

8.0 RIGHT-OF-WAY

CDOT will acquire Right-of-Way (ROW) for this Project. At the level of design completed at the issuance of this document, it has been determined that this Project will be constructed on or within existing CDOT ROW and the additional ROW, as defined in the ROW plans in Book 4, being acquired. However, in the event that the Contractor requests additional ROW acquisition and CDOT Approves such request (Contractor Acquisitions), all Contractor Acquisitions, if needed, shall be performed by the Contractor in compliance with the requirements of this Section 8 and Book 1. Such Contractor Acquisitions include additional ROW acquisition for Additional Requested Elements (ARE) included in the Work. The Contractor shall be responsible for completion of all steps in the ROW acquisition process for Contractor Acquisitions, except for condemnations (if needed). The Colorado Attorney General's Office will file and prosecute all condemnations needed for Contractor Acquisitions.

8.1 Administrative Requirements

CDOT will retain possession of each parcel and all improvements, if any, made thereon by the Contractor. The Contractor's access and use of the ROW arises solely from the permission granted by CDOT under the Contract.

8.1.1 Acquisition and Relocation Standards

All ROW acquisition and relocations for Contractor Acquisitions shall be performed in accordance with all applicable federal and state laws, including:

1. The federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, including regulations promulgated pursuant to such Act, which appear at 49 CFR Part 24, as amended.
2. Right of Way Requirements for Design/Build Projects, 23 CFR 710.313.
3. The Colorado Relocation Assistance and Land Acquisition Policies Act, Section 24-56-101, *et seq.*, C.R.S., as amended.
4. The Colorado Eminent Domain Act, Section 38-1-101, *et seq.*, C.R.S., as amended.
5. CDOT's *Right of Way Manual*, as amended.
6. CDOT's authority to acquire property and to acquire through eminent domain, if necessary, is set forth in Section 43-1-208, 210 and 43-3-106, C.R.S., as amended.
7. If the acquisition of additional ROW by the Contractor is Approved by CDOT (Contractor Acquisitions), all appraisal, acquisition negotiation, and relocation shall be done by CDOT-Approved consultants.
8. All Contractor Acquisitions will be acquired in CDOT's name.

8.1.2 Status of Right-of-Way

CDOT will acquire all permanent ROW for the Project, including Permanent Easements (PEs). CDOT has also acquired some temporary construction easements (TEs) as shown on the ROW

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Plans included in Book 4. The ROW Plans included in Book 4 shows the ROW that CDOT owns and is acquiring for the Project.

If the Contractor determines that additional temporary construction easements are needed for the Work, the Contractor shall be responsible to define, value, negotiate, and pay for the acquisition of such temporary construction easements. If condemnation is needed to obtain possession of, or resolve acquisition negotiations, for any temporary construction easements, the Colorado Attorney General's Office will file and prosecute such condemnations. Temporary (construction) Easements (TE) will not be needed for construction on property owned by the City and County of Denver. The Contractor must apply for permits to enter and construct the Project on City and County of Denver property.

The Contractor shall comply with all the terms and conditions of the use and occupancy agreements. The parcels that will be obtained pursuant to use and occupancy agreements are shown on the ROW Plans included in Book 4. A copy of a form use and occupancy agreement is attached as Appendix A. It is anticipated that Appendix A will later be supplemented with the actual use and occupancy agreements that are executed by CDOT. The actual use and occupancy agreements may vary from the form use and occupancy agreement currently attached as Appendix A.

The Contractor shall be allowed access to each parcel identified in Appendix B as each parcel is acquired. CDOT will provide the Contractor with status reports, written notice of parcel access, and any applicable restrictions that may apply. The Contractor shall not access any parcel on which access has not been provided.

The Contractor shall not trespass on private property. If CDOT discovers a trespass, the Contractor shall promptly vacate possession of the private property upon receipt of notice of the trespass from CDOT. If any liability occurs as a result of the trespass, the Contractor shall be responsible for such liability, including indemnifying CDOT for such liability. In the event that trespass occurs, and especially in instances where trespasses persist after receipt of a notice to desist from CDOT, the Contractor shall be liable for liquidated damages as defined in Book 1, Section 17.

8.1.3 Right-of-Way Manager and Compliance with CDOT *Right-of-Way Manual*

A ROW Manager shall only be retained if ROW acquisition by the Contractor (Contractor Acquisitions) is Approved by CDOT. The Contractor's ROW Manager shall be responsible for all ROW coordination and compliance requirements. The Contractor's ROW Manager shall be qualified and Approved by CDOT for both acquisition and relocation services. The Contractor's ROW Manager shall coordinate all acquisition and relocation activities with CDOT. In compliance with 23 CFR §710.313(d)(3), the Contractor shall execute a certification in its Proposal that it has reviewed the current copy of the CDOT *ROW Manual* on CDOT's website and will comply with all of the requirements of the CDOT *ROW Manual*.

8.1.4 Property Management Plan

CDOT's property acquisition includes the acquisition of [List locations here] As set forth in Section 8.2.1, the Contractor shall be responsible for demolition of these improvements before completion of construction of the Project. If such demolition is not immediately completed, the Contractor shall be responsible for all property management requirements for such

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improvements until their demolition. The Contractor shall establish and maintain a written Property Management Plan for the Work, including such improvements, which shall establish administrative and technical means for the security, hazardous materials assessment, demolition, debris removal, site clearing, and cleanup of building structures and property improvements acquired as a part of the ROW on the Project. The Property Management Plan shall conform to Chapter 7, Property Management, of the CDOT Right of Way Manual and shall specifically address the following components:

1. Project Land and Improvements
2. Demolition
3. Rodent Control
4. Safety
5. Hazardous Waste and Storage Tanks
6. Hazardous Materials
7. Improvement Security and Maintenance

The Property Management Plan shall be submitted to CDOT for Approval at least 60 Days after NTP2.

