

POSSESSION AND USE AGREEMENT AND IMPROVEMENT AGREEMENT

This Possession and Use Agreement and Improvement Agreement (“**Agreement**”) is made this ___ day of July, 2015 between the Regional Transportation District, a political subdivision of the State of Colorado (“**RTD**”), and the Western Stock Show Association, a Colorado non-profit corporation (“**WSSA**”) and the City and County of Denver, Colorado, a home rule city and county (the “**City**”). (RTD, WSSA, and the City are each a “**Party**,” and collectively are the “**Parties**.”)

RECITALS

A. WSSA is the owner of certain real property located in Denver, Colorado (the “**WSSA Property**”), which is part of a larger group of properties generally known and used as the National Western Complex (the “**NW Complex**”).

B. The City is the Owner of certain buildings and improvements located at the NW Complex (the “**City Improvements**”), and which are in place on the WSSA Property pursuant to a leasehold from WSSA (the “**City Leased Property**”). The City is also the beneficiary of certain other easements of record encumbering portions of the WSSA Property (the “**Existing City Easements**”) (the City Improvements, the City Leased Property and the Existing City Easements are referred to herein, collectively, as the “**City Property Interests**.”). WSSA has a leasehold interest in the City Improvements and the City Leased Property from the City such that both WSSA and the City have interests in the City Improvements and the City Leased Property.

C. RTD is expanding its Mass Transportation System by the construction of a Fixed Guideway Mass Transit System that will provide mass transit service to the traveling public in a location and on an alignment known as the North Metro Corridor (the “**Project**”). The terms “Mass transportation system” and “Fixed guideway mass transit system” are defined in C.R.S. §§ 32-9-103 (7) (a) and (6.5), respectively.

D. A portion of the Project, comprising rail lines, a rail station, and associated improvements, will be constructed upon the NW Complex.

E. RTD has stated its intention to acquire, through negotiation or by eminent domain, if necessary, certain property interests owned by WSSA and the City, and comprising portions of the NW Complex in connection with RTD’s completion of the Project (the “**RTD Property Interests**”). The RTD Property Interests include: (1) certain property that will be acquired in fee simple, as more particularly described in **Exhibit A** attached hereto (the “**Fee Take Property**”); and (2) the non-exclusive right to use certain property for certain specified uses, as more particularly described in **Exhibit B** attached hereto (the “**Easement Property**”).

F. Certain of the Easement Property includes portions of the City Property Interests.

G. In order to expedite the Project and to allow the Parties to avoid litigation at this time, WSSA and the City are granting to RTD, for RTD’s benefit and the benefit of its contractors, agents, and all others deemed necessary by RTD in its sole discretion: (1) the irrevocable right to possession and use of the Fee Take Property; and (2) subject to the

provisions of Paragraph 31, the irrevocable, non-exclusive right to possession and use of the Easement Property.

H. The Parties acknowledge that it is in their mutual interest to use their best efforts to work cooperatively to coordinate the activities relating to the Project in a manner that minimizes the impact and minimizes disruption to the operation and functioning of the NW Complex, in particular in the periods immediately before, during and after the annual National Western Stock Show, and also at all other times.

I. RTD agrees to provide for the benefit of WSSA and the City design, permitting and construction services directly relating to the RTD Modifications (as defined below), all other portions of the Project within the limits of the Fee Take Property and the Easement Property and the 46th Avenue Improvements (as defined below), as more particularly described herein (collectively, the “**RTD Infrastructure Replacement**”).

J. In consideration for RTD providing such design, permitting and construction services for the RTD Infrastructure Replacement, and so long as RTD is not in material default of this Agreement, WSSA agrees not to seek just compensation for the cost to cure damages specifically arising out of, and limited only to, the RTD Infrastructure Replacement (the “**Waived Cure Damages**”). The Waived Cure Damages include damages relating to WSSA’s claim that the passageway through the Marion Street underpass must be enlarged (which is being addressed in connection with the RTD Modifications) and any damages relating to WSSA claim that entry/exit to the NWSS Complex from 46th Avenue must be reconstructed (which is being addressed in connection with the 46th Avenue Improvements), both as more particularly described in David B. Clayton’s March 14, 2014 Real Estate Appraisal.

