

**DENVER UNION STATION PROJECT AUTHORITY
OWNER'S REPRESENTATIVE AGREEMENT**

THIS AGREEMENT is made and entered into this ____ day of August, 2009, by and between the **DENVER UNION STATION PROJECT AUTHORITY**, a Colorado non-profit corporation and instrumentality of the City and County of Denver, Colorado authorized to do business in the State of Colorado, hereinafter referred to as the "OWNER," and the TC Denver Development, Inc., hereinafter referred to as the "OWNER'S REPRESENTATIVE."

RECITALS:

1. Denver Union Station Project Authority ("DUSPA") was created by the City and County of Denver, Colorado (the "City") by ordinance for the purpose of financing, acquiring, owning, equipping, designing, constructing, renovating, operating, maintaining and taking such other action as necessary with respect to the redevelopment of the Denver Union Station ("DUS") building and its immediately surrounding environs as a multi-modal transportation center to serve as the future hub for several transportation modes in the City's metropolitan area (the "Project").

2. DUSPA desires the Owner's Representative act as its representative in administering the design and construction of the Project and the negotiation and performance of its design/build contract (the "Design/Build Agreement") with Kiewit Construction Company and its subcontractors (the "Design/Builder") for constructing the Project.

3. Owner's Representative is ready, willing and able to provide such services.

4. The Owner's obligations pertaining to the Project and affecting the Owner's Representative duties under this Agreement are subject to certain requirements as set forth in multiple agreements ("Project Agreements") among or between the City, the Regional Transportation District ("RTD"), the Colorado Department of Transportation ("CDOT"), the

Denver Regional Council of Governments (“DRCOG”) (the City, RTD, CDOT and DRCOG are collectively referred to herein as the “Partner Agencies”), the Union Station Neighborhood Company (“USNC”), one or more metropolitan districts that have been formed to construct certain Project elements (the “Metropolitan District”), and the Downtown Development Authority (the “DDA”).

5. The Owner’s obligations will also be subject to the provisions of a bond indenture of trust for senior debt that is anticipated to be issued to fund Project costs, Transportation Infrastructure Finance and Innovation Act (“TIFIA”) loan or grant requirements and/or Railroad Rehabilitation and Improvement Financing (“RRIF”) loan or grant requirements and any other state or local requirements that may apply as a result of grants being made available for the Project. The Owner’s Representative shall comply with all grant requirements which affect its performance hereunder in its administration of the Project and performance of this Agreement, as such grant requirements are communicated to the Owner’s Representative by RTD, any of the Partner Agencies or the Owner. The Owner’s obligations under this Agreement may become subject to additional requirements due to the financing of the Project which may result in successor or additional administrators being appointed or obligations being incurred. The Trustee or Administrator for all such financings shall be collectively referred to as “the Trustee.”

AGREEMENTS:

ARTICLE I.

COORDINATION AND LIAISON:

The President of DUSPA is the officer of the Owner who is responsible for authorizing and approving the work performed under this Agreement. The Owner hereby designates its

President to act on its behalf for the purpose of administering, coordinating and approving the services performed by the Owner's Representative under this Agreement.

ARTICLE II.

COMPENSATION:

The Owner's Representative shall provide professional services for the Project, and the Owner shall compensate the Owner's Representative in accordance with the terms and conditions of this Agreement.

A. Basic Services. The Owner agrees to pay the Owner's Representative, as compensation for its basic services as described below, a lump sum fee of four million nine eighty two nine hundred ninety four dollars (\$4,982,994.00). The lump sum fee is based on one point one percent (1.1%) of the Project's design and construction costs (exclusive of developer fees, and legal and financing related costs and allocations) estimated as of July 2009. The parties agree that ninety point nine percent (90.9%) of the fee is to be applied as to services rendered regarding representation of the Owner for the Project ("Representation Fee") and that nine point one percent (9.1%) of the fee is to be applied as to services rendered regarding DUSPA organizational management ("Management Fee"). Such compensation covers all charges for Owner's Representative's labor and expenses for the Project including Owner's Representative's subcontractor and sub-consultant charges, if any. The Owner's Representative's payments shall be made based upon basic services rendered by the Owner's Representative from pre-construction services through completion of the Project as follows:

Payment for Period from January 1, 2009 through Project Funding. Within ten (10) business days of full execution of this Agreement, Owner shall pay to the Owner's Representative the amount of \$270,000, which represents a portion of the amount (\$45,000 x 6

months) owed to Owner's Representative covering a portion of the payments to be made over the term of this Agreement. Thereafter, payments due to the Owner's Representative shall be suspended until the "Notice to Proceed" to begin the "Work" of construction (as such terms are defined in the Design/Build Agreement) is issued under the Design/Build Agreement (the "NTP to Begin Construction" (which NTP to Begin Construction shall not include the revised Limited Notice to Proceed issued on July 9, 2009)). The issuance of the NTP to Begin Construction shall constitute, for purposes of this Agreement, the "Project Funding."