If such demolition is not immediately completed, the Contractor shall be responsible for all property management requirements for such improvements until their demolition. The Contractor shall establish and maintain a written Property Management Plan for the Work, including such improvements, which shall establish administrative and technical means for the security, hazardous materials assessment, demolition, debris removal, Site clearing, and cleanup of building structures and property improvements acquired as a part of the ROW on the Project. The Property Management Plan shall conform to Chapter 7, Property Management, of the CDOT *Right of Way Manual* and shall specifically address the following components:

1. Project land and improvements
2. Demolition
3. Rodent control
4. Safety
5. Hazardous waste and storage tanks
6. Hazardous materials
7. Improvement security and maintenance

The Property Management Plan shall be submitted to CDOT for Approval at least 60 Days after NTP2.

8.2 Acquisition and Relocation Requirements

8.2.1 Temporary Easements

The TEs acquired by CDOT for the Project are shown on the ROW Plans included in Book 4. Should the Contractor determine that it needs TEs in addition to the TEs shown on the ROW Plans included in Book 4 (Additional TEs), the Contractor shall submit a written request to purchase such the Additional TEs to CDOT for Approval. Each request shall include the following documentation:

1. Identification of the Additional TEs and an explanation of a justification for their need. An illustration of each Additional TE superimposed on an aerial photograph with the dimensions of the requested Additional TE will be sufficient.
2. A preliminary cost estimate for each Additional TE that includes separate values for land and improvements, if any improvements will be affected, and appraisal (if needed) and acquisition costs.
3. Conveyance deeds showing the names of the current owners of all properties from which Additional TEs will be needed.

CDOT will review each request and, if Approved, shall notify the Contractor in writing. If CDOT Approves the request, the Contractor, at its sole cost and expense, shall be responsible for acquiring such Additional TEs.

Once authorization is obtained from CDOT, the Contractor may begin the ROW plans preparation, valuation, and acquisition negotiation process for the Additional TE's. All aspects of the ROW process for Additional TEs must be conducted in compliance with CDOT's Right of Manual, including ROW plans preparation and approval, appraisal, appraisal review (if required) or valuation, and acquisition negotiations. An appropriate environmental clearance, as specified in Section 5.0 of Book 2, shall be required as a prerequisite for approval of ROW plans for the Additional TEs. If an Additional TE is to be acquired from a landowner in which CDOT has an unsettled condemnation case, the same appraiser that prepared the appraisal for CDOT's condemnation case shall value the Additional TE. CDOT must Approve all value determinations and appraisals (if needed) for the Additional TE prior to any offer being made to the landowner.

After each TE is acquired, the Contractor shall submit a complete parcel acquisition file, which includes but is not limited to, copies of offer letters, fair market value determinations or value findings, fully-executed easement documents and/or agreements, the negotiator's signed diary, and a statement signed by the property owner acknowledging receipt of payment in full. Parcel acquisition files shall be submitted to CDOT for Approval no later than two Working Days following tender to the landowner. The Contractor shall not access any requested ROW parcel until CDOT provides written authorization allowing the Contractor access.

If the Contractor cannot reach an agreement with a landowner for the acquisition of the Additional TEs, the Contractor may request in writing that CDOT acquire the Additional TEs through condemnation proceedings. The Contractor shall prepare and submit to CDOT for Approval, a properly completed Condemnation Memorandum and Check List Form in

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accordance with the instruction contained in the CDOT Right of Way Manual. The condemnation request shall include two certified checks payable to the Clerk of the District Court of the appropriate county in the amount of the required condemnation filing fee and approved fair market value or value finding. The Contractor shall not enter any properties until notified in writing that legal possession has been obtained. Any cost increases, including payment of landowner's attorneys fees in some cases, or time delays as a result of condemnation proceedings shall be borne by the Contractor. The Contractor may be required to provide personnel for pre-trial and court testimony for each condemnation request.

8.2.2 Utility Easements

Construction of the Project will affect existing Utilities. Known easements for existing Utilities are shown in the ROW Plans included in Book 4. It is again noted that certain parcels will be obtained from (CCD ? BNSF ?) pursuant to a Use and Occupancy Agreement as shown on the ROW Plans included in Book 4. A copy of a Form Use and Occupancy Agreement is attached to this Section 8 as Appendix A. The Form Use and Occupancy Agreement includes specific provisions concerning Utilities. The Contractor shall comply with the requirements of such provisions.

If the Contractor determines that it needs Utility Easements (UE) in addition to, or as replacement for the UEs shown on the ROW Plans included in Book 4 (Additional UEs), the Contractor, at its sole cost and expense, shall be responsible for acquiring such Additional UEs (Contractor Acquisitions). The steps of the ROW acquisition process, the entity that is responsible for completion of each step (Contractor or CDOT), and approximate time frames for some of the steps are set forth in Appendix D of this Section 8. Note that all time frames in this table are approximate suggestions as opposed to binding agreements. As a general proposition, appropriate completion of the CDOT ROW acquisition process is subject to many variables that can create unforeseen delays. While every effort will be made by both the Contractor and CDOT to minimize such delays, they are common in this process.

Acquisition parcels to be acquired from irrigation ditches or ditch companies (both those acquired by CDOT and those acquired by the Contractor), if any, will likely not be conventional acquisitions of a fee simple interest or a UE for a limited certain purpose. Instead, ditch agreements with terms and conditions defining parties rights and responsibilities, including construction, use, and maintenance, may be negotiated. Each of these agreements may be different. The Contractor shall be responsible for compliance with certain of these terms and conditions during the effective time frame of this Contract.

The acquisition of Contractor Acquisition UEs requires prior Approval by CDOT. Acquisition of Additional UEs must be conducted in compliance with Book 2, Section 8.2.3, below.

