

**PASSENGER RAIL ACCESS AND OPERATING AGREEMENT
BETWEEN
STATE OF COLORADO
AND
UNION PACIFIC RAILROAD COMPANY**

This PASSENGER RAIL ACCESS AND OPERATING AGREEMENT (this “Agreement” or “PROA”) is entered into as of this 1st day of May, 2025 (“Effective Date”) by and between the STATE OF COLORADO (“Passenger Agency” or “State”) and UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (“Railroad”). Passenger Agency and Railroad may be individually referred to as a “Party,” and jointly referred to as the “Parties.”

RECITALS

A. Railroad is a major Class I Railroad (as defined below) that operates trains over more than 32,000 miles of track across 23 U.S. states. The company owns, operates, maintains, and dispatches a significant network of critical freight rail routes and hosts both intercity and commuter passenger rail services. Railroad plays a vital role in national and state economies by: (a) maintaining and expanding its ability to move freight by rail; (b) serving the states’ shippers; and (c) relieving crowded highway networks by facilitating the transportation of goods by rail rather than by truck: This shift helps reduce traffic congestion, air pollutant emissions, greenhouse gas emissions, and energy consumption.

B. On November 1, 2024, the Parties entered into a Memorandum of Understanding outlining their joint commitment to develop this Agreement and establish a framework for a new passenger rail service to operate Trains in Colorado using certain facilities. owned by the Railroad along and over the Rail Lines (“Mountain Passenger Rail Service” or “Service”)

C. Mountain Passenger Rail Service is in consideration for lease payments from Railroad to the Passenger Agency for Railroad’s use of the Moffat Tunnel in accordance with the terms described in the Lease Agreement dated May 1, 2025 (“Lease Agreement”),

D. between the Parties.

E. The Passenger Agency anticipates that the Mountain Passenger Rail Service will operate from Denver Union Station in Denver, Colorado to Craig, Colorado along the route described in *Exhibit A*.

F. In addition to a direct contract with a Designated Contractor, Passenger Agency may engage in public-private partnerships, public-public partnerships, and joint service models with other parties to effectuate the Mountain Passenger Rail Service (an “Alternative Delivery Method”).

The Parties have agreed on the below terms for the Mountain Passenger Rail Service as follows:

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated into and made a part of this Agreement; the mutual covenants and agreements set forth in this Agreement; all attached exhibits, which are incorporated herein; and other good and valuable consideration, the receipt and sufficiency of which are acknowledged and accepted by the Parties, Railroad and Passenger Agency agree as follows;

Section 1. DEFINED TERMS

Section 1.1 **"Affiliate"** means a corporation, partnership, or other entity, controlled by, controlling, or under common control of a Party. In the case of and with respect to the Passenger Agency, Affiliate includes any subdivision of the State of Colorado.

Section 1.2 **"Agreement"** shall have the meaning set forth in the introductory paragraph.

Section 1.3 **"Alternative Delivery Method"** shall have the meaning set forth in Recital E.

Section 1.4 **"Applicable Law"** means all present and future laws, statutes, regulations, ordinances, resolutions and orders of any Governmental Authority, including the State Fiscal Rules and the federal Interstate Commerce Commission Termination Act of 1995. Any reference in this Agreement to Applicable Law shall be interpreted to refer to such authority then in effect, as may have been changed or amended since the Effective Date of this Agreement.

Section 1.5 **"Authorization Notice"** means an agreement between the Parties for the provision of non-route/non-recurring services.

Section 1.6 **"Authorization Notice Procedure"** means the authorization notice for non-routine/non-recurring services prior to approval for such services using the procedure, as described in **Exhibit B**.

Section 1.7 **"CAD"** means Computer-Aided Dispatch.

Section 1.8 "C.F.R." means the Code of Federal Regulations.

Section 1.9 **"Claim"** shall have the meaning set forth in section 14.1.

Section 1.10 **"Class I Railroad"** means a freight carrier designated by the Surface Transportation Board as having an annual operating revenue of at least the amount designated by the Surface Transportation Board, which is currently \$900 million, after applying the railroad revenue deflator formula shown in Note A of 49 C.F.R. Part 1201, as amended, titled "RAILROAD COMPANIES" and any implementing regulations.

Section 1.11 **"Confidential Information"** means any information delivered to the Receiving Party by or on behalf of the Providing Party that (a) is proprietary, privileged, or confidential in nature; and (b) was visibly marked, labeled, or otherwise adequately identified as such when provided to the Receiving Party. Notwithstanding the foregoing, Confidential

Information does not include information that: (i) was publicly known or otherwise known to the Receiving Party prior to the time of such disclosure; (ii) subsequently becomes publicly known through no act or omission by the Receiving Party or any person acting on the Receiving Party's behalf; (iii) constitutes financial statements that are otherwise publicly available; (iv) is independently developed by the Receiving Party without reliance on or reference to the Providing Party's Confidential Information; (v) is rightfully received by the Receiving Party from a third party that is not under any obligation to keep such information confidential; (vi) is approved for release by the Providing Party in writing; or (vii) is required for release by Applicable Law.

Section 1.12 "*Consists*" means the consists to which Passenger Agency shall have the right to operate Trains, as described in *Exhibit C*.

Section 1.13 "*Contract*" shall mean a contract between the Passenger Agency and Designated Contractor(s) for the provision of operation or maintenance services associated with the Passenger Agency's Service.

Section 1.14 "*Contractor Requirements*" shall have the meaning set forth in Section 9.2.

Section 1.15 "*CORA*" means the Colorado Open Records Act, C.R.S. §§ 24-72-201 to 206.

Section 1.16 "*C.R.S.*" means the Colorado Revised Statutes.

Section 1.17 "*Days*" or "*days*" means consecutive calendar days, unless otherwise noted.

