as set forth in the Contractor's ROE Agreement.

4.1.2 When employees, vendors and/or Contractors are performing any Work on the UPRR-UPRR Relocation Parcel, RTD-UPRR Relocation Parcel or the Current Facilities Property within twenty-five (25) feet of any active freight rail trackage, or near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track, they must abide by applicable FRA On Track Safety Rules and Regulations, 49 CFR, Part 214, Subpart C, and UPRR's On-Track Safety Program which was implemented in compliance with the FRA Rules. Copies of the UPRR program will be available from UPRR's Engineering Department. If either party or its Contractors provide rail traffic coordinators for railroad operations, that party will assure that all such rail traffic coordinators are fully qualified under UPRR and FRA rules and regulations for such service, and UPRR and City shall cooperate to provide such rail traffic coordinators with radios, equipped with appropriate channels, to communicate with UPRR train crews and dispatchers.

4.1.3 Prior to starting any Work within twenty-five (25) feet of any active freight rail trackage, or near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track, each party will adopt an appropriate safety training plan meeting the minimum standard UPRR safety requirements, which standards will be provided to City at least five (5) days prior to commencement of the Work. Emergency phone numbers shall be posted in a conspicuous place in all field offices. For those persons who will be performing Work, each party or its Contractor(s) shall conduct a weekly safety meeting. UPRR's project representative will attend these meetings as may be required. No red clothing will be worn within twenty-five (25) feet of any freight rail tracks. Without limiting the Contractor's obligations to pay for flagging costs in

the Contractor's ROE Agreement, it is anticipated by the parties that City or its Contractor, without cost to UPRR, shall construct a temporary construction fence between UPRR's trackage and the Work area. Location of the fence will be determined by UPRR to ensure that there is no interference with UPRR's operations. The installation of the fence is intended to mitigate potential flagging costs during performance of the Work; provided, however, that nothing contained herein shall modify the City or its Contractor's obligations to comply with the flagging requirements included in the Contractor's ROE Agreement.

4.1.4 City's primary Contractor shall have a copy of the American Railway Engineering and Maintenance of Way Association Manual for Railway Engineering (hereinafter "AREMA Standards") available for reference at all times.

4.2 Permits and Licenses; Laws, Ordinances, Governmental Rules and Regulations.

4.2.1 All necessary permits and licenses necessary for the Work shall be obtained by City or its contractors, including permits and licenses which are required from and are to be obtained by UPRR, with the exception of permits and licenses which are required to be in UPRR's name, in which case UPRR shall use reasonable efforts to obtain and/or agree to execute the same all at City's sole cost and expense.

4.2.2 City shall give all necessary notices and shall pay all fees which are required by such laws, ordinances, and governmental rules and regulations as are applicable to the Work and/or to labor employed to perform the Work.

4.2.3 If City's or any third party's performance of any portion of the Work, or if the result of such portion of the Work, is not in compliance with the aforementioned permits and licenses, and with all applicable laws, ordinances, and governmental rules and regulations, City shall correct such portion of the Work and such result, to the extent necessary to be in compliance therewith, at City's sole expense; provided, however, if City believes that such noncompliance is caused solely by conformance to the Approved Plans, City shall notify UPRR in writing of the variance between the Approved Plans and such permits, licenses, laws, ordinances, rules and regulations which in its opinion would cause such noncompliance, before City or such third party performs such portion of the Work, and City or the third party shall not proceed with any portion of the Work affected by such variance until UPRR notifies it to proceed. UPRR shall use reasonable efforts to notify City in writing, within three (3) business days after receipt of City's written notice of such variance, to proceed with the Work in accordance with a change notice to be issued by UPRR to correct such variance.

4.2.4 Each party and its Contractors shall comply with all laws, ordinances, and governmental rules and regulations applicable to the performance and/or results of the Work, including but not limited to labor employed on the Work, and to the preservation of safety and health.