8.2.3 Request for Additional Right-of-Way and Permanent Easements

Should the Contractor determine that additional ROW parcels or PE parcels (including Contractor acquisition UEs) are necessary or desirable for the Design or any ARE included in the Work, the Contractor shall submit a written request to CDOT for Approval. If acquisition of both TEs and permanent ROW, including PEs if any, are requested, the application, Approval and acquisition requirements of this Section 8.2.3 are applicable. Book 2, Section 8.2.1, above, is only applicable for requests to acquire TEs only. Each request shall include the following documentation:

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1. Identification of the additional parcels and an explanation of a justification for its need. An illustration of each parcel superimposed on an aerial photograph with approximate area of the parcel will be sufficient.
2. A preliminary cost estimate for each parcel that includes separate values for land, improvements, damages or benefits (if any), relocation (if applicable), and survey, ROW Plan preparation, appraisal, and acquisition costs.
3. A title commitment report for each parcel, including all supporting documentation, not more than 30 Days old. The Contractor shall be required to purchase title insurance for all additional ROW, PEs, and Additional UEs it is allowed to purchase and, if condemnation is needed, the Contractor shall be responsible for providing litigation guarantees for eminent domain proceedings.
4. Any maps, deeds, or other information available to the Contractor that shall expedite the acquisition.
5. Acquisition stage relocation plan in accordance with the CDOT *Right of Way Manual*, Chapter 5, if additional ROW acquisition requires occupant or personal property relocation.

CDOT will review each request and, if Approved, shall notify the Contractor in writing (Contractor Acquisitions). CDOT will notify the Contractor of any deficiencies and may request a resubmittal of the request. The Contractor shall promptly correct any deficiencies and resubmit the appropriate documentation.

If authorization is obtained from CDOT, the Contractor may begin the ROW acquisition process for the Contractor Acquisitions. All aspects of the ROW process for the Contractor Acquisitions must be conducted in compliance with CDOT's *Right of Way Manual*, including ROW plans preparation and approval, appraisal and valuation, and conduct and procedures for acquisition negotiations and relocation, if needed. For any fee parcels acquired, the Contractor shall obtain and provide appropriate release documents for any encumbrances affecting the acquisition parcels, including but not limited to releases of deeds of trust, mortgages, easements, and liens. If liens or encumbrances affect permanent easement parcels, CDOT should be notified of such liens and encumbrances and the Contractor will be required to take the action requested by CDOT, which may include subordination or release of the liens and encumbrances. An appropriate environmental clearance, as specified in Book 2, Section 5, Environmental Requirements, shall be required as a prerequisite for Approval of ROW plans for the additional ROW.

If the additional ROW is to be acquired from a landowner with whom CDOT has an unsettled condemnation case, the same appraiser that prepared the appraisal for CDOT's condemnation case shall value the additional ROW. CDOT must Approve the value determination for the additional ROW, or if required, issue a fair market value determination prior to any offer being made to the landowner. CDOT must review and Approve certain administrative settlements, which are settlements over the amount of the CDOT-Approved offer to purchase that is made to the landowner. Contractor shall be delegated the same administrative settlement authority as the "Region" as set forth in Section 10.2.1 of the CDOT *Right-of-Way Manual*. CDOT Region 6 shall be delegated the same administrative settlement authority as "Central Office" as set forth in Section 10.2.2 of the CDOT *Right-of-Way Manual*.

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The steps of the CDOT right of way acquisition process, the entity that is responsible for completion of each step (Contractor or CDOT), and approximate time frames for some of the steps are set forth in Appendix D of this Section 8. Note that all time frames in this table are approximate suggestions as opposed to binding agreements. As a general proposition, appropriate completion of the CDOT ROW acquisition process is subject to many variables that can create unforeseen delays. While every effort will be made by both the Contractor and CDOT to minimize such delays, they are common in this process.

If the additional Contractor Acquisitions requires occupant or personal property relocation, such relocation shall be conducted in compliance with Chapter 5 of the *CDOT Right of Way Manual*. The steps of the CDOT Relocation process, the entity that is responsible for completion of each step (Contractor or CDOT), and approximate time frames for some of the steps are set forth in Appendix E of this Section 8. Note that all time frames in this table are approximate suggestions as opposed to binding agreements. As a general proposition, appropriate completion of the CDOT ROW relocation process takes longer than one would reasonably think it might. If an acquisition displaces an occupant, working through the relocation process will likely be the longest most Schedule-specific required ROW activity. As a result, prioritizing such acquisition is recommended.

After each parcel of Contractor Acquisitions is acquired, the Contractor shall submit a complete parcel acquisition file, which shall include but not be limited to, copies of offer letters, fair market value determinations or value findings, fully executed easement documents and/or agreements, the negotiator's signed diary, a statement signed by the property owner acknowledging receipt of payment in full, and if relocation is applicable, all required relocation forms. Parcel acquisition files shall be submitted to CDOT for Approval no later than 2 Working Days following tender to the landowner. The Contractor shall not access any requested ROW parcel until CDOT provides written authorization allowing the Contractor access.

If the Contractor cannot reach an agreement with a landowner for the acquisition of the Contractor Acquisitions, the Contractor may request in writing that CDOT acquire the additional ROW through condemnation proceedings. The Contractor shall prepare and submit to CDOT for Approval a properly completed Condemnation Memorandum and Check List Form in accordance with the instruction contained in the *CDOT Right of Way Manual*. The condemnation request shall include a certified check payable to the Clerk of the District Court of the appropriate county in the amount of the required condemnation filing fee and approved fair market value or value finding.

The Contractor must work with the Colorado Attorney General's Office to establish a realistic schedule for filing condemnations, and setting and holding immediate possession hearings. It usually takes at least three months from the date of submission of a condemnation request file to the Colorado Attorney General's Office for a condemnation action to be filed and an immediate possession hearing to be set and held. The Contractor shall not enter any properties until notified in writing that legal possession has been obtained. If a settlement is negotiated with a property owner after the filing of a condemnation, the Contractor will be consulted on the settlement; however, CDOT shall have authority to decide whether to accept or reject the settlement. If a settlement is agreed to, the Contractor must pay the full amount of the settlement. If a valuation trial is held, the Contractor shall be responsible for payment of the full amount of the valuation trial award, including all interest, costs and attorneys' fees, if any.

If authorization is obtained from CDOT for the Contractor to purchase Contractor Acquisitions, the Contractor's ROW Manager shall meet with CDOT Region 6's ROW Manager, or a delagee,

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every two weeks to review the status of the ROW acquisitions and relocations, if applicable, and check Quality Control/Quality Assurance as needed, until the completion and CDOT Approval of the acquisitions and relocations. The Contractor is responsible for creation and implementation of an internal status tracking and quality control system for all ROW processes.

