SUMMARY OF DOCUMENTS FOR DISTRIBUTION

FOR DUSPA FINANCE COMMITTEE MEETING

1. The City Contingent Commitment Agreement (the "CCC Agreement") among the City, DUSPA and the Trustee creates a moral obligation of the City to replenish the Subordinate Debt Service Reserve Fund up to the Subordinate Debt Service Reserve Fund Minimum (as defined therein) from legally available funds of the City. DUSPA will reimburse the City for any payments made under this Agreement, with interest, from amounts available in the Surplus Fund. DUSPA will not be in default if it is unable to make such payments due to insufficient funds on deposit in the Surplus Fund. The CCC Agreement does not create any general obligation or other indebtedness or multiple fiscal year direct or indirect debt or other financial obligation of the City. This Agreement will terminate when no Subordinate Obligation is outstanding as defined in the Indenture. **Board Action:** The Board must (i) adopt a resolution authorizing DUSPA to reimburse the City for payments made under this Agreement; and (ii) approve this Agreement and to execute as a party thereto pursuant to the direction of the Finance Committee.

2. The CDOT/DUSPA/RTD SB-001 Funding Agreement between the aforementioned parties creates an assignment from RTD to DUSPA in state SB 97-001 funds previously awarded to RTD. Such funds will initially be used by DUSPA to pay the Credit Subsidy Fee for the TIFIA loan, subject to CDOT's review and approval of the Master Indenture's and of the DUSPA/RTD Funding Agreement's conformity with the terms of this Agreement. DUSPA is required to reallocate such funds into a separate Credit Subsidy Fee Account to fund Approved Project Element costs pursuant to the terms of this Agreement. **Board Action:** The Board must approve this Agreement and execute as a party thereto pursuant to the direction of the Finance Commitee.

3. The First Amendment to the Denver Union Station Plan of Development Cooperation Agreement (the "First Amendment") between the City and the DDA amends the original Denver Union Station Plan of Development Cooperation Agreement dated as of May 5, 2009 (the "Original Cooperation Agreement") wherein the City promised to pay Incremental Sales Tax and Property Tax Revenues to the DDA in repayment of certain undertakings of the DDA. The First Amendment replaces the definition of "DUS Project Mill Levy" to reduce the number of mills to not less and not more than 20 mills and replaces the definition of "Pledged DDA Revenues" to specifically exclude the Cherry Creek Subarea BID Incremental Property Tax Revenues from such Pledged DDA Revenues. The First Amendment adds the definitions "Cherry Creek Subarea BID Incremental Property Tax Revenues" and "Cherry Creek Subarea BID." The First Amendment also replaces section 4.1(a) of the Original Cooperation Agreement to provide for the additional use of Pledged DDA Revenues to pay Cherry Creek Subarea

BID Incremental Property Tax Revenues to the Cherry Creek Subarea BID. **Board Action:** The Board must provide its consent to the Amendment to the Original Agreement, pursuant to the direction of the Finance Committee.

4. The DUSPA/DDA Pledge Agreement between DUSPA and the DDA provides for the DDA's pledge of Incremental Sales and Property Tax Revenues to DUSPA for payment of Obligations issued by DUSPA to finance the DUS Project. This Agreement has been amended by changing the definition of "Pledged DDA Revenues" to include provision for the Cherry Creek Subarea BID and by adding the contact information of the parties. **Board Action:** The Board must approve this Agreement and execute as a party thereto pursuant to the direction of the Finance Committee.

5. The Temporary Amtrak Platform and Commuter Rail Tracks License Agreement between the City and DUSPA grants to DUSPA a non-exclusive, revocable license to own, operate, construct, maintain, repair and replace Work, including existing and new tracks, platform, canopies, fencing, utility facilities, etc., as listed in Exhibit A hereto. This license applies to a parcel of land lying in the Southwest Quarter of Section 27 and the Southeast Quarter of Section 28, Township 3 South, Range 68 West of the 6th Principal Meridian being more particularly described in Exhibit B hereto. The license expires March 31, 2014 or on such other date approved by the Manager of Public Works. **Board Action:** The Board must approve this Agreement and execute as a party thereto pursuant to the direction of the Finance Committee.

# CONTINGENT COMMITMENT AND SERVICES AGREEMENT

AMONG

THE CITY AND COUNTY OF DENVER, COLORADO

THE DENVER UNION STATION PROJECT AUTHORITY

AND

ZIONS FIRST NATIONAL BANK, AS TRUSTEE

Dated: _____, 2010

THIS CONTINGENT COMMITMENT AND SERVICES AGREEMENT (the "Agreement"), dated as of _____day of _____, 2010, by and among the CITY AND COUNTY OF DENVER, COLORADO (the "City"), a home-rule city and a municipal corporation of the State of Colorado, the DENVER UNION STATION PROJECT AUTHORITY ("DUSPA"), a Colorado nonprofit corporation and instrumentality of the City and ZIONS FIRST NATIONAL BANK (together with its successors and assigns is referred to herein as "TRUSTEE"), a national banking association with an office in Denver, Colorado.

WHEREAS, the City is a home rule city and a municipal corporation duly organized and existing under and pursuant to Article XX of the Colorado Constitution and the charter of the City (the "Charter"); and

WHEREAS, DUSPA is a Colorado nonprofit corporation and instrumentality of the City created pursuant to Ordinance No. 334, Series of 2008, for the purposes of financing, acquiring, owning, equipping, designing, constructing, renovating, operating, maintaining and taking such other action as necessary with respect to the DUS Project; and

WHEREAS, the DUS Project is a joint and cooperative undertaking among the City and County of Denver (CCD), the Regional Transportation District (RTD), Colorado Department of Transportation (CDOT), and the Denver Regional Council of Governments (DRCOG) for the purpose of establishing at Denver Union Station a multimodal transportation hub for the city, region, and state, and such entities have proceeded with planning, zoning, financing and developing the project over the last eight years; and

WHEREAS, the City is cooperating with RTD, CDOT and DRCOG to finance, construct, operate and maintain a sustainable, multi-modal hub for the region's transit system, including facilities for light rail, passenger rail, commuter rail, regional and commercial buses, bicycles, taxis, and pedestrians and to incorporate private mixed use development on and around the DUS site; and

WHEREAS, in support of the DUS Project, the City Council of the City (the "Council") has approved a Plan of Development (the "DUS Plan") for the area included in the Denver Downtown Development Authority (the "DDA"), by authority of Ordinance No. 723, Series 2008, including the 19.5-acre DUS site and surrounding properties; and

WHEREAS, DUSPA, in connection with the borrowings by DUSPA from two U.S. Department of Transportation loan programs to finance the transportation elements of the DUS Project (collectively, the "DOT Loans"), has requested that the City provide a contingent commitment to support the repayment of one of such DOT Loans; and

WHEREAS, to secure the repayment of the DOT Loans, DUSPA and Trustee propose to enter into the Indenture (as defined herein); and

WHEREAS, in further support of the DUS Project, and in consideration of DUSPA's financing of certain transportation infrastructure elements in accordance with the DUS Plan through the DOT Loans, and in consideration of the benefits to be derived by the City and its inhabitants as a result of the completion of the DUS Project, the City deems it appropriate to provide to DUSPA the requested contingent commitment to replenish a certain reserve fund established under the Indenture in connection with one of the DOT Loans, to the extent and upon the terms set forth herein ; and

WHEREAS, DUSPA has agreed to repay to the City any funds paid by the City to replenish such reserve fund, on the terms and from the sources specified herein.

NOW, THEREFORE, in consideration of the foregoing recitals, and the following terms and conditions, the City and DUSPA hereby agree as follows:

## ARTICLE 1. DEFINITIONS

Section 1.01 Definitions. The terms defined in the recitals of this Agreement shall have the meanings set forth therein wherever used in this Agreement. In addition, for all purposes of this Agreement, the following terms shall have the meanings set forth below.

"Business Day" has the meaning assigned to it in the Indenture.

"City Payments" means payments made by the City to Trustee in accordance with Section 2.01 hereof.

"Fiscal Year" means the fiscal year of the City, which commences on January 1 of each calendar year and ends on December 31 of the same calendar year.

"Indenture" means the Master Trust Indenture and any supplements and amendments thereto to be entered into by DUSPA and the Trustee with respect to the Obligations.

"Interest Rate" means 5.25 percent per annum.

"Obligations" has the meaning assigned to it in the Indenture.

"Subordinate Debt Service Reserve Fund" has the meaning assigned to it in the Indenture.

"Subordinate Debt Service Reserve Fund Minimum" has the meaning assigned in the Indenture.

"Subordinate Obligations" has the meaning assigned to it in the Indenture.

"Surplus Fund" has the meaning assigned to it in the Indenture.

"Reimbursement Payments" means payments made by DUSPA to the City in accordance with Section 2.03 hereof.

ARTICLE II
FINANCING MATTERS

Section 2.01 City Payments. Within 90 days after the City's receipt of the Written Notice of a draw on the Subordinate Debt Service Reserve Fund as provided in Section 2.02 hereof, the City shall, subject to the provisions of Section 2.04 hereof, replenish the Subordinate Debt Service Reserve Fund, up to the Subordinate Debt Service Reserve Fund Minimum, from legally available funds of the City. City Payments shall be made directly to Trustee for deposit in the Subordinate Debt Service Reserve Fund in immediately available funds by wire transfer pursuant to the instructions set forth in the Written Notice. Each City Payment and its date shall be reflected on the grid attached hereto as Exhibit A. Upon making an entry in Exhibit A, the City shall promptly provide a revised Exhibit A to DUSPA and to the Trustee.

Section 2.02 Required Notices. At least sixty (60) days prior to an interest and/or principal payment date for the Subordinate Obligations, Trustee shall notify the City and DUSPA in writing as to whether there are adequate funds on deposit with Trustee under the Indenture, together with any payments scheduled to be deposited with the Trustee prior to such payment date, to make such interest and/or principal payment without making a draw on the Subordinate Debt Service Reserve Fund, and if such draw would be required, stating the anticipated amount of such draw. Within five (5) Business Days following a draw on the Subordinate Debt Service Reserve Fund, Trustee shall notify the City and DUSPA in writing (the "Written Notice") of such draw, stating the amount of the draw and instructions for making the City Payment.

Section 2.03 Reimbursement Payments. DUSPA shall reimburse the City for the amount of all City Payments paid by the City pursuant to this Agreement, together with interest on the unpaid balance of such City Payments at the Interest Rate until paid; provided however, that the Reimbursement Payment shall be made solely from amounts that are on deposit in the Surplus Fund and are available for such purpose in accordance with the provisions of the Indenture. There shall be no default by DUSPA if it fails to make a Reimbursement Payment

due to the insufficiency of funds on deposit in the Surplus Fund for such purpose. Each Reimbursement Payment shall be memorialized as an entry on a grid attached to this Agreement as Exhibit A. Upon making an entry in Exhibit A, the City shall promptly provide a revised Exhibit A to DUSPA and to the Trustee.

Section 2.04 Appropriation. The City and DUSPA acknowledge and agree that the City Payments shall constitute currently appropriated expenditures of the City. The City's obligation with respect to the City Payments shall not create a general obligation or other indebtedness or multiple fiscal year direct or indirect debt or other financial obligation of the City within the meaning of its Charter or any constitutional debt limitation, including Article X, Section 20 of the Colorado Constitution. Neither this Agreement nor the issuance of the Obligations shall obligate or compel the City to make City Payments beyond those appropriated in the City's sole discretion. Notwithstanding the foregoing, the City hereby agrees that the City's Office of Budget and Management shall seek an appropriation by the Council after receiving the Written Notice in amounts sufficient to pay all City Payments required under this Agreement and in time to make the payment within 90 days as provided in Section 2.01 hereof, it being the intent of the City hereunder that the decision to appropriate or not appropriate the City Payments from the City's general fund pursuant to this Agreement shall be made by the Council acting by ordinance without compulsion and solely in the City's discretion.

Section 2.05 Termination of the City's Payment Obligations. The obligations of the City to make City Payments under this Agreement shall terminate automatically on the date on which no Subordinate Obligation, including any Obligations issued to refund such Subordinate Obligation, is Outstanding within the meaning of the Indenture.

## ARTICLE III
## MISCELLANEOUS

Section 3.01 Acknowledgment of the Pledge of City Payments. City hereby acknowledges and agrees that the City Payments will be pledged by DUSPA to the Trustee pursuant to the Indenture for the benefit of the owners of the Subordinate Obligations.

Section 3.02 Amendments and Waivers. No amendment or waiver of any provision of this Agreement, nor consent to any departure herefrom, in any event, shall be effective unless the same shall be in writing and signed by the parties hereto, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. This Agreement may be modified, amended, changed or terminated, in whole or in part, without City Council approval unless City Council approval is required by the City Charter.

Section 3.03 Notices. All notices, certificates, or other communications given hereunder shall be deemed sufficiently given on the third day following the day on which the same have been mailed by first class, postage prepaid, addressed to the City and County, the DUSPA, Trustee, as the case may be, at the address set forth for such party below. The City, the DUSPA, and the Trustee may, by notice given hereunder, designate any different addresses to which subsequent notices, certificates, or other communications shall be sent.