4.2.5 Fiber optic cable systems may be buried on the UPRR-UPRR Relocation Parcel and/or the Current Facilities 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. City or its Contractor shall telephone UPRR at 1-

800-336-9193 (a twenty-four (24)-hour number) to determine if fiber optic cable is buried anywhere on the UPRR-UPRR Relocation Parcel or the Current Facilities Property. City shall telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, and will commence no Work on such property until all such protection or relocation has been accomplished.

4.3 Utilities.

4.3.1 Private Utilities. UPRR and City shall cooperate fully with each other and with UPRR's licensees, lessees and easement owners, with respect to the relocation of related utilities, and of certain fiber optics lines and facilities and other private utilities. Any Costs incurred by UPRR related to such work shall constitute UPRR Work and be paid for in accordance with Section 6.3 below. UPRR shall cooperate with City by providing notice to the impacted licensees, lessees and easement owners, and by reviewing (and approving, in UPRR's sole discretion) any designs proposed by City for relocating onto UPRR's adjacent property those utilities that cannot be accommodated on the UPRR Relocation Property or the Current Facilities Property.

4.3.2 Public Utilities. UPRR and City shall cooperate fully with each other, and with governmental entities and quasi-governmental agencies, with respect to any required relocations of public utilities required due to the Work. The parties reasonably believe that such utility work is included in the Approved Plans as City Work. Any Costs incurred by UPRR related to such work shall constitute UPRR Work and be paid for in accordance with Section 6.3 below.

4.4 Third Party Work and Additional Costs. To the extent not paid for by other agreements or the extent such work is not City Work, the City shall pay all Costs that are related to the any third party work that arises hereunder. City shall pay all additional Costs related to, or required in connection with, the UPRR Relocated Facilities and Current Facilities Work, including without limitation, any exactions, conditions of approval and/or contractual obligations that are imposed by any governmental entity or quasi-governmental agency in connection with development or permitting approvals for the Work, up to the Maximum Contract Amount, subject to the requirements to pursue additional appropriations and the termination provisions set forth herein.

ARTICLE V - RIGHT TO STOP WORK

5.1 Work Stoppage. If (i) any City Contractor shall perform any portion of the Work contrary to the Approved Plans, or in a manner UPRR deems to be hazardous to its employees, facilities, property or operations (whether owned, controlled, or leased by UPRR), or (ii) the insurance described in Article III above or in the Contractor's ROE Agreement signed by such Contractor shall be canceled during the course of any portion of the Work, UPRR shall give notice of such matters that it becomes aware to the City's Project Manager. Upon receipt of such notice, the City Project Manager shall immediately take appropriate actions to address the issues raised in such notice to UPRR's reasonable satisfaction or, as the case may be, additional insurance has been delivered to and accepted by UPRR. If City Project Manager fails to timely take such appropriate actions, upon receipt of a notice to stop work, the City shall cause such

portion of the Work to be stopped until the acts or omissions of such Contractor have been rectified. Any Work stoppage shall not give rise to or impose upon UPRR any liability to City or to any such Contractor. The right of UPRR to stop a portion of the Work shall be in addition to any other rights UPRR may have hereunder.

UPRR shall have the right to request to the City Project Manager that any employee or Contractor of City or any employee of any such Contractor, be removed from the UPRR-UPRR Relocation Parcel or the Current Facilities Property for incompetence, neglect of duty, unsafe conduct or misconduct, and UPRR shall state the cause for such removal in its request. The City Project Manager shall take appropriate action to address the request. If City or such Contractor elects not to honor such request for removal from the UPRR-UPRR Relocation Parcel or the Current Facilities Property, UPRR may stop that portion of the Work until the matter has been fully rectified to UPRR's reasonable satisfaction. After the offending person(s) has(ve) been removed from the UPRR-UPRR Relocation Parcel or the Current Facilities Property, and the situation has been otherwise rectified to UPRR's reasonable satisfaction, the Work may be recommenced upon notice to UPRR's project representative.