Section 1.18 "*Designated Contractor*" means the legal entity or entities designated and certified by Passenger Agency to Railroad that the Designated Contractor meets the criteria in Section 9.2 herein, to be responsible for the control, management, and operation of Passenger Agency's Trains.

Section 1.19 "*Discontinuance of Service*" shall have the meaning set forth in Section 4.11.

Section 1.20 "*Dispute*" shall have the meaning set forth in Section 18.1.

Section 1.21 "*Dispute Notice*" shall have the meaning set forth in Section 18.2.

Section 1.22 "*Effective Date*" shall have the meaning set forth in the introductory paragraph.

Section 1.23 "*Environmental Laws*" shall have the meaning set forth in Section 12.4.

Section 1.24 "*Extension Term*" means each additional period of time for which this Agreement is extended by written consent of the Parties and for any period in which Railroad continues to use the Moffat Tunnel as a tenant at sufferance in accordance with Section 17.2 of the Lease Agreement dated May 1, 2025.

Section 1.25 *"Facility"* means Railroad's real property that is a building or other fixed structure adjacent to or within close proximity to Rail Lines.

Section 1.26 *"Force Majeure Event(s)"* means: (a) any governmental order, law, regulation, executive order, action or pronouncement of local, regional, or national emergencies that impair either Party's performance under this Agreement; (b) terrorist threats, acts, or explosions of any kind; (c) riots, insurrection, war, terror, occupation, coup, or civil unrest; (d) picket lines, strikes, labor stoppages or slowdowns, or lockouts by third parties providing labor, material, or services under contract to a Party, or other occurrences that make a Party unable to procure critical materials despite commercially reasonable efforts to procure such materials; (e) derailments, wrecks, freight embargoes or blockades, or unforeseen catastrophic railroad emergencies anywhere on or adjacent to Rail Lines; (f) pandemic outbreaks of communicable diseases or other public health emergencies, acts of God, earthquakes, fires, explosions, floods, cloudbursts, tornadoes, or other natural phenomena beyond the power of a Party to reasonably foresee or to make preparation in defense against, but not including rain, windstorm, or other natural phenomena of normal intensity based on U.S. Weather Bureau reports for the particular locality and for the particular season of the year in which the work is being performed; or (g) other similar events beyond the reasonable control of the impacted Party.

Section 1.27 *"FRA"* means the Federal Railroad Administration.

Section 1.28 *"Franchise Access Fee"* means the user fee paid by the Passenger Agency to the Railroad in exchange for access to the Rail Lines,

Section 1.29 *"Freight Rail Tax Credit"* shall have the meaning set forth in Section 5.8.

Section 1.30 *"General Code of Operating Rules"* means the set of operating rules for railroads in the United States. The rules in the General Code of Operating Rules are intended to enhance railroad safety. The rules cover employee responsibilities, signaling equipment, procedures for safe train movement, dealing with accidents and other topics that directly and indirectly affect railroad safety.

Section 1.31 *"Governmental Authority"* means any and all entities, courts, boards, agencies, states, offices, divisions, subdivisions, departments, bodies or authorities of any nature whatsoever of any governmental unit (federal, state, county, city or otherwise) whether now or hereafter in existence.

Section 1.32 *"Government Requirement"* means any order, ordinance, regulation, standard, statute, or other obligation imposed by any Governmental Authority with jurisdiction over the relevant area or activity and/or the Parties.

Section 1.33 *"Hazardous Materials"* shall have the meaning set forth in Section 12.4.

Section 1.34 *"Informal Negotiations"* shall have the meaning set forth in Section 18.3.

Section 1.35 *"Initial Service Initiation Date"* means November 1, 2026.

Section 1.36 *"Initial Term"* means the period of time commencing on the Effective Date and expiring on the Termination Date, unless earlier terminated or extended in accordance with the terms of the Agreement.

Section 1.37 *"Insurance Requirements"* shall have the meaning set forth in Section 15.1.

Section 1.38 *"Lease Agreement"* shall have the meaning set forth in Recital C.

Section 1.39 *"License"* shall have the meaning set forth in Section 3.1.

Section 1.40 *"Maintenance Request"* shall have the meaning set forth in Section 6.4.

Section 1.41 *"Mandatory Mediation"* shall have the meaning set forth in Section 18.5.

Section 1.42 *"Modification Request"* shall have the meaning set forth in Section 6.5,

Section 1.43 *"Moffat Tunnel"* means the railroad tunnel along the Rail Line that is the subject of the Lease Agreement.

Section 1.44 *"Monitoring Request"* shall have the meaning set forth in Section 7.3.

Section 1.45 *"Mountain Passenger Rail Service"* shall have the meaning set forth in Recital B.

Section 1.46 *"Operations and Maintenance Fee"* means compensation paid for maintaining Rail Lines to the standards specified in this Agreement.

Section 1.47 *"Party"* and *"Parties"* shall have the meaning set forth in the introductory paragraph.

Section 1.48 *"Passenger Agency"* shall have the meaning set forth in the introductory paragraph.

Section 1.49 *"Passenger Agency Default"* shall have the meaning set forth in Section 17.3.

Section 1.50 *"Performance Payments"* means additional payments that Railroad receives for meeting certain Schedule reliability standards as described in *Exhibit D*.

Section 1.51 *"Performance Standard"* is set forth in *Exhibit D*.

Section 1.52 *"Phase I"* means the period of time during which the Passenger Agency shall provide Service between Denver Union Station and Kremmling.

Section 1.53 *"Prevailing Franchise Access Fee"* shall have the meaning set forth in Section 17.2

Section 1.54 *"Prime Rate"* shall mean the rate of interest so designated in the Money Rates section of the Wall Street Journal, or the commercially accepted successor to that publication or section.