If there are any time delays as a result of condemnation proceedings, all costs associated with such time delays shall be borne by the Contractor. The Contractor may be required to provide personnel for pre-trial and court testimony for each condemnation request.

8.2.4 Permission to Enter Property

The Contractor shall secure permission to enter property forms prior to entering any property outside the ROW for surveying, nonintrusive environmental investigation, and appraisal purposes. It shall be the Contractor's sole responsibility to obtain the forms, and the Contractor shall be responsible for any and all damages and claims. The Contractor shall submit copies of all permission to enter property forms to CDOT for Acceptance.

8.2.5 Permits for Bikeway Construction on (Public and or CCD Properties?)

Portions of the Bikeway are located on properties owned by ??? (CCD or ?). No ROW parcels have been defined or acquired for these portions of the. The Contractor shall apply for and obtain permits from the City and County of Denver for this Bikeway construction. The Contractor shall assume that complete design plans for the Bikeway will be required before issuance of these permits. The Contractor is solely responsible for all aspects of the permits, including required indemnifications and insurance policies with minimum coverage amounts. The permits will only cover the construction of the Bikeway segments on these City and County of Denver properties and shall only be effective for the construction time frame. CDOT will enter into Intergovernmental Agreements with City and County of Denver that will define the rights and responsibilities of the entities for maintenance of the Bikeway segments on these properties after construction completion.

8.3 Construction Requirements

8.3.1 Demolition

The Contractor shall demolish all buildings, structures, and other improvements on the ROW, including but not limited to, those structures listed in Appendix C of this Section 8. In the event that ROW acquisition has been Approved by CDOT that includes acquisition of structures or improvements, demolition of such structures and improvements shall be completed in compliance with this Section. The Contractor shall conduct and document asbestos and hazardous waste, including lead-based paint inspections and any required action in accordance with Book 1 of the Contract Documents. All Utilities associated with such buildings, structures, and other improvements installed on or connected to the ROW shall be abandoned or removed in accordance with the requirements of the applicable Utility Owner as part of the demolition, unless otherwise noted.

The Contractor shall, in accordance with all federal, state, and local regulations, properly remove and dispose of all regulated asbestos containing material, all Universal and other types of hazardous waste, and any other regulated material other than solid waste prior to demolition of any property. The Contractor shall also obtain all permits or other approval documents

required by state and local government, including a demolition plan Approved by the CDOT Manager of Property Management at Headquarters in accordance with the Occupational Health and Safety Administration (OSHA) demolition regulations 1926.850 prior to demolition of any property. Such documentation shall be submitted to CDOT for Acceptance at least 15 Days prior to demolition.

8.3.2 Restoration of Property and Landscape

Temporary easements are temporary rental of property. At the end of the rental period, property occupied by the Contractor under a temporary easement shall be returned to the landowner in the same condition it was in prior to taking possession. The Contractor shall, at its sole cost and expense, repair and/or replace or restore any damage to TE property that may occur as a result of the Contractor's occupancy, to a condition reasonably equal to that existing prior to the damage. Restoration may include, but is not limited to, repair, replacing in kind, rebuilding, or replanting. Such restoration must be completed prior to the termination date of the TE rental term.

8.3.3 Protection of Property

Once permission to enter has been acquired for a property in accordance with the requirements herein, the Contractor shall manage and minimize losses to the property in accordance with the requirements of Book 2, Section 18, Maintenance during Construction. This shall include the installation of temporary chain-link security fencing sufficient to contain animals, people, etc. The temporary fencing shall be installed prior to removing any ROW fencing or sound barrier in place within the Project limits.

8.3.4 Prohibition Against Coercion, Impairment of Safety, and Inconvenience of Displaced Occupants Still in Occupancy

In compliance with 23 CFR §710.313(d)(3), CDOT may establish hold off zones around occupied properties whose occupants are being displaced by a ROW acquisition, but have not vacated the premises. If such zones are established, no construction-related activity will be allowed within the hold off zone until the property is vacated.

In compliance with 23 CFR §710.313(d)(4), adequate access shall be provided to occupied properties whose occupants are being displaced by a ROW acquisition, but have not vacated the premises, to ensure emergency and personal vehicle access.

In compliance with 23 CFR §710.313(d)(5), utility service must be available to all to occupied properties whose occupants are being displaced by a ROW acquisition, but have not vacated the premises, at all times prior to and until relocation is completed.

In compliance with 23 CFR §710.313(d)(6), open burning should not occur within 305 meters (1,000 feet) of occupied properties whose occupants are being displaced by a ROW acquisition, but have not vacated the premises.

8.4 Deliverables

At a minimum, the Contractor shall submit the following to CDOT for review, Approval, and/or Acceptance:

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Deliverable	Review, Acceptance, or Approval	Schedule
Property Management Plan	Approval	60 Days after NTP2
Parcel Acquisition Files	Approval	No later than 2 Working Days following tender of payment
Condemnation memorandum and check list form	Approval	Concurrent with the request to CDOT for property condemnation
Request for additional ROW (letter)	Approval	As needed
Permission to enter property form	Approval	Prior to entering private property
Asbestos and lead based paint inspection	Approval	15 Days prior to demolition

All deliverables shall also conform to the requirements of Book 2, Section 3, Quality Management.

8.5 Appendices

- Appendix A Form Use and Occupancy Agreement - for CDOT's use and occupancy of property owned by (Entity name here) for the Project
- Appendix B Right of Way Schedule
- Appendix C Right of Way Demolition Schedule
- Appendix D Steps of the CDOT Right of Way Acquisition Process, Entity Responsible for Completion of Each Step, and Approximate Time Frames
- Appendix E Steps of the CDOT Relocation Process, Entity Responsible for Completion of Each Step, and Approximate Time Frames

APPENDIX A

FORM USE AND OCCUPANCY AGREEMENT

for CDOT's Use and Occupancy of Property Owned by the City and County of Denver for the Project.