If to the City: City and County of Denver
Mayor
1437 Bannock Street
Denver, Colorado 80202

With copies to:

Manager of Finance
City and County of Denver
201 W. Colfax Avenue
Department 1010
Denver, Colorado 80202

and

City Attorney
City and County of Denver
1437 Bannock Street
Suite 353
Denver, Colorado 80202

If to DUSPA: Attention: President
c/o Cole Finegan, Hogan & Hartson, LLP
1200 17th Street, Suite 1500
Denver, Colorado 80202

With copies to:

Attention: Dawn Bookhardt
Bookhardt & O'Toole
999 18th Street, Suite 2500
Denver, Colorado 80202

Attention: Cole Finegan
Hogan & Hartson, LLP
1200 17th Street, Suite 1500
Denver, Colorado 80202

If to Trustee: Zions First National Bank
Attn: Corporate Trust
1001 17th Street, Suite 1050
Denver, Colorado 80202

Section 3.04 Governing Law. This agreement shall be governed by, and construed in accordance with, the laws of the State of Colorado and shall be subject to the limitations, if any, that are applicable under the Charter or ordinances of the City on the date hereof.

Section 3.05 Headings. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 3.05 Counterparts, Effectiveness. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective upon approval of the Council and upon all required signatures of the City, DUSPA and Trustee.

Section 3.06 Severability. In case any one or more of the provisions contained in this Agreement should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. Furthermore, if any amendment to this Agreement should be invalid, illegal or unenforceable in any respect, the validity and enforceability of the Agreement as in effect prior to such amendment shall not in any way be affected or impaired thereby. The parties shall endeavor in good faith negotiations to replace the invalid, illegal, or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal, or unenforceable provisions.

IN WITNESS WHEREOF, the parties hereto have here unto set their hand and affix their seals at Denver, Colorado as of the day first above written.

**ATTEST:**

_____
STEPHANIE Y. O'MALLEY, Clerk and Recorder,
*Ex-Officio Clerk* of the City and County of Denver

**CITY AND COUNTY OF DENVER:**
**a Colorado Municipal Corporation**

_____
JOHN W. HICKENLOOPER, Mayor

**RECOMMENDED AND APPROVED:**

_____
Manager of Finance

**APPROVED AS TO FORM:**

DAVID R. FINE
City Attorney for the City and County of Denver

By: _____
Assistant City Attorney

**REGISTERED AND COUNTERSIGNED:**

By: _____
Manager of Finance

Contract Control No. _____

By: _____
Auditor

**"CITY"**

DENVER UNION STATION PROJECT AUTHORITY

ATTEST:

By: _____

Name: _____
Title: _____

By: _____

Name: _____
Title: _____

_____

ZIONS FIRST NATIONAL BANK,
as Trustee

_____

By: _____

_____

Name: _____
Title: _____

_____

EXHIBIT A

SCHEDULE OF CITY PAY MENTS AND REIMBURSEMENT PAYMENTS

| Date | Amount of City Payment from City to Trustee | Amount of Reimbursement Payment from DUSPA to City | Unpaid balance of City Payments | Accrued Interest | Notation Made By |
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**Draft 2010-01-07**
PROJECT DEMO ____-___, (_____)
REGION 06 / (GWH)

**CONTRACT**

THIS AGREEMENT is made this _____ day of _____, 2010, by and between the STATE OF COLORADO for the use and benefit of THE DEPARTMENT OF TRANSPORTATION, 4201 E. Arkansas Avenue, Denver, CO 80222 (hereinafter referred to as "***CDOT***"), the DENVER UNION STATION PROJECT AUTHORITY, a Colorado non-profit corporation, c/o Trammell Crow Company, 1225 17th Street, #3050, Denver, CO 80202 (hereinafter referred to as "***DUSPA***") and the REGIONAL TRANSPORTATION DISTRICT, 1600 Blake Street, Denver, CO 80202 (hereinafter referred to as "***RTD***"). CDOT, DUSPA and RTD are collectively referred to as the "Parties."

**FACTUAL RECITALS**

1. Authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient uncommitted balance thereof remains available for payment of project and DUSPA costs in Fund Number 400, Appropriation Code 010, Organization Number 9991, Program 2000, Functions 3404 & 3020 & 3301, GL Acct. 4231200011, WBS Elements XXXXX.10.40, XXXXX.10.30 and XXXX.20.10, (Contract Encumbrance Amount: Environmental $XXX.00, Design $XXX.00, Construction $XXX.00; Total Encumbrance $XXX.00).

2. Any required approval, clearance and coordination have been accomplished from and with appropriate agencies with respect to funds that have been budgeted, appropriated and otherwise made available for the Denver Union Station ("***DUS***") projects as described in the Scope of Work attached as Exhibit A hereto (the "***Project***").

3. CDOT, DUSPA and RTD desire to enter into this Agreement to establish general provisions with respect to the contracting, oversight and funding for work on the Project using:

a. State funding from the S.B. 97-001 10% for Transit Program (the "S.B. 97-001");

b. RTD local match funding;

c. RTD FasTracks bond proceeds;

~~d.~~4. Other funds that may be secured including federal Railroad Rehabilitation and Improvement Financing ("***RRIF***"), Transportation Infrastructure Finance and Innovation Act ("***TIFIA***") funds;

~~e.~~a. Tax increment financing and revenue bonds or other sources; and

~~f.~~b. In order to facilitate funding of the Project and other elements of the DUS Overall Project (those elements of the overall DUS project, in addition to those described in Exhibit A hereto are referred to herein as the "***DUS Overall Project***"), DUSPA will enter into a Master Trust Indenture by and between DUSPA and Zions First National Bank, as Trustee (the "***Master Indenture***").

~~4.~~5. Pursuant to Title I, Subtitle A, Section 1108 of the "Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users" ("***SAFETEA-LU***") of 2005 and to applicable provisions of Title 23 of the United States Code and implementing regulations at Title 23 of the Code of Federal Regulations, as may be amended (collectively referred to hereinafter as the "***Federal Provisions***"), certain federal funds have been and will in the future be allocated for transportation projects at DUS. These projects are eligible to receive funding under the State Transportation Improvement Program that has been approved by the Federal Highway Administration ("***FHWA***"), hereinafter referred to as the "***Program***."

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~~5.~~6. The City and County of Denver ("***CCD***") is identified to receive $16.88 million in state funds from CDOT in the S.B. 97-001 program in support of the DUS development by Transportation Commission Resolution Number TC-1455. CCD, by letter dated January 11, 2007, has assigned the funding to RTD. RTD, by this Agreement, further assigns its rights to the S.B. 97-001 funds to DUSPA. By this Agreement, CDOT asserts its right to assign, and DUSPA asserts its right to assume the responsibilities as project sponsor, including providing required matching funds of $4.22 million in local funding. DUSPA will receive these S.B. 97-001 funds pursuant to and in accordance with the terms set forth in this Agreement with CDOT. The matching ratio for this state funding is 80% state funds to 20% local funds ("***20% local match***"). The release of these state funds is contingent upon meeting the terms described in Recital paragraph 11 below.

~~6.~~7. On June 30, 2008, the Denver City Council adopted the DUSPA Ordinance which authorized the creation of DUSPA as a non-profit public corporation governed by a Board comprised of thirteen directors, eight of whom (six voting and two non-voting) are appointed by the Mayor of Denver, two of whom are appointed by RTD, one of whom is appointed by CDOT, one of whom is appointed by the Denver Regional Council of Governments and one of whom is a appointed by the DUS Metropolitan District No. 1. DUSPA's purpose is to finance, acquire, own, equip, design, construct, renovate, operate and maintain the DUS project as such project is described in the Final Environmental Impact Statement for DUS dated August 2008 ("***FEIS***") and in the Record of Decision dated October 17, 2008 ("***ROD***"), together with undertaking other improvements beyond the FEIS and ROD, including DUS renovation, storm sewer design and construction and public plaza improvements. DUSPA is currently designated as the entity to

handle day-to-day operations with regard to the DUS development on behalf of the public entities including RTD, CCD and CDOT.

~~7.~~8. DUS property is under ownership of RTD. If further right-of-way or permanent real property interests are acquired for the DUS project, all provisions of the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 USC 4601, et seq., will apply.

~~8.~~9. CDOT has also entered into a Master IGA dated April 12, 2004 with RTD for the FasTracks program, with DUS being the common termini for most of the rail corridors and principal transfer points to bus and interstate bus/rail travel.

~~9.~~10. The DUS FEIS has been prepared with the Federal Transit Administration ("***FTA***") designated as the federal lead agency.

~~10.~~11. The U.S. Department of Transportation ("***DOT***") will require a Major Project Financial Plan ("***Plan of Finance***"), or equivalent financial document acceptable to DOT, and a Project Management Plan for this Project including documentation of any assumed revenues from RRIF and TIFIA loan programs. DUSPA and CCD have agreed that responsibility for preparing, submitting and securing approval of that Plan of Finance or equivalent document will be DUSPA's and CCD's. DUSPA and CCD have also agreed to provide the Plan of Finance, or equivalent financial document, to CDOT for review prior to submitting it to the DOT for final consideration. Approval of any such required Plan of Finance, or equivalent financial document and Project Management Plan by DOT is a prerequisite for the release to DUSPA of any state funding from CDOT under this Agreement. DUSPA and RTD have provided a completed Project Management Plan which the FTA, on behalf of DOT, approved on _____ _____.

~~11.~~12. DUSPA has developed an internal draft finance plan for the coverage of Project costs and revenues (the "***DUS Plan of Finance***"). The DUS Plan of Finance provides several revenue sources for payment of Project costs, including the $16.88 million in S.B. 97-001 revenue. DUSPA is pursuing, as part of its DUS Plan of Finance, a low-interest TIFIA loan from the DOT. The TIFIA loan, if approved, will require upon closing the immediate payment of a credit subsidy fee of approximately $15 million (the "***Credit Subsidy Fee***"). The Credit Subsidy Fee payment may only be made with non-federal funds. The S.B. 97-001 funds are the most liquid and readily available state and local funds from which to pay the Credit Subsidy Fee.

~~12.~~13. The Colorado Transportation Commission by Resolution Number 1782 adopted on October 15, 2009, has authorized the use of up to $16.88 million of the S.B. 97-001 funding for payment of the Credit Subsidy Fee for the TIFIA loan with the following conditions:

a. No disbursement of the S.B. 97-001 funds for payment of the Credit Subsidy Fee shall occur until DOT approves the Plan of Finance.

b. The S.B. 97-001 funds made available for the Credit Subsidy Fee will subsequently be reallocated by DUSPA to fund costs related to those Project elements that have been previously approved by the Transportation Commission ("***Approved Project Elements***"), including Optimization of Downtown Circular Access, Final Design and construction of the Commuter Rail Facility and Final Design and construction of RTD's Regional Bus Facility as shown on Exhibit A. DUSPA shall ensure that as other local funds become available, they will be substituted for the S.B. 97-001 funds used for payment of the Credit Subsidy Fee, so that the Approved Project Elements shall ultimately be funded with the $16.88 million in S.B. 97-001 moneys and the appropriate local matching funds.

c. CDOT will be provided the opportunity to review and approve the Master Indenture and the DUSPA/RTD Funding Agreement to ensure that such documents support the timely reallocation of S.B. 97-001 funds to pay for the Approved Project Elements.

**NOW, THEREFORE, IT IS HEREBY AGREED THAT**:

**The recitals set forth above are incorporated into this Agreement by reference.**

***Section 1.*** **Assignment to DUSPA of State S.B. 97-001 Funds**

1. RTD, as the grant recipient of state S.B. 97-001 funds, described above in Recital 6~~5~~, hereby assigns all of its right, title and interest in such funds to DUSPA. DUSPA is hereafter the designated recipient of the state S.B. 97-001 funds for the DUS Project.

2. DUSPA hereby assumes all of the right, title and interest in and to such state S.B. 97-001 funds described above in Recital 7~~6~~ and as such funds are assigned by RTD.

***Section 2.*** **Credit Subsidy Fee and Scope of Work**

1. The S.B. 97-001 funds shall be used by DUSPA initially for payment of the Credit Subsidy Fee for the TIFIA loan, subject to the following condition:

a. No disbursement of the S.B. 97-001 funds for payment of the Credit Subsidy Fee shall occur until DOT approves the Plan of Finance and CDOT has reviewed and approved the Master Indenture and the DUSPA/RTD Funding Agreement to ensure that such documents support the timely reallocation of S.B. 97-001 funds to pay for the Approved Project Elements.

2. The S.B. 97-001 funds made available for the Credit Subsidy Fee will subsequently be reallocated by DUSPA to fund Approved Project Element costs, including Optimization of Downtown Circular Access, Final Design and construction of the Commuter

Rail Facility, and Final Design and construction of RTD's Regional Bus Facility as shown on Exhibit A, the DUS Scope of Work. The requirement is that the Approved Project Elements shall ultimately be funded with the $16.88 million in S.B. 97-001 moneys, combined with the correct local match. DUSPA will reallocate funds to accomplish this as it receives sufficient other local funds as specified in the Master Indenture and the DUSPA/RTD Funding Agreement.

3. The DUS Scope of Work for eligible activities to be funded under this Agreement is attached as Exhibit A. Exhibit A reflects the DUS Project scope as agreed to by DUSPA and CDOT at the time of signing of this Agreement.

4. Any change orders that impact the DUS Project scope as set forth in Exhibit A and cause changes to them, shall follow the process set forth in the "***Change Order Procedures***" document executed by DUSPA, RTD and CCD with respect to the design-build contract for the DUS Project. Any proposed alterations to the Scope of Work contained in Exhibit A, which ~~specifies~~affects the Approved Project Elements, will require approval by the Transportation Commission and an amendment to Exhibit A.

5. Right-of–way may be purchased by RTD as necessary to complete the Scope of Work identified in Exhibit A. If right-of-way or other permanent real property interest is to be acquired, all provisions of the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act listed further in this Agreement will apply to all real estate acquired to be used for the Project.