Section 1.55 *"Providing Party"* shall mean the Party delivering Confidential Information.

Section 1.56 *"Rail Line"* means Railroad's main track, main-track-proximate appurtenances (e.g., ballast, platforms, pocket tracks, rail and fastenings, switches, bridges, signals, siding and connecting tracks, signal equipment, and ties), and underlying subgrade-land. Rail Line excludes all other properties such as stations and parking lots.

Section 1.57 *"Railroad"* shall have the meaning set forth in the introductory paragraph.

Section 1.58 *"Railroad Activities"* means, collectively, (a) the performance of construction, maintenance, or repair of Rail Lines; (b) the construction, maintenance, and repair of highways, utility lines, or other public works that cross or are adjacent to Rail Lines; and (c) other such activities on or near Rail Lines.

Section 1.59 *"Railroad Default"* shall have the meaning set forth in Section 17.4.

Section 1.60 *"Railroad Requirements"* means the rules, regulations, standards, and requirements established or modified by Railroad from time to time.

Section 1.61 *"Receiving Party"* shall mean the Party receiving Confidential Information.

Section 1.62 *"Right of Entry Agreement"* shall have the meaning set forth in Section 8.2.

Section 1.63 *"Rolling Stock"* means all locomotives, carriages, wagons, or other passenger rail vehicles used on Rail Lines.

Section 1.64 *"Route"* means a route over Rail Lines described in *Exhibit A*.

Section 1.65 *"Schedules"* means a schedule to which Passenger Agency shall have the right to operate Trains, as described in *Exhibit E*.

Section 1.66 *"Service"* shall have the meaning set forth in Recital B.

Section 1.67 *"Service Change"* means a change to the Schedules, Routes, or Consists, provided that an Authorization Notice is not a Service Change.

Section 1.68 *"Service Change Request"* shall have the meaning set forth in Section 4.6.

Section 1.69 *"Service Change Studies"* shall have the meaning set forth in Section 4.10.

Section 1.70 *"Service Initiation Date"* means the first date on which to initiate a Service Change as agreed to in writing by the Parties.

Section 1.71 *"State"* shall have the meaning set forth in the introductory paragraph.

Section 1.72 *"State Fiscal Rules"* means the rules promulgated by the Colorado State Controller under § 24-30-202(1), C.R.S., and set forth in the Code of Colorado Regulations at 1 Code of Colorado Regulations 101-1.

Section 1.73 *"Statement of Charges"* shall have the meaning set forth in Section 5.3.

Section 1.74 *"Tenn"* means, collectively, the Initial Term and any and all subsequent Extension Term(s).

Section 1.75 *"Termination Date"* means May 1, 2050.

Section 1.76 *"Train"* means a series of connected passenger rail vehicles used to transport Passenger Agency passengers on the Rail Line. Such vehicles include locomotives, cars, and all other Rolling Stock.

Section 1.77 *"Train Mile"* means one mile traversed by one train used as a unit in railroad accounting.

Section 1.78 *"U.S.C."* means the United States Code.

Section 2. CONDITIONS PRECEDENT; REQUIREMENTS PRIOR TO SERVICE COMMENCEMENT

Section 2.1 Conditions Precedent. Prior to the Initial Service Initiation Date, all conditions set forth in *Exhibit F* must be met and satisfied as detailed in *Exhibit F*.

Section 3. ACCESS TO RAIL LINES AND CONSTRUCTION OF IMPROVEMENTS OR REQUIRED ADDITIONAL INFRASTRUCTURE

Section 3.1 Access to Railroad Rail Lines. Subject to the rights reserved to Railroad and to the terms and conditions set forth in this Agreement, Railroad grants Passenger Agency a non-exclusive license dating the Tenn to access the Rail Lines for the limited purpose of operating Trains on Rail Lines (the "License"). The License does not constitute an interest in real property, but instead constitutes a limited license revocable by Railroad in accordance with the terms of this Agreement. The License shall not be extended, expanded, or otherwise modified except through a written amendment to this Agreement or a separate written agreement executed by both Parties in each Party's sole discretion.

Section 3.2 Other Passenger Rail Service. The Service is above and beyond existing passenger rail service on the Rail Lines, including the Rocky Mountaineer, Amtrak California Zephyr, and Amtrak Winter Park Express.

Section 3.3 Access to Additional Rail Lines and Facilities. The Parties acknowledge that the Passenger Agency may require additional infrastructure and real estate to support the Service. The Parties agree to work together in good faith to negotiate additional access to Rail Lines and Facilities as long as such access is necessary for the Service and does not unreasonably interfere with Railroad's operations.

Section 3.4 Access to Denver Union Station and Other Stations. Parties agree to work together in good faith to (a) support Railroad access and use of Denver Union Station, or (b) negotiate Railroad access and use of other stations owned, leased, and in the control of Passenger Agency for Railroad's heritage fleet and passenger cars.

Section 3.5 Non-Disturbance of Passenger Agency's Use of the Rail Lines. Railroad shall use all best efforts to ensure that Passenger Agency has the ability to access and use the Rail Line during the Term and for the uses and purposes contemplated by this Agreement.

Section 3.6 Construction and Maintenance. By July 15, 2025, the Parties shall execute a Construction and Maintenance Agreement that sets forth the terms and conditions for the Construction Project 1 and Construction Project 2 as further descn'bed in *Exhibit G*, including a schedule of design plans and resolutions for the Granby and Denver layover maintenance facilities. The Construction and Maintenance Agreement shall also include terms and conditions for the construction of additional infrastructure or other improvements to the Rail Lines and associated Facilities as may be required for implementation and operation of the Service on the Routes. The Parties have agreed to strive for the lowest cost options for infrastructure needs for each phase of implementation of the Service that will provide for high quality rail service. *Exhibit G* to this Agreement sets forth the Parties' initial understanding of the property that may be required to implement the Service and the construction that may be required to implement Service on each of the phases of the Service.