USE AND OCCUPANCY AGREEMENT

This Use and Occupancy Agreement is entered into this _____ day of _____, 20____, ("Agreement") by and between the REGIONAL TRANSPORTATION DISTRICT, 1600 Blake Street, Denver, CO 80202 (hereinafter referred to as "RTD") and the STATE OF COLORADO for the use and benefit of the DEPARTMENT OF TRANSPORTATION, 4201 East Arkansas, Denver, Colorado 80222 (hereinafter referred to as "CDOT"). CDOT and RTD are referred to individually herein as a "Party" or collectively as the "Parties".

FACTUAL RECITALS

- A. RTD is in possession of certain real property located in the City and County of Broomfield, Colorado; and
- B. CDOT will design, purchase right of way for, and construct CDOT Project No. NH 0361-093, which is a project that will construct a new Managed Lane in each direction on US 36, from Federal Boulevard to west of the US 36/Interlocken interchange. Pursuant to an intergovernmental agreement dated _____, RTD is a financial contributor and design and construction partner in this project. CDOT will design, purchase right of way for, and construct CDOT Project No. FBR 0361-100, which is a replacement of the SH 121 (Wadsworth) bridge over US 36. Both of these projects will be constructed at the same time and shall hereinafter collectively be referred to as "Projects"; and
- C. CDOT has asked RTD for permission to use and occupy the portion of RTD Right of Way illustrated on the right of way plans attached hereto as Exhibit "A", consisting of the following: (i) Parcel Nos. 15, 15A, 15B, 15C and 15D for Project No. NH 0361-093, and (ii) Parcel No. SE-201 for Project No. FBR 0361-100 (hereinafter collectively referred to as the "Subject Property") which CDOT needs for the Projects. Legal descriptions for the Subject Property are attached hereto as Exhibit "B"; and
- D. RTD has agreed to allow CDOT to use the Subject Property. The permission instrument for CDOT's use of the Subject Property is a use and occupancy agreement. This Agreement defines the rights and responsibilities of the parties with regard to CDOT's use of the Subject Property; and
- E. In consideration of the foregoing and the mutual covenants herein, this Agreement is executed by the Parties under the authority of § 29-1-203, § 32-9-119, § 43-1-106 and § 43-1-110, C.R.S., as amended, and by the RTD General Manager pursuant to the

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authorization by the RTD Board of Directors provided at the RTD Board meeting of _____, 2012 a copy of the minutes of which is attached hereto.

NOW THEREFORE, it is hereby agreed that:

1. RTD hereby consents to the perpetual use and occupancy of the Subject Property by CDOT for the construction, operation, use, and maintenance of roadways and all associated appurtenances, including but not limited to bridges and other structures, signals, culverts, sluices, drains, ditches, waterways and other drainage features, pedestrian and bicycle facilities, embankments, slopes, retaining walls, trees, shrubs and other landscaping (“CDOT Transportation Facilities”) subject to the terms and conditions herein contained.

2. The Subject Property may not be used for any purposes other than the purposes described herein without the specific written prior permission of RTD. Any other use of the Subject Property shall constitute a material breach of this Agreement. Any revenue producing operation on the Subject Property shall be permitted only subject to agreement between the Parties as to the nature of the operation and use of the proceeds.

3. CDOT acknowledges RTD’s authority to grant this Agreement and RTD by its issuance represents it has the authority to do so. Except as set forth in paragraph, 6 of this Agreement, RTD shall not convey any of its interests in the Subject Property without CDOT’s consent during the term of this Agreement. The right to use and occupy the Subject Property granted hereunder is granted with respect to the Subject Property in its “AS IS” physical condition without any warranty, express or implied. RTD does not warrant its title in, or right to use, the Subject Property. In the event that any third party disputes RTD’s right to grant this Agreement or CDOT’s right to use the Subject Property pursuant hereto, the Parties will reasonably cooperate to resolve the dispute with the third party. RTD will not be required to expend funds in order to resolve the dispute.

4. The CDOT Transportation Facilities to be constructed on the Subject Property are defined by a set of preliminary design plans sufficient for awarding a contract to a design-build contractor dated _____. RTD has reviewed and approved such plans. CDOT shall not proceed with any major modifications of the CDOT Transportation Facilities or other new construction on the Subject Property, without first obtaining prior approval, including a detailed review and approval of all design plans, from RTD, which approval will not be unreasonably withheld. “Major modifications of the CDOT Transportation Facilities” shall be defined as modifications that trigger modifications to the right of way plans and/or legal descriptions of the Subject Property. Upon completion of the design-build contract, CDOT shall submit to RTD a full set of “as built” drawings for the completed CDOT Transportation Facilities. If the Parties enter into design and/or construction intergovernmental agreements (“IGAs”) for the CDOT Transportation Facilities, and if the provisions of this paragraph 4 conflict with any provisions of such IGAs, the terms and conditions of the IGAs will control.

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5. Operation, maintenance, and repair of the CDOT Transportation Facilities on the Subject Property will be the sole legal and financial responsibility of CDOT, including, but not limited to, landscaping, sweeping, graffiti, litter, and snow removal. CDOT operates, maintains, and repairs its transportation facilities to Colorado Transportation Commission level of service (MLOS) allocated standards. If CDOT fails to properly maintain the Subject Property to the MLOS standards so that the lack of such maintenance impairs the use, operation, maintenance, or safety of adjoining RTD properties, RTD shall make written demand on CDOT to immediately complete outstanding maintenance items. Failure to complete such outstanding maintenance item(s) following such demand shall trigger the following dispute resolution process: The Parties shall resolve disputes regarding all items in this Agreement at the lowest staff level possible. The escalation process shall be, in ascending order: 1. the RTD Manager, Real Property and the CDOT Region 6 Maintenance Superintendent; 2. RTD's Assistant General Manager, FASTRACKS/ENGINEERING and CDOT's Region 6 Transportation Director; and 3. RTD's General Manager and CDOT's Executive Director.