Payments Subsequent to Project Funding. Upon Project Funding, Owner's Representative shall be paid a lump sum representing the difference of an accrual of all payments owed to the Owner's Representative through and including Project Funding (\$83,049 multiplied by the number of months covering the period from January 1, 2009 through and including Project Funding), less the lump sum amount previously paid of \$270,000. Thereafter, on or before the 10th day of each month following Project Funding, the Owner's Representative shall submit two invoices to the Owner requesting the applicable percentages of the Representation Fee and the Management Fee in the amounts of \$75,492 and \$7,557, respectively, based on a 60 month term, totaling \$83,049 due to Owner's Representative for the immediately preceding month. Such monthly amount shall represent a monthly, pro-rata installment covering the sixty month term of this Agreement, and taking into account the payments made prior to Project Funding. At such time as the NTP to Begin Construction is issued and it is determined that the schedule for Final Completion will necessarily extend beyond December 31, 2013, the Owner's Representative shall re-calculate the Representation Fee and the Management Fee representing the appropriate monthly, pre-rata installments that would accommodate an extended number of months over the term of this Agreement (the "Extended Term"). Should the Extended Term

exceed six months beyond December 31, 2013, the parties hereto reserve the right to re-negotiate and amend the Term, Management Fee and Representation Fee as set forth herein to reflect such modified terms as the parties may reach. Any payment by the Owner of compensation shall be due within thirty (30) days of the receipt of such invoices.

In the event the Project's design and construction budget (**Exhibit E**) is reduced by more than ten percent (10%) due to a Project scope reduction or is increased by more than ten percent (10%) due to scope increases or Owner caused time delays, the parties may negotiate an adjustment to the Owner's Representative's Fee in accordance with the Project change. Notwithstanding the effect of delays to the Project, the parties agree that the Management Fee will not be tolled, but that the Representation Fee will be tolled in the event of a suspension of work of the Design/Builder. The tolling period will be the same as the suspension period.

B. Final Payment. Owner's Representative agrees that Owner will not pay the final three (3) months of the Representation Fee for October, November or December of 2014 pending Final Completion of the Project. Final Payment to the Owner's Representative shall not be made until "Final Completion" of the Project is achieved (as such term is defined in the Design/Build Agreement), upon which this Agreement shall be considered otherwise fully performed by the Owner's Representative. Upon Final Completion Owner shall pay Owner's Representative the balance of the lump sum Representation Fee owed by Owner in accordance with the terms for a lump sum payment as identified in Section A above.

C. Owner's Obligations are Subject to Financing. Notwithstanding anything to the contrary contained in this Agreement, except the payment to Owner's Representative of \$270,000 upon execution of this Agreement, the obligations of Owner to pay the Owner's Representative its fees hereunder arise only upon Project Funding and only when funds from

financing or other sources authorized for such use are made available to the Owner. Owner shall have no liability for payment hereunder other than out of funds received by Owner from financing or other sources from which these payments are an authorized use.

ARTICLE III.

GENERAL RESPONSIBILITIES OF THE OWNER'S REPRESENTATIVE:

The following provisions shall apply to all services rendered by the Owner's Representative under this Agreement. The responsibilities and obligations of the Owner's Representative under this Agreement shall not be relieved or affected in any respect by the mere presence on the site of any agent, consultant, sub-consultant, or employee of the Owner. In entering into this Agreement, the Owner's Representative acknowledges that it understands the organization and expectation of the Owner and scope of work expected to be performed.

A. Personnel Assignments.

1. The Owner's Representative commits to have Bill Mosher and Mike Sullivan serve as personnel assigned to this Project so long as they remain employees of Trammell Crow Company. Should either or both of Bill Mosher and/or Mike Sullivan cease as employees of Trammell Crow Company, the Owner shall have the right to terminate this Agreement upon the expiration of ten (10) business days should Trammell Crow Company be unable to identify [an] acceptable substitute[s] (as determined in the sole discretion of the Owner) within such ten (10) business days to serve as personnel assigned to the Project. The Owner's Representative shall not change the key personnel assigned without prior written approval of Owner. If, during the term of this Agreement, the Owner determines that the performance of sub-consultants or personnel assigned by the Owner's Representative to this Project is not acceptable, the Owner shall notify the Owner's Representative and give the

Owner's Representative a period of time (not exceeding 60 days) to correct such performance. Thereafter, the Owner may require the Owner's Representative to reassign or replace such personnel or sub-consultant. If the Owner notifies the Owner's Representative that certain of its personnel or a sub-consultant should be replaced, the Owner's Representative will use its best efforts to replace such personnel or sub-consultant within then (10) days from the date of the Owner's notice.

2. Neither the Owner's Representative nor any sub-consultant shall have other interests which conflict with the interests of the Owner related to the sale or promotion of equipment or material which may be used on the Project or the sale or leasing of any property on which the Project will be constructed, and the Owner's Representative shall make written inquiry of all of its sub-consultants concerning the existence of or potential for such conflict. The Owner's Representative shall execute a Standards of Conduct and Conflicts of Interest Policy in substantially the same form as that executed by the Board Members of the Owner.

