

LEGAL MEMORANDUM
PRIVILEGED AND CONFIDENTIAL

To: DUSPA Board of Directors – June 10 Meeting
From: Bookhardt & O’Toole
Date: June 7, 2010
Re: Summary of Agreements for Presentation at Board Meeting

Below are summaries of the documents that require Board Action.

DUS Project Asset Ownership Agreement: among DUSPA, RTD and the City and County of Denver, Colorado. In this document, the parties agree that (1) DUSPA will not own or have ownership rights to the DUS project assets, either during construction or at completion of the construction of the DUS Project assets and in no circumstances (unless agreed to in writing) will any of the DUS Project assets be included as assets on the financial statements of the Authority; (2) the DUS Project assets will be owned primarily by RTD and that RTD will have the responsibility for tracking the DUS Project assets both during and after construction; (3) during the construction of the DUS Project, the DUS Project assets will be added to the financial statements of RTD as “Construction in Progress” assets on a monthly basis; (4) upon completion of the DUS Project, approximately 90% of the DUS Project assets will be included on the financial statements of RTD; (5) RTD will be responsible for the maintenance and operation of the DUS Project assets that are on RTD owned property, upon completion of the DUS Project; (6) at completion of the DUS Project, the City will own approximately 10% of the DUS Project assets which will be on City owned property; (7) RTD will maintain the regional and commercial bus facility which is in the City right-of-way and the city will maintain above-ground improvements in the City right-of-way.

Board Action: The Board must take action to approve the agreement and DUSPA will execute as a party.

Second Amendment to DUSPA/RTD Initial Funding, Reimbursement and Project

Coordination Agreement: between DUSPA and RTD. The purpose of this agreement is to (1) provide for the delegation of duties by DUSPA to RTD concerning certain federal compliance and accounting functions required of federal funds recipients or sub-recipients; (2) establish the general division of federal compliance and accounting responsibilities between RTD and Trammell Crow on behalf of DUSPA; (3) set forth the responsibilities of RTD, DUSPA and TCC (on behalf of DUSPA) in carrying out those functions required of DUSPA as a federal funds recipient or sub-recipient; and (4) to provide for payment of costs associated with the provision of federal compliance and accounting services and goods by RTD to DUSPA. The document lists a division of responsibilities to be carried out as between RTD and Trammell Crow.

Board Action: The Board must take action to approve the agreement and DUSPA will execute as a party.

DENVER UNION STATION PROJECT ASSET OWNERSHIP AGREEMENT

This **DENVER UNION STATION PROJECT ASSET OWNERSHIP AGREEMENT** (the “**Agreement**”) dated as of June 1, 2010, by and among **DENVER UNION STATION PROJECT AUTHORITY** (the “**Authority**”), a Colorado non-profit corporation and instrumentality of the City and County of Denver, the **REGIONAL TRANSPORTATION DISTRICT** (the “**RTD**”), a body corporate and politic and a political subdivision of the State of Colorado and the **CITY AND COUNTY OF DENVER, COLORADO** (the “**City**”), a municipal corporation, organized and operating as a home-rule City under the laws of the State of Colorado.

WITNESSETH:

WHEREAS, capitalized terms used and not defined herein shall have the meaning assigned to them in Article I hereto; and

WHEREAS, the Authority is a Colorado nonprofit corporation and instrumentality of the City created pursuant to Ordinance No. 334, Series of 2008, adopted by the City Council of the City on June 30, 2008 (the “DUSPA Creation Ordinance”) as a constituted authority for the purposes of financing, equipping, designing, constructing, renovating and taking such other action as necessary with respect to the Denver Union Station Project (the “DUS Project”); and

WHEREAS, RTD is a public body politic and corporate and a political subdivision of the State organized and existing pursuant to C.R.S. § 32-9-101, *et. seq.*; and

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, the Authority will incur Obligations to finance the costs of acquisition, design, construction, renovation and other improvement of the DUS Project, including certain Major Transit Elements which will be constructed on RTD owned property and will be owned as constructed, used and operated by RTD; and

WHEREAS, construction of the DUS Project is ongoing and the Authority, the City and RTD desire to plan for an orderly division of the DUS Project assets as and when construction of the same are completed; and

NOW THEREFORE, the premises being as stated above, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

“Major Transit Elements” means the new Light Rail Terminal at CML station, tracks and other facilities (including the 16th Street Mall Shuttle), the new Regional and Commercial Bus Facility and the new Commuter Rail station and connecting tracks and all other buildings, facilities and improvements constructed or installed on RTD owned property or to be operated and maintained by RTD.