Section 3.7 Railroad Approval Process. The Passenger Agency shall follow Railroad's current public projects' process for design and project approval prior to commencing construction of the required capital improvements. Railroad shall have no obligation to permit the initiation of Service for a particular phase until such capital improvements have been completed, provided that, upon receipt of evidence of funding from the State (which may include the use of federal grants and loans) for such capital improvements, Railroad shall diligently commence to schedule and perform the capital improvements.

Section 3.8 Capital Improvements. The Parties shall agree upon which Party will provide the environmental analysis and any land acquisition to accommodate any capital improvements required for implementation of the Service.

Section 3.9 Phase I Operations. With respect to the construction of the house tracks at MPs 75-77 that are required for implementation of the Phase I Service between Denver Union Station and Kremmling, the Parties agree that they will use best efforts within their control to complete such construction prior to the second quarter of 2026 in order to allow timely commencement of such Phase I operations.

Section 4. SCOPE OF OPERATIONS

Section 4.1 Designation of State as Operator. The Parties agree that the Passenger Agency shall be the operator for all purposes under State and federal law. As the operator, the Passenger Agency will enter into a contract (each, a "Contract") with a third-party provider(s) of train and engine crews and functions associated with the operation and maintenance of the equipment associated with the passenger rail service contemplated under this Agreement (each a

"Designated Contractor"). The Contract shall provide that a Designated Contractor shall have only the rights to act as the Passenger Agency's service provider as enumerated by the applicable Contract and the Designated Contractor shall not have any other rights to access the tracks and Facilities used by the Passenger Agency in operating the service.

Section 4.2 Route Over Rail Lines. Passenger Agency shall have the right to operate its Trains on the Routes.

Section 4.3 Train Schedules and Consists. Subject to the terms and conditions of this Agreement, Passenger Agency shall have the right to operate Trains in accordance with the Schedules and Consists. The initial Schedules for operations and Train speed limits are attached hereto in *Exhibit E*. The Parties shall periodically re-assess the schedule for operations and Train speed limits for the Service to reflect operational issues and passenger demand data. Railroad's approval shall be required for any schedule of operations.

Section 4.4 Rolling Stock. Passenger Agency's Rolling Stock must meet Government Requirements and Railroad Requirements, including but not limited to the requirement that Rolling Stock equipment must properly shunt to activate Railroad's signal system (e.g., automatic crossing warning device).

Section 4.5 Service Changes of Train Schedules and Consists. Nothing in this Agreement shall obligate Railroad to permit the operation of additional Trains, Route changes, Schedule changes, Consist changes, improvements, enhancements, or any other changes.

Section 4.6 Service Change Request. In the event Passenger Agency wishes to request a service change, the Passenger Agency shall deliver written notice, in substantially the form set forth in *Exhibit H* ("Service Change Request"). Each Service Change Request shall consist of the following: (a) proposed Schedule(s); (b) proposed Service Initiation Date; (c) the proposed route(s); (d) the train consist; (e) proposed station stop additions or changes; and (f) any other information reasonably necessary to describe the Service Change Request.

Section 4.7 Evaluation of Service Change Request. While Railroad retains the sole discretion to determine whether to approve a Service Change Request pursuant to this Section 4.7, Railroad shall consider the following factors, to the extent possible, when evaluating a Service Change Request: (a) safety; (b) Railroad's physical capabilities (existing and projected growth), resource limitations, infrastructure, speed, weight, and other similar operating restrictions; (c) the avoidance of interference with freight transportation and other passenger services on the Route; (d) the importance of efficient and reliable freight and passenger schedules; and (e) any other reasonable factors necessary to evaluate a Service Change Request.

Section 4.8 Railroad Response to Service Change Request. Railroad retains sole discretion to determine whether to approve a Service Change Request, but such approval shall not be unreasonably withheld, conditioned or delayed. Notwithstanding anything to the contrary, approval shall not be deemed unreasonably withheld, conditioned or delayed if, without limitation, the Service Change Request (a) was not supported by required Service Change Studies, (b) is illegal or unsafe, (c) would result in an uncompensated increased expense to Railroad, or (d) poses any other unreasonable burden on Railroad, including but not limited to requiring additional use

of Railroad property. Railroad shall provide a written response within thirty (30) days of receiving a Service Change Request, or as otherwise agreed to by the Parties. If the Railroad does not approve the Service Change Request, the response shall include the reason for the denial. If the Railroad approves the Service Change Request, the approval shall expire ninety (90) days from the approval date, unless otherwise agreed in writing by the Parties.

Section 4.9 Rescission of Service Change. The Passenger Agency may rescind the Service Change Request at any time. However, the Passenger Agency shall be responsible for any expenses incurred by the Railroad arising from or related to the preparation of the rescinded Service Change Request. The Railroad shall also have the right to rescind its approval for the Service Change prior to the Service Initiation Date in the event of a Force Majeure event under which the Railroad would have denied approval if such circumstances were present at the time approval was granted.

Section 4.10 Service Changes. The Parties acknowledge and agree that any identification, review, evaluation, or modeling ("Service Change Studies") shall be at the sole cost and expense of the Passenger Agency. Service Changes shall be mutually negotiated in good faith and effectuated pursuant to a formal amendment to this Agreement or a separate written agreement, properly executed and approved in accordance with Applicable Law. The Passenger Agency acknowledges and agrees that Service Changes may require additional capital investment, fees, and other expenses from the Passenger Agency.

Section 4.11 Discontinuance of Service.