AGREEMENT

NOW, THEREFORE, in consideration of the Recitals set forth above, which are incorporated herein, the mutual agreements, promises and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, RTD, WSSA and the City agree as follows:

1. **Effective Date.** As used herein, the term “**Effective Date**” is the date on which both RTD and WSSA have executed this Agreement, as reflected in the signature blocks. RTD will sign after WSSA signs. Following execution of this Agreement by WSSA and RTD, the City shall begin the process of formal review, approval and execution of this Agreement, which the City shall complete promptly. The date the City executes this Agreement is referred to herein as the “**City Execution Date.**”

2. **Purpose of Agreement.** The purpose of this Agreement is to allow RTD to proceed with its Project without delay and to allow the Parties to avoid litigation at this time.

3. **Payment and Possession.**

(a) In consideration of RTD's payment of the sum of Three Million Three Hundred Ninety-Six Thousand Dollars (\$3,396,000) to WSSA (the "**Deposit**"), WSSA irrevocably grants possession of the RTD Property Interests to RTD. This grant of possession of the RTD Property Interests will be effective on the date of RTD's tender of the Deposit as described herein (the "**Possession Date**"). Thereafter, RTD's right to possession and use of the Fee Take Property shall be exclusive, and RTD's right to possession and use of the Easement Property shall be non-exclusive. WSSA and the City shall retain any and all rights it may have that are not inconsistent with RTD's reasonable enjoyment of the Easement Property.

(b) Some or all of the property comprising the RTD Property Interests is currently subject to the following monetary liens:

(i) A Deed of Trust dated July 31, 1992, recorded in the real property records of the clerk and recorder of the City (the "**Records**") on August 14, 1992 at Reception No. R-92-0094010, and subject to: a Modification Agreement recorded in the Records on December 7, 1994 at Reception No. 9400182525; a Modification Agreement recorded in the Records on October 6, 1995 at Reception No. 9500124486; a Modification Agreement recorded in the Records on December 8, 1997 at Reception No. 9700166158, and a Partial Release recorded in the Records on February 2, 1998 at Reception No. 9800014677;

(ii) A Deed of Trust dated July 01, 1999, and recorded in the Records on July 14, 1999 at Reception No. 9900123905;

(iii) A First Deed of Trust, Security Agreement and Assignment of Rents, recorded in the Records on July 14, 1999 at Reception No. 9900123906;

(iv) An Amended and Restated First Deed of Trust dated October 01, 2006, and recorded in the Records on October 17, 2006 at Reception No. 2006165928;

(v) An Assignment of Leases Rents and Other Income recorded in the Records on November 1, 2006 at Reception No. 2006174756;

(vi) A Deed of Trust dated October 05, 2007, and recorded in the Records on October 17, 2007 at Reception No. 2007162501; and

(vii) An Amendment and Ratification of Deed of Trust recorded in the Records on February 7, 2014 at Reception No. 2014013669.

(The above-described monetary liens, along with any other monetary liens or encumbrances created by, through or under WSSA or the City or appearing of record, irrespective of who records them, are collectively referred to herein as the "**Encumbrances**".)

(c) No later than fifteen (15) days from the Effective Date, WSSA shall provide proof acceptable to RTD, in RTD's sole discretion, that all of the Encumbrances have been removed from the property comprising the RTD Property Interests.

(d) Within thirty (30) days of RTD determining in its sole discretion the state of the title is acceptable, RTD shall tender the Deposit to WSSA's legal counsel by check or by wiring the funds, as directed in writing. If RTD determines in its sole discretion that the title to the property comprising the RTD Property Interests is not acceptable, then RTD shall inform the WSSA's legal counsel and the City's legal counsel in writing. Upon sending such notice in accordance with the notice provisions set forth in Paragraph 33, this Agreement shall terminate.