ARTICLE VI – UPRR WORK COSTS AND PAYMENTS

6.1 Reimbursements. City agrees to reimburse UPRR for all Costs for the UPRR Work pursuant to this Agreement, the Property Agreement and the Preliminary Engineering Agreement, up to the maximum amount for UPRR Work set forth in Exhibit D and the Preliminary Engineering Agreement as it relates to the UPRR Relocated Facilities, subject to the requirements to pursue additional appropriations and the termination provisions set forth herein.

6.2 Payments by City. On an ongoing basis, City shall pay UPRR for the cost of all UPRR Work or UPRR work performed under the Preliminary Engineering Agreement related to the UPRR Relocated Facilities or the Property Agreement actually incurred as follows:

6.2.1 UPRR Invoices. UPRR shall send City invoices ("**UPRR Invoices**") not more frequently than monthly, but in no event later than one hundred eighty (180) days after Substantial Completion (provided that such outside date shall be reasonably extended if there are any delays in connection with completing the punch list items as set forth herein), describing the amount to be paid by City to UPRR for UPRR Work or UPRR work performed under the Preliminary Engineering Agreement related to the UPRR Relocated Facilities or the Property Agreement that have actually been incurred (but not previously paid by City), and such backup documentation as City may reasonably request to verify the amounts expended by UPRR for such work. Once the City Project Manager has approved the invoice, payment from City shall be due in accordance with Denver Revised Municipal Code Section 20-107 to 118 ("**Prompt Payment Ordinance**"). City acknowledges that certain UPRR Invoices and backup documentation may be in electronic format.

6.2.2 Amounts Past Due. Any amounts owing that remain unpaid shall be dealt with pursuant to the Prompt Payment Ordinance.

6.2.3 Amounts Due at Closing or Termination. Notwithstanding anything to the contrary contained herein, at the Closing or termination of this Agreement, City shall pay to UPRR all costs of UPRR Work or UPRR work performed under the Preliminary Engineering Agreement related to the UPRR Relocated Facilities or the Property Agreement that have been invoiced 60 days prior to Closing. Notwithstanding the foregoing, in the event this Agreement is terminated prior to the Closing, City's payment obligations hereunder shall be limited to payment of those UPRR Invoices that have been previously delivered to City and those UPRR Invoices (covering Costs previously incurred and Costs due under executed contracts) delivered to City within ninety (90) days after the termination date (on condition that such UPRR Invoices meet the standards set forth in Section 6.3.1.1 above). If the City fails to pay any UPRR costs of UPRR Work or UPRR performed under the Preliminary Engineering Agreement related to the UPRR Relocation Facilities or the Property Agreement prior to the Closing, the City's obligation to make such payments shall survive Closing.

6.2.4 Disputes Regarding Uses of Funds. If City disputes any item on a UPRR Invoice, City may notify UPRR of the amounts and reasons for any such disputed items within twenty (20) days after City's receipt of the invoice. In such event, City may request from UPRR copies of such supporting documentation and/or records as are kept in the ordinary course of UPRR's business and that are reasonably necessary to verify the accuracy of the invoice as rendered. City shall pay disputed amounts in a timely manner as though there were no dispute unless the dispute is based solely on whether or not a bill is attributable to Work, and any credits due to City based upon the parties' settlement of a disputed amount shall be credited against future amounts due from City hereunder. If a dispute is based solely on whether or not a bill is attributable to UPRR Work (despite UPRR's provision of backup documentation pursuant to Section 6.3.1.1 above), then City shall pay the amount of the disputed bill upon receipt of further confirmation from UPRR that the bill was for UPRR Work.

6.3 Cooperation and Diligence; Project Representative.

6.3.1 Cooperation and Diligence. UPRR and City shall cooperate to diligently perform and/or facilitate all Work described in this Agreement.