UP Confidential

Section 5. COMPENSATION AND FEES

Section 5.1 Franchise Access Fee, Operations and Maintenance Fee, and Other Compensation.

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Section 5.2 Non-Routine Services. The Parties may execute an Authorization Notice for non-routine/non-recurring services (e.g. emergency services) prior to approval for such services using the Authorization Notice Procedure.

Section 5.3 Billing and Monthly Payment. Within the first week of each calendar month, the Railroad shall submit a billing statement to the Passenger Agency with the Franchise Access Fee, Operations and Maintenance Fee and other compensation owed Railroad, calculated in accordance with the provisions of this Section 5, for the previous calendar month and any adjustments covering prior periods, substantially in the form attached as *Exhibit F* ("Statement of Charges"). The Railroad shall have the right to reasonably modify the basis of compensation if it determines that the forms and methods of billing significantly alter the amount of work required by the Railroad in connection with billing the Passenger Agency. Within thirty (30) days after receiving a Statement of Charges, the Passenger Agency shall pay the Railroad the net amount due via automated clearing house, wire transfer, or other mutually agreed-upon electronic payment. Upon thirty (30) days' written notice, the Railroad may elect to have a payment(s) made by check sent via Certified Mail.

Section 5.4 Accounting Adjustments. If any accounting adjustment is necessary, such as the discovery of an error, the disallowance of an expense, or the omission of a bill item that should have been included in a Statement of Charges for the prior month, Railroad shall make the appropriate adjustment in the next Statement of Charges. Railroad shall maintain reasonable documentation for any such adjustment.

Section 5.5 Overdue Payments. All undisputed unpaid sums of money due and payable on a particular date by Passenger Agency to Railroad, shall accrue interest at a rate equal to the greater of: (a) six percent (6%) per annum or (b) the Prime Rate plus two interest percentage points based on the Prime Rate as published in the Money Rates section of the Wall Street Journal on the date such unpaid sums were due. Interest shall not accrue with respect to any sums due as compensation adjustments until thirty (30) days after the date on which payment of such undisputed sums was due.

Section 5.6 Annual Review of Operations and Maintenance Fee.

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Section 5.7 Adjustment to Fee. If a request is made pursuant to Section 5.6, the Parties shall complete the review within forty-five (45) days of such request. If the associated costs have changed, the Parties shall adjust the Operations and Maintenance Fee for that year in accordance with the mutually agreed upon determination of the costs associated with the operation of Passenger Agency Trains on the segments of the Rail Lines where such Trains are operating.

Passenger Agency shall only pay the Operations and Maintenance Fee for a segment after Passenger Agency has commenced Service on such segment.

Section 5.8 State Tax Credits. The Parties will work together to collaboratively and in good faith identify infrastructure projects that may enhance the Service and Service performance utilizing the State's Freight Rail Tax Credit. The Freight Rail Tax Credit (based on Senate Bill 24-190) is a tax relief program for eligible taxpayers that, among other requirements, have business impacts from coal production reductions or closures such as those on Railroad's rail line that runs through the Yampa Valley, which branches from the mainline in Bond, runs north through Philippsburg to Steamboat Springs, and then west to Hayden and past Craig. The Freight Rail Tax Credit is a refundable state income tax credit for an amount up to 75% of a user's eligible costs.

Section 6. MAINTENANCE OF RAIL LINES AND STRUCTURES

Section 6.1 Maintenance of Rail Lines. Railroad shall maintain the Rail Lines in accordance with standards necessary to maintain the Schedules as of the Effective Date. The maintenance of Rail Lines shall also include regular inspection of tracks, signal equipment, and structures as prescribed by Government Requirements and Railroad Requirements.

Section 6.2 Maintenance of Signal and Communications. Railroad's signal and communications systems shall be maintained in accordance with applicable Government Requirements and Railroad Requirements.

Section 6.3 Other Maintenance and Government Requirements. All maintenance performed under Sections 6.1 and 6.2 is covered by the Operations and Maintenance Fee set forth in Section 5.1. Passenger Agency shall be solely responsible for all costs and expenses not expressly provided for in Sections 6.1 and 6.2, including all Government Requirements.

Section 6.4 Additional Maintenance. Passenger Agency may request, in writing, additional maintenance of Rail Lines or Facilities necessary to the operation of Service in this Agreement ("Maintenance Request"). Railroad may approve or reject any Maintenance Request, but such approval shall not be unreasonably withheld, conditioned or delayed. Railroad shall notify Passenger Agency of its decision within ninety (90) days of receiving a Maintenance Request. Such response shall include Railroad's estimate of the cost of such maintenance. Passenger Agency shall then have sixty (60) days to advise Railroad of its approval. Passenger Agency shall be solely responsible for all costs and expenses incurred in connection with the request.

Section 6.5 Infrastructure Modifications. Passenger Agency may submit a written request that Railroad modify infrastructure on the Rail Lines ("Modification Request"). Railroad may approve or reject any Modification Request, but such approval shall not be unreasonably withheld, conditioned or delayed. Railroad shall notify Passenger Agency of its decision within sixty (60) days of receiving a Modification Request. Such response shall include Railroad's estimate of the cost of such modification. Passenger Agency shall then have sixty (60) days to advise Railroad of its approval. Passenger Agency shall be solely responsible for all costs and expenses incurred in connection with the Modification Request.

Section 6.6 Restoration of Rail Lines. Railroad shall make commercially reasonable efforts that reflect the need of the Passenger Agency to timely advise its passengers of service disruptions to restore the Rail Line in the event of casualty or destruction that causes a catastrophic service interruption, including, but not limited to, bridge failures, roadbed collapses, and tunnel collapses. Notwithstanding the foregoing and following the protocol regarding Force Majeure Events as described in Section 19.6, in the event the casualty losses exceed the insurance proceeds, the Parties shall meet and confer in good faith to determine alternatives to repair or replace the Rail Lines, including early termination of this Agreement or modifications to the Lease Agreement. This Agreement shall remain in full force and effect during such period of restoration and repair.