4. **City Consents to Grant of Possession.** Subject to the provisions of Paragraph 31, the City irrevocably consents to the grant of possession of the RTD Property Interests to RTD as of the Possession Date or the City Execution Date, whichever occurs later. Notwithstanding delayed execution by the City, WSSA and RTD agree that the grant of possession of the RTD Property Interests to RTD shall be effective as of the Possession Date.

5. **Indemnification for Liens.** WSSA holds RTD harmless from any and all liability for any unreleased or undisclosed monetary liens or encumbrances affecting the RTD Property Interests that were created by, through or under WSSA, or appearing of record, irrespective of who records them, through the date that RTD takes title to and obtains an easement for the RTD Property Interests; provided, however, that this provision shall not waive or modify RTD's obligation to ensure that the RTD Infrastructure Replacement is completed at no cost to WSSA, free and clear of any liens or encumbrances as set forth herein.

6. **Rights Limited to RTD Property Interests.** RTD's right to possess and use the RTD Property Interests is limited to the RTD Property Interests. If RTD requires access to, or possession or use of any other WSSA Property or City Property Interests, then RTD must first acquire appropriate permission from WSSA or the City, as the case may be.

7. **Marion Street Underpass.** BNSF Railway Company ("**BNSF**") is currently in the process of constructing a new railroad bridge over the Marion Street underpass (the "**First New BNSF Bridge**") and adjacent to the west of the existing BNSF railroad bridge over the Marion Street underpass (the "**Existing BNSF Bridge**"). Upon completion of BNSF's work on the First New BNSF Bridge, the minimum vertical clearance from the ground level at which pedestrian and vehicular traffic passes under the First New BNSF Bridge to the lowest portion of the Marion Street underpass will be approximately eight feet (8'). Following completion of the First New BNSF Bridge, RTD will complete the following work:

(a) Secure all permits necessary to complete all required work efforts including clearance from the United States Army Corps of Engineers and the Colorado State Historic Preservation Officer.

(b) Lower the roadway (the "**Roadway Lowering**") beneath the First New BNSF Bridge to gain a minimum vertical clearance from the roadway of twelve feet (12') for both spans of the two span bridge.

(c) Cut back the sloped embankment to widen the horizontal clearance of the First New BNSF Bridge to gain a minimum horizontal clearance of at least twenty-five feet (25') for each of the two spans of the bridge (the "**Span Enlargement**"). Demolish the Existing BNSF Bridge and replace it with a triple track railroad bridge adjacent and to the east of the First New BNSF Bridge (the "**Second New BNSF Bridge**") meeting the same horizontal clearance described herein, and vertical clearance described in Paragraph 7(b).

(d) Construct a bridge structure to carry the rail line for the Project, which bridge will be adjacent and to the east of the Second New BNSF Bridge (the "**RTD Bridge**," and collectively with the Roadway Lowering, the Span Enlargement, demolition of the Existing BNSF Bridge and construction of the Second New BNSF Bridge, the "**RTD Modifications**"). The RTD Bridge shall also meet the horizontal clearance described in Paragraph 7(c) and the vertical clearance in Paragraph 7(b).

(e) So long as the minimum vertical clearance of the First New BNSF Bridge, the Second New BNSF Bridge, and the RTD Bridge following completion of the RTD Modifications is at least ten feet three inches (10'3") as specified herein, WSSA will make no claim that BNSF is in violation of its easement retained in that Quitclaim Deed dated November 30, 1990 between BNSF and WSSA recorded at R-90-01134000 on December 5, 1990 in the office of the Clerk of the City and County of Denver. BNSF shall be a third party beneficiary solely of this Paragraph 7(e) of this Agreement.

8. **The RTD Modifications.** RTD shall complete all work diligently and as quickly as reasonably possible. RTD will complete the Roadway Lowering and the Span Enlargement, on or before November 1, 2015. If any remaining RTD Modifications have not been completed prior to November 1, 2015, then RTD shall demobilize and leave the site prior to December 1, 2015. RTD will return to the site on or after January 31, 2016, after which point, RTD shall diligently complete the RTD Modifications. The RTD Modifications shall be completed in accordance with the following:

(a) The First New BNSF Bridge and the RTD Infrastructure Replacement shall be designed to accommodate a future maximum vertical clearance of 14 feet.