“Obligations” means bonds, notes, loan agreements, 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 the Authority pursuant to the Master Indenture or other obligations documents.

ARTICLE II OWNERSHIP OF DUS PROJECT ASSETS

2.1 All Parties hereto agree that the Authority will not own nor have ownership rights to the DUS Project assets, whether during construction or upon the completion of the construction of the DUS Project assets and in no circumstances, unless specifically set forth in writing and agreed to by the Parties, will any of the DUS Project assets be included as assets on the financial statements of the Authority.

2.2 The Parties hereto agree that the DUS Project assets will be owned primarily by RTD and that RTD will have the responsibility for tracking the DUS Project assets both during and after construction.

2.3 During the construction of the DUS Project, the DUS Project assets will be added to the financial statements of RTD as “Construction in Progress” assets on a monthly basis.

2.4 Upon completion of the DUS Project, approximately ninety percent (90%) of the DUS Project assets will be included on the financial statements of RTD. RTD will also be responsible for the maintenance and operation of the DUS Project assets that are situated on RTD owned property, upon completion of the DUS Project.

2.5 Upon completion of the DUS Project, the City will own approximately ten percent (10%) of the DUS Project assets which assets will be situated on City owned property, upon completion of the DUS Project. RTD will maintain the Regional and Commercial Bus Facility which is within City right of way. The City will maintain above-ground improvements on City right of way.

ARTICLE III MISCELLANEOUS

3.1 This 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.

3.2 If any provision of this Agreement shall be held or deemed to be or shall, in fact, be invalid or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid or unenforceable to any extent whatsoever.

3.3 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 Representative

Attention: President
c/o Cole Finegan
Hogan Lovells 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 Lovells LLP
1200 17th Street, Suite 1500
Denver, Colorado 80202

To RTD:

Attention: Jerry Nery
RTD – FasTracks
1560 Broadway, 7th Floor, FAS 61
Denver, Colorado 80202

With copies to:

Attention: Marla Lien
RTD General Counsel
1600 Blake Street
Denver, Colorado 80202

Attention: Terry Howerter
RTD Chief Financial Officer
1600 Blake Street
Denver, CO 80202

To City:

Claude Pumilia
Chief Financial Officer
City & County of Denver
201 West Colfax, Department 1004
Denver, Colorado 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.

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

**DENVER UNION STATION
PROJECT AUTHORITY**

ATTEST:

By: _____

By: _____

**REGIONAL TRANSPORTATION
DISTRICT**

Approved as to Form for the
Regional Transportation District:

By: _____

By: _____

**CITY AND COUNTY OF
DENVER, COLORADO**

(SEAL)

By: _____
Mayor

ATTEST:

Recommended and Approved:

By: _____
City Clerk and Recorder

By: _____
Manager of Finance, Chief Financial
Officer, *ex officio* Treasurer

Countersigned and Registered:

Approved as to Form:

By: _____
Manager of Finance, Chief Financial
Officer, *ex officio* Treasurer

By: _____
City Attorney

By: _____
Auditor

Second Amendment to DUSPA/RTD Initial Funding, Reimbursement and Project Coordination Agreement

This Second Amendment to the DUSPA/RTD Initial Funding, Reimbursement and Project Coordination Agreement is entered into as of this ____ day of June 2010 for the purpose of (i) memorializing the delegation of certain federal compliance and accounting functions related to the Denver Union Station Project (the “DUS Project”) by agreement between the Denver Union Station Project Authority (DUSPA) a Colorado non-profit corporation and the Regional Transportation District (RTD), a political subdivision of the State of Colorado; and (ii) providing an advance by RTD and repayment from DUSPA of Senate Bill 1 grant funds in the amount of \$8.1 million.