***Section 3.*** **Roles and Responsibilities**

1. DUSPA is responsible for:

   a. Ensuring completion of the Work.

b. Obtaining and complying with all applicable permits and building requirements in completing the Work.

c. Coordinating with CDOT and RTD regarding compliance with all state requirements for the use of S.B. 97-001 funding.

~~c.~~d. Providing CDOT with a draft of the Master Indenture for its review and approval prior to its adoption so that CDOT can ensure that it supports the timely reallocation of other local funds to allow for their as SB97-001 funds to pay for the approved project elements.

~~d.~~e. Preparing, submitting and securing approval of any required Project Plan of Finance and Project Management Plan which may be a prerequisite for receiving state S.B. 97-001 funding, including, but not limited to, documentation of any assumed revenues from the RRIF or TIFIA loan programs as well as other local funds dedicated to the completion of the Project.

~~e.~~f. Coordinating with all involved entities.

~~f.~~g. Preparing and submitting invoices to CDOT for work completed consistent with Section 7 of this Agreement. The invoices must detail charges for reimbursement from S.B. 97-001 funding and document the appropriate contribution of local matching funds required for use of the S.B. 97-001 funds.

~~g.~~h. Preparing and submitting progress reports with each invoice to CDOT that include, at a minimum, the following:

(i) Percentage completion of each element of the Approved Project Elements;

(ii) Percentage of funding expended on the Approved Project Elements;

(iii) Any encountered or anticipated cost increases, the reason for any cost increases, a plan for completing the Approved Project Elements in spite of cost increases;

(iv) Progress in completing the Approved Project Elements, an explanation of any delays to meeting milestones for completing the Approved Project Elements; and

(v) The plan for addressing any schedule delays or cost increases for the Approved Project Elements.

~~h.~~i. Ensuring that a certified Professional Engineer registered in Colorado review and approve all final design plans and construction documents for this Project.

~~i.~~j. Coordinating with CDOT for any change orders to the Scope of Work (Exhibit A) as provided in Section 2.3 and Section 2.4 above and assisting CDOT with presenting those changes requiring Commission approval to the Commission.

2. CDOT is responsible for:

a. Reviewing and processing invoices submitted by DUSPA in a manner consistent with Section 7 of this Agreement and consistent with all applicable federal and state rules.

b. Coordinating with and providing guidance to DUSPA, as needed, regarding DUSPA's responsibilities as set forth in Section 3 herein.

c. Coordinating with and providing guidance to DUSPA to allow DUSPA to comply with all state requirements for the use of S.B 97-001 funding.

3. RTD is responsible for:

a. Coordinating with and providing guidance to DUSPA, as needed, regarding DUSPA's responsibilities as set forth in Section 3 herein.

***Section 4.*** **Order of Precedence**

In the event of conflicts or inconsistencies between this Agreement and its exhibits, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

a. Special Provisions contained in Section 23 of this Agreement;

b. This Agreement;

c. Exhibit A (Scope of Work);

d. Exhibit C (Funding Provisions);

e. Exhibit D (Local Agency Billing format); and

f. Other Exhibits in descending order of their attachment.

***Section 5.*** **Term**

This Agreement will be effective upon approval of the State Controller or designee, or on the date made, whichever is later. The term of this Agreement shall continue through the completion and final acceptance of the Project as defined in Exhibit A by DUSPA, CCD, CDOT, FTA and RTD.

***Section 6.*** **Project Funding Provisions**

[DUSPA shall provide its entire share of the 20% local match for the S.B. 97-001 funding for the Project as outlined in Exhibit C at the time DUSPA commences construction of the Approved Project Elements, as set forth in Exhibit A hereto. **QUESTION**: Does this mean the local match for any Approved Project Element or for the entire Approved Project Elements as a

whole? See, Section 7(7)(a).] Answer: I am not sure that there is a "clean" sequencing of the work on the three approved project elements so I would like to ensure that the entire match is available. We can work on this element: an alternative to funding the SB97-001 reallocation is as follows: When an invoice for payment with SB97-001 reallocated funds is submitted, 80% of the allowable expenses will be reimbursed with documentation that the balance was paid with other local funds.

***Section 7.*** **Project Payment Provisions**

1. The State will reimburse DUSPA for the state share of the Project charges after the state's review and approval of such charges, subject to the terms and conditions of this Agreement, after DUSPA has expended the funds attributable to the Credit Subsidy Fee as provided in Section 7.3 below. The reimbursement will be based upon certification by a member of CDOT staff designated as Project Manager and DUSPA's Owner's Representative or designee.

2. For S.B. 97-001 funds, the state will provide DUSPA with the funds necessary for payment of the Credit Subsidy Fee subject to the conditions set forth in paragraph 1 of Section 2 herein. To the extent that less than all of the S.B. 97-001 funds are utilized for the Credit Subsidy Fee, CDOT will apply the remaining funds to reimburse DUSPA's reasonable, allocable, allowable costs of performance of the Work completed solely on the Approved Project Elements subsequent to signing this Agreement and subsequent to receiving federal authorization, including approval of a Plan of Finance, not exceeding the maximum total amount described in Exhibit C. No expenses incurred prior to designation as a participating project are eligible for reimbursement other than the payment of the Credit Subsidy Fee.

3. The following principles shall govern the costs submitted for reimbursement to CDOT or paid with funds representing the reallocation of the Credit Subsidy Fee under this Agreement. DUSPA shall comply with all such principles. To be eligible for reimbursement, costs by DUSPA shall be:

a. Consistent with the Scope of Work as defined in Exhibit A;

b. In accordance with the provisions of Exhibit C and with the terms and conditions of this Agreement;

c. Necessary for the accomplishment of the Work;

d. Reasonable in the amount for the goods and services provided;

e. Actual net cost to DUSPA (i.e., the price paid minus any refunds, rebates or other items of value received by DUSPA that have the effect of reducing the cost actually incurred);

f. Incurred for Work performed after the effective date of this Agreement;

g. Are only for the portion of the costs eligible for the state match after deducting the local matching share; and

h. Satisfactorily documented. Satisfactory documentation shall include:

(i) Proof of payment: Cancelled checks or Cash or General Ledger showing payment;

(ii) Payroll: Timesheets that reflect time worked and salary or hourly pay;

(iii) Payroll Journal reflecting the time worked and salary or hourly pay; and

(iv) Expenditures: Expenditure ledger displaying the accounting coding of all incurred expenditures that are being billed, copies of invoices from vendors with proper approvals.

4. DUSPA shall establish and maintain a proper accounting system in accordance with generally accepted accounting standards (a separate set of accounts, or as a separate and integral part of its current accounting scheme) to assure that Project funds are expended and costs accounted for in a manner consistent with this Agreement and Project objectives.

a. All allowable costs charged to the Project, including any approved services contributed by DUSPA or others, shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers evidencing in detail the nature of the charges.

b. Any check or order drawn up by DUSPA, including any item which is or will be chargeable against the Project account shall be drawn up only in accordance with a properly signed voucher or electronic payment then on file in the office of DUSPA, which will detail the purpose for which said check or order is drawn. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents shall be clearly identified, readily accessible, and to the extent feasible, kept separate and apart from all other such documents.

5. DUSPA will prepare and submit to CDOT, no more than monthly, invoices showing charges for costs incurred relative to the Project. CDOT will reimburse DUSPA for eligible costs it has incurred on the Project as defined in this Agreement. DUSPA's invoices shall include a description of the amounts of services performed, the dates of performance and the amounts and description of reimbursable expenses. The invoices will be prepared in

accordance with CDOT's standard policies, procedures and standardized billing format attached hereto and made a part hereof as Exhibit D.

6. To be considered for payment, billings for payment pursuant to this Agreement must be received within 60 days after the period for which payment is being requested and final billings on the contract must be received by CDOT within 60 days after the end of the contract term.

a. Payments pursuant to this Agreement shall be made as earned, in whole or in part, from available funds, encumbered for the purchase of the described services. The liability of CDOT, at any time, for such payments shall be limited to the amount remaining of such encumbered funds.

b. In the event this Agreement is terminated, final payment to DUSPA may be withheld at the discretion of CDOT until completion of final audit.

c. Incorrect payments to DUSPA due to omission, error, fraud or defalcation shall be recovered from DUSPA by deduction from subsequent payment under this Agreement between CDOT and DUSPA.

d. Any costs incurred by DUSPA that are not allowable under the Common Grant Rule shall be reimbursed by DUSPA, or offset against current obligations due by CDOT to DUSPA, at CDOT's election.

7. The S.B. 97-001 funds disbursed by CDOT for payment of the Credit Subsidy Fee shall be reallocated by DUSPA following closing of the Plan of Finance to pay for the costs of constructing the Approved Project Elements (Exhibit A), as follows:

a. Any and all funds allocated with respect of the payment of the Credit Subsidy Fee shall be placed in an separate account under the Construction Period

Retained Revenue Fund of the Master Indenture (the "***Credit Subsidy Fee Account***"). ~~and DUSPA shall be allowed to release such funds to be applied to costs associated with~~ Disbursements from this account shall occur ~~constructing the Approved Project Elements and~~ pursuant to a requisition process consistent with the provisions of paragraph 3 of this Section 7. This process ~~and which~~ shall: (i) be mutually agreed to between the Parties; (ii) require the approval of CDOT representatives; and (iii) demonstrate the proper provision of the required 20% local match as the Approved Project Elements are constructed (iv) be solely for work performed on the Approved Project Elements.

b. The Parties agree that this process shall incorporate sufficient documentation so that any audit may track the proper expenditure of such funds, including the proper provision of the required 20% local match.

c. Any interest DUSPA earns on the Credit Subsidy Fee Account will be counted toward the total $16.88 million allocation approved for the Project by the Transportation Commission.

d. Subsequent to the expenditure of the initial moneys used to support the Credit Subsidy Fee, CDOT shall reimburse DUSPA with any remaining S.B. 97-001 money over and above the Credit Subsidy Fee following receipt of proper documentation and net of any interest income DUSPA may earn on the interest in the Credit Subsidy Fee Account.

e. Funds shall be released from the Credit Subsidy Fee Account only after the Credit Subsidy Fee Account is fully funded in an amount equal to the moneys applied to the payment of the Credit Subsidy Fee.

f. If, for any reason, the Project is terminated and funds remain in the Credit Subsidy Fee Account, all such remaining funds shall be returned to CDOT.

By way of example, if CDOT applies $12 million in S.B. 97-001 moneys for payment of a Credit Subsidy Fee, as funds become available under the Master Indenture, DUSPA would place $12 million of such funds into the Credit Subsidy Fee Account. As the Approved Project Elements (Exhibit A) are constructed, DUSPA would provide the 20% local match and receive reimbursement of the 80% out of the Credit Subsidy Fee Account until the $12 million is expended. After the $12 million is expended, CDOT would reimburse DUSPA with the remaining $4.88 million in S.B. 97-001 moneys following receipt of proper documentation less any interest income DUSPA may have earned on the Credit Subsidy Fee Account.

***Section 8.*** **Applicable Labor Rates**

It is understood that all labor and mechanics employed by DUSPA, the Master Developer or subcontractors to work on construction projects financed by federal assistance must be paid wages not less than those established for the locality of the Project by the Secretary of Labor under the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). It is also understood that construction undertaken with federal financial assistance must comply with the provisions in Exhibit B attached hereto. The Parties recognize that although this Agreement deals solely with state S.B. 97-001 funds, the DUS Project will receive significant federal assistance that will require compliance with federal requirements. CDOT agrees to assist DUSPA in fulfilling its federal compliance requirements with respect to this Agreement.

***Section 9.*** **Record Keeping Requirement**

DUSPA shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and to make such materials available for inspection at all reasonable times during the contract period and for 3 years from the date of final payment by CDOT. Copies of such records shall be furnished by DUSPA if requested. DUSPA shall, during all phases of the Work, permit duly authorized agents and employees of CDOT to inspect the Project and to inspect, review and audit the Project records.

***Section 10*. Termination Provisions**

This Agreement may be terminated as follows:

1. Termination for Convenience. The Parties may terminate this Agreement at any time the Parties determine that the purposes of the distribution of moneys under this Agreement would no longer be served by completion of the Project. The Parties shall effect such termination by the terminating party giving written notice of termination to the non-terminating party, and specifying the effective date thereof, at least ninety (90) days before the effective date of such termination.

2. Termination for Cause. If, through any cause, either party should fail to fulfill, in a timely and proper manner, its obligations under this Agreement, or if either party should violate any of the covenants, agreements or stipulations of this Agreement, the non-violating party shall thereupon have the right to terminate this Agreement for cause by giving written notice to the violating party of its intent to terminate and at least ten (10) days opportunity to cure the default or show cause why termination is otherwise not appropriate. In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports or other material prepared by DUSPA under this Agreement shall, at the option of CDOT, become its property, and DUSPA shall be entitled to receive just

and equitable compensation for any services and supplies delivered and accepted. DUSPA shall be obligated to return any unused payments advanced under the provisions of this Agreement.

Notwithstanding the above, the violating party shall not be relieved of liability to the non-violating party for any damages sustained by the non-violating party by virtue of any breach of this Agreement by the violating party, and the non-violating party may withhold payment or services to the violating party for the purposes of mitigating its damages until such time as the exact amount of damages due to the non-violating party from the violating party is determined.

If after such termination it is determined, for any reason, that the violating party was not in default or that the violating party's action/inaction was excusable, such termination shall be treated as a termination for convenience, and the rights and obligations of the Parties shall be the same as if the Agreement had been terminated for convenience, as described herein.