6.3.2 Project Representative. Each party shall designate a project representative to coordinate with the other party on all Work matters, including working directly or indirectly with the public and with public entities with respect to entitlements, approvals and permits. The City's representative shall be the City Project Manager. City shall pay all reasonable costs and expenses, including without limitation salary/compensation, benefits, office space and overhead expenses for UPRR's designated project representative, in accordance with Section 6.3 above, as set forth in Exhibit D.

6.4 Funding.

6.4.1 City shall pay, or cause to be paid, all Costs allocated to City by this Agreement, the Preliminary Engineering Agreement related to the UPRR Relocated Facilities

and the Property Agreement, up to the Maximum Contract Amount, subject to the requirements to pursue additional appropriations and the termination provisions set forth herein.

6.4.2 If UPRR delays or stops its Work due to lack of payment or reimbursement by City, City shall be liable for, among other Costs, all demobilization and mobilization Costs incurred for such stoppage up to the Maximum Contract Amount.

ARTICLE VII –COMPLETION; POST-COMPLETION OBLIGATIONS

7.1 Inspection; Completion of Work.

7.1.1 City shall provide and maintain safe access for the inspection by UPRR of all portions of the Work. If laws, ordinances, or governmental rules or regulations require any portion of the Work to be inspected and/or tested, City shall perform, as part of Work, the inspection and/or tests so required.

7.1.2 City shall provide at least thirty (30) days' prior written notice to UPRR's project representative of projected substantial completion of (as applicable) the City Work (and any other work required to be performed hereunder) ("**Substantial Completion**"). Such notice shall confirm that (i) the Work on the UPRR Relocated Facilities has been completed in accordance with the Approved Plans; (ii) UPRR and all Contractors have been fully paid by City for all UPRR Work and other work under the Property Agreement and the Preliminary Engineering Agreement related to the UPRR Relocated Facilities; and (iii) the City shall cause the punch list to be completed. The parties shall thereafter meet on site at a mutually agreeable time to review the City Work and to prepare and review a "punch list" of items that must be completed or repaired prior to approval by UPRR. Notwithstanding anything to the contrary contained in this Agreement, in no event shall UPRR have any obligation to finalize the relocation of the UPRR Relocated Facilities Substantial Completion and the Deed for RTD-UPRR Relocation Parcel is ready to be recorded in the Office of the Clerk and Recorder of the City and County of Denver, State of Colorado.

7.1.3 No later than five (5) days after UPRR's receipt of the Notice of Substantial Completion, UPRR may request that the Current Facilities not be demolished. The Manager of Public Works may approve or deny such request, in the Manager's reasonable discretion. The City shall demolish the Current Facilities in accordance with the Approved Plans, unless the City Manager approves UPRR's request to not demolish the Current Facilities.

7.2 As-Builts. Upon completion of the Work, City will furnish UPRR two (2) sets of "as-built plans" at no cost to UPRR, prepared in U.S. Customary Units, and two (2) sets of computer diskettes, containing as-built CAD drawings of the Work, in Micro Station software. The "as-built plans" will depict all information in UPRR engineering stationing and milepost pluses where applicable. The "as-built plans" will also include plan and profile and drainage plans. All improvements and UPRR facilities constructed in connection with the Work will be shown. All right-of-way boundaries will be distinguished by ownership and dimensioned with appropriate distances and bearings.

7.3 Bills of Sale. Upon completion of the Work, City shall execute and deliver to UPRR a bill of sale for all facilities and equipment constructed or installed in connection with the City Work as set forth in the Property Agreement.

7.4 Warranty Matters. At Closing, the City shall assign all warranties relating to the UPRR Relocated Facilities to UPRR. The City shall insert all standard City warranty provisions in all contracts and shall ensure that such warranties are assignable to UPRR.