(b) All construction relating to the RTD Modifications shall be completed by RTD at no expense to WSSA in a good and workmanlike manner and shall be free and clear of liens and encumbrances.

(c) Construction of the RTD Modifications shall be completed in accordance with the plans attached hereto as generally shown on **Exhibit C** and subject to final approval by the City and WSSA.

(d) No construction activities shall occur from December 1 through January 31 of each year, unless approved by WSSA in writing.

9. **46th Avenue Access Drive.** As part of its construction of the Project and the RTD Infrastructure Replacement, RTD will reconstruct the existing access drive from 46th Avenue into the south end of the NW Complex (the "**Existing Access Drive**"), as generally shown on

and in accordance with the plans attached hereto as **Exhibit D** (the “**46th Avenue Improvements**”), which shall be subject to final approval by the City and WSSA. RTD’s work on the 46th Avenue Improvements shall commence following completion of the RTD Modifications, and shall be completed no later than November 1, 2017. Construction of the 46th Avenue Improvements shall be completed at no expense to WSSA in a good and workmanlike manner and shall be free and clear of liens and encumbrances.

(a) **Interim Access.** The Existing Access Drive provides the sole means of egress from and the major means of ingress to the southwestern portion of the NW Complex, and preserving such access is critical to the operations of the NW Complex. The Existing Access Drive passes over a portion of the Fee Take Property. Until RTD commences construction on the 46th Avenue Improvements, WSSA shall have a license for itself, its agents, employees, contractors, invitees and licensees to continue to use any portions of Fee Take Property that include the Existing Access Drive, provided such use is in a manner consistent with the historical use of the Existing Access Drive. Until the 46th Avenue Improvements are completed, RTD shall not block, obstruct, or otherwise impair the ability for WSSA to use the Existing Access Drive in a manner consistent with WSSA’s historical use of the Existing Access Drive; provided, however, to the extent that construction of the 46th Avenue Improvements necessitates temporary blockages or obstructions of the Existing Access Drive, RTD shall reasonably coordinate with WSSA to minimize the impact of any impairments to WSSA’s ability to use of the Existing Access Drive. Following completion of the 46th Avenue Improvements, as approved by the City and WSSA, the license granted herein to use portions of the Fee Take Property that include the Existing Access Drive shall terminate.

10. **City Contribution to RTD Infrastructure Replacement.** The City and RTD will enter into a separate Intergovernmental Agreement pertaining to certain City funding contributions to the RTD Infrastructure Replacement and related matters.

11. **Coordination of Construction and Access.** The NW Complex is used year-round for a variety of public and private activities and events (collectively “**NW Events**”). Many NW Events require use of and access to all or substantially all of the NW Complex. In order to minimize disruption to WSSA’s operations and NW Events, RTD shall coordinate with the WSSA regarding its Project, and, to the extent reasonably practicable, RTD shall ensure minimal interruption of WSSA’s use of the remaining NW Complex in connection with scheduled NW Events. As soon as reasonably practicable prior to November 1 and May 1 of each calendar year, WSSA shall provide to RTD a NW Complex event schedule of events scheduled for the next six months (or more). WSSA shall be given timely notice of and shall be invited to RTD’s weekly construction meetings at which time RTD will discuss a “6-week look ahead” of construction activities. RTD will not conduct any construction activities on the RTD Property Interests from December 1 to January 31 of each year, unless approved by the WSSA in writing.

12. **Applicability of Requirements.** References herein to requirements, construction and access restrictions applicable to RTD include RTD and its contractors, subcontractors, agents, and anyone else acting on RTD’s behalf or at RTD’s direction (collectively, “**RTD**”).

Agents”). All such requirements, construction and access restrictions shall apply to all RTD Agents and RTD shall ensure such compliance.

13. **Primary RTD Contract.** On or before the Effective Date, RTD will provide to WSSA a complete open records copy of its contract with the primary contractor for the Project (the “**Primary Contract**”). RTD will provide copies of any amendments to the Primary Contract as soon as reasonably practicable after execution thereof.