3. Actions taken by the Owner under this section shall not relieve the Owner's Representative of any of its responsibilities under this Agreement unless such actions preclude Owner's Representative from carrying out its obligations pursuant to this Agreement.

B. Project Budget and Schedule. The Owner's Representative shall be responsible for coordinating, establishing and implementing a Project Budget and Schedule in conjunction with construction sequencing and financial modeling. Should the Owner's Representative determine that the Project cannot be accomplished within the Owner's established budget, or within the established schedule, the Owner's Representative shall immediately notify the Owner in writing, so that the Project scope, budget and schedule can be reviewed and, to the extent such revisions may be borne by the Project, modified as necessary.

C. Assistance to Owner in Defending Against Claims. The Owner's Representative shall assist the Owner in defending all claims against the Owner which relate in any way to alleged negligence, errors or omissions of the Owner's Representative or its sub-consultants at no extra cost to the Owner.

D. Coordination and Cooperation within Scope of Work.

1. Owner's Representative's Cooperation and Coordination within Scope of Work. The Owner's Representative shall be responsible for coordination of all Project work with the Owner and involved governmental agencies, including the Partner Agencies, which shall be a continuing work item. Such coordination shall consist of:

- a. Bi-Monthly construction and other progress and review meetings with the Owner;
- b. Regular attendance at Owner Board Meetings;
- c. Interaction with the Partner Agencies, including the facilitation of specific Partner Agency needs with respect to the Project;
- d. Coordination of RTD staff in accordance with RTD's DUS CM Staffing Plan dated April 24, 2009 (**Exhibit F**);
- e. Coordination with the design consultants for the Project;
- f. Negotiation and coordination with the Project's design/builder or construction contractor[s];
- g. Coordination and leadership of Project management and tasking, including any Project Management Team efforts;
- h. Coordination with the Owner's Financial Advisor and Financing Team;
- i. Coordination with the Owner's Legal Counsel;

- j. Coordination with the Owner's, Design/Builder's, and Partner Agencies' public involvement points of contact and personnel;
- k. Public outreach and Public Information/Involvement tasks;
- l. Rendering of recommendations, suggestions and requirements on Project work, workloads, labor load, budget, schedule, methods and modes of delivery;
- m. On-site construction observation;
- n. Coordination with the City regarding efforts related to implementation of the Owner's \$2 million Art Program; and
- o. Any other coordination efforts as set forth in the Scope of Work or ancillary efforts requested by any of the Partner Agencies to ensure coordination of reporting requirements or other guidelines for all state and federal funding sources.

These services also include field and office reviews of plans, specifications and documents as required during the development of the design and actual construction of the Project.

2. **Contractors.** The Owner's Representative agrees to perform its services under this Agreement in such manner and at such times that the Owner and/or any Owner contractor who has work to perform, or contracts to execute, can do so without unreasonable delay.

E. Accounting and Records. The Owner's Representative's in-house personnel shall be responsible for basic book keeping of Owner's finances and coordination of all aspects of financial control of federal funds with RTD and CDOT during the term of this Agreement. Book keeping and accounting activities shall be reported to and reviewed by an independent third party certified public accountant, if retained by Owner and shall be carried out in such a manner that such books and records are adequately maintained and prepared for audit purposes.

The form of accounting reports to be prepared by Owner's Representative shall be as set forth in **Exhibit C** hereto. All accounting and book keeping shall be subject to audits by Owner, CDOT, RTD and the City at any such reasonable times and places as may be requested by said agencies. Records of the Owner's Representative's direct personnel, consultants and reimbursable expenses pertaining to this Project, and records of accounts between the Owner and the Owner's Representative shall be available for inspection and audit by the representatives of the Owner at mutually convenient times for three (3) years after the final payment under this Agreement.

ARTICLE IV.

BASIC SERVICES:

Subject to the terms and conditions described herein and in **Article III**, the Owner's Representative will provide to the Owner services in connection with the design and construction of the Project including the management and implementation of the Design/Build Agreement. In general, the Owner's Representative will establish and implement a comprehensive Owner's representation program, including appropriate communication and monitoring, and will provide and implement the necessary procedures, coordination, administration, review, expediting and counseling required to assist the Owner in monitoring and fully participating in the Project in a timely, economical and acceptable manner. It is the intent of this Agreement that the Owner's Representative shall perform its duties under this Agreement in a competent and timely manner.

The services that the Owner's Representative shall provide are further described in Exhibit A and the Responsibility Matrix in Exhibit B. The Owner's Representative and the Owner herein acknowledge that, as the Project proceeds, responsibilities set forth in the Responsibility Matrix may change. To the extent that DUSPA is identified as having additional responsibilities, the Owner's Representative agrees to coordinate and perform the services as

necessary to undertake and complete such responsibilities at no additional cost to DUSPA, so long as any request by DUSPA is reasonably made, consistent with Article III hereof, and the completion of such additional responsibilities by the Owner's Representative may be undertaken in a reasonable manner.

ARTICLE V.