ARTICLE VIII - INTENTIONALLY OMITTED

ARTICLE IX – INTENTIONALLY DELETED

ARTICLE X - TERMINATION

10.1 Termination Date; Restoration

10.1.1 This Agreement shall terminate upon the earliest to occur of:

(i) the date on which both of the following have occurred:
(a) the completion of the Work, all as provided in Section 7.1 above, and (b) the Closing under the Property Agreement;

(ii) the date on which the Property Agreement has been terminated;

(iii) the date of termination set forth in a written notice from UPRR to City following an event of default by City under this Agreement or the Property Agreement that has not been cured within any applicable cure period;

(iv) the date the City Project Manager notifies UPRR that no acceptable bids for the Work has been received and accepted.

(v) the date of termination set forth in a written notice from UPRR to City following an event of default by City or any Contractor under its Contractor's ROE Agreement that has not been cured within any applicable cure period; or

(vi) December 31, 2016.

The parties will memorialize the termination date in writing if requested by either party, and shall cease to accrue further liabilities as soon as is reasonably practicable following termination

or notice thereof, whichever occurs first. All accrued liabilities shall survive and continue to be fully enforceable in accordance with the terms thereof notwithstanding termination of this Agreement.

10.1.2 Upon termination of this Agreement other than pursuant to Subsection 10.1.1(i) above, City shall, as soon as possible after the date of such termination and at City's sole cost and expense, restore the UPRR-UPRR Relocation Parcel and the Current Facilities Property to the same condition as existed prior to the commencement of City of any Work thereon. City shall remove all of City's tools, equipment and materials from the UPRR-UPRR Relocation Parcel and the Current Facilities Property.

ARTICLE XI - ADDITIONAL PROVISIONS

11.1 Appropriations. Any and all obligations of the City hereunder, whether direct or contingent, which require funding, are subject to and shall extend only to prior annual appropriations of money expressly made by the Denver City Council for the purposes of this Agreement, encumbered for the purposes of this Agreement, and paid therefore into the Treasury of the City. If at any time during the term of this Agreement, either party determines that the Maximum Contract Amount may be insufficient to meet the City's obligations, City's Manager of Public Works shall promptly initiate and pursue the process for budgeting, authorizing and appropriating the additional amounts required. If a requested appropriation is denied by City Council, the parties shall meet in good faith during the sixty (60) days after such denial to resolve any outstanding issues impacting the funding requirements. In the event additional funds are not made available within such sixty (60) day period, UPRR has the right to stop providing services until such time as additional funds are appropriated and encumbered the amounts necessary for payment to UPRR or terminate this Agreement.

11.2 Status. It is not intended, nor shall it be construed, that either party or any employee or subcontractor 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.

11.3 When Rights and Remedies Not Waived. In no event shall any payment or performance hereunder by either party constitute or be construed to be a waiver by such party of a breach of any term, covenant or condition, or default which may then exist on the part of the other party, and the making of any such payment or rendering of such performance when any such breach or default shall exist shall not impair or prejudice any right or remedy available to the non-breaching party with respect to such breach or default; and no assent, expressed or implied, to any breach of any one or more terms, covenants, or conditions of this Agreement shall be construed as a waiver of any succeeding or other breach.

11.4 Audits. UPRR shall, during normal business hours and as often as the City may deem reasonably necessary, make available to the City, including its Auditor, for examination all of its records and data with respect to all matters covered by this Agreement and shall permit the City or its designated or authorized representative to audit and inspect all invoices, materials, payrolls, records of personal conditions or employment and other data relating to all matters covered by this Agreement. Such records shall be maintained for a

minimum period of three years following payment for services hereunder.

11.5 Venue and Governing Law. Each and every term, condition, or covenant of this Agreement is subject to and shall be construed in accordance with the provisions of Colorado law and/or applicable Federal Law. Venue for any action arising hereunder shall be in the City and County of Denver, Colorado.

11.6 Conflict of Interest. The parties agree that no employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein and UPRR further agrees not to hire or contract for services any employee or officer of the City, which would be in violation of the Denver Revised Municipal Code.