14. **RTD Will Not Permit Liens to Attach.** RTD shall contractually require all RTD Agents and any subcontractors to indemnify, defend, and hold WSSA and the City, their officers, partners, directors, agents, and employees harmless against and from any and all claims, liabilities, losses and damages as a result of the work performed in connection with the Project, including any liens which arise thereunder. RTD shall not permit any valid bills, debts or obligations applicable to its operation as they relate to its use of the RTD Property Interests to become delinquent and shall allow no lien, mortgage, judgment, execution, or adjudication in bankruptcy that will in any way impair the rights of WSSA or the City under this Agreement. It shall not be a violation of this paragraph for RTD Agents in good faith to dispute or litigate or arbitrate such bills, debts, or other such obligations. However, from and after the time at which RTD obtains title to the Fee Take Property, the provisions of this paragraph shall no longer apply with respect to liens, mortgages, judgments, executions, or adjudications in bankruptcy relating to the Fee Take Property, but shall continue to apply with respect to the Easement Property.

15. **Waived Cure Damages.** So long as RTD is not in default of this Agreement, WSSA will not seek compensation for the Waived Cure Damages. In the event that WSSA seeks compensation for any Waived Cure Damages, WSSA shall be required to establish that RTD was in default of a relevant and material provision of this Agreement as of the time WSSA asserted a claim for such compensation. Provided, however, nothing herein shall constitute a waiver by WSSA of any other rights or claims to seek Just Compensation, including those arising out of (a) RTD’s acquisition of the Fee Take Property (including, without limitation, damages to the remainder of the WSSA Property resulting from RTD’s acquisition of the Fee Take Property) or the Easement Property, (b) another eminent domain action, (c) any other action, or (d) to the extent permitted by law, and without waiving any provisions of the Colorado Governmental Immunity Act, C.R.S. 24-10-101, *et seq.*, the occurrence of any accidental, negligent or willful destruction by RTD or RTD’s contractor during RTD’s performance of the RTD Infrastructure Replacement. To the extent that WSSA seeks to recover any Waived Cure Damages, it shall do so in the context of RTD’s proceeding in eminent domain to acquire the RTD Property Interests, (a “**Condemnation Action**”). If the parties have already reached a settlement prior to WSSA’s assertion of a claim for recovery of any Waived Cure Damages, or if a Condemnation Action has already concluded, WSSA may commence a new action against RTD for breach of contract.

16. **Grant of Possession Absolute.** Notwithstanding any claim by WSSA or the City that RTD has breached this Agreement, any effort by WSSA to seek compensation for the Waived Cure Damages, or any finding by any court of competent jurisdiction that RTD has breached this Agreement, RTD shall continue in possession of the RTD Property Interests.

17. **No Waiver.** It is agreed by entering into this Agreement, the Parties do not waive any rights to raise any issue pertaining to just compensation should RTD commence a Condemnation Action. Without limiting the foregoing, the Parties agree that, by accepting payment of the Deposit, WSSA does not waive any rights to seek the full amount of just compensation to which it is entitled and RTD does not waive any rights to litigate the amount of just compensation, including the value of the property acquired, benefits, damages, costs and fees as provided for in the Colorado statutes, the Colorado Rules of Evidence, the Colorado Rules of Civil Procedure, the Colorado Common Law, the Colorado Constitution and the United States Constitution (“**Just Compensation**”).

18. **RTD’s Use of the RTD Property Interests.** All RTD Agents shall comply with all health and safety requirements applicable to the RTD Property Interests and the WSSA Property including, without limitation, all applicable Occupational Safety and Health Administration requirements. RTD and any RTD Agents accessing the RTD Property Interests will maintain a commercial general liability and automobile liability insurance policy covering the RTD Property Interests with limits of liability of no less than \$2,000,000 per occurrence and \$4,000,000 in the aggregate. RTD’s self-insured automobile policy satisfies the automobile liability insurance policy requirement with regard to RTD. RTD and any RTD Agents accessing the RTD Property Interests will also maintain Workers Compensation as required by statute, Employers Liability, and an excess or Umbrella policy in the amount of \$1,000,000 per occurrence. After commencement of revenue service of North Metro Corridor rail transit, WSSA may from time to time require reasonable adjustments in such insurance policies, including reasonable increases to policy limits. All such insurance policies shall name WSSA and the City as additional insureds. RTD will require that any RTD Agents accessing the RTD Property Interests indemnify WSSA and the City to the same extent as RTD for any liabilities caused by their work.