SCOPE OF OWNER'S REPRESENTATIVE'S AUTHORITY:

The Owner's Representative shall have such authority as is specifically conferred in this Agreement. The Owner's Representative shall have such further authority as may be granted in writing by the Owner. Any discrepancy, ambiguity, variance or inconsistency in the description or scope of the Owner's Representative duties contained in this Agreement or elsewhere shall be resolved solely within the reasonable discretion of the Owner. All of such authority of the Owner's Representative hereunder, expressed or implied, shall be deemed to constitute the scope of work for the Owner's Representative hereunder.

The Owner's Representative is hereby designated to act on behalf of Owner as its "Representative" pursuant to that certain DUSPA/City Project Coordination Agreement dated as of April 30, 2009 (the "DUSPA/City Agreement") and pursuant to that certain DUSPA/RTD Initial Funding, Reimbursement and Project Coordination Agreement dated as of April 30, 2009 (the "DUSPA/RTD Agreement").

The Owner's Representative shall have full authority to administer the Project on behalf of the Owner, within the limits described by this Agreement and the Design/Build Agreement, setting forth the terms of the design and construction of the Project. The Owner shall, upon reasonable notice to Owner's Representative, be entitled to inspect the records of the Owner's Representative, and receive monthly reports on the progress of the Project. The Owner shall not

be required to approve or deny the administrative activities of the Owner's Representative so long as such activities are performed in accordance with this Agreement and incorporated within the Design/Build Agreement, the DUSPA/City Agreement and the DUSPA/RTD Agreement.

The Owner's Representative shall have the authority to approve change orders in accordance with the terms set forth in the DUSPA/City Agreement and in the DUSPA/RTD Agreement.

ARTICLE VI.

OWNER'S RESPONSIBILITY:

A. The Owner shall provide access to available information for the Project in the Owner's possession or control to the Owner's Representative. However, the Owner does not guarantee the accuracy of any such information and assumes no liability therefor. The Owner's Representative shall exercise reasonable judgment in assessing the accuracy and completeness of such information.

B. The Owner shall furnish the Owner's Representative, without charge, all copies of drawings and specifications reasonably necessary, in the Owner's Representative's opinion, for the execution of the Project.

C. The Owner shall make payment to the Owner's Representative within thirty (30) of the receipt of monthly invoices from the Owner's Representative.

ARTICLE VII.

OWNERSHIP OF DOCUMENTS:

A. All documents prepared by the Owner's Representative under this Agreement, when delivered to and accepted by the Owner, shall become the property of the Owner. The Owner's Representative also agrees to allow the Owner to review any of the procedures used by

it in doing the work hereunder and to make available for inspection field notes and other documents used in the preparation for and performance of any of the services required hereunder. All documents of the Owner are subject to the Colorado Open Records Act, C.R.S. §24-72-203.

B. The Owner shall have unlimited rights in the ownership of all documents, notes and other work developed in the performance of the Agreement.

ARTICLE VIII.

TERM AND TERMINATION:

A. The Term of this Agreement shall commence upon the date hereof, and the parties specifically ratify all work done on the Project beginning on January 1, 2009 and prior to execution of the Agreement, and shall end on Final Completion of the services to be provided hereunder by the Owner's Representative or December 31, 2013, whichever is latest, unless sooner terminated or extended in accordance herewith. Any concurrence regarding the extension of the Term of this Agreement must be evidenced by a written agreement and executed in full by the parties hereto.

B. Nothing herein shall be construed as giving the Owner's Representative the right to perform the services contemplated under this Agreement beyond the time when its services become unsatisfactory to the Owner.

C. If the Owner's Representative shall be discharged or if the Owner's Representative becomes unable to serve under this Agreement, then the Owner's Representative shall be paid only for that portion of the work which shall have been satisfactorily completed at the time of dismissal, direction to cease work, or the time when the Owner's Representative became unable to serve under the Agreement.

D. If the Owner terminates this Agreement for cause, or if the Owner's Representative becomes unable to serve under this Agreement, the Owner may take over work to be done under this Agreement and prosecute the work to completion by contract or otherwise, and the Owner's Representative may be held liable to the Owner for costs incurred by the Owner by reason of such events.

E. The Owner may, for convenience, cancel and terminate this Agreement by giving not less than sixty (60) days prior written notice to the Owner's Representative, which notice shall state the date of cancellation and termination. The Owner's Representative may, for convenience, cancel and terminate this Agreement by giving not less than ninety (90) days prior written notice to the Owner, which notice shall state the date of cancellation and termination.

F. If the Owner's Representative's services are terminated, postponed or revised, or if it shall be discharged before all the work contemplated has been completed, or if work for any reason shall be stopped or discontinued, the Owner's Representative shall be paid only for the portion of work which has been satisfactorily completed at the time of such dismissal, termination, postponement, revision or stoppage.

G. If this Agreement is terminated for any reason, the Owner's Representative shall promptly deliver to the Owner all drawings, specifications, progress and other reports, and other documents relating to the design, construction or administration of work completed or partially completed.

ARTICLE IX.