11.7 Reasonableness of Consent or Approval. Whenever under this Agreement "reasonableness" is the standard for granting or denial of the consent or approval of either party hereto, such party shall be entitled to consider public and governmental policy, moral and ethical standards, as well as business and economic considerations.

11.8 No Third Party Beneficiary. The parties agree 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 City and UPRR, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement, including but not limited to subcontractors, subconsultants, and suppliers. The parties intend that any person other than the City or UPRR receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

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

If intended for UPRR:

UNION PACIFIC RAILROAD COMPANY
Assistant Vice President Real Estate
1400 Douglas Street, Stop 1690
Omaha, NE 68179-1690
Telephone: 402-544-8640
Facsimile: 402-501-0340
E-mail: TKLOVE@UP.COM

with copies to:

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

HUSCH BLACKWELL LLP
Shane C. Orr
1700 Lincoln Street, Suite 4700
Denver, CO 80203
Telephone: 303-389-4655
Facsimile: 303-749-7272
E-mail:shane.orr@huschblackwell.com

If intended for City:

Manager of Public Works
City and County of Denver
201 W. Colfax Avenue, Dept. 608
Denver, CO 80202

with copies to:

Denver City Attorney
201 W. Colfax Avenue, Dept. 1207
Denver, CO 80202
Attn: Robert Wheeler

11.10 Prohibited Interests. No officer, member or employee of City, no members of City council and no other public official or employee of the governing body of any locality included within City's geographic area, during his or her tenure or for one (1) year thereafter,

shall have any interest, direct or indirect, in this Agreement, any related agreement, or other agreement referenced herein, or the proceeds thereof.

11.11 No Third Party Rights. Except as expressly set forth herein, the representations, warranties, terms and provisions of this Agreement are for the exclusive benefit of the parties hereto and no other person or entity shall have any right or claim against either party by reason of any of these terms and provisions or be entitled to enforce any of those terms and provisions against either party.

11.12 Severability. If any part, term or provision of this Agreement is judicially determined to be illegal or in conflict with any applicable law, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular part, term or provision held to be invalid or illegal.

11.13 Whole Agreement. This Agreement, including all exhibits hereto and all related agreements and agreements referenced herein, is intended as the complete integration of all understandings with respect to the subject matter hereof, between the parties, in addition to the Property Agreement (and documents executed in connection with the Closing thereunder). No prior or contemporaneous addition, deletion or other amendment shall have any force or effect unless embodied in writing. No subsequent novation, renewal, addition, deletion or other amendment hereto shall have any force or effect unless embodied in a written amendment or other agreement executed by the authorized representatives of the parties.

11.14 Captions and Headings. The captions and headings set forth herein are for convenience of reference only and shall not be construed so as to define or limit the terms and provisions hereof.

11.15 Successors and Assigns. This Agreement and the terms, covenants and conditions hereof shall be binding upon, and inure to the benefit of, the parties and their respective permitted successors and assigns. City's interest under this Agreement, or any right or obligation hereunder, shall not be assigned, encumbered or otherwise transferred, whether voluntarily, involuntarily, by operation of law or otherwise (and any attempt to do so shall be void).

11.16 Time of Essence; Force Majeure Event. Time is important to both parties in the performance of this Agreement, and they have agreed that strict compliance is required as to any date set forth herein. If the final date of any period which is set forth in any term or condition of this Agreement falls upon a Saturday, Sunday or legal holiday under the laws of the United States or the State of Colorado, then, and in such event, the time of such period shall be extended to the next day that is not a Saturday, Sunday or legal holiday. Whenever performance is required by either party, such party shall use reasonable efforts to perform; provided however, that if completion of performance shall be delayed at any time by a Force Majeure Event, then the time for performance as herein specified shall be extended by the amount of the delay actually so caused.