3. Loss of Funding. The Parties hereto expressly recognize that DUSPA is to be paid, reimbursed or otherwise compensated with state funds which are available to CDOT for the purposes of contracting for the Project provided for herein, and therefore, DUSPA expressly understands and agrees that all its rights, demands and claims to compensation arising under this Agreement are contingent upon availability of such funds to CDOT. The Parties hereto agree that in the event that state funds made available for this Project are less than the amounts reflected in Exhibit C, the Scope of Work as defined in Exhibit A will be completed regardless of the shortfall, although such Scope of Work may be reduced or modified in correlation to such shortfall.

***Section 11*. Legal Authority**

DUSPA and RTD warrant that they possess the legal authority to enter into this Agreement and that they have taken all actions required by their procedures, by-laws and/or

applicable law to exercise that authority, and to lawfully authorize their undersigned signatories to execute this Agreement and to bind DUSPA and RTD to its terms. The persons executing this Agreement on behalf of DUSPA and RTD warrant that such persons have full authorization to execute this Agreement.

***Section 12*. Representatives and Notice**

CDOT Region 6 (acting on behalf of CDOT) will provide liaison with DUSPA through the CDOT Project Manager. Said Project Manager will also be responsible for coordinating CDOT's activities under this Agreement and will also issue a "Notice to Proceed" to DUSPA for commencement of the Work. All communications relating to the day-to-day activities for the Work shall be exchanged between the CDOT Project Manager and DUSPA. All communication, notices and correspondence shall be addressed to the individuals identified below. Either party may from time to time designate in writing new or substitute representatives.

If to CDOT:

Gary Gonzales
CDOT FasTracks Liaison
1560 Lincoln Street, #700
Denver, CO 80202
(303) 299-6905

If to DUSPA:

Mike Sullivan
Project Manager
1225 17th Street, #3050
Denver, CO 80202
(303) 628-1719

With copies to:

Hogan & Hartson
Attention: Cole Finegan
1225 17th Street, #1500
Denver, CO 80202
(303) 899-7300

Bookhardt & O'Toole
Attention: Dawn Bookhardt
999 18th Street, #2500
Denver, CO 80202
(303) 294-0204

If to RTD:

***Section 13.*** **Assignments and Successors**

Except as herein otherwise provided, this Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns. Any assignment of this Agreement by DUSPA to another entity shall be subject to CDOT's prior written approval. Any such assignment shall not relieve DUSPA of responsibility for compliance with state and federal requirements with respect to the use of federal and state funds.

***Section 14.*** **Third Party Beneficiaries**

It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to CDOT, RTD and DUSPA. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of CDOT and DUSPA that any such person or entity, other than CDOT or DUSPA receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

***Section 15.*** **Governmental Immunity**

Notwithstanding any other provision of this Agreement to the contrary, no term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions of the Colorado Governmental Immunity Act, § 24-10-101, et seq., C.R.S., as now or hereafter amended. The Parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of CDOT, DUSPA or RTD, their officials and employees are controlled and

limited by the provisions of § 24-10-101, et seq., C.R.S., as now or hereafter amended and the risk management statutes, §§ 24-30-1501, et seq., C.R.S., as now or hereafter amended.

***Section 16.*** **Severability**

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

***Section 17.*** **Waiver**

The waiver of any breach of a term, provision or requirement of this Agreement shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision or requirement.

***Section 18.*** **Entire Understanding**

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 by writing. No subsequent notation, renewal, addition, deletion or other amendment hereto shall have any force or effect unless embodied in a writing, executed and approved pursuant to the State Fiscal Rules.

***Section 19.*** **Survival of Contract Terms**

Notwithstanding anything herein to the contrary, the Parties understand and agree that all terms and conditions of this Agreement and the exhibits and attachments hereto which may require continued performance, compliance or effect beyond the termination date of this

Agreement shall survive such termination date and shall be enforceable by CDOT as provided herein in the event of such failure to perform or comply by DUSPA.

***Section 20.*** **Modification and Amendment**

This Agreement is subject to such modifications as may be required by changes in federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this contract on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this Agreement shall be effective unless agreed to in writing by all parties in an amendment to this Agreement that is properly executed and approved in accordance with applicable law.

***Section 21.*** **Disputes**

Dispute Resolution. The Parties shall resolve disputes regarding all items in this Agreement at the lowest staff level possible. The escalation process shall be:

a. The Project Manager for DUSPA and the CDOT Liaison to the Project.

b. CDOT's Region 6 Regional Transportation Director and DUSPA's Owner's Representative.

c. The CDOT Executive Director and the DUSPA President.

d. The Transportation Commission and the DUSPA Board.

Resolution of any dispute that may result in loss of future funds or request for return of funds by any federal agency including FTA or FHWA shall require concurrence by the appropriate federal agency(ies) in addition to DUSPA and CDOT and shall not be binding until concurrence is obtained.

***Section 22.*** **Equal Opportunity Efforts**

DUSPA acknowledges that it is in the best interest of the people of Colorado to promote and encourage the full inclusion of underutilized groups and communities in projects funded by the DOT modal agencies, including employees, businesses and the traveling public. DUSPA agrees to incorporate into the Project programs, systems and monitoring processes to ensure equal opportunity in all aspects of the Project. Such programs/monitoring processes include the Disadvantaged Business Enterprise Program, On-the-Job Training Program, Emerging Small Business Program, Americans with Disabilities Act and EEO Contract Compliance. DUSPA further agrees to utilize the resources of CDOT's Center for Equal Opportunity, including its local agency manual at:

http://www.dot.state.co.us/DesignSupport/Local%20Agency%20Manual/2006%20Local%20Agency%20Manual/2006%20Local%20Agency%20Manual.htm

In addition, DUSPA shall not discriminate on the basis of race, color, national origin or sex in the award and performance of this Project.

Since DUSPA is receiving DOT funds through CDOT for use with the Project, all funds will be subject to DOT Civil Rights requirements pursuant to 49 CFR, 23 CFR, 28 CFR, and the Civil Rights Act of 1964 Titles VI and VII and their implementing regulation.

***Section 23.*** **Special Provisions**

These Special Provisions apply to all contracts except where noted in *italics*.

1. Controller's Approval. CRS §24-30-202(1). This Agreement shall not be valid until it has been approved by the Colorado State Controller or designee.

2. Fund Availability. CRS §24-30-202(5.5). Financial obligations of the state payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available.

3. Governmental Immunity. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

4. Independent Contractor. Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the state. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the state and the state shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. Contractor shall not have authorization, express or implied, to bind the state to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the state, and (c) be solely responsible for its acts and those of its employees and agents.

5. Compliance With Law. Contractor shall strictly comply with all applicable federal and state laws, rules and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

6. Choice of Law. Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Agreement, to the extent capable of execution.

7. Binding Arbitration Prohibited. The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Agreement or incorporated herein by reference shall be null and void.

8. Software Piracy Prohibition. Governor's Executive Order D 002 00. State or other public funds payable under this Agreement shall not be used for the acquisition, operation or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Agreement and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the state determines that Contractor is in violation of this provision, the state may exercise any remedy available at law or in equity or under this Agreement, including, without limitation, immediate termination of this Agreement and any remedy consistent with federal copyright laws or applicable licensing restrictions.

9. Employee Financial Interest/Conflict of Interest. CRS §§24-18-201 and 24-50-507. The signatories aver that to their knowledge, no employee of the state has any personal or beneficial interest whatsoever in the service or property described in this Agreement. Contractor

has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

~~Harry, so do these two items VENDOR OFFSET and Public Contracts need to be removed?~~

10. Vendor Offset. CRS §§24-30-202 (1) and 24-30-202.4. **[*Not Applicable to intergovernmental agreements*]** Subject to CRS §24-30-202.4 (3.5), ***the State Controller may withhold payment under*** the state's vendor offset intercept system for debts owed to state agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the state as a result of final agency determination or judicial action.

11. Public Contracts for Services. CRS §8-17.5-101. **[Not Applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services]** Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Agreement, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into a contract with a subcontractor that fails to certify to

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Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. Contractor (a) shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed, (b) shall notify the subcontractor and the contracting state agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this Agreement, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this Agreement for breach and, if so terminated, Contractor shall be liable for damages.

12. Public Contracts With Natural Persons. CRS §24-76.5-101. Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this Agreement.

**SIGNATURE PAGE**

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year above written.

**Denver Union Station Project Authority**

By: _____
Elbra Wedgeworth, President

Approved as to Legal Form

_____
DUSPA Legal Counsel

**State of Colorado, Department of Transportation**

By: _____
Russell George, Executive Director

Approved as to Legal Form

_____
Colorado Attorney General

**Regional Transportation District**

By: _____
Phil Washington, General Manager

Approved as to Legal Form

_____
Marla L. Lien, General Counsel

**ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER**

CRS 24-30-202 requires that the State Controller approve all state contracts. This Agreement is not valid until the State Controller, or such assistant as he may delegate, has signed it. The contractor is not authorized to begin performance until this Agreement is signed and dated below. If performance begins prior to the date below, the State of Colorado may not be obligated to pay for goods and/or services provided.

**State Controller**
**David McDermott**

By: _____

**EXHIBIT A**

**SCOPE OF WORK**

Scope of Eligible Activities for S.B. 97-001 10% for Transit Funding. Costs shown are estimates and include local match. Allowable line item costs may be modified with prior written approval by the CDOT project manager.

| *Goal* | *Element* | *Cost* |
|---|---|---|
| Optimize downtown circulator access to the underground regional bus facility at the intersection of 18th and Wynkoop | Acquire right-of-way for 18th St access and design and construct the bus access ramp. | $4.2 M |
| | | |
| Commuter rail facility | Final design and construction of commuter rail facility. | $8.9M |
| | | |
| Relocate Market Street Station bus facility to DUS. | Final Design and construction of below-grade RTD bus facility. | $8.0 M |
| | | |
| | | $21.1 M total |

Completion of contract obligations will occur when all facilities listed in this Project Scope of Work, consistent with the NEPA decision document are constructed. Costs in excess of the funding provided by this Agreement are to be paid by other revenue sources.

# EXHIBIT B

FHWA-1273 Electronic version – March 10, 1994
FHWA Form 1273

## REQUIRED CONTRACT PROVISIONS
## FEDERAL-AID CONSTRUCTION CONTRACTS



### I. GENERAL

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.

3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.

4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:

Section I, paragraph 2;
Section IV, paragraphs 1, 2, 3, 4, and 7;
Section V, paragraphs 1 and 2a through 2g.

5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.

6. **Selection of Labor:** During the performance of this contract, the contractor shall not:

a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or

b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

### II. NONDISCRIMINATION

(Applicable to all Federal-aid construction contracts and to all related subcontracts of $10,000 or more.)

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630 and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.

b. The contractor will accept as his operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, preapprenticeship, and/or on-the-job training."

2. **EEO Officer:** The contractor will designate and make known to the SHA contracting officers an EEO Officer who

will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.

3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)

c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.

5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a. reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

6. **Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

7. **Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will

use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.

8. **Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.

b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.

c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.

9. **Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and

(4) The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

b. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data.

**III. NONSEGREGATED FACILITIES**

(Applicable to all Federal-aid construction contracts and to all related subcontracts of $10,000 or more.)

a. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of $10,000 or more and that it will retain such certifications in its files.

**IV. PAYMENT OF PREDETERMINED MINIMUM WAGE**

(Applicable to all Federal-aid construction contracts exceeding $2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

1. **General:**

a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

2. **Classification:**

a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.

b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:

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

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

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

(4) with respect to helpers, when such a classification prevails in the area in which the work is performed.

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

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

e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

3. **Payment of Fringe Benefits:**

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

b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program,

provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

4. **Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:**

a. Apprentices:

(1) Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate listed in the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

(3) Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(4) In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

b. Trainees:

(1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration.

(2) The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(3) Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.

(4) In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Helpers:

Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under a approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

5. **Apprentices and Trainees (Programs of the U.S. DOT):**

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

6. **Withholding:**

The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, as much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the SHA contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

7. **Overtime Requirements:**

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

8. **Violation:**

Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of $10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

9. **Withholding for Unpaid Wages and Liquidated Damages:**

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

**V. STATEMENTS AND PAYROLLS**

(Applicable to all Federal-aid construction contracts exceeding $2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

1. **Compliance with Copeland Regulations (29 CFR 3):**

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

2. **Payrolls and Payroll Records:**

a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.

b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.

c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or

subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;

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

(3) that each laborer or mechanic has been paid not less that the applicable wage rate and fringe benefits or cash equivalent for the classification of worked performed, as specified in the applicable wage determination incorporated into the contract.

e. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.

f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

**VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR**

1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than $1,000,000 (23 CFR 635) the contractor shall:

a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.

b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.

c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.

2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

**VII. SUBLETTING OR ASSIGNING THE CONTRACT**

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635).

a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

**VIII. SAFETY: ACCIDENT PREVENTION**

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and

protective equipment and take any other needed actions as it determines, or as the SHA contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

**IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

**NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS**

18 U.S.C. 1020 reads as follows:

*"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or*

*Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or*

*Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;*

*Shall be fined not more than $10,000 or imprisoned not more than 5 years or both."*

**X. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

(Applicable to all Federal-aid construction contracts and to all related subcontracts of $100,000 or more.)

By submission of this bid or the execution of this contract, or subcontract, as appropriate, the bidder, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.

3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

**XI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

1. **Instructions for Certification - Primary Covered Transactions:**

(Applicable to all Federal-aid contracts - 49 CFR 29)

a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary

participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.

f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.

I. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Primary Covered Transactions**

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and

d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

2. **Instructions for Certification - Lower Tier Covered Transactions:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions of $25,000 or more - 49 CFR 29)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal

is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

I. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions:**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

**XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS OR LOBBYING**

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed $100,000 - 49 CFR 20)

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. 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 any Federal 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.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal 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.