6. A utility, or utilities, may, ask for permission to occupy or cross the Subject Property. In the event of such an occurrence, CDOT shall be the entity authorized to issue permits for the Subject Property. If any permit application is acceptable, CDOT will issue a utility permit to allow for such use. All CDOT permits issued shall include the following provision:

The Regional Transportation District has an ownership interest in the property that is the subject of this permit. Permittee hereby indemnifies and holds harmless the Regional Transportation District for any and all liabilities arising from the uses allowed by the permit. Permittee shall name the Regional Transportation District as an additional insured on all insurance policies required by this permit. This permit shall not be valid until copies of such insurance policies so naming the Regional Transportation District have been provided to:

Assistant General Manager, FASTRACKS/Engineering
Regional Transportation District
1560 Broadway
Denver CO 80202

Each permit shall provide that the permit shall be terminable upon no more than one year's advance written notice to utility permittee, utility permittee to bear all costs of removal or relocation. RTD shall not issue a companion utility permit or license to allow for such use.

7. RTD expressly reserves the right to use and enjoy the Subject Property, including but not limited to the lands beneath and the airspace above, for all purposes and uses which do not unreasonably interfere with the uses granted to CDOT herein.

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8. Except as specified in paragraph 6, above, CDOT's allowed use of the Subject Property as defined herein, shall not be transferred to another party without RTD's prior approval.

9. If CDOT fails to use the Subject Property for the uses defined herein by _____, or if it abandons the Subject Property, CDOT's right to use the Subject Property shall terminate. Abandonment shall be deemed to occur for purposes of this Agreement if CDOT notifies RTD that it will cease to use the Subject Property for the CDOT Transportation Facilities, or if CDOT fails to use, operate, or maintain the CDOT Transportation Facilities for a consecutive period of 24 months after _____, during which time no use, operation, maintenance, construction or reconstruction activities are occurring.

10. The Parties intend that the general form of this Agreement shall be used in future instances in which RTD may grant CDOT use and occupancy of various RTD properties for various CDOT uses in instances where the entities facilities do not share the same space.

11. Each Party represents and warrants that it has taken all actions that are necessary or required by applicable law, to properly authorize the undersigned signatory to lawfully execute this Agreement on behalf of such Party and to bind the Party to its terms.

12. All notices and other communications provided for in this agreement shall be sent to the following:

For RTD:
Assistant General Manager, FASTRACKS/Engineering
Regional Transportation District
1560 Broadway
Denver CO 80202

For CDOT:
Regional Transportation Director
Colorado Department of Transportation
2000 South Holly Street
Denver, CO 80203

13. RTD and CDOT are subject to applicable provisions of the "Taxpayer's Bill of Rights" (TABOR Amendment), as may be amended, found at Article X, Section 20, Constitution of Colorado. Their respective financial obligations hereunder beyond 2009 are subject to and contingent upon the budgeting and irrevocable pledging of funds intended to pay such obligations and sufficient therefore by their respective governing bodies.

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IN WITNESS WHEREOF, the Parties hereto have caused the foregoing Agreement to be executed the day and year first above written.

DEPARTMENT OF TRANSPORTATION
STATE OF COLORADO

ATTEST:

By _____
Timothy J. Harris, P.E.
Chief Engineer

By _____
Ian Broussard
Chief Clerk of Right-Of-Way

REGIONAL TRANSPORTATION DISTRICT

ATTEST:

By _____
Philip Washington, General Manager

By _____

Approved as to legal form for the
Regional Transportation District

Associate General Counsel

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APPENDIX B

RIGHT-OF-WAY SCHEDULE

Parcel No.	Segment	Owner	Access Date
AP-1	A	KKR Culp LLC, et al.	5-1-12
AP-2 Rev.	A	BRT Properties LLC	5-1-12
AP-3	A	Stan Lucas	5-1-12
PE-4	A	City of Westminster	6-5-12
5, PE-5, PE-5A	A	Magnum Colorado One LLC	6-5-12
4A, 4B, 4C, 4D, 4E, 4F, 4G, 4H, 4I, 4J, 4K, PE-4A, PE-4B	B	City of Westminster	6-15-12
6	B	SB Del Amo LLC	6-25-12
7	B	Westfield Village LLC	6-25-12
8	B	Wal Mart Real Estate Business Trust	6-25-12
9	B	Tuscany Trails Homes	6-25-12
PE-10	B	Farmer Highline Canal	7-20-12
11	B	Centex Homes	4-27-12
12, PE-12	B	AMLI Residential 2001 Pool LP	6-25-12
13, PE-13	B	R Dean Hawn Interests	6-25-12
14	B	TT of Westminster, Inc.	6-25-12
4L, 4M, PE-4F, PE-4G, PE-4H, PE-4I, PE-4J, PE-4K, SE-4, SE-4A, SE-4B	C	City of Westminster	8-1-12
15, 15A, 15B, 15C, 15D, SE-15	C	Regional Transportation District	5-11-12
PE-16	C	BNSF	10-31-12
AP-17, AP-17A	C	Oscar Albert Becker, Jr.	9-28-12
17B, 17C	C	Oscar Albert Becker, Jr.	7-31-12
AP-18	C	Hudson Cross REO Funding X, LLC	9-28-12
19	C	Park 36 Investment LLC	7-20-12
20	C	Sauer	5-21-12
21	C	City of Broomfield	7-20-12