FEDERAL REQUIREMENTS:

By entering into this Agreement, the Owner's Representative hereby certifies to the truthfulness and accuracy of each statement of any certification and disclosure as set forth in

Exhibit D hereto and the Owner's Representative understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to the certification and disclosure as set forth in **Exhibit D** hereto. The Owner's Representative also agrees that those provisions set forth in **Exhibit D** hereto are hereby incorporated by reference as though fully set forth herein.

ARTICLE X.

TIME IS OF THE ESSENCE:

The parties agree that in the performance of the term, conditions and requirements of this Agreement by the Owner's Representative, time is of the essence.

ARTICLE XI.

MISCELLANEOUS PROVISIONS:

A. Status of Owner's Representative. It is understood and agreed that the status of the Owner's Representative shall be that of an independent contractor retained on a contractual basis to perform professional or technical services for limited periods of time, and it is not intended, nor shall it be construed, that the Owner's Representative, or any member of its staff or any consultant, is an employee or officer of the Owner for any purpose whatsoever.

B. Rights and Remedies Not Waived. No payment by the Owner shall constitute a waiver of any breach of covenant or default which may then exist on the part of the Owner's Representative. No assent, expressed or implied, to any breach of the Agreement shall be held to be a waiver of any later or other breach.

C. Subject to Local Laws; Venue. Each and every term, condition or covenant contained herein is subject to and shall be construed in accordance with the provisions of Colorado law, and applicable federal law, the Charter of the City and County of Denver and the

ordinances, regulations and Executive Orders enacted and/or promulgated pursuant thereto. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this Agreement as if fully set out herein by this reference. Venue for any action arising hereunder shall be in the Denver County or Denver District Court in the City and County of Denver, Colorado.

D. Nondiscrimination in Employment. In connection with its performance of this Agreement, the parties hereto agree not to refuse to hire, nor to discharge, promote or demote, nor to discriminate in matters of compensation against any person otherwise qualified solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status or physical or mental disability; and further agree to insert the foregoing provision in all subcontracts hereunder.

E. Assignment by Owner. The Owner's Representative agrees that this Agreement shall be fully and freely assignable by the Owner without the consent of any other person and that if the Owner does assign this Agreement, Owner's Representative shall fully perform the agreements contained herein. Should an Event of Default or Event of Non-Appropriation as defined in a bond indenture of trust or in any subsequent agreement entered into by the Owner for purposes of financing the Project, the Trustee may, in its full discretion, terminate this Agreement and the Owner's Representative shall be entitled to payment only from amounts legally allocated and available for the Project and only for work done prior to such termination.

F. Assignment by Owner's Representative. The Owner's Representative shall not assign any of its rights, benefits, obligations or duties under this Agreement except upon prior written consent and approval of the Owner, which consent and approval may be withheld in the absolute discretion of the Owner.

G. Taxes, Charges and Penalties. The Owner shall not be liable for the payment of taxes, late charges or penalties of any nature arising out of this Agreement.

H. Indemnification by Owner's Representative. The Owner's Representative agrees to release, defend, indemnify and save harmless the Owner and the Partner Agencies and their officers, agents and employees from any and all claims, damages, suits, costs, expenses, including attorney's fees and expert witness fees, liabilities, actions or proceedings of any kind or nature whatsoever, in any way resulting from or arising out of, directly or indirectly, the Owner's Representative's operations or performance in connection with this Agreement for the Project, including acts or omissions of the Owner's Representative's or its officers, employees, sub-consultants, invitees, contractors and agents.

I. Indemnification by Owner. The Owner agrees to release, defend, indemnify and save harmless the Owner's Representative, its officers, employees, sub-consultants, invitees, contractors and agents from any and all claims, damages, suits, costs, expenses, including reasonable attorney's fees and reasonable expert witness fees, liabilities, actions or proceedings of any kind or nature whatsoever, in any way directly resulting from or arising out of, the Owner's willful, wanton or grossly negligent performance in connection with this Agreement.

J. Notices. Notices concerning termination of this Agreement, notices of alleged or actual violations of the terms or provisions of this Agreement, and other notices shall be made to:

Owner:	Elbra Wedgeworth, DUSPA President c/o Hogan & Hartson LLP 1200 17 th Street, Suite 1500 Denver, Colorado 80202 Fax - 303.899.7333
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With a copy to:

Cole Finegan, Esq.
Hogan & Hartson LLP
1200 17th Street, Suite 1500
Denver, Colorado 80202
Fax – 303.899.7333

Dawn P. Bookhardt, Esq.
Bookhardt & O'Toole
999 18th Street, Suite 2500
Denver, Colorado 80202
Fax – 303.294.0723

Owner's Representative:

William E. Mosher
TC Denver Development, Inc.
1225 17th Street, Suite 3050
Denver, Colorado 80202
Fax - 303.628.1744

Said notices shall be delivered personally during normal business hours to the appropriate office, above, or by prepaid U.S. Certified Mail, Return Receipt Requested, delivered via overnight mail, or if such notice does not relate to a notice of default or notice of termination, by electronic transmission.. Mailed notices shall be deemed effective upon deposit with the U.S. Postal Service or delivery by overnight mail carriers. The parties may from time to time designate substitute addresses or persons where and to whom such notices are to be mailed or delivered but such substitutions shall not be effective until actual receipt of written notification of such substitution.