2. 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. 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.

3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such recipients shall certify and disclose accordingly.

**EXHIBIT C**

**FUNDING PROVISIONS**

The Recipient of Federal and State Funds has estimated the total cost of the Work to be $21,100,000.00 which is to be funded as follows:

| | | | |
|---|---|---|---|
| **1** | **BUDGETED FUNDS** | | |
| | a. State Funds (FY06 S.B. 97-001 @ 80% of FAB463) | $4,220,000.00 | |
| | b. State Funds (FY07 S.B. 97-001 @ 80% of FAB463) | $12,660,000.00 | |
| | Total State Funds | | $16,880,000.00 |
| | c. Local Match (FY06 S.B. 97-001 @ 20% of FAB463) | $1,055,000.00 | |
| | d. Local Match (FY07 S.B. 97-001 @ 20% of FAB463) | $3,165,000.00 | |
| | Total Recipient of Federal and State Funds Matching Funds | | $4,220,000.00 |
| | e. Recipient of Federal and State Funds Matching for CDOT – Incurred Non-Participating Costs (Including Non-Participating Indirects) | | $0.00 |
| | TOTAL BUDGETED FUNDS | | $21,100,000.00 |
| **2** | **ESTIMATED CDOT-INCURRED COSTS** | | |
| | a. State Share (80% of Participating Costs) | | $0.00 |
| | b. Local Share | | |
| | Recipient of Federal and State Funds Share of Participating Costs | $0.00 | |
| | Non-Participating Costs (Including Non-Participating Indirects) | $0.00 | |
| | Estimated to be Billed to Recipient of Federal and State Funds | | $0.00 |
| | TOTAL ESTIMATED CDOT-INCURRED COSTS | | $0.00 |
| **3** | **ESTIMATED PAYMENT TO RECIPIENT OF FEDERAL AND STATE FUNDS** | | |
| | a. State Funds Budgeted (1b) | | $16,880,000.00 |
| | b. Less Estimated Federal Share of CDOT-Incurred Costs (2a) | | $0.00 |
| | TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY | | $16,880,000.00 |

| | | | | |
|---|---|---|---|---|
| **FOR CDOT ENCUMBRANCE PURPOSES** | | | | |
| Total Encumbrance Amount $16,880,000.00divided by 80%) | | | | $21,100,000.00 |
| Less ROW Acquisition 3111 and/or ROW Relocation 3109 | | | | $0.00 |
| Net to be encumbered as follows: | | | | $21,100,000.00 |
| Misc | 2312 1P | | 3404 | $21,100,000.00 |
| Const | 2312 1P | | 3301 | $0.00 |

1. The matching ratio for the state participating funds for this project is 80% State Funds for S.B. 97-001 funds as outlined above. It is understood that such ratio applies only to the $21,100,000.00 that is eligible for state participation, it is further understood that all non-participating costs are borne by the Recipient of these State Funds at 100%. If the total participating cost of performance of the Work exceeds $21,100,000.00, the Recipient shall pay all such costs. If the total participating cost of performance of the Work is less than $21,100,000.00, then the amounts of state funds will be decreased in accordance with the funding ratio described herein.

2. The maximum amount payable to the Recipient under this Agreement shall be $16,880,000.00 (for CDOT accounting purposes, the State Funds of $16,880,000.00 and local matching funds of $4,220,000.00 will be encumbered for a total encumbrance of $21,100,000.00). It is understood and agreed by the Parties hereto that the total cost of the Work stated hereinbefore is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and that such cost is subject to revisions (in accordance with the procedure in the previous sentence) agreeable to the Parties prior to bid and award.

3. The Parties hereto agree that this Agreement is contingent upon all funds designated for the Project herein being made available from State Funds sources, as applicable. Should these sources, or State Funds, fail to provide necessary funds as agreed upon herein, this Agreement may be terminated by either party, provided that any party terminating its interest and obligations herein shall not be relieved of any obligations which existed prior to the effective date of such termination or which may occur as a result of such termination.

**EXHIBIT D**

**LOCAL AGENCY BILLING FORMAT**

SECTION I. CONTRACT DATA

Local Agency: _____ Project No. _____

Address: _____

Employer (FEIN) ID Number: _____ Project Location _____

Invoice Number and Date: _____

% Completed:_____ Subaccount No._____

BASIC AND/OR SUPPLEMENTAL CONTRACT TOTAL: $_____

Federal Share $_____

Local Agency Share $_____

State Share $_____

Prior Period Billing Amount: $

Current Billing Period : From:_____ To: _____

SECTION II. INCURRED COSTS

DIRECT LABOR: (List individually)

| Employee Name | Classification | Regular Hours | Direct Hourly Rate $ | Overtime Hours* | Cost $ |
|---|---|---|---|---|---|
| | | | | | |

| | Current This Period | Total to Date |
|---|---|---|
| SUBTOTAL – DIRECT LABOR | | |
| BENEFITS _____% OF DIRECT LABOR | $_____ | $_____ |
| OTHER DIRECT COSTS (In-House) | $_____ | $_____ |
| List individually-at actual cost; Mileage (miles x $), CADD (hrs. x $), Equip rental (hrs. x $), etc. | $_____ | $_____ |
| OUTSIDE SERVICES (Consultants & Vendors) (List individually) (To be in this same format- attach copies of invoices) | $_____ | $_____ |

TOTAL COSTS CURRENT PERIOD: $_____

TOTAL COSTS TO DATE: $_____

SECTION III. BILLING

TOTAL BILLING CURRENT PERIOD

(_____% OF TOTAL COSTS): $_____

Prior Billing: $_____

I certify that the billed amounts are actual and in agreement with the contract terms.

Signature Title Date

**DRAFT**
McGEADY SISNEROS, P.C.
January 8, 2010

# FIRST AMENDMENT TO DENVER UNION STATION PLAN OF DEVELOPMENT COOPERATION AGREEMENT

THIS FIRST AMENDMENT TO DENVER UNION STATION PLAN OF DEVELOPMENT COOPERATION AGREEMENT ("First Amendment to Agreement") is entered into as of this ____ day of _____, 2010, by and between the DENVER DOWNTOWN AUTHORITY, a body corporate and duly organized existing as a downtown development authority under the laws of the State of Colorado ("DDA") and the CITY AND COUNTY OF DENVER, a municipal corporation organized and operating as a home-rule city under the laws of the State of Colorado ("City").

## RECITALS

WHEREAS, the DDA and the City entered into that certain Denver Union Station Plan Of Development Cooperation Agreement dated as of May 5, 2009 ("City/DDA Cooperation Agreement"); and

WHEREAS, the City/DDA Cooperation Agreement is one of several agreements related to the financing and construction of the DUS Project Improvements (as defined in the City/DDA Cooperation Agreement); and

WHEREAS, Section 6.3 of the City/DDA Cooperation Agreement requires the consent of the Denver Union Station Project Authority to any amendments which have an adverse affect on the Pledged DDA Revenues (as defined in the City/DDA Cooperation Agreement); and

WHEREAS, the DDA and the City now desire to amend the City/DDA Cooperation Agreement to conform the definition of "DUS Project Mill Levy" therein with the definition of such term used in other agreements related to the financing and construction of the DUS Project Improvements.

NOW, THEREFORE, in consideration of the promises and mutual agreements set forth herein, the benefits of which will inure to each party and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the DDA and the City agree as follows:

## AGREEMENT

**Section 1.1** Any capitalized term used but not defined herein shall have the meaning ascribed to in the City/DDA Cooperation Agreement.

**Section 1.2** Section 1.1 of the City/DDA Cooperation Agreement is hereby amended by the deletion of the definition of "DUS Project Mill Levy" and replacement of such definition in its entirety with the following:

"DUS Project Mill Levy" means a mill levy in an amount of not less and not more than 20 mills. The DUS Project Mill Levy may be adjusted to take into account legislative or constitutionally imposed adjustments in assessed values or their method of calculation so that, to the extent possible, the actual revenues generated by the DUS Project Mill Levy are neither diminished nor enhanced as a result of such changes.

**Section 1.3** Section 1.1 of the City/DDA Cooperation Agreement is hereby amended by the deletion of the definition of "Pledged DDA Revenue" and replacement of such definition in its entirety with the following:

"Pledged DDA Revenues" means the Incremental Sales Tax Revenues and the Incremental Property Tax Revenues less (i) the CPV District Incremental Property Tax Revenues; (ii) the DUS District Incremental Property Tax Revenues in excess of the DUS Project Mill Levy Incremental Property Tax Revenues; and (iii) the Cherry Creek Subarea BID Incremental Property Tax Revenues.

**Section 1.4** Section 1.1 of the City/DDA Cooperation Agreement is hereby amended by the addition of the following definition of Cherry Creek Subarea BID Incremental Property Tax Revenues:

"Cherry Creek Subarea BID Incremental Property Tax Revenues" means Incremental Property Tax Revenues produced by the Property Tax imposed by the Cherry Creek Subarea BID.

**Section 1.5** Section 1.1 of the City/DDA Cooperation Agreement is hereby amended by the addition of the following definition of Cherry Creek Subarea BID:

"Cherry Creek Subarea BID" means Cherry Creek Subarea Business Improvement District, a quasi-municipal corporation and political subdivision of the State of Colorado.

**Section 1.6** Section 4.1(a) of the City/DDA Cooperation Agreement is hereby amended by the deletion of the entire section and replacement of such section in its entirety with the following:

**Section 4.1** Use of Incremental Tax Revenues; Use of Pledged DDA Revenues.

(a) Use of Incremental Tax Revenues. In carrying out activities, including financing activities, related to DUS Project Improvements pursuant to the DUS Plan and this City/DDA Cooperation Agreement, payable in whole or in part from Incremental Sales Tax Revenues and Incremental Property Tax Revenues, or either of them as provided for herein, the DDA is authorized to make (i) the payment of CPV Metropolitan District Incremental Property Tax Revenues to the CPV Metropolitan District pursuant to the CPV Metropolitan District Cooperation Agreement, (ii) the payment of DUS District Incremental Property Tax Revenues less the DUS Project Mill Levy Incremental Property Tax

Revenues to DUS District No. 1 pursuant to the DDA/DUS Districts Cooperation Agreements, (iii) the payment of the Cherry Creek Subarea BID Incremental Property Tax Revenues to the Cherry Creek BID pursuant to the Cherry Creek Subarea Business Improvement District Cooperation Agreement; and (iii) the payment of Pledged DDA Revenues to DUSPA pursuant to the DUSPA/DDA Pledge Agreement.

**Section 1.7** Except as expressly provided herein, all other terms and conditions contained in the City/DDA Agreement shall remain in full force and effect.

**[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]**

IN WITNESS WHEREOF, the parties hereto have here unto set their hand and affix their seals at Denver, Colorado as of the day first above written.

**ATTEST:**

STEPHANIE Y. O'MALLEY, Clerk and Recorder,
*Ex-Officio Clerk* of the City and County of Denver

**CITY AND COUNTY OF DENVER:**
**a Colorado Municipal Corporation**

JOHN W. HICKENLOOPER, Mayor

**RECOMMENDED AND APPROVED:**

Manager of Finance

Manager of Public Works

**APPROVED AS TO FORM:**

DAVID R. FINE
City Attorney for the City and County of Denver

By: _____
Assistant City Attorney

**REGISTERED AND COUNTERSIGNED:**

By: _____
Manager of Finance

Contract Control No. _____

By: _____
Auditor

**"CITY"**

**ATTEST:**

By: _____
Name: _____
Title: _____

**DENVER DOWNTOWN**
**DEVELOPMENT AUTHORITY**

By: _____
Name: _____
Title: _____

**"DDA"**

The undersigned hereby consents to this First Amendment to Denver Union Station Plan of Development Cooperation Agreement as required by Section 6.3 of the City/DDA Cooperation Agreement.

Date: _____, 2010

DENVER UNION STATION PROJECT AUTHORITY

[SEAL]

Attest:_____ By:_____

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# DENVER UNION STATION TAX INCREMENT AREA PLEDGE AGREEMENT

**AMONG**

**DENVER DOWNTOWN DEVELOPMENT AUTHORITY (DDA),**

**DENVER UNION STATION PROJECT AUTHORITY (DUSPA),**

**AND**

**ZIONS FIRST NATIONAL BANK (TRUSTEE)**

---

**Dated as of _____ 1, 2010**

**DENVER UNION STATION TAX INCREMENT AREA**
**PLEDGE AGREEMENT**

**THIS PLEDGE AGREEMENT** (this "**Pledge Agreement**"), dated as of _____ 1, 2010, by and among **DENVER DOWNTOWN DEVELOPMENT AUTHORITY** (the "**DDA**"), a body corporate duly organized and existing as a downtown development authority under the laws of the State, **DENVER UNION STATION PROJECT AUTHORITY** ("**DUSPA**"), a Colorado nonprofit corporation and instrumentality of the City and **ZIONS FIRST NATIONAL BANK**, as Trustee (the "**Trustee**"), a national banking association, having an office in Denver, Colorado.