19. **Valuation Date/Possession Date.** It is agreed that in the event RTD commences a Condemnation Action pursuant to the terms of this Agreement, then the valuation date for determining the amount of Just Compensation shall be the Possession Date.

20. **City Disclaims Interest in Deposit, Settlement or Just Compensation Award/Verdict.** The City disclaims any interest in the Deposit and in any settlement. The City disclaims any interest in any portion of any payment made in consideration of RTD’s acquisition of the RTD Property Interests, whether such payment may be made in connection with a negotiated acquisition of the RTD Property Interests or as a result of an award/verdict of Just Compensation in connection with a Condemnation Action. The City also agrees it will not seek any compensation of any kind at any time from RTD related to RTD’s acquisition of the RTD Property Interests.

21. **Negotiations and Settlement.** This Agreement is made with the understanding that RTD will continue to negotiate in good faith with WSSA to acquire the RTD Property Interests by direct purchase. In the event WSSA and RTD agree upon the Just Compensation for the RTD Property Interests, then within 30 days of such settlement, subject to any delays in obtaining consent of the City, the Parties will close upon the acquisition of the RTD Property Interests by RTD in accordance with the following:

(a) RTD will pay WSSA in immediately available funds an amount equal to the difference, if any, between Just Compensation owed and the Deposit. Interest will not be paid on any settlement amount in excess of the Deposit;

(b) WSSA will execute and deliver to RTD a Bargain and Sale Deed, in a form to be agreed upon by the Parties, conveying the Fee Take Property to RTD free and clear of the Encumbrances; and

(c) WSSA and RTD will sign an agreement (the “**Bridge Easement Agreement**”) providing for WSSA’s conveyance to RTD of permanent, exclusive and non-exclusive easements over, on, under and through the portions of the Easement Property described in Exhibit B-1 of Exhibit B (the “**Bridge Easement Property**”). The Bridge Easement Agreement shall be substantially in the form attached hereto as Exhibit E.

(d) Should it be necessary, in order for RTD to acquire the interests of any other person or entity in the RTD Property Interests, for RTD to complete its acquisition of any of the RTD Property Interests by commencing a Condemnation Action, WSSA will reasonably cooperate with RTD and shall not unreasonably object to RTD’s efforts, provided that commencement or completion of such a Condemnation Action will not prejudice WSSA’s rights.

22. **Failure of Negotiations**. If a settlement among all parties is not reached within one hundred twenty (120) days of the Effective Date, then this will be a confession that the negotiations to acquire the RTD Property Interests have proved futile. RTD shall then promptly begin a Condemnation Action to acquire the RTD Property Interests. If RTD commences a Condemnation Action, it shall continue in possession of the RTD Property Interests until either a settlement is reached or a Rule and Order as provided for in C.R.S. 38-1-105(3) is entered by the court.

23. **Settlement, Verdict, Award**. In the event of a Condemnation Action, if the settlement, verdict or award of Just Compensation is greater than the Deposit, then the Deposit shall be a partial payment of the Just Compensation to be paid to WSSA and others interested, if any. The Deposit shall be deducted by the court from any award or verdict. If the final verdict or award of Just Compensation is greater than the Deposit, then RTD shall pay into the Registry of the Court the difference between the verdict or award and the Deposit (the “**Additional Compensation Amount**”). RTD shall pay interest on the Additional Compensation Amount at the statutory interest rate from the Possession Date to the date of the making of such payment. If the final verdict or award of Just Compensation is less than the Deposit, then WSSA shall refund to RTD the difference between the verdict or award and the Deposit (the “**RTD Refund Amount**”). WSSA shall pay RTD interest on the RTD Refund Amount at the statutory interest rate from the Possession Date to the date of the making of such refund.