K. Disputes. The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between Owner's Representative and the President and Vice President of the Board of Directors of DUSPA and any other DUSPA director with authority to settle the controversy. Any person may give the other party written notice of any dispute not resolved in the normal course of business. The notice shall include a statement of the party's position and a summary of the rationale supporting that position. The

parties shall meet within 7 days after delivery of the notice at a mutually acceptable time and place to attempt to resolve the dispute. If the dispute has not been resolved by negotiation as provided herein within 7 days after delivery of the initial notice of negotiation, the parties shall endeavor to settle the dispute by mediation within [30] days following the negotiation. The parties shall select a mediator from a panel of distinguished neutrals or the Judicial Arbitrator Group (“JAG”). Should the mediation regarding resolution of such dispute be deemed inconclusive by either party, or if the dispute has not been resolved by nonbinding means as provided herein within [60] days of the initiation of such procedure, this Agreement does not preclude either party from initiating other means of dispute resolution, including court action. The parties agree that any proceeding, regardless of its nature, including, arbitration, mediation or court action, shall take place in Denver, Colorado.

L. Use, Possession or Sale of Alcohol, Drugs or Firearms. To help ensure a safe, productive work environment, it is the policy of the Owner to prohibit the use, transportation and possession of firearms, drugs and/or controlled substances, drug paraphernalia and alcoholic beverages on the Owner’s premises. Employees of the Owner’s Representative and its sub-consultants shall not perform services hereunder while under the influence of alcohol or any controlled substance, or while a measurable presence of alcohol or such substances has or can be shown by urine or blood test. Possession of a firearm by any employee of the Owner’s Representative while on the Owner’s site is strictly prohibited, including having a firearm in any vehicle parked at or driving over the site. The Owner specifically reserves the right to carry out reasonable searches of individuals, their personal effects, and vehicles when entering on or leaving the site. The searches will be initiated without prior announcement. Submission to such a search is strictly voluntary; however, refusal may be cause for not allowing that individual on

the job site. The Owner's Representative shall notify its employees and sub-consultants of these prohibitions and their enforcement.

M. Insurance. The Owner's Representative agrees to carry and maintain insurance as follows:

1. Insurance Requirements

a. The Owner's Representative shall secure and deliver to the Owner at the time of execution of this Agreement, and shall keep in force at all times during the term of this Agreement, a comprehensive liability policy, including public liability and property damage, covering all operations conducted under this Agreement, including the following minimum amounts:

(i) Business Automotive Liability Insurance or Comprehensive Auto Liability with a Combined Single Limit of \$2,000,000 each occurrence.

(ii) Commercial General Liability Insurance with a limit of \$2,000,000 each occurrence and in the aggregate.

b. The Commercial General Liability or Comprehensive Liability Coverage shall include blanket contractual liability and shall include the Owner and the City as additional insureds in a form acceptable to the Owner and the City, with primary and non-contributory coverage with respect to the Owner and the City.

c. The selected Owner's Representative and its sub-consultants shall carry and maintain sufficient Workers' Compensation Insurance on all employees to fully insure their responsibilities under Colorado law, and shall provide the Owner with certificates evidencing such coverage.

d. The selected Owner's Representative shall require in any contract with its sub-consultants that its sub-consultants provide and maintain insurance with the same coverage and limits of coverage required of the selected Owner's Representative by the Owner, as herein described and as evidenced by certificates of insurance. Alternatively, the selected Owner's Representative must provide a project specific policy which includes all of its sub-consultants in the coverage.

e. The selected Owner's Representative shall provide Waivers of Subrogation and Rights Recovery against the Owner and the City.

f. The selected Owner's Representative shall in addition carry and maintain Excess Liability in umbrella form to insure adequate performance of all activities under its agreement with the Owner in the amount of \$8,000,000 per claim and in the aggregate.

g. The certificates evidencing the existence of the policies set forth thereof, all in such form as the Owner may require, shall be delivered to the Owner upon execution of this Agreement. Each such certificate shall contain a valid provision or endorsement stating that the policy will not be canceled without the issuing company first endeavoring to provide thirty (30) days written notice to Denver Union Station Project Authority c/o Hogan & Hartson, 1200 17th Street, Suite 1500, Denver, Colorado 80202, as a certificate holder.

h. The insurance coverages required by this Agreement constitute the minimum requirements, but in no way lessen or limit the liability of the Owner's Representative. The Owner's Representative shall maintain, at its own expense, any additional kinds and amounts of insurance that it may deem necessary.

N. Effective Date. Notwithstanding the dates of execution of this Agreement, the parties agree that the effective date for this Agreement is January 1, 2009, and that all services performed subsequent to the effective date are subject to this Agreement. Any approved services performed prior to the effective date shall be paid upon receipt of invoice as specified herein.