**W I T N E S S E T H:**

A. Capitalized terms used and not defined herein shall have the meaning assigned to them in Article I hereof; and

B. DUSPA is a Colorado nonprofit corporation and instrumentality of the City created as a constituted authority for the purposes of financing, acquiring, owning, equipping, designing, constructing, renovating, operating, maintaining and taking such other action as necessary with respect to the DUS Project; and

C. The DDA is a body corporate and has been duly created, organized, established and authorized by the City to transact business and exercise its powers as a downtown development authority, all under and pursuant to the DDA Act, the DUS Plan and the City/DDA Cooperation Agreement; and

D. The City adopted the DUS Plan under and pursuant to the DDA Act; and

E. In accordance with the DUS Plan and the DDA Act, the DDA is authorized to undertake development and redevelopment projects and activities within the DUS Plan Area and to finance such projects and activities in part by utilization of certain Incremental Property Tax Revenues and Incremental Sales Tax Revenues; and

F. At an election of the qualified electors of the DDA, duly called and held on November 4, 2008, in accordance with law and pursuant to due notice, a majority of those qualified to vote and voting at such election voted in favor of the DDA incurring multiple fiscal year direct or indirect debt or other financial obligations, including by entering into and performing under this Pledge Agreement.

G. At an election of the qualified electors of the DDA, duly called and held on November 4, 2008, in accordance with law and pursuant to due notice, a majority of those qualified to vote and voting at such election voted to approve the following ballot questions:

BALLOT ISSUE IB:

SHALL THE DENVER DOWNTOWN DEVELOPMENT AUTHORITY (THE "AUTHORITY"), OR THE CITY AND COUNTY OF DENVER FOR USE OF

THE AUTHORITY, AND AS A VOTER-APPROVED REVENUE CHANGE, BE AUTHORIZED TO INCUR ANY MULTIPLE FISCAL YEAR DIRECT OR INDIRECT DEBT OR OTHER FINANCIAL OBLIGATION, PARTICULARLY CONTRACTUAL AGREEMENTS, INCLUDING INTERGOVERNMENTAL AGREEMENTS, AND OTHER OBLIGATIONS AND TO COLLECT, RETAIN AND SPEND REVENUES AND SHALL THE MANAGE OF FINANCE OF THE CITY BE AUTHORIZED TO SPEND FOR USE OF THE AUTHORITY, IN 2009 AND IN ALL SUBSEQUENT YEARS THEREAFTER WHATEVER AMOUNT IS COLLECTED ANNUALLY FROM ANY REVENUE SOURCES INCLUDING BUT NOT LIMITED TO TAXES RECEIVED AS DESCRIBED IN SECTIONS 31-25-807(3) AND 31-25-816 COLORADO REVISED STATUTES, AND FEES, RATES, TOLLS, RENTS, CHARGES, GRANTS, CONTRIBUTIONS, LOANS, INCOME, PROCEEDS OF ANY AGREEMENTS OR CONTRACTS, OR OTHER REVENUES IMPOSED, COLLECTED, OR AUTHORIZED AS DESCRIBED IN SECTION 31-25-808 COLORADO REVISED STATUTES, OR OTHERWISE, BY LAW TO BE IMPOSED OR COLLECTED BY THE AUTHORITY OR BY THE CITY AND COUNTY OF DENVER FOR THE SUE OF THE AUTHORITY, AND SHALL SUCH REVENUES BE COLLECTED, RETAINED AND SPENT WITHOUT REGARD TO ANY SPENDING, REVENUE-RAISING, OR OTHER LIMITATION CONTAINED WITHIN ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION, AND WITHOUT LIMITING IN ANY YEAR THE AMOUNT OF OTHER REVENUES THAT MAY BE COLLECTED, RETAINED AND SPENT BY THE AUTHORITY AND THE CITY AND COUNTY OF DENVER ON BEHALF OF THE AUTHORITY?

BALLOT ISSUE ID:

SHALL DENVER DOWNTOWN DEVELOPMENT AUTHORITY OBLIGATIONS BE INCREASED $350,000,000 WITH A REPAYMENT COST OF $847,000,000 (MAXIMUM) FOR AN APPROVED PLAN OF DEVELOPMENT AS AMENDED OR MODIFIED FROM TIME TO TIME, AND CONSTITUTING A VOTER-APPROVED REVENUE CHANGE?

The DDA's pledge of certain Incremental Property Tax Revenues and all of the Incremental Sales Tax Revenues to DUSPA shall constitute a multiple fiscal year financial obligation of the DDA as authorized by the aforementioned ballot questions.

H. DUSPA is authorized pursuant to the DUSPA Creation Ordinance to issue indebtedness to finance or refinance the DUS Project; and

I. DUSPA intends to issue Obligations pursuant to the Master Indenture or other Obligation Documents to finance or refinance the DUS Project, which Obligations are expected to be secured in part by a portion of the Incremental Property Tax Revenues and all of the Incremental Sales Tax Revenues; and

J. The DDA Act authorizes the DDA and DUSPA Articles of Incorporation and applicable state law authorize DUSPA to enter into cooperative agreements, such as this Pledge Agreement; and

**NOW, THEREFORE**, in consideration of the foregoing recitals, and the following terms and conditions, the DDA, DUSPA and Trustee hereby agree as follows:

## ARTICLE 1
## DEFINITIONS

Section 1.1 Definitions. The terms defined in the first paragraph of this Pledge Agreement and on **Schedule A** hereto shall have the meanings set forth therein wherever used in this Pledge Agreement. In addition, for all purposes of this Pledge Agreement, the following terms shall have the meanings set forth below.

"**City**" means the City and County of Denver, Colorado, a municipal corporation organized and operating as a home-rule city under the laws of the State.

"**City/DDA Cooperation Agreement**" means that certain Denver Union Station Plan of Development Cooperation Agreement dated as of May 5, 2009, by and between the DDA and the City, as it may be amended or supplemented from time to time**.**

**"Cherry Creek Subarea BID Incremental Property Tax Revenues" means Incremental Property Tax Revenues produced by the Property Tax imposed by the Cherry Creek Subarea BID.**

**"Cherry Creek Subarea BID" means Cherry Creek Subarea Business Improvement District, a quasi-municipal corporation and political subdivision of the State**.

"**CPV Metropolitan District**" means the Central Platte Valley Metropolitan District, a quasi-municipal corporation and political subdivision of the State, created pursuant to the Special District Act and its Service Plan, and its permitted successors and assigns.

"**CPV Metropolitan District Incremental Property Tax Revenues**" means the Incremental Property Tax Revenues produced by the Property Tax imposed by the CPV Metropolitan District.

"**DDA Act**" means the Downtown Development Authority Act, Section 31-25-801, *et seq*., C.R.S., as amended from time to time.

"**DUS District No. 1**" means DUS Metropolitan District No. 1, a quasi-municipal corporation and political subdivision of the State, created pursuant to the Special District Act and its Service Plan, and its permitted successors and assigns.

"**DUS District No. 2**" means DUS Metropolitan District No. 2, a quasi-municipal corporation and political subdivision of the State, created pursuant to the Special District Act and its Service Plan, and its permitted successors and assigns.

"**DUS District No. 3**" means DUS Metropolitan District No. 3, a quasi-municipal corporation and political subdivision of the State, created pursuant to the Special District Act and its Service Plan, and its permitted successors and assigns.

"**DUS District No. 4**" means DUS Metropolitan District No. 4, a quasi-municipal corporation and political subdivision of the State, created pursuant to the Special District Act and its Service Plan, and its permitted successors and assigns.

"**DUS District No. 5**" means DUS Metropolitan District No. 5, a quasi-municipal corporation and political subdivision of the State, created pursuant to the Special District Act and its Service Plan, and its permitted successors and assigns.

"**DUS Districts Non-Pledged Revenues**" means the Property Tax Revenues produced by the Property Taxes imposed by (i) DUS District Nos. 2 and 3 in excess of the DUS Project Mill Levy and (ii) DUS District Nos. 4 and 5.

"**DUS Plan**" means the Denver Union Station Plan of Development dated November 25, 2008, and approved by the Denver City Council on December 22, 2008, by the DUS Plan Ordinance, as such DUS Plan may be amended from time to time.

"**DUS Plan Area**" means the area described in an exhibit to the DUS Plan.

"**DUS Plan Ordinance**" means Ordinance No. 723, Series 2008.

"**DUS Project**" means acquisition, construction, renovation, rehabilitation, improvement or equipping of [DUS Project Improvements /**or/** property whether real or personal, tangible or intangible and wherever situated and whether now owned or hereafter acquired by DUSPA that are necessitated by and/or associated with the improvement of the DUS Plan Area in accordance with the DUS Plan] [and DUS Project Equipment].

["**DUS Project Equipment**" means those items of machinery, equipment or other personal property acquired and installed in connection with the DUS Project or which are acquired or financed in whole or in part with proceeds from the sale of a Series of Obligations].

["**DUS Project Improvements**" means those improvements to be constructed in accordance with the DUS Project, including the 16th Street Mall Shuttle; Commuter Rail; Downtown Circular; Historic Station; Light Rail Terminal at CML; Light Rail; LRT Canopy; Main Canopy; Parking Structure (the DUS Project component); Passenger Rail; Pedestrian Bridge and Canopies; Public Spaces; Regional and Commercial Bus Facility; ROD Improvements; Non-ROD Improvements; Storm Drainage Improvements; Street Infrastructure and Reconstruction; Transit Architecture Improvements; Transit Facilities; Utilities, and the 17th Street ROW. Capitalized terms used in this definition and not defined in this Article 1 shall have the meanings assigned to such terms on **Schedule A** attached hereto. **- need to be updated]**

"**DUS Project Mill Levy**" means a mill levy in an amount of not less and not more than 20 mills. The DUS Project Mill Levy may be adjusted to take into account legislative or constitutionally imposed adjustments in assessed values or their method of calculation so that, to

the extent possible, the actual revenues generated by the DUS Project Mill Levy are neither diminished nor enhanced as a result of such changes.

"**DUS Project Mill Levy Base Revenues**" means the Property Tax Revenues produced by the imposition of the DUS Project Mill Levy against the Property Tax Base Valuations for property subject to the DUS Project Mill Levy during the Term.

"**DUS Project Mill Levy Incremental Property Tax Revenues**" means the Incremental Property Tax Revenues produced by the imposition of the DUS Project Mill Levy against the property subject to the DUS Project Mill Levy during the Term.

"**DUS Project Mill Levy Revenues"** means the DUS Project Mill Levy Incremental Property Tax Revenues, the DUS Project Mill Levy Base Revenues and the DUS Project Mill Levy Post DDA Revenues.

"**DUSPA Creation Ordinance**" means Ordinance No. 334, Series of 2008, adopted by the City Council of the City on June 30, 2008.

"**DUSPA/DUS District Nos. 1-3 Pledge Agreement**" means that certain DUS Project Mill Levy Pledge Agreement dated as of _____, 2010, by and among DUSPA, the Trustee and DUS District Nos. 1-3 as **it** may be amended or supplemented from time to time.

"**Effective Date**" means the actual date of execution of this Pledge Agreement.

"**Incremental Property Tax Revenues**" means, for each calendar year, subsequent to inclusion of property into the Property Tax Increment Area, all Property Tax Revenues with respect to such property, in excess of Property Tax Revenues produced by the levy of Property Tax on Property Tax Base Amount for such property; provided that (i) such amount shall be reduced by any lawful collection fee charged by the City; and (ii) in the event of a general reassessment of taxable property in the Property Tax Increment Area, Incremental Property Taxes shall be proportionately adjusted in the manner required by the DDA Act.

"**Incremental Sales Tax Revenues**" means, for each calendar year subsequent to the inclusion of property into the Sales Tax Increment Area, 100% of the Sales Tax Revenues in excess of the Sales Tax Base Amount; provided that such amount shall be reduced by costs and expenses of the City for such calendar year of enforcing the Sales Tax in the Sales Tax Increment Area and collecting the Sales Tax Revenues as allowed by State statute, including the pro-rata share of uncollectible Sales Tax Revenues to be absorbed by the DDA for such calendar year as set forth in the City/DDA Cooperation Agreement.

"**Master Indenture**" means the indenture and any supplements or amendments thereto to be entered into by DUSPA and the Trustee with respect to the Obligations.

"**Obligations**" means bonds, notes, loan agreement, interim certificates or receipts, indebtedness, contracts, certificates of indebtedness, debentures, advances or other obligations, whether taxable or tax-exempt, including refunding obligations and obligations to accumulate and maintain appropriate coverage and reserve accounts, issued or incurred by DUSPA pursuant to the Master Indenture or other Obligations Documents.

"**Obligations Documents"** means the Master Indenture and any resolution, indenture, reimbursement agreement, other agreement, or any supplement or amendment thereto or any disclosure documents related to issuance or incurrence of Obligations in connection with the financing or refinancing of the costs of the DUS Project.

"**Party**" means DUSPA, the DDA and the Trustee, as applicable, and "**Parties**" means collectively, DUSPA, the DDA and Trustee.

"**Pledged DDA Revenues**" means the Incremental Sales Tax Revenues and the Incremental Property Tax Revenues less (i) the CPV District Incremental Property Tax Revenues ~~and~~**,** (ii) the DUS Districts Non-Pledged **Revenues and (iii) Cherry Creek Subarea BID Incremental Property Tax** Revenues.

"**Property Tax**" means the levy on real and personal property at the rate fixed each year by the governing body of a taxing jurisdiction.

"**Property Tax Base Revenues**" means the Property Tax Revenues produced by the imposition of Property Tax by the applicable jurisdiction against the Property Tax Base Valuation of such jurisdiction during the Term, provided that in the event of a general reassessment of taxable property in the Property Tax Increment Area, Property Tax Base Revenues shall be proportionately adjusted in the manner required by the DDA Act.

"**Property Tax Base Valuation**" means the total valuation for assessment as certified by the County Assessor for the City of all property taxable by the applicable jurisdiction lying within the Property Tax Increment Area as of January 1, 2008, as may be recalculated in accordance with State law.