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

11.18 Survivability. The parties agree that their respective rights, duties and obligations existing under (i) any Contractor's ROE Agreements entered into by the City pursuant to Section 3.3 above, and (ii) any other provision that by its terms imposes an obligation on City or UPRR that is continuing in nature shall survive the termination of this Agreement, regardless of whether such termination is effected through mutual agreement or default or breach of this Agreement. Moreover, the parties agree that all terms and provisions of this Agreement that have not been fully completed and performed as of the Closings under the Property Agreement shall survive such closing until the full and complete performance thereof is accomplished.

11.19 Remedies. In the event that either City or UPRR fails to perform or comply with any of its obligations or the terms contained in this Agreement, the non-defaulting party shall give the defaulting party written notice specifying such default and the defaulting party shall have the opportunity to cure such default within thirty (30) days after receipt of such notice. Failure of the non-defaulting party to provide notice of such default shall not constitute a waiver of such default. In the event that the defaulting party fails to timely cure such default, the non-defaulting party shall have the right to seek specific performance or terminate this Agreement as provided herein. Without limiting the foregoing and in addition to the remedies set forth above, in the event of a default under this Agreement by City, UPRR shall also have the right to terminate the Flyover Easement and the New Pedestrian Bridge Overpass Crossing Agreement between the parties and dated of even date herewith. The City and UPRR, for themselves and their successors and assigns, hereby waive the remedies of consequential and punitive damages and all other rights and remedies in law and equity not set forth in this Section 11.19.

11.20 No Other Construction on UPRR Relocated Property or Current Facilities Property. Notwithstanding anything to the contrary contained in this Agreement, in no event shall City or any City Contractor perform any pre-construction or construction work of any nature whatsoever on the UPRR Relocated Property or Current Facilities Property except in accordance with the terms of this Agreement.

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

11.22 Electronic Signature and Electronic Records. Parties hereto consent to the use of electronic signatures by either party. This Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the

City. The Parties agree not to deny the legal effect or enforceability of this 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 this Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, 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.

IN WITNESS WHEREOF, the parties have executed this Agreement as of: _____.

CITY:

CITY AND COUNTY OF DENVER,
a political subdivision of the State of Colorado

By: _____
MAYOR

ATTEST:

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

APPROVED AS TO FORM:

Denver City Attorney, attorney for the
City and County of Denver

By: _____
Assistant City Attorney

REGISTERED AND COUNTERSIGNED:

By: _____
Manager of Finance

By: _____
Auditor

UPRR:

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation


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

EXHIBIT A

(Attached to and made a part of
Construction Agreement –
36th Street Yard Office Facility Relocation)

Approved Plans (see attached)

The cover sheets for the Approved Plans, ~~together with additional comments by UPRR~~
~~which are to be incorporated therein,~~ are attached hereto, and by such attachment, the entire
Approved Plans ~~and UPRR comments~~ are incorporated herein by reference.

From: Gregory R. Clark [<mailto:GREGORYRCLARK@UP.COM>]
Sent: Tuesday, November 04, 2014 1:59 PM
To: Orr, Shane
Subject: Fw: Denver drawing issues

See below

Greg Clark PE
Facility & Utility Design Program Manager
Office 402-544-3270
Fax 402-501-3033

----- Forwarded by Gregory R. Clark/UPC on 11/04/2014 02:58 PM -----

From: Gregory R. Clark/UPC
To: "Brown, David A - PWCPM Cap Projects Management" <David.Brown@denvergov.org>
Cc: Daniel A. Leis/UPC@UP
Date: 11/03/2014 04:48 PM
Subject: Denver drawing issues

David

These comments from my 6/27/14 review comments still need to be addressed.

1. The fire lane easement still needs to be coordinated with UP real estate. It still shows up on C1.2

(See attached file: 201411031624.pdf)

2. A4.01 and C3.3, Still need a detail showing connection of downspouts to site storm drain system. Sheet A4.01 note 8 refers to civil plans. There is no detail on civil plans.