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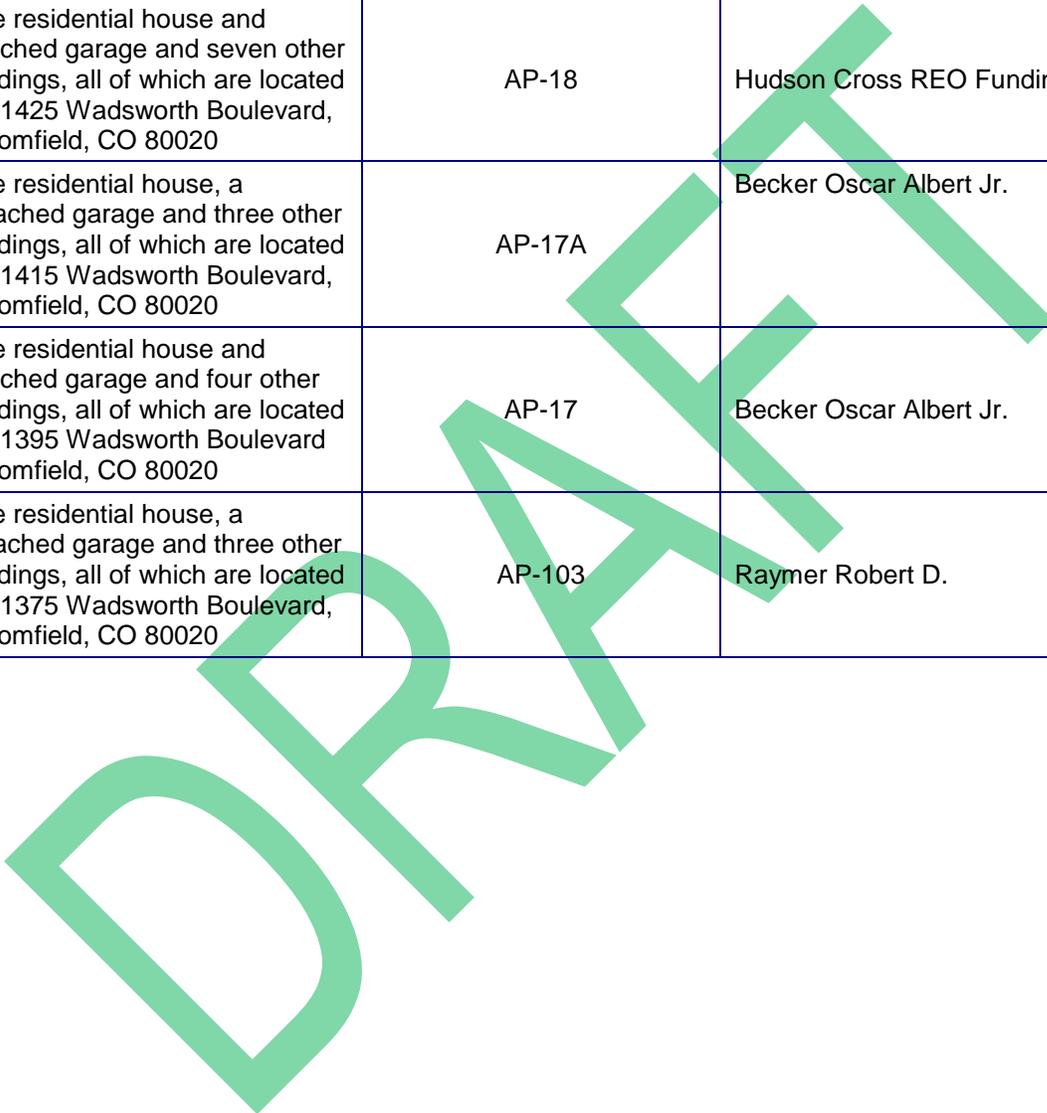
Parcel No.	Segment	Owner	Access Date
21C, 21D	D	City and County of Broomfield	7-20-12
PE-22	D	J.P.J.A. Limited Family Partnership	7-20-12
SE-23	D	Millennium Investments I, LLP	5-2-12
SE-24	D	Turnpike Foresight, LLC	7-20-12
25, SE-25, SE-25A, 25B, SE-25B, 25C, SE-25C	D	JPI Colorado L and LLLP	8-20-12
26	D	Mad Dog Enterprises LLC	9-28-12
27, 27A	D	Carey Technology Properties II LLC	7-20-12
SE-28	D	Tana Oil and Gas L.L.C.	7-20-12
SE-29	D	Teilhaber Manufacturing Corp.	5-21-12
30	D	Auto-Owners Insurance Company	8-20-12
31, 31A	D	DDR Flatiron LLC	8-31-12
32, SE-32	D	Conoco Phillips Company	8-31-12
PE-33	D	Broomfield Properties Corp	8-31-12
BE-112th			
100, SE-100, SE-100A	BE-112th	Colorado R&R LLC	8-6-12
101, 101A, 101B, 101C, PE-101, PE-101A, PE-101B, PE 101C, PE-101D, SE-101, SE-101A	BE-112th	City and County of Broomfield	7-2-12
SE-102, SE-102A	BE-112th	Park 36 Investment LLC	7-16-12
AP-103	BE-112th	Robert D Raymer	9-14-12
104	BE-112th	Dallas d. & Alice Hass	5-18-12
BE-Wads			
200, 200A, 200B, PE-200	BE-Wads	JAT4 Family Limited Liability Limited Partnership	7-25-12
SE-201	BE-Wads	Regional Transportation District	5-11-12

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APPENDIX C

SCHEDULE OF IMPROVEMENTS TO BE DEMOLISHED

Address of Improvement	Parcel Nos. on CDOT ROW Plans for Underlying Ownership	Owner from Whom Underlying Property shall be Acquired
One residential house and attached garage and seven other buildings, all of which are located at 11425 Wadsworth Boulevard, Broomfield, CO 80020	AP-18	Hudson Cross REO Funding X. LLC
One residential house, a detached garage and three other buildings, all of which are located at 11415 Wadsworth Boulevard, Broomfield, CO 80020	AP-17A	Becker Oscar Albert Jr.
One residential house and attached garage and four other buildings, all of which are located at 11395 Wadsworth Boulevard Broomfield, CO 80020	AP-17	Becker Oscar Albert Jr.
One residential house, a detached garage and three other buildings, all of which are located at 11375 Wadsworth Boulevard, Broomfield, CO 80020	AP-103	Raymer Robert D.