"**Property Tax Increment Area**" means the area more particularly described on Exhibit B-1, as the same may be amended from time to time, of the City/DDA Cooperation Agreement.

"**Property Tax Revenues**" means the revenues produced by the levy of any Property Tax provided that such amount shall be reduced by any lawful collection fee charged by the City.

"**Sales Tax**" means the sales tax levied by the City from time to time on the retail sale of taxable goods and services, excluding (a) that portion of the Sales Tax levied by Section 53-27 for the City Code as amended by Ordinance No. 557, Series of 1987, on food and beverages not exempt from taxation under Section 53-26(8) of the City Code, at the rate of one-half percent (0.5%) of the purchase price; (b) that portion of the Sales Tax levied by Section 53-27 of the City Code, as amended by Ordinance No. 557, Series 1987 and by Ordinance No. 973, Series 1999, on the short-term rental of automotive vehicles, at the rate of three and three-quarter percent (3.75%) of the rentals paid or purchase price; (c) [Pre-School tax;] [(d) other ear-marked;] and (d) any increased portion of the Sales Tax, if any, designated by ordinance by the City following January 1, 2009.

"**Sales Tax Base Amount**" means the actual Sales Tax Revenues collected during the Sales Tax ~~BaseYear~~**Base Year**.

"**Sales Tax Base Year**" means the twelve-month period beginning December 1, 2007, and ending November 30, 2008.

"**Sales Tax Increment Area**" means the area more particularly described in Exhibit B-2 to the City/DDA Cooperation Agreement.

"**Sales Tax Revenues**" means the amount to be derived by the City in each calendar year from the levy of the Sales Tax within the Sales Tax Increment Area.

"**Service Plan**" means the Service Plan of the CPV Metropolitan District or any of DUS District Nos. 1-5, as applicable, as the same may be supplemented, amended or restated from time to time.

"**Special District Act**" means Section 32-1-101, et seq., C.R.S., as amended from time to time.

"**Supplemental Act**" means the Supplemental Public Securities Act, Section 11-57-201, *et seq*., C.R.S., as amended from time to time.

"**Term**" means the term of this Pledge Agreement, which shall have the meaning given to the term "Tax Increment Term" in the City/DDA Cooperation Agreement.

## ARTICLE 2
## TAX INCREMENT FINANCING

Section 2.1 DUS Project. DUSPA hereby agrees to issue or incur the Obligations as necessary to finance or refinance the acquisition, design, construction, equipment and renovation of the portions of the DUS Project to be financed with proceeds of such Obligations. DUSPA hereby agrees to apply the net proceeds from the issuance or incurrence of the Obligations in accordance with the provisions of the Obligations Documents pursuant to which such Obligations were issued or incurred. DUSPA hereby agrees to apply or cause all Pledged DDA Revenues to be applied in accordance with the Obligations Documents.

Section 2.2 Pledge of Pledged DDA Revenues. In consideration of DUSPA incurring or issuing the Obligations, the DDA hereby irrevocably pledges to DUSPA all Pledged DDA Revenues [which it receives] during the Term. During the Term, on the [__] day of each month, commencing on _____, 2009, the DDA shall remit to the Trustee all Pledged DDA Revenues which it has received and the Trustee shall apply such Pledged DDA Revenues in accordance with the Master Indenture and other Obligations Documents pursuant to which such Obligations were issued or incurred. The obligation of the DDA set forth herein shall constitute an obligation to DUSPA within the meaning of Section 31-25-807(3) of the DDA Act.

The creation, perfection, enforcement, and priority of the pledge by the DDA to secure or pay the Pledged DDA Revenues to DUSPA shall be governed by Section 11-57-208 of the Supplemental Act and this Pledge Agreement. The Pledged DDA Revenues, as received by or otherwise credited to the DDA, shall immediately be subject to the lien of such pledge without any physical delivery, filing, or further act. The lien of such pledge on the Pledged DDA Revenues and the obligation of the DDA to perform the contractual provisions made herein shall have priority

over any or all other obligations and liability of the DDA. The lien of such pledge shall be valid, binding, and enforceable as against all persons having claims of any kind in tort, contract, or otherwise against the DDA irrespective of whether such persons have notice of such liens.

Section 2.3 DDA Covenant Relating to Pledged DDA Revenues. The DDA hereby covenants that so long as this Pledge Agreement is in effect, it will not pledge, encumber or otherwise transfer any portion of the Pledged DDA Revenues or any right to the Pledged DDA Revenues, but shall maintain the same for the use and benefit of DUSPA.

Section 2.4 No Recourse Against Officers and Agents. Pursuant to Section 11-57-209 of the Supplemental Act, if a member of the Board of Directors of the DDA or any officer or agent of any of the DDA acts in good faith, no civil recourse shall be available against such member, officer, or agent for payment of the Pledged DDA Revenues in accordance herewith. Such recourse shall not be available either directly or indirectly through the Board of Directors of the DDA or the DDA or the City or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of this Pledge Agreement and as a part of the consideration hereof, DUSPA and the DDA specifically waive any such recourse.

Section 2.5 Conclusive Recital. Pursuant to Section 11-57-210 of the Supplemental Act, this Pledge Agreement contains a recital that it is issued pursuant to certain provisions of the Supplemental Act, and such recital is conclusive evidence of the validity and the regularity of this Agreement after its delivery for value.

Section 2.6 Limitation of Actions. Pursuant to Section 11-57-212 of the Supplemental Act, no legal or equitable action brought with respect to any legislative acts or proceedings in connection with the authorization, execution, or delivery of this Pledge Agreement shall be commenced more than thirty days after the authorization of this Pledge Agreement.

## ARTICLE 3
## TERM

Section 3.1 Term of Pledged DDA Revenues. The DDA shall begin receiving Incremental Property Tax Revenues and Incremental Sales Tax Revenues as set forth in the City/DDA Cooperation Agreement and as limited by the DDA/CPV Cooperation Agreement. The DDA shall remit any Pledged DDA Revenues received by it prior to the Effective Date to DUSPA on the first payment date set forth in Section 2.2 hereof. All obligations of the DDA to DUSPA pursuant to this Pledge Agreement shall terminate upon the expiration of the Term.

## ARTICLE 4
## MISCELLANEOUS

Section 4.1 Obligation Absolute. The obligation of the DDA hereunder is absolute, irrevocable and unconditional except as specifically set forth herein. So long as any Obligations remain outstanding, the DDA agrees, notwithstanding any fact, circumstance, dispute or other matter, that it will not assert any rights of setoff, counterclaim, estoppels or other defenses to its payment obligations, or take or fail to take any action which would delay a payment to DUSPA or impair the ability of DUSPA to receive payments due hereunder.

Section 4.2 Inspection of Books and Records. All books, records and receipts (except those required by applicable law to be kept confidential) in the possession of the DDA relating to the Pledged DDA Revenues shall at all reasonable times be open to inspection by the other Parties and their agents.

Section 4.3 Cooperation. The DDA and DUSPA covenant with each other that in any action or challenge of the DUS Plan, City/DDA Cooperation Agreement, DUSPA/DUS District Nos. 1-3 Pledge Agreement and/or this Pledge Agreement, regarding the legality, validity or enforceability of any provision thereof or hereof, the DDA and DUSPA will work cooperatively and in good faith to defend and uphold each and every such provision.

Section 4.4 Enforcement. The DDA agrees to use best efforts to cause the City Treasurer to enforce the collection of all moneys which may qualify as Pledged DDA Revenues.

Section 4.5 Specific Performance Remedy. In the event of default hereunder by any Party, the exclusive remedy of the non-defaulting Party shall be to require the specific performance of the defaulting Party. In no event shall any Party be entitled to damages or a monetary award, whether in the form of actual damages, punitive damages, and award of attorney fees or costs, or otherwise. Any delay in asserting any right or remedy under this Pledge Agreement shall not operate as s waive of any such right or limit such rights in any way.

Section 4.6 Opinion. [At the time of issuance of each Obligation, if so requested by DUSPA, the DDA shall deliver, at its expense, an opinion of its counsel addressed to DUSPA and as required for the issuance of the Obligations, which opinion shall include without limitation a statement that this Pledge Agreement, has been duly authorized, executed, and delivered by the DDA, constitutes a valid and binding agreement of the DDA, enforceable according to its terms, subject to any applicable bankruptcy, reorganization. insolvency, moratorium, or other law affecting the enforcement of creditors' rights generally and subject to the application of general principles of equity. **Discuss who will provide this opinion for the DDA**]

Section 4.7 Amendments and Waivers. No amendment and waiver of any provision of this Pledge Agreement, nor consent to any departure herefrom, in any event shall be effective unless the same shall be in writing and signed by the Parties, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

Section 4.8 Governing Law. This Pledge Agreement shall be governed by, and construed in accordance with, the laws of the State.

Section 4.9 Notices. All notices, demands, requests or other communications to be sent by one Party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the addressee or by courier delivery via Federal Express or other nationally recognized overnight air courier service, by electronically-confirmed facsimile transmission, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To DUSPA **:**

~~_____~~**Attention : President**
**c/o Cole Finegan, Hogan & Hartson, LLP**
**1200 17th Street, Suite 1500**
**Denver, Colorado 80202**

With copies to:

~~_____~~**Attention:**
**Dawn Bookhardt**
**Bookhardt & O'Toole**
**999 18th Street, Suite 2500**
**Denver, Colorado 80202**

**Attention: Cole Finegan**
**Hogan & Hartson, LLP**
**1200 17th Street, Suite 1500**
**Denver, Colorado 80202**

To DDA:

Denver Downtown Development Authority~~,~~
c/o Manager of Finance~~,~~
201 W. Colfax Avenue, Department ~~1010,~~**1010**
Denver, Colorado 80202

With copies to:

_____

To TRUSTEE:

~~_____~~**Zions First National Bank**
**Attention: Stephanie Nicholls**
**Vice President**
**1001 17th Street, Suite 1050**
**Denver, CO 80202**

All notices, demands, requests or other communications shall be effective upon such personal delivery or one (1) business day after being deposited with Federal Express or other nationally recognized overnight air courier service, upon electronic confirmation of facsimile transmission, or three (3) business days after deposit in the United States mail. By giving the other Party hereto at least ten (10) days' written notice thereof in accordance with the provisions hereof, each Party shall have the right from time to time to change its address.

Section 4.10 Headings. Section headings in this Pledge Agreement are included herein for convenience of reference only and shall not constitute a part of this Pledge Agreement for any other purpose.

Section 4.11 Severability. Any provision of this Pledge Agreement which is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be effective to the extent of such prohibition, unenforceability or lack of authorization without affecting the validity, enforceability or legality of such provisions in any other jurisdiction.

Section 4.12 Counterparts. This Pledge Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Pledge Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

**DOWNTOWN DENVER DEVELOPMENT AUTHORITY**

**DENVER UNION STATION PROJECT AUTHORITY**

**ZIONS FIRST NATIONAL BANK**

By: _____

# SCHEDULE A

## Certain Definitions

**[To come]**

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| **Statistics:** | |
|---|---|
| | Count |
| Insertions | 33 |
| Deletions | 18 |
| Moved from | 0 |
| Moved to | 0 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 51 |

**TEMPORARY AMTRACK PLATFORM AND COMMUTER RAIL TRACKS LICENSE AGREEMENT (DENVER UNION STATION)**

**THIS TEMPORARY AMTRACK PLATFORM AND COMMUTER RAIL TRACKS LICENSE AGREEMENT** ("License" or "Agreement") is granted this _____ day of _____, 2010, by the **CITY AND COUNTY OF DENVER**, a home rule city and municipal corporation of the State of Colorado ("City") to the **DENVER UNION STATION PROJECT AUTHORITY**, a _____ whose address is _____ ("Licensee" or "DUSPA").

1. Grant, Term, and Scope of Work. The City grants to the Licensee, its contractors, subcontractors and assignees, for a term commencing on the date of execution and ending March 31, 2014, or other date approved in writing by the Manager of Public Works, subject to the conditions and terms in this License, a non-exclusive revocable license to own, operate, construct, maintain, repair and replace the Work more specifically described in Exhibits A, A-1, and B-1 attached hereto and incorporated herein ("Work"). Such Work shall be performed only as shown on plans to be approved by the Manager of Public Works or as otherwise agreed to in writing by the Manager of Public Works. The land to which this License applies is set forth in Exhibits B and B-1, attached hereto and incorporated herein ("Premises").

2. Revocation and Retained Rights of City.

A. This License shall be revocable at any time that the Council of the City and County of Denver determines that such revocation is deemed to be necessary to facilitate the movement of traffic; to provide for public safety; or to provide for the public safety, convenience or necessity in use of the Premises, and the right to revoke the same is hereby expressly reserved to the City and County of Denver; provided however, at a reasonable time prior to Council action upon such revocation or proposed revocation, opportunity shall be afforded to Licensee, its successors and assigns, to correct any issues arising under this License and to be present at a hearing to be conducted by the Council upon such matters and thereat to present its views and opinions thereof and to present for consideration action or actions alternative to the revocation of such License.

B. The City reserves the right to own and occupy the Premises in any manner that does not unreasonably interfere with the exercise of the rights granted by this License.

C. This License does not relieve the Licensee from obtaining rights from the owners, if any, of other interests in the Premises.

3. Use of Premises. Licensee shall use the Premises only for the Work and subject to the following terms and conditions:

A. Licensee shall obtain a street occupancy permit from Public Works Permit Operations at 2000 West 3rd Avenue, 303-446-3759, prior to commencing construction.

B. Licensee shall be responsible for obtaining all other permits and approvals required by law, ordinance and rule and regulation and shall pay all costs that are necessary for installation, construction, operation and maintenance of the Work permitted herein.