24. **Public Purpose**. The Parties agree there is a public use and purpose for obtaining possession of the RTD Property Interests, which is in furtherance of a public use.

25. **Need and Necessity.** The Parties agree there is a public need and necessity for RTD to acquire the RTD Property Interests for the Project.

26. **Authority.** The Parties agree RTD has the constitutional and statutory authority to acquire the RTD Property Interests by eminent domain, if necessary.

27. **Sole Issue at Trial is Just Compensation.** If there is no settlement, then the sole issue at the valuation hearing will be the Just Compensation to be paid for the acquisition of the RTD Property Interests.

28. **Taxes.** Property taxes for the current year for the Fee Take Property shall be prorated as of the Possession Date; WSSA shall not be responsible for property taxes after the Possession Date. WSSA shall continue to be responsible for property taxes applicable to the Easement Property.

29. **Utilities.** On or before the Possession Date, WSSA will notify any applicable utility companies to cease service to the Fee Take Property as of the Possession Date. If RTD desires utility service, it will be responsible for arranging service with the applicable utility companies.

30. **RTD Grant of Pedestrian Bridge Easement.** Upon completion of the Project on the RTD Property Interests, and upon written request made by the City to RTD within fifteen (15) years of the Effective Date of this Agreement, RTD agrees to grant to the City, for no additional consideration, a non-exclusive easement as may be reasonably necessary for the construction, operation and maintenance of a pedestrian bridge (the “**Pedestrian Bridge**”) crossing the Fee Take Property, which Pedestrian Bridge shall be up to 30 feet wide, and shall be located within 500 feet of the rail station comprising the Project (the “**Pedestrian Bridge Easement**”). Specific terms for the Pedestrian Bridge Easement will be agreed to by RTD and the City. The Pedestrian Bridge shall be constructed at the City’s sole cost and expense.

31. **Easement Conveyances to the City and the Denver Board of Water.** In furtherance of this Agreement, and to provide for the timely completion of the RTD Infrastructure Replacement and the Project, WSSA agrees to grant easements in the portions of the Easement Property described in **Exhibits B-2 and B-3** of **Exhibit B** to parties other than RTD. Specifically:

(a) WSSA shall enter into an easement agreement with the City, on terms mutually agreeable to WSSA and the City (the “**City Easement Agreement**”), granting an easement to the City for utilities and drainage purposes (as more particularly described in the City Easement Agreement, the “**City Easement**”). RTD hereby consents to the grant of the City Easement. Upon mutual execution and recordation of the City Easement Agreement, RTD’s right to possession and use of the portion of the Easement Property described in **Exhibit B-2** of **Exhibit B** shall terminate and be of no further force or effect.

(b) WSSA shall enter into an easement agreement with the Board of Water Commissioners for the City (the “**Water Board**”), on terms mutually agreeable to WSSA and the Water Board (the “**Water Board Easement Agreement**”), granting easements to

the Water Board for utilities purposes (as more particularly described in the Water Board Easement Agreement, the “**Water Board Easements**”). RTD hereby consents to the grant of the Water Board Easements. Upon mutual execution and recordation of the Water Board Easement Agreement, RTD’s right to possession and use of the portion of the Easement Property described in **Exhibit B-3** of **Exhibit B** shall terminate and be of no further force or effect.

(c) WSSA shall enter into the City Easement Agreement and the Water Board Easement Agreement as soon as reasonably possible. RTD agrees and acknowledges that the grants of the City Easement and the Water Board Easements are being made by WSSA directly to the City and the Water Board, respectively, at RTD’s request, under threat of condemnation, and that WSSA is entitled to compensation from RTD for the grant of the City Easement and the Water Board Easements as part of the total Just Compensation that is due to WSSA.

32. **Further Assurances; Cooperation.** The Parties agree to reasonably cooperate to carry out the intents and purposes of this Agreement and to execute such additional documents and perform such further acts as may reasonably be necessary to give effect to the intents and purposes of this Agreement.