Section 6.7 Annual Railroad Activities Schedule. Railroad shall use reasonable efforts to provide Passenger Agency with notice of scheduled annual Railroad Activities on or before January 31 of each calendar year. Such notice shall contain the date, location, and, if practicable, the hours of intended Railroad Activities. Such notice is merely informative and does not bind Railroad to conduct Railroad Activities according to the schedule in the notice, nor does it grant Passenger Agency any right to object to modifications to the schedule.

Section 6.8 Notice and Accommodation of Railroad Activities. The Railroad shall use reasonable efforts that reflect the need of the Passenger Agency to advise its passengers of service disruptions to provide the Passenger Agency with notice of scheduled Railroad Activities that impacts the Passenger Agency's Service no later than fourteen (14) days prior to the beginning of such work. Such notice shall be in writing and sufficiently describe the Railroad Activities (e.g., date, location, and, if practicable, the hours). This notice is merely informative and does not bind the Railroad to conduct Railroad Activities according to the schedule in the notice, nor does it grant the Passenger Agency any right to object to Railroad Activities for which fourteen (14) days' notice is not given. Such notice may not be provided in the event of an emergency. Regardless of whether the Railroad was able to provide such notice, the Passenger Agency shall make temporary accommodations in its Routes, Schedules, or Consists to minimize interference with Railroad Activities. The Passenger Agency shall be solely responsible for all costs and expenses it incurs to accommodate the Railroad Activities.

Section 7. PERFORMANCE PAYMENTS

Section 7.1 Performance Payments. Agency shall pay Performance Payments to Railroad as described in *Exhibit D*.

Section 7.2 Performance Notification. Railroad shall respond to Passenger Agency's written notice of concerns and/or suggested corrective action regarding the Performance Standard, as described in *Exhibit D*. Railroad shall have fourteen (14) days to respond to such notice. Railroad is under no obligation to implement any suggested corrective actions made by Passenger Agency.

Section 7.3 Performance Monitoring. Passenger Agency may submit a written request that Railroad provide a dedicated person(s) to monitor and report on the Performance Standard ("Monitoring Request"). Railroad may approve or reject any Monitoring Request, but such approval shall not be unreasonably withheld, conditioned or delayed. Railroad shall notify Passenger Agency of its decision within sixty (60) days of receiving a Monitoring Request and the

reasons for any denials. Such response shall include Railroad's estimate of the cost. Passenger Agency shall then have sixty (60) days to advise Railroad of its approval. Passenger Agency is solely responsible for any additional cost incurred by either Party in connection with the Monitoring Request.

Section 8. PROPERTY OF RAILROAD

Section 8.1 No Rights in Railroad's Real Property. Notwithstanding anything to the contrary, nothing in this Agreement grants Passenger Agency any rights in any real property owned, leased, licensed, or otherwise used by Railroad.

Section 8.2 Access onto Rail Lines or Other Railroad Property for Work. Prior to Passenger Agency accessing, or having its contractors access, Rail Lines or other property of Railroad in order to perform any work on Rail Lines, other property of Railroad, or other property adjacent to Rail Lines, Passenger Agency shall, and shall cause its contractors to, comply with all of the terms and conditions set forth in Exhibit J ("Right of Entry Agreement").

Section 8.3 No Warranty of Title; DISCLAIMER. WITH RESPECT TO RAIL LINES OR ANY OTHER RAILROAD PROPERTY, RAILROAD MAKES NO COVENANT OR WARRANTY OF TITLE FOR QUIET POSSESSION OR AGAINST ENCUMBRANCES. RAIL LINES AND ALL OTHER PROPERTY OF RAILROAD ARE PROVIDED AS-IS, WHERE-IS, WITHOUT WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED CONDITIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OTHER THAN PASSENGER RAIL SERVICE. ANY IMPLIED WARRANTY ARISING FROM TRADE USAGE, COURSE OF DEALING OR COURSE OF PERFORMANCE, AND ANY AND ALL OTHER WARRANTIES OR OBLIGATIONS ARE HEREBY EXPRESSLY DISCLAIMED.

Section 8.4 Right of Access Granted Subject to Outstanding Rights. The License granted to Passenger Agency by Railroad in this Agreement is subject to: (a) any existing encumbrances and rights (whether public or private), recorded or unrecorded, and any renewals thereof, and (b) the rights of any other railroads to operate on Rail Lines, whether existing as of the date hereof or granted by Railroad in the future, provided that the operations of any such railroad shall be reasonably coordinated with Passenger Agency's operations. If any property or rights not held or grantable by Railroad other than the rights hereby granted are necessary for the operation of Trains on Rail Lines, Passenger Agency shall acquire all such other property and rights without expense to Railroad, and no such need or expense by Passenger Agency shall reduce any amounts payable by Passenger Agency to Railroad under this Agreement.

Section 8.5 No Interference. Passenger Agency shall not damage, destroy, or interfere with the property or rights of nonparties in, upon, or relating to Railroad's property, unless Passenger Agency at its own expense settles with and obtains releases from such nonparties, and all such expenses shall be subject to indemnification by Passenger Agency in accordance with Section 14. Railroad reserves the right to use and to grant to others the right to use Rail Lines for any purpose not inconsistent with the License granted in this Agreement, including, but not limited to, the right to construct, reconstruct, maintain, operate, repair, alter, renew, and replace tracks,

facilities, and appurtenances on the property, to cross Rail Lines with all kinds of equipment, and to grant other persons or entities the right to operate passenger trains on Rail Lines.