A. Federal Compliance and Accounting

1. DUSPA and RTD entered into the DUSPA/RTD Initial Funding, Reimbursement and Project Coordination Agreement (the “Coordination Agreement”) on April 30, 2009. The Coordination Agreement remains in full force and effect and all definitions contained therein apply to this First Amendment. This Second Amendment is intended to modify the Coordination Agreement only as specifically set forth below.
2. DUSPA has engaged the Trammell Crow Company (TCC) as “Owner’s Representative” to manage the DUS Project budget, contracts, and draw process, and to pay project costs upon funding from various grant and loan sources. As the recipient of various federal grants and loans, DUSPA is required to comply with Federal Accounting and Compliance guidelines as required by the Federal Transit Administration and OMB Circular A-133. While DUSPA will continue to carry out its compliance responsibilities as either a sub-recipient for federal grants or a recipient of federal loans, the parties desire to memorialize the delegation of certain of the federal compliance and accounting functions related to DUSPA’s receipt of federal funds and to establish a division of responsibilities between RTD and TCC in carrying out certain accounting and compliance functions on behalf of DUSPA.
3. Pursuant to Section 3.4 of the Coordination Agreement, DUSPA must obtain RTD’s approval of all monthly and annual reports concerning Kiewit Western Company’s (Design Builder) compliance under all applicable federal reporting requirements, and DUSPA vests in RTD the authority to implement review and other reasonable mechanics to monitor and ensure the Design Builder’s compliance with federal regulations, policies, procedures, directives and requirements. Additionally, the Coordination Agreement includes a responsibility matrix as an attachment that reflects the general roles and responsibilities of TCC and RTD, among others, regarding each party’s role with respect to the DUS Project. The purpose of this Second Amendment is to (i) provide for the

delegation of duties by DUSPA to RTD concerning certain federal compliance and accounting functions required of federal funds recipients or sub-recipients, (ii) establish the general division of federal compliance and accounting responsibilities between RTD and TCC on behalf of DUSPA, (iii) set forth the responsibilities of RTD, DUSPA and TCC (on behalf of DUSPA) in carrying out those functions required of DUSPA as a federal funds recipient or sub-recipient, and (iv) to provide for payment of costs associated with the provision of federal compliance and accounting services and goods by RTD to DUSPA.

4. The responsibilities of RTD and TCC in relation to the DUS Project are more fully set forth in **Exhibit A**, attached hereto. The general division of those responsibilities related to the activities to be undertaken by TCC and RTD on behalf of DUSPA, and the other obligations of the parties as memorialized herein are set forth below:

- a. **RTD**

- i. Maintain DUSPA's official set of books for audit purposes;
- ii. Prepare the Comprehensive Annual Financial Report (CAFR);
- iii. Administer on behalf of DUSPA appropriate Policies and Procedures to ensure compliance with all federal and loan policies and regulation applicable to the DUS Project funding, which Policies and Procedures will to the maximum extent practicable follow those in use by RTD for federally funded projects. Policies and Procedures administered on behalf of DUSPA will include, without limitation, procurement policies, Disadvantaged Business Enterprise (DBE) policies, and tracking of all certifications required for use of federal funds in payment to grantees, sub-recipients or contractors.;
- iv. Track DUSPA project costs by funding source for audit purposes and for breakout of the City and County of Denver's share of costs;
- v. Federal reporting as required by the FTA and RRIF/TIFIA loans; and
- vi. Procurement oversight and support to ensure compliance.

- b. **TCC**

- i. Budget Management and Variance Tracking;
- ii. Contract Management including Change Orders, DBE monitoring, contract amendments and insurance verification;
- iii. Manage the Draw Process and prepare the Monthly Construction Report;

- iv. Cash Management including paying invoices as funding occurs and preparation of monthly bank reconciliations;
- v. Audit Support;
- vi. Monitoring as required by federal regulations;
- vii. RFQ and RFP Preparation; and
- viii. IRS Filings.