C. If the Licensee intends to install any underground facilities in or near a public road, street, alley, right-of-way or utility easement, the Licensee shall join the Statewide Notification Association of Owners and Operators of Underground Facilities by contacting the Utility Notification Center of Colorado, 12600 West Colfax Avenue, Suite B-310, Lakewood, Colorado 80215, at 303-232-1991. Further, Licensee shall contact the Utility Notification Center at 1-800-922-1987 to locate underground facilities prior to commencing any work under this permit.

D. Licensee is fully responsible for any and all damages incurred to facilities of the Water Department and/or drainage facilities for water and sewage of the City and County of Denver due to the Work. Should the relocation or replacement of any drainage facilities for water and sewage of the City and County of Denver become necessary as reasonably determined by the Manager of Public Works, in the Manager's sole and absolute discretion, Licensee shall pay all cost and expense of the portion of the sewer affected by the permitted structure. The extent of the affected portion to be replaced or relocated by Licensee shall be reasonably determined by the Manager of Public Works. Any and all replacement or repair of facilities of the Water Department and/or drainage facilities for water and sewage of the City and County of Denver attributed to the Licensee shall be made by the Water Department and/or the City and County of Denver at the sole expense of the Licensee. In the event Licensee's facilities are damaged or destroyed due to the Water Department's or the City and County of Denver's reasonable, usual and customary repair, replacement and/or operation of its facilities, repairs will be made by the Licensee at its sole expense. The City and County of Denver and the Water Department shall give the Licensee notice of any non-emergency repair or maintenance work to be performed on their facilities above or adjacent to the Work at least two (2) weeks prior to the start of the work. Licensee agrees, to the extent it legally may, and specifically subject to the Constitution of the State of Colorado and the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.,* as may be amended, to defend, indemnify and save the City harmless and to repair or pay for the repair of any and all damages to said sanitary sewer, or those damages resulting from the failure of the sewer to properly function as a result of the permitted structure.

E. Licensee shall comply with all requirements of affected utility companies located within the Premises and pay for all costs of removal, relocation, replacement or rearrangement of utility company facilities. Existing telephone facilities shall not be utilized, obstructed or disturbed.

F. All construction in, under, on or over the Premises shall be accomplished in accordance with the Building Code and other laws and regulations of the City and County of Denver. Plans and specifications governing the construction of the Work shall be approved by the Manager of Public Works prior to construction. Upon completion, a reproducible copy of the exact location and dimensions of any permanent Work shall be filed with the Manager of Public Works.

G. The Work shall be capable of withstanding an LRFD HL-93 loading in accordance with the latest AASHTO Specifications or as otherwise approved by the Manager of Public Works in writing. All installations within the Premises shall be constructed so that the paved section of the street/alley can be widened without requiring additional structural modifications. The Work shall be constructed so that it can be removed and replaced without affecting structures within the Premises.

H. Licensee shall pay all costs of construction and maintenance of the Work. Upon termination, revocation or Licensee's election to abandon or release the License, Licensee shall pay all costs of removing the Work from the Premises and return the Premises to its original condition under the supervision of the City Engineer.

I. Licensee shall remove and replace any and all street/alley paving, sidewalks, and curb and gutter, both inside the Premises and in the rights-of-way adjacent thereto, that become broken, damaged or unsightly during the course of construction, or operation of the Work. In the future, Licensee shall also remove, replace or repair any street/alley paving, sidewalks, and curb and gutter that become broken or damaged when, in the opinion of the City Engineer, the damage has been caused by the activity of the Licensee within the Premises. All repair work shall be accomplished without cost to the City and under the supervision of the City Engineer.

J. The City reserves the right to make an inspection of the Work contained within the Premises. An annual fee, subject to change, of Two Hundred Dollars ($200.00) shall be assessed.

K. This license agreement shall not operate or be construed to abridge, limit or restrict the City and County of Denver in exercising its right to make full reasonable use of the Premises and adjacent rights-of-way as public thoroughfares nor shall it operate to restrict the utility companies in exercising their rights to construct, remove, operate and maintain their facilities within the Premises and adjacent rights-of-way, subject to Licensee's reasonable consent to such utility company rights that impact the Work.

L. During the existence of the Work and this License, Licensee, its successors and assigns, at its expense, and without cost to the City and County of Denver, shall procure and maintain a Commercial General Liability insurance policy with a limit of not less than Two Million Dollars ($2,000,000.00), or if assigned to the Regional Transportation District ("RTD") evidence satisfactory to the City of self insurance. All coverages are to be arranged on an occurrence basis and include coverage for those hazards normally identified as X.C.U. during construction. The insurance coverage required herein constitutes a minimum requirement and such enumeration shall in no way be deemed to limit or lessen the liability of the Licensee, its successors or assigns, under the terms of this License. All insurance coverage required herein shall be written in a form and by a company or companies approved by the Risk Manager of the City and County of Denver and authorized to do business in the State of Colorado. A certified copy of all such insurance policies shall be filed with the Manager of Public Works, and each such policy shall contain a statement therein or endorsement thereon that it will not be canceled or materially changed without written notice, by registered mail, to the Manager of Public Works at least thirty (30) days prior to the effective date of the cancellation or material change. All such insurance policies shall be specifically endorsed to include all liability assumed by the Licensee hereunder and shall name the City and County of Denver as an additional insured.

M. Licensee shall comply with the provisions of Article IV (Prohibition of Discrimination in Employment, Housing and Commercial Space, Public Accommodations, Educational Institutions and Health and Welfare Services) of Chapter 28 (Human Rights) of the Revised Municipal Code of the City and County of Denver. The failure to comply with any such provision shall be a proper basis for revocation of this License.

N. The right to revoke this License is expressly reserved to the City and County of Denver.

O. Licensee shall, to the extent it legally may, and specifically subject to the Constitution of the State of Colorado and the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as may be amended, agree to indemnify and always save the City and County of Denver harmless from all costs, claims or damages arising, either directly or indirectly, out of the rights and privileges granted by this License.

P. Prior to commencement of any of the Work on the Premises, Licensee's contractors shall furnish bonds to the City assuring one hundred percent (100%) performance and labor and material payment of Licensee's construction activity in the amount of one hundred percent (100%) of the construction contract price. Such bonds shall guarantee prompt and faithful performance of Licensee's construction contract and prompt payment by Licensee's contractors to all persons supplying labor and/or materials.

Q. The City shall not be responsible or liable for injuries to persons or damage to property when such injuries or damage are caused by or result from the Licensee's use of the Premises under the terms of this License and are not due to the sole negligence of the City.

R. Licenses shall coordinate all activities with the RTD East Corridor project and all FasTracks projects. All such FasTracks projects shall be given priority over any activities under this License should conflicts arise.

S. In the event of any inconsistency between this License and any agreements relating to the FasTracks projects, the FasTracks Agreements shall govern.

T. The License Area shall not be used in any manner that adversely impacts City infrastructure or City property, including the storage of flammable or hazardous materials.

4. No Cost to City. The exercise of the privileges granted by this License shall be without cost or expense to the City.

5. Compliance with Environmental Requirements. Licensee shall comply with all applicable local, state, and federal environmental rules, regulations, statutes, laws or orders (collectively, "Environmental Requirements"), including but not limited to Environmental Requirements regarding the storage, use and disposal of Hazardous Materials and regarding releases or threatened releases of Hazardous Materials to the environment. For purposes of this License, the terms "Hazardous Materials" shall mean asbestos and asbestos-containing materials, special wastes, polychlorinated biphenyls (PCBs), any petroleum products, natural gas, radioactive source material, pesticides and any hazardous waste as defined at 42 U.S.C. § 6903(5) of the Solid Waste Disposal Act, any hazardous substance as defined at 42 U.S.C. § 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act, and chemical substance as defined at 15 U.S.C.§ 2602(2) of the Toxic Substances Control Act, and any rules or regulations promulgated pursuant to such statutes or any other applicable federal or state statute. Further, Licensee shall obtain all necessary federal, state, and local environmental permits and comply with all applicable federal, state, and local environmental requirements relating to the Work.

6. Notices. All notices required to be given to the City or Licensee shall be in writing and sent by certified mail, return receipt requested, to:

Licensee: Mike Sullivan
Trammel Crow Company
1225 17th Street, Suite 3050
Denver, CO 80202

City: Mayor
City and County of Denver
1437 Bannock Street, Room 350
Denver, CO 80202

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

Denver City Attorney
1437 Bannock Street, Room 353
Denver, CO 80202

Any party may designate in writing from time to time the address of substitute or additional persons to receive such notices. The effective date of service of any such notice is the date on which mailed or personally delivered.

7. Compliance with Laws. All persons or entities utilizing the Premises pursuant to this License shall observe and comply with the applicable provisions of the Charter, ordinances, and rules and regulations of the City and with all applicable Colorado and federal laws.

8. Severability. The promises and covenants contained in this License are several in nature. Should any one or more of the provisions of this License be judicially adjudged invalid or unenforceable, such judgment shall not affect, impair, or invalidate the remaining provisions of the License.

9. Applicable Law/Venue. Each and every term, condition, or covenant of this License is subject to and shall be construed in accordance with the provisions of Colorado law, any applicable federal law, the Charter of the City and County of Denver, and the ordinances, regulations, and Executive Orders enacted and/or promulgated pursuant to the Charter. The applicable law, together with the Charter, Revised Municipal Code and regulations of the City and County of Denver, as the same may be amended from time to time, are expressly incorporated into this License as if fully set out by this reference. Venue for any action relating to this License shall be in the State District Court in the City and County of Denver, Colorado.

10. Nondiscrimination. In connection with the performance of Work under this License, Licensee agrees not to refuse to hire, discharge, promote or demote, or 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.

11. Entire License. This License is the complete integration of all understandings between the Parties. No prior or contemporaneous addition, deletion, or other modification shall have any force or effect, unless embodied in this Agreement in writing.

12. Amendments. No subsequent novation, renewal, addition, deletion, or other amendment shall have any force or effect unless embodied in a written amendment to this License properly executed by the parties. No oral representation by any officer or employee of the City at variance with the terms and conditions of this License or any written amendment to this License shall have any force or effect nor bind the City. This Agreement and any amendments to it shall be binding upon the Parties and their successors and assigns. All amendments to this License must be fully executed by the City and the Licensee. City Council approval shall not be necessary unless required by the City's Charter.

13. Authority. Licensee represents and warrants that the person signing this License has the authority to execute and deliver this License on behalf of Licensee.

14. Appropriation. All obligations of the City under and pursuant to this License are subject to prior appropriations of monies expressly made by the City Council for the purposes of this License and paid into the Treasury of the City.

15. Right to Extend Time of Performance. The parties agree that the Term of this License shall be as set forth in Paragraph 1 herein. Any other time for performance of any term or condition of this License may be extended for up to two (2) additional thirty (30) day periods by a letter signed by the Manager of Public Works and an authorized representative of Licensee. All other amendments to this License must be fully executed by the City and the Licensee as provided for herein. No approval of the Denver City Council is necessary unless required by the City Charter.

16. Conflict of Interest by City Officers. Licensee represents that to the best of its information and belief no officer or employee of the City is either directly or indirectly a party to or in any manner interested in this License except as such interest may arise as a result of the lawful discharge of the responsibilities of such elected official or employee.

17. No Personal Liability. No elected official, director, officer, agent, or employee of the City nor any director, officer, employee or personal representative of Licensee shall be charged personally or held contractually liable by or to the other party under any term or provision of this License or because of any breach thereof or because of its or their execution, approval, or attempted execution of this License.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the day and year first above written.

**ATTEST:**

By: _____
STEPHANIE Y. O'MALLEY, Clerk and Recorder, Ex-Officio Clerk of the City and County of Denver

**CITY AND COUNTY OF DENVER:**

By: _____
M A Y O R

**RECOMMENDED AND APPROVED:**

By: _____
Manager of Public Works

**APPROVED AS TO FORM:**

DAVID R. FINE, Attorney for the City and County of Denver

By: _____
Assistant City Attorney

**REGISTERED AND COUNTERSIGNED:**

By: _____
Manager of Finance

Contract Control No. _____

By: _____
Auditor

**"CITY"**

**ATTEST:** [If required by Corporate procedures]

By: _____
(signature)

Name: _____
(please print)

Title: _____

**DENVER UNION STATION PROJECT AUTHORITY**

By: _____
(signature)

Name: _____
(please print)

Title: _____

**"LICENSEE"**

STATE OF COLORADO )
) ss.
COUNTY OF _____ )

The foregoing instrument was acknowledged before me this ___ day of _____, 2010 by_____, as _____ (Title) of_____ (Licensee).

Witness my hand and official seal.

My commission expires: _____

_____
Notary Public

**Exhibit A**
**WORK**

Remove, relocate, repair, replace, construct and operate:

1. Existing track and new tracks;
2. Platform, canopies, fencing, and related appurtenances;
3. Utility facilities, including water and electrical lines, and related appurtenances;
4. Wewatta scour protection;
5. OCS wire foundations;
6. Temporary traffic signals and related appurtenances including operation of baggage carts;
7. Street, sidewalk, signs and other right-of-way and pedestrian improvements;
8. Amtrack baggage cart path and related appurtenances;
9. Access Roads;
10. Servicing and maintenance of Amtrack trains;
11. Parking of passenger vehicles;
12. Storm sewer improvements.

all as generally depicted on Exhibits A-1 and B-1.

**Exhibit B**
**PREMISES**

All City right-of-way and other City-owned land and easements within the following described area:

[INSERT LEGAL]

All as generally depicted on Exhibit B-1.