Section 8.6 Taxes or Assessments. To the extent any entity imposes any tax or assessment of whatever kind on the License granted to Passenger Agency or the amounts paid by Passenger Agency to Railroad under this Agreement, Passenger Agency shall, to the extent provided by law, assume, bear, and pay all such taxes and assessments or, if paid by Railroad, reimburse Railroad for any such taxes or assessments, in addition to all other sums payable to Railroad by Passenger Agency under this Agreement.

Section 9. DESIGNATED CONTRACTOR

Section 9.1 Designated Contractor. Nothing herein shall be construed to limit or waive the rights of the Railroad to seek damages from the Passenger Agency for the actions of a Designated Contractor any other person or entity acting on the Passenger Agency's behalf, subject to the terms of this Agreement.

Section 9.2 Designated Contractor Profile. A Designated Contractor must: (a) be operationally capable of safely performing the Passenger Agency's obligations under the contemplated operating agreement; (b) meet all state, federal, and Railroad safety and operational protocols, including but not limited to 49 C.F.R. Part 239 "Passenger Train Emergency Preparedness;" (c) be qualified under the General Code of Operating Rules; (d) require employees to obtain and maintain applicable FRA certifications, licenses, and fulfill other necessary requirements; (e) be financially viable; (f) not be a freight Class I Railroad or a wholly directly or indirectly owned subsidiary of a freight Class I Railroad; (g) in the event the Designated Contractor is a government entity from the State of Colorado, be subject to the provisions of Sections 14 and 15; (h) ensure equipment utilized in the rail passenger service operations meets government and Railroad Requirements, including but not limited to the requirement that rolling stock equipment must properly shunt to activate Railroad's signal system (e.g., automatic crossing warning device); and (i) agree in its contract with the Passenger Agency (1) to on-time performance metrics developed by Passenger Agency and Railroad, with Passenger Agency retaining the sole right under the contract to seek remedies related to such contractual on-time performance metrics; (2) that the contract procedures, metrics, and remedies will exclusively apply instead of any procedures, metrics, or remedies available to the State or Contractor under 49 U.S.C. § 24308(f); and (3) that the contract procedures and remedies set forth in the contract will constitute the sole and exclusive means for the resolution of any metrics-related disputes (collectively, "Contractor Requirements"). In the event that a Designated Contractor fails to satisfy any of the Contractor Requirements, following notice to Passenger Agency and an opportunity to discuss with Passenger Agency and/or cure, Railroad reserves the right upon thirty (30) days' notice to require Passenger Agency within a commercially reasonable time to remove the Designated Contractor or restrict the Designated Contractor's operations, if the Designated Contractor fails to come into compliance within that thirty-day period with the Contractor Requirements. The Parties agree that prior to Railroad removing a Designated Contractor based on the Designated Contractor's failure to satisfy the Contractor Requirements, the Parties shall work in good faith to find a replacement Designated Contractor within a commercially reasonable timeframe in order to allow for uninterrupted continuation of the Service during that period.

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Section 10. DISPATCHING

Section 10.1 Dispatching Control.

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Section 10.2 Access to Railroad Dispatching Center.

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Section 10.3 Access to Railroad's Computer-Aided Dispatch.

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Section 11. RAILROAD CONTROL AND SUPERVISION

Section 11.1 Railroad Control and Supervision. All personnel rendering any service in connection with the handling or movement of any Train while on Rail Lines shall be subject to the direction, supervision, and control of Railroad.

Section 11.2 Persons Prohibited or Removed. Railroad may prohibit any person from performing services pursuant to this Agreement. Railroad may revoke access to its facilities by Contractor personnel who engage in conduct that violates applicable rules of confidentiality or other rules and standards applicable to operations on Railroad's property or facilities (e.g., suspicion of being under the influence of drugs, fouling the Railroad's tracks).

Section 12. COMPLIANCE WITH REGULATIONS AND RULES

Section 12.1 Compliance with Applicable Law. Railroad shall comply with all Applicable Law, including but not limited to applicable federal and State statutes, laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

Section 12.2 Regulation and Rules. Passenger Agency shall comply with: (a) all Applicable Law and Railroad Requirements, including those relating to the operation, maintenance, condition, inspection, testing, or safety of Trains and other equipment on Rail Lines;

(b) the General Code of Operating Rules and any successor published by the American Association of Railroads; (c) Railroad's timetables, general orders, bulletins, and other standards as established and modified from time to time; and (d) applicable permit requirements, environmental or otherwise.

Section 12.3 Colorado State Law. Provisions specific to the state of Colorado and applicable to this agreement are contained in ***Exhibit K***. In the event of any conflict between the provisions of this Agreement and ***Exhibit K***, the terms of ***Exhibit K*** shall prevail.

Section 12.4 Environmental Compliance. Passenger Agency shall not cause, and shall not permit its agents to cause, any discharge or release of any Hazardous Material (as defined below) on the Rail Lines in violation of Environmental Laws, and shall properly discharge or release of any Hazardous Material (as defined below) on the Rail Lines in violation of Environmental Laws, and shall promptly remove, remediate and dispose of any such Hazardous Material in compliance with all Environmental Laws. For purposes of this Lease, "Hazardous Material" means any hazardous or toxic material, substance or waste which is defined by those or similar terms or is regulated as such under any Environmental Laws; and "Environmental Laws" means any statute, law, ordinance, rule or regulation of any local, county, state or federal authority having jurisdiction over the Rail Lines or any portion thereof or its use, which pertains to environmental, health or safety matters and/or the regulation of any hazardous or toxic materials, substance or waste, including but not limited to: (a) the Federal Water Pollution Control Act (33 U.S.C. §1317, et seq.) as amended; (b) the Federal Resource Conservation and Recovery Act (42 U.S.C. §6901, et seq.) as amended; (c) the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. §9601, et seq.) as amended; (d) the Toxic Substance Control Act (15 U.S.C. §2601 et seq.), as amended; and (e) the Clean Air Act (42 U.S.C. §7401 et seq.), as amended. Passenger Agency's obligations under this Section 11.12.4 shall survive the expiration or earlier termination of this Agreement with respect to any obligation accruing, or any Hazardous Material that exists or is discharged from or onto or released on the Rail Lines, prior to the end of the Term. Passenger Agency shall notify Railroad in writing immediately upon: (a) the discovery of, (b) notice received from any Governmental Authority, or (c) reasonable grounds to suspect the presence in the Premises of, any Hazardous Material or conditions that result in a violation or could reasonably be expected to violate the terms of this Agreement.