33. **Notices.** Any notice pursuant to this Agreement shall be in writing and shall either be hand delivered, sent by registered or certified mail, return receipt requested, postage prepaid, or by reputable national carrier (*e.g.*, FedEx or UPS), to the addresses of the Parties set forth below. All notices so given shall be considered effective on the earlier of actual receipt or seventy-two (72) hours after deposit in the United States mail with the proper address as set forth below. Either party may change the address to which future notices shall be sent by providing written notice to the other party. Email addresses, where included below, are for convenience only.

To RTD: Regional Transportation District
Attn: General Counsel
1600 Blake Street
Denver, Colorado 80202

With a copy to: Regional Transportation District
Attn: Susan Altes, Manager, Real Property, Capital Programs
1560 Broadway, Suite 650
Denver, Colorado 80202
Susan.Altes@RTD-Denver.com

To WSSA: National Western Stock Show
Attn: Paul Andrews and Ron Rohr
4655 Humboldt St.
Denver, Colorado 80216
pandrews@nationalwestern.com
ronr@nationalwestern.com

With a copy to: Otten, Johnson, Robinson, Neff & Ragonetti, P.C.
Attn: Thomas J. Ragonetti / Bill E. Kyriagis
950 17th Street, Suite 1600
Denver, Colorado, 80202
tjr@ottenjohnson.com
bkyriagis@ottenjohnson.com

To City: Executive Director of Public Works or Designee
201 West Colfax Avenue, Dept. 611
Denver, Colorado 80202

With a copy to: Denver City Attorney's Office
1437 Bannock St., Room 353
Denver, Colorado 80202

34. **Colorado Governmental Immunity Act:** The Parties hereto understand and agree that the City is relying upon, and has not waived, the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Act, § 24-10-101, et seq., C.R.S.

35. **Contract.** This Agreement shall be deemed a contract and it shall bind the Parties only when signed by authorized representatives of WSSA, the City and RTD.

36. **Successors and Assigns.** This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective successors and assigns.

37. **Third-Party Beneficiaries.** This Paragraph 37 is expressly subject to Paragraph 7(e). 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 their successors and assigns. Nothing contained in this Agreement shall give or allow any claim or right of action by any person or entity not expressly identified as a Party in this Agreement. It is the express intention of the Parties that any person, other than the Parties, that receives benefits under this Agreement shall be deemed to be an incidental beneficiary only.

38. **Severability.** If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or make unenforceable any other provision hereof.

39. **No Construction Against Drafter.** Each party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any party.

40. **Execution in Counterparts; Electronic Signatures.** This Agreement may be executed in several counterparts, including with electronic or scanned signatures, each of which will be an original and all of which will constitute one and the same document. Additionally, Parties consent to the use of electronic signatures by the City. The 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 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, 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.

41. **Captions.** The captions or headings herein are for convenience only and do not define, limit or describe the scope or intent of any paragraph of this Agreement.

42. **Time is of the Essence.** Time is of the essence in the performance of the obligations set forth in this Agreement.

43. **Applicable Law; Venue.** This Agreement will be governed by and construed in accordance with the laws of the State of Colorado. Venue for any dispute shall be in the District Court for the City and County of Denver, Colorado.

44. **No Merger; Survival of Terms.** In the event of a conveyance of the Fee Take Property to RTD the provisions of this Agreement shall not merge into title and shall continue in full force and effect. If there is no settlement and RTD commences a Condemnation Action, the terms of this Agreement will also survive.

45. **Recording.** RTD will record this Agreement with the Clerk and Recorder of the City and County of Denver.

[Signature pages follow]

WESTERN STOCK SHOW ASSOCIATION

By: Paul D. Andrews

Date: 7/9/15

Paul Andrews
[Printed Name]

Title: President / CEO

THE CITY AND COUNTY OF DENVER, COLORADO

By: _____

Date: _____

[Printed Name]

Title: _____

THE REGIONAL TRANSPORTATION DISTRICT

By: Richard F. Clarke

Date: 7/10/15

RICHARD F. CLARKE
[Printed Name]

Title: Assistant General Manager, Capital Programs

APPROVED AS TO LEGAL FORM FOR RTD

By: Robert R. Duncan
Robert R. Duncan, Esq.

Date: 9 July '15