O. Agreement as Complete Integration - Amendments. This Agreement is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other agreement properly executed by the parties. This Agreement and any amendments shall be binding upon the parties, their successors and assigns.

P. Examination of Records. The Owner's Representative agrees that any duly authorized representative of the Owner or the Partner Agencies, including the City Auditor, his employees and consultants, until the expiration of three (3) years after the final payment by the Owner under this Agreement, shall have access to, and the right to examine any directly pertinent books, documents, papers and records of the Owner's Representative involving transactions related to this Agreement.

Q. Paragraph 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.

R. Severability. It is understood and agreed by the parties hereto that if any part, term or provision of this Agreement, except for the provisions of this Agreement requiring that the Owner's liability is subject to funding and limiting the total amount to be paid by the Owner,

is held by a court of competent jurisdiction to be illegal or in conflict with any law of the State of Colorado, 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 the Agreement did not contain the particular part, term or provision held to be invalid.

S. Legal Authority.

1. The Owner's Representative assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement.

2. The person or persons signing and executing this Agreement on behalf of the Owner's Representative do hereby warrant and guarantee that he/she or they have been fully authorized by the Owner's Representative to execute this Agreement on behalf of the Owner's Representative and to validly and legally bind the Owner's Representative to all the terms, performances and provisions herein set forth.

3. The Owner shall have the right, at its option, either to temporarily suspend or to permanently terminate this Agreement if there is a dispute as to the legal authority (i) of the Owner's Representative to enter into this Agreement or (ii) of the person signing the Agreement on behalf of the Owner's Representative to so sign this Agreement.

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

U. Partnering Agency's Status. The Owner's Representative understands and acknowledges that (a) the relationship of the Partner Agencies and the Owner via the Project Agreements is that of an independent non-profit corporation that serves as an instrumentality of

the City of Denver and is not a relationship of partnership, joint venture, or principal agent and
(b) the City nor the remaining Partner Agencies have not undertaken nor have they assumed any
responsibility or duty to the Owner or any third party with respect to the Owner's obligations
relating to the Project or this Agreement.

**DENVER UNION STATION PROJECT
AUTHORITY**

ATTEST:

By: _____
Title: _____

By: _____
Title: _____

“OWNER”

**TC DENVER DEVELOPMENT, INC.
WILLIAM E. MOSHER**

ATTEST:

By: _____
Title: _____

By: _____
Title: _____

“OWNER’S REPRESENTATIVE”

EXHIBIT A

PART A - BASIC SERVICES SCOPE OF WORK

Preconstruction, beginning January 1, 2009:

- Review preliminary budget, schedule, and existing design and consulting agreements
- Meet with Owner to review project goals and assess progress toward immediate design/permitting and lending requirements
- Manage contract negotiations with Design Builder for design and engineering services to be contracted by Owner
- Review and assist with development of Owner's overall project budget
- Manage the selection and oversight of the consultant team including envelope, testing and inspection, acoustical and others as required
- Manage the development of an overall project milestone schedule
- Participate in design/permitting meetings with various governing agencies.
- Manage and provide tracking and reporting of the permit process
- Coordinate the provision of new utility services to the project, with the Contractor as required
- Review and critique general contractor estimates during design maturation
- Initiate and manage consultant review of mechanical and electrical design, engineering and budgets
- Attend design meetings to assure design effort proceeds as scheduled and in accordance with the Owner project goals. Provide interface between Owner and the design/consultant team to facilitate functional and operational related design decisions
- Provide monthly executive reports summarizing design and construction status, budget status, key owner decision milestones and risk assessment
- Manage contractor's budgeting effort to reflect current stage of documents
- Manage in-depth cost and value engineering effort
- Manage completion of construction documents, incorporating cost engineering decisions by Owner.
- Coordinate Owner requirements: schedule, budget, and risk management
- Coordinate RTD staff in accordance with RTD's DUS CM Staffing Plan dated April 24, 2009

During Construction:

- Continue/complete above efforts as required
- Manage initiation of construction effort
- Provide primary interface between Owner and the contractor
- Provide reporting and oversight of the construction budget and schedule
- Interface with Owner in maintaining the project budget, through periodic updating and incorporation of current information
- Facilitate changes to the design required by Owner
- Attend construction meetings with architect and Contractor
- Provide review and recommendation regarding Contractor's monthly pay application request
- Manage prompt resolution to construction/operational problems