Section 13. CLAIMS HANDLING

Section 13.1 Claims Handling. Except to the extent that Claims are caused by the gross negligence or willful misconduct of Railroad, Passenger Agency or the relevant Designated Contractor(s) shall administer all Claims arising from, relating to, or in connection with this Agreement. Unless the Parties agree otherwise, Passenger Agency or the relevant Designated Contractor(s) shall bear the full expense of administering claims. Nothing contained in the section shall be deemed to prohibit Passenger Agency, a Designated Contractor, and Railroad from cooperating with respect to the administration of claims.

Section 14. LIABILITY

Section 14.1 Passenger Agency's Liability. AS BETWEEN THE RAILROAD AND PASSENGER AGENCY, EXCEPT TO THE EXTENT OF CLAIMS (AS DEFINED BELOW),

THAT ARE CAUSED BY THE ACTS, INACTION, OR OMISSIONS OF RAILROAD FOR WHICH RAILROAD SHALL REMAIN LIABLE, THE PASSENGER AGENCY SHALL BE SOLELY RESPONSIBLE FOR ANY AND ALL ACTIONS, SUITS, FINES, JUDGMENTS, AWARDS, CLAIMS, DECREES, DEMANDS, LIABILITIES, DEFICIENCIES, SETTLEMENTS, LOSSES (INCLUDING, WITHOUT LIMITATION, LOSSES OR DAMAGE TO PROPERTY BELONGING TO ANY PERSON OR LOSSES OR DAMAGE TO RAILROAD'S PROPERTY), DAMAGES, INJURIES (INCLUDING, WITHOUT LIMITATION, INJURY OR DEATH TO ALL PERSONS, INCLUDING RAILROAD'S EMPLOYEES), COSTS AND EXPENSES OF ANY AND EVERY KIND AND NATURE WHATSOEVER (INCLUDING ENVIRONMENTAL CLAIMS) (EACH, A "CLAIM") WHERE SUCH CLAIM ARISES FROM, RELATES TO, OR IS IN CONNECTION WITH (a) THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF PASSENGER AGENCY OR ITS EMPLOYEES (IN NO CIRCUMSTANCE IS A DESIGNATED CONTRACTOR EMPLOYEE CONSIDERED A PASSENGER AGENCY EMPLOYEE) IN CONNECTION WITH THIS AGREEMENT OR (b) THE WILLFUL ACTION, INACTION, OR OMISSION OF PASSENGER AGENCY OR ITS EMPLOYEES. NOTHING IN THIS SECTION 14.1 SHALL BE DEEMED TO BE A WAIVER OF ANY RIGHTS, DEFENSES, AND IMMUNITIES AVAILABLE TO PASSENGER AGENCY UNDER THE COLORADO GOVERNMENT IMMUNITY.

Section 14.2 Designated Contractor Liability. The Passenger Agency shall execute a Contract between itself and any Designated Contractor to include the following provisions, unless otherwise agreed to by Railroad:

EXCEPT TO THE EXTENT THAT CLAIMS (AS DEFINED BELOW) ARE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF RAILROAD FOR WHICH RAILROAD SHALL REMAIN LIABLE, THE DESIGNATED CONTRACTOR SHALL INDEMNIFY, DEFEND AND SAVE HARMLESS RAILROAD, ITS DIRECTORS, OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, SUBSIDIARIES, AND AFFILIATES FROM AND AGAINST ANY AND ALL (a) ACTIONS, SUITS, FINES, JUDGMENTS, AWARDS, CLAIMS, DECREES, DEMANDS, LIABILITIES, DEFICIENCIES, SETTLEMENTS, LOSSES (INCLUDING, WITHOUT LIMITATION, LOSSES OR DAMAGE TO PROPERTY BELONGING TO ANY PERSON OR LOSSES OR DAMAGE TO RAILROAD'S PROPERTY); (b) DAMAGES; (c) INJURIES (INCLUDING, WITHOUT LIMITATION, INJURY OR DEATH TO ALL PERSONS, INCLUDING RAILROAD'S EMPLOYEES), (d) COSTS AND EXPENSES OF ANY AND EVERY KIND AND NATURE WHATSOEVER (INCLUDING ENVIRONMENTAL CLAIMS), (EACH, (a) through (d), A "CLAIM") WHERE SUCH CLAIM ARISES FROM, RELATES TO, OR IS IN CONNECTION WITH DESIGNATED CONTRACTORS' OPERATIONS, OR RELATED TO ITS ACTS OR OMISSION, OR THE ACTS OR OMISSION OF ITS

EMPLOYEES, CONTRACTORS, VENDORS, VOLUNTEERS, INVITEES, DELEGATES, REPRESENTATIVES, AGENTS OR CAUSED AS A RESULT OF TRESPASSERS AT LOCATIONS FOR WHICH THE DESIGNATED CONTRACTOR IS SOLELY RESPONSIBLE FOR SECURITY.

The