c. Compliance Agreement and Policies and Procedures

- i. In conjunction with entering into that certain loan agreement (namely, the Transportation Infrastructure Finance and Innovation Act (TIFIA) and/or the Railroad Rehabilitation and Improvement Financing (RRIF)) with the United States Department of Transportation acting by and through the Federal Transit Administration (FTA) for the funding of the DUS Project, DUSPA is required to enter into a compliance agreement (Compliance Agreement). The Compliance Agreement sets forth the standard terms and conditions governing the administration of a project supported with federal assistance awarded by the U.S. Department of Transportation (DOT) establishing the federal compliance activities that are required of TIFIA borrowers and loan recipients. The parties, with the understanding that RTD has specialized knowledge and experience in matters relating to the execution of standard terms and conditions governing the administration of projects supported with federal assistance as awarded by the DOT, hereby agree that DUSPA shall delegate to RTD the responsibility of administration of those portions of the Compliance Agreement as set forth in, and indicated by, Exhibit E to the TIFIA loan agreement.
- ii. As the recipient of various federal grants and loans, in addition to entering into the Compliance Agreement, DUSPA is required to comply with Federal Accounting and Compliance guidelines as required by the Federal Transit Authority and OMB Circular A-133. The parties, with the understanding that RTD has specialized knowledge and experience in matters relating to the execution of standard terms and conditions governing the administration of projects supported with federal assistance as awarded by the DOT, hereby agree that RTD shall administer Policies and Procedures to ensure federal compliance on behalf DUSPA which shall be to the maximum extent practicable follow RTD Policies and Procedures. DUSPA agrees to adopt RTD's applicable Policies and

Procedures, while maintaining a reservation of rights to streamline and customize such adopted policies and procedures to meet its particular needs.

d. Cooperation

Exhibit A, attached hereto, sets forth the responsibilities of RTD and TCC (on behalf of DUSPA) in fulfilling those duties necessary to meet the federal accounting and compliance standards and conditions governing the administration of the DUS Project, as is required of a project that is supported with federal assistance. RTD, DUSPA and TCC (on behalf of DUSPA) will cooperate to accomplish the performance of those responsibilities set forth in **Exhibit A** and the division of responsibilities as set forth above.

e. Compensation

Costs incurred by RTD to fulfill the terms of this Agreement shall be borne by DUSPA, paid in annual installment within 30 days of receipt of an invoice from RTD detailing the goods and services rendered. The estimated budget for costs associated with RTD's provision of goods and services to accomplish the engagement hereunder through and including December 31, 2014 shall not exceed a total amount of \$500,000 represented by annual installments in amounts not exceeding \$125,000, as described in greater detail in **Exhibit B**, attached hereto. **Exhibit B** may be amended from time to time as actual costs are finalized throughout the term of the Coordination Agreement. Invoices provided by RTD to DUSPA shall be based on actual costs, without incurring interest and without markup.

B. Senate Bill 1 Funds

DUSPA has been awarded \$8.1 million in Senate Bill 1 Funds (SB1 Funds) by the Colorado Department of Transportation. SB1 funds are paid on a reimbursement basis for authorized project expenditures. DUSPA lacks sufficient available funds to make payments eligible for reimbursement. RTD will advance up to \$8.1 million of eligible SB1 expenditures and will be reimbursed by immediate payment of all SB1 funds received by DUSPA, estimated to be \$6. __ million, and will be repaid remaining advances pursuant to Section 2.2 of the Coordination Agreement. The Maximum Advance Amount specified in Section 2.1 of the Coordination Agreement shall be changed to \$57. __ million. Attached hereto as Exhibit C is an updated funding matrix showing all RTD advances and repayments pursuant to Section 2.2 of the Coordination Agreement.

C. Terms Remain in Effect

The terms of the Coordination Agreement except as modified herein shall remain in full force and effect throughout the term of the DUS Project and shall govern the coordination between DUSPA and RTD.

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

**DENVER UNION STATION PROJECT
AUTHORITY**

By:_____

Elbra Wedgeworth

President

**REGIONAL TRANSPORTATION
DISTRICT**

By:_____

Phillip A. Washington

General Manager

Approved as to legal form for the Regional Transportation District

By: _____

EXHIBIT A

RTD Responsibilities:

1. DUSPA, as a sub-recipient of federal grants and a recipient of federal dollars under federal loan programs will be required to fulfill certain federal compliance and accounting obligations.
2. To assist DUSPA with compliance under these programs RTD agrees to provide to DUSPA:
 - a. FTA knowledgeable Staff;
 - b. RTD Policies and Procedures and supporting compliance staff, which Policies and Procedures would be adopted by DUSPA resulting in an economy of scale cost savings to DUSPA;
 - c. IT support for RTD systems and internal control;
 - d. Administration and management of federal and state grants;
 - e. Administration of the “Compliance Agreement” set forth as Exhibit E to the TIFIA Loan Agreement;
 - f. Ensure compliance with federal regulations, grant agreements and applicable FTA circulars;
 - g. Oversight of procurements to ensure compliance;
 - h. Maintain all accounting and grant records for audit purposes;
 - i. Produce Comprehensive Annual Financial Report; and
 - j. Maintain DUSPA’s official set of books for purposes of complying with FTA and Single Audit requirements, and for providing financial statements as required per the RRIF/TIFIA loan agreements.¹
3. Circular 5010.1D notes the following responsibilities of RTD as “Grantee” which RTD agrees to manage and oversee with DUSPA as its “sub-recipient”:
 - a. Demonstrate legal, financial, and technical capacity to carry out the program, including safety and security aspects of the program;
 - b. Provide administrative and management support of project implementation;
 - c. Provide, directly or by contract, adequate technical inspection and supervision by qualified professionals of all work in progress;
 - d. Ensure conformity to Grant Agreements, applicable statutes, codes, ordinances, and safety standards;
 - e. Maintain the project work schedule agreed to by FTA and the grantee and monitor grant activities to assure that schedules are met and other performance goals are achieved;
 - f. Keep expenditures within the latest approved project budget;

¹ This item correlates directly with Number 4 under “TCC Responsibilities.”

- g. Ensure compliance with FTA and Federal requirements on the part of agencies, consultants, contractors, and subcontractors working under approved third party contracts or inter-agency agreements;
- h. Request and withdraw Federal funds for eligible activities only in amounts and at times as needed to make payments that are due and payable within three business days and retain receipts to substantiate withdrawals;
- i. Account for project property and maintain property inventory records that contain all the elements required;
- j. Demonstrate and retain satisfactory continuing control over the use of project property;
- k. Demonstrate procedures for asset management and adequate maintenance of equipment and facilities;
- l. Ensure that an annual independent organization-wide audit is conducted in accordance with Office of Management and Budget (OMB) Circular, A-133, "Audits of States, Local Governments, and Non-Profit Organizations";
- m. Prepare force account and Cost Allocation Plans (CAPs) and submit and obtain approval if applicable before incurring costs;
- n. Prepare and submit FTA required reports (see Chapter III, Section 3. "Reporting Requirements");
- o. Update and retain FTA required reports and records for availability during audits or oversight reviews; and
- p. Ensure that effective control and accountability are maintained for all grants and sub-grants, cash, real and personal property, and other assets. Grantees and sub-grantees must ensure that resources are properly used and safeguarded, and used solely for authorized purposes.

TCC Responsibilities:

- 1. Adhere to Policies and Procedures for receipt of grant and loan funding and payment of project costs that comply with Single Audit requirements;
- 2. Prepare Monthly Draws and Construction Progress Report (DUSPA is the direct recipient of the SB1 grant and the RRIF/TIFIA loans; RTD is the direct recipient of all remaining grants);
- 3. Prepare Budget Variance Tracking Reports;
- 4. For purposes of managing the project budget, TCC will maintain a separate general ledger on its CTI accounting software to record cash receipts (grants/loans) and accounts payable disbursements. TCC will review, code, approve, and pay project costs, either by check or wire transfer, upon receipt of grant and loan funding;²
- 5. Monthly reconciliation of bank account statements to the TCC general ledger;
- 6. Monitor and coordinate funding requirements to disburse funds within 3 days of funding;

² This item correlates directly with Number 2(j) above under "RTD Responsibilities."

7. Setup on-line cash management system with Vectra with positive pay and wire transfer modules;
8. Monitoring of outsourcing functions provided by RTD;
9. Procure auditor services for 2010 and beyond; and
10. Assist with annual Single Audit.

EXHIBIT B

RTD's Estimated Costs for Budget Purposes

q. Hard cost for a SANS server - storage - Onetime	\$25,000
r. Setup DUSPA ledger consultant and staff - Onetime	\$25,000
s. Accounting position July 1, 2010 to December 31, 2014 (\$100,000 per year including benefits)	<u>\$450,000</u>
Total	\$500,000