APPENDIX D

STEPS OF THE CDOT RIGHT OF WAY ACQUISITION PROCESS, ENTITY RESPONSIBLE FOR COMPLETION OF EACH STEP, AND APPROXIMATE TIME FRAMES

Description of ROW Task	Entity Responsible for Completion of ROW Task	Approximate Time Frame for Completion of ROW Task	Entity Responsible for Review and Approval of ROW Task	Approximate Time Frame for Completion of Review and Approval of ROW Task	Comments
Survey	Contractor	Variable depending on scope 2-4 weeks for smaller surveys, 2-4 months for larger surveys	CDOT Region 6 Survey Unit	2-3 weeks from submission	This is only survey of property boundary and topography needed for development of ROW Plans
Delivery of Engineering Design of Improvements Requiring ROW Completed to a Sufficient Level to Ensure that Location, Size and Shape of ROW Parcels Will Not Change as Design is Advanced	Contractor	Variable depending on scope of improvements to be designed	CDOT Design Review Team and CDOT Region 6 ROW Manager	Variable depending on scope of improvements designed	Completion of sufficient design to this level is a common cause of delay in the ROW plans development process
Appraisal and Appraisal Review	Appraisal: Contractor Appraisal Review: CDOT	6-8 weeks per appraisal per landowner 1-2 weeks to review an appraisal	CDOT	1-2 weeks to review an appraisal	If the estimated value of the acquisition is \$5,000 or less, a value finding can be prepared by a real estate specialist and an appraisal/appraisal review is not needed. All requests for valuation by a value finding vs. an appraisal must be Approved by CDOT.

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Description of ROW Task	Entity Responsible for Completion of ROW Task	Approximate Time Frame for Completion of ROW Task	Entity Responsible for Review and Approval of ROW Task	Approximate Time Frame for Completion of Review and Approval of ROW Task	Comments
Acquisition Negotiation	Contractor	4-6 weeks for the initial negotiation. 2 weeks for a final offer letter. 2 weeks for a last and final offer letter, if given. At least 3 months from submission of request for condemnation to completing immediate possession hearing.	CDOT must review and Approve certain administrative settlements. Contractor shall be delegated the same administrative settlement authority as the "Region" as set forth in Section 10.2.1 of the CDOT ROW Manual. CDOT Region 6 shall be delegated the same administrative settlement authority as "Central Office" as set forth in Section 10.2.2 of the CDOT ROW Manual.	2-4 Days to review and Approve backup document-ation of completed acquisition negotia-tions	Contractor cannot use duress or coercion in acquisition negotiations

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Description of ROW Task	Entity Responsible for Completion of ROW Task	Approximate Time Frame for Completion of ROW Task	Entity Responsible for Review and Approval of ROW Task	Approximate Time Frame for Completion of Review and Approval of ROW Task	Comments
Condemnation	Colorado Attorney General's Office	At least three months to file a condemnation petition, serve it on the parties, set and hold an immediate possession hearing. Valuation trials can take a year or more from the date of filing the condemnation petition.			All offers to purchase must be made in CDOT's name, so the Attorney General's Office is properly authorized to represent the CDOT as the condemning authority in the condemnation proceeding,
Certification that Acquisition was completed in compliance with State and Federal Requirements	Contractor		CDOT Region 6 ROW Manager		

APPENDIX E

STEPS OF THE CDOT RELOCATION PROCESS, ENTITY RESPONSIBLE FOR COMPLETION OF EACH STEP, AND APPROXIMATE TIME FRAMES

Description of ROW Task	Entity Responsible for Completion of ROW Task	Approximate Time Frame for Completion of ROW Task	Entity Responsible for Review and Approval of ROW Task	Approximate Time Frame for Completion of Review and Approval of ROW Task	Comments
Relocation Planning Studies Required by 49 CFR §24.205	Contractor	Variable depending on scope 1-2 weeks for smaller studies	CDOT HQ ROW Unit	1-2 weeks from submission	
Relocation Advisory Services Required by 49 CFR §24.205	Contractor	Variable. Typically continuous throughout relocation process.	CDOT Region 6 Acquisition/Relocation Supervisor. Note: Approval of a specific deliverable is not required. Rather this is general oversight.	Generally continuous throughout relocation process.	CDOT Region 6 Acquisition/Relocation personnel can assist with advisory services, as needed.
Provide Displaced Occupants Notice that They Have 90 Days to Vacate the Premises, and Later That They Have 30 Days to Vacate the Premises 49 CFR §24.203	Contractor	The 90-Day notice is provided at the time the written offer to purchase the property is provided to the landowner	CDOT Region 6 Acquisition/Relocation Supervisor. Note: Approval of a specific deliverable is not required. Rather this is general oversight.		90 Days for a displaced occupant to find a replacement property and move into it is the minimum required by law. As a practical matter, that is too short, especially for displaced businesses. It is desirable to lengthen this minimum time frame as much as possible. At least 6 months is a better expectation. The 30-Day notice cannot be provided until possession of the underlining property is obtained.

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DATE: MAY 16, 2012

Description of ROW Task	Entity Responsible for Completion of ROW Task	Approximate Time Frame for Completion of ROW Task	Entity Responsible for Review and Approval of ROW Task	Approximate Time Frame for Completion of Review and Approval of ROW Task	Comments
<u>Business Relocation</u> Prepare and Submit Requests for Reimbursement of all Available Business Relocation Monetary Benefits, Including Expenses Incurred Searching for a Replacement Property, 49 CFR §24.301, Moving Expenses, 49 CFR §24.301, Reestablishment, 49 CFR §24.304, or single "In Lieu" payment, 49 CFR §24.305	Contractor	Variable Note: since these are reimbursable expenses, the displaced occupant must actually incur the expenses before a request for reimbursement can be prepared.	CDOT HQ ROW Unit	2-5 Days per submittal	
<u>Residential Relocation</u> Prepare and Submit Requests for Reimbursement of all Available Residential Relocation Monetary Benefits, Including Replacement Housing Payment, 49 CFR §24.401 and Moving Expenses, 49 CFR §24.301	Contractor	Variable Note: since these are reimbursable expenses, the displaced occupant must actually incur the expenses before a request for reimbursement can be prepared.	CDOT HQ ROW Unit	5-10 Days per submittal	
Certification that Acquisition was completed in compliance with State and Federal Requirements	Contractor		CDOT Region 6 ROW Manager		