3. S2.01, Area under ice machines to slope to floordrain. Show location of floordrains and floor sloping to drains.

Greg Clark PE
Facility & Utility Design Program Manager
Office 402-544-3270
Fax 402-501-3033

**

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**

Attachments:

40117372.gif; ATT00001.htm; graycol.gif; ATT00002.htm; Denver, CO - 36th St Yard Office - Consultant Review 11-4-14.pdf; ATT00003.htm

From: "Gregory R. Clark" <GREGORYRCLARK@UP.COM>

Date: November 5, 2014 at 6:35:34 AM MST

To: "Brown, David A - PWCPM Cap Projects Management" <David.Brown@denvergov.org>

Cc: "Daniel A. Leis" <DALEIS@up.com>, <shane.orr@huschblackwell.com>

Subject: Fw: Denver 36th St office

David,

Additional comments. Note: these are comments from June 2014 that were not picked up in the 100% design.

Greg Clark PE
Facility & Utility Design Program Manager
Office 402-544-3270
Fax 402-501-3033

Electrical Comments
Denver, CO
Yard Office
100% Construction Documents Drawing Review
Drawings dated May 2, 2014
11-4-14
Crista Bredin – UPRR Electrical Contractor

Drawings:

I1.02

- Detail 1: Electric Controller – All exterior above ground electrical conduit to the electric controller shall be Rigid Galvanized Steel (RGS); Electrical Metallic Tubing (EMT) is not acceptable.

A10.02

- Wall switches are shown to be mounted at 3'-6". Wall Switches shall be mounted at 48" AFF. Office receptacles shall be mounted to ADA standards.

E3.0

- Wall switches shall be Pass and Seymour or Hubbell and used in conjunction with Watt Stopper brand occupancy sensors.

E10.1

- Wall switches shall be Pass and Seymour or Hubbell.
- Occupancy sensors only shall be WattStopper.
- Office lighting shall be Spec. grade (3) lamp fluorescent 2'x4' troffers, with electronic ballasts, white lamps, and parabolic type louvers. Lighting in the TE&Y Open office and the Carmen Open Office do not meet UPRR specifications.
- All exterior lighting shall be Metal Halide. CFL lamps in the decorative fixtures are not permitted.

E12.1

- Verify padmount transformer size. The 75kVA transformer shown will only provide about 90A at 480V, 3PH.

Specification 260533.1.3.E

- Above grade conduit installed outdoors shall be Rigid Galvanized Steel only. Long sweep 90 degree elbows shall be Rigid Galvanized Steel. EMT is not permitted for outdoor use.

Specification 260553.2.1.A

- Nameplates shall be a white background with contrasting black lettering.

Specification 262726.2.1A

- Approved wall switch manufacturers are Pass and Seymour or Hubbell.

Specification 262726.2.2.A

- Approved receptacle manufacturers are Pass and Seymour or Hubbell.

Specification 262726.2.4.A

- Approved wall plate manufacturers are Pass and Seymour or Hubbell.

Specification 262726.2.5.A

- Flush mounted wall devices shall have white plastic covers.
- Gray colored devices shall have gray colored coverplates.
- Plates for devices installed on exposed fittings or boxes shall be Appleton or approved equal.
- Blank covers shall be installed on boxes without devices or fixtures; covers shall be of similar material and finish as rest of room or area.

Specification 262819.2.1.A

- Enclosed Switches Approved manufacturer: Square D

Specification 264313.2.1A

- SPD shall be Eaton brand, Innovative Technology SPD products; The IT Protector.

Specification 265100.2.6.A and 265600.2.5.A

- Lamps shall be G.E., Sylvania, or Philips

EXHIBIT B

(Attached to and made a part of
Construction Agreement –
36th Street Yard Office Facility Relocation)

Depiction of UPRR–UPRR Relocation Parcel

(see attached)