- Coordinate timely A/E response to construction and design conflicts
- Quality control reporting
- Review change orders and make recommendations to Owner
- Support contractor coordination of on-going activities in the immediate downtown vicinity and interface with City of Denver to assure minimal disruption and positive relationship
- Manage the purchase and timely delivery of Owner provided FF&E to facilitate Contractor's construction schedule and occupancy dates
- Oversee Contractor's occupancy inspections effort, startup and owner training effort, and project closeout
- Carry out actions as required by DUSPA/City Project Coordination Agreement
- Carry out actions as required by DUSPA/RTD Initial Funding, Reimbursement and Project Coordination Agreement
- Coordinate RTD staff in accordance with RTD's DUS CM Staffing Plan dated April 24, 2009
- Carry out actions as required by DUSPA/RTD/CDOT Funding Agreement
- Coordinate DUSPA's financial controls and DUSPA required reporting of federal funds with RTD and CDOT
- Coordinate with RTD and CDOT regarding DUSPA's reporting of uses of federal funds and preparation of DUSPA reports
- Manage document control in respect of DUSPA administrative documentation and activities
- Coordinate Owner's, Design Builder's and Partner Agencies' public involvement points of contact and/or personnel
- Coordinate DUSPA's overall Project DBE aspirational goal efforts

Monthly Deliverables by Owner's Representative to Owner During Construction in such forms as to be agreed upon:

- * Financial Reports
- * Progress Report on delivered design services (until complete)
- * Progress Report on Critical Issues
- * Progress Report on appropriated funds
- * Progress Report on funds expended
- * Progress Report on delivered construction services
- * Progress Report on completed construction services

PART B - ITEMS EXCLUDED FROM SCOPE OF SERVICES

- Document control of RTD and CDOT documentation in accordance with federal requirements
- Document archiving of RTD and CDOT documentation in accordance with federal requirements
- Secretarial and support staff necessary for document control, document archiving and direct reporting to Federal Agencies to be conducted by RTD and/or CDOT
- Management of DBE programs and process
- Safety compliance
- Preparation of requests for federal funds
- Preparation of billing submittals for federal draws

EXHIBIT B
RESPONSIBILITY MATRIX

EXHIBIT C

ACCOUNTING ACTIVITY FORM

EXHIBIT D

CERTIFICATIONS AND FEDERAL REQUIREMENTS

Lobbying

The Owner's Representative certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.

Access to Records and Reports

The following access to records requirements apply to this Agreement:

1. The Owner's Representative agrees to provide the Owner, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Owner's Representative which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Owner's Representative also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Owner's Representative's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. Where the Owner is a State and is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Owner's Representative agrees to provide the Owner, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Owner's Representative's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.

3. Where the Owner enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Owner's Representative agrees to provide the Owner, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Owner's Representative which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where any Owner which is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Owner's Representative shall make available records related to the contract to the Owner, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. The Owner's Representative agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. The Owner's Representative agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Owner's Representative agrees to maintain same until the Owner, the FTA Administrator, the Comptroller General, or any of their

duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

7. FTA does not require the inclusion of these requirements in subcontracts.

Federal Changes

Owner's Representative shall at all times comply with all applicable federal regulations, policies, procedures and directives as they may be amended or promulgated from time to time during the term of this contract as they are communicated to Owner's Representative by any of the Partner Agencies or Owner.

No Government Obligation to Third Parties

(1) The Owner and Owner's Representative acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Owner, Owner's Representative, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Owner's Representative agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Program Fraud and False or Fraudulent Statements and Related Acts

(1) The Owner's Representative acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Owner's Representative certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Owner's Representative further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Owner's Representative to the extent the Federal Government deems appropriate.

(2) The Owner's Representative also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. §

5307(n)(1) on the Owner's Representative, to the extent the Federal Government deems appropriate.

(3) The Owner's Representative agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Government-Wide Debarment and Suspension (Nonprocurement)

This Agreement is a covered transaction for purposes of 49 CFR Part 29. As such, the Owner's Representative verifies that none of the Owner's Representative, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Owner's Representative shall comply with 49 CFR 29, Subpart C and agrees to include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing this Agreement, the Owner's Representative certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Owner. If it is later determined that the Owner's Representative knowingly rendered an erroneous certification, in addition to remedies available to Owner, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Owner's Representative agrees to comply with the requirements of 49 CFR 29, Subpart C throughout the period of this Agreement or any contract that may arise therein. The Owner's Representative further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Disadvantaged Business Enterprise (DBE)

1. This Agreement is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. DUSPA's overall aspirational Project goal for DBE participation is [12%]. A separate contract goal has not been established for this Agreement.

2. The Owner's Representative shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Owner's Representative shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the Owner's Representative to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such

other remedy as DUSPA deems appropriate. Each subcontract the Owner's Representative signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).

[3. ***{If a separate contract goal has been established for a contract, use the following}*** Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following **[concurrent with and accompanying sealed bid] [concurrent with and accompanying an initial proposal] [prior to award]**:

- a. The names and addresses of DBE firms that will participate in this contract;
- b. A description of the work each DBE will perform;
- c. The dollar amount of the participation of each DBE firm participating;
- d. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
- e. Written confirmation from the DBE that it is participating in the contract as provided in the prime Owner's Representative's commitment; and
- f. If the contract goal is not met, evidence of good faith efforts to do so.]

Incorporation of Federal Transit Administration (FTA) Terms

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Owner's Representative shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

EXHIBIT E
PROJECT BUDGET

EXHIBIT F

RTD'S DUS CM STAFFING PLAN DATED APRIL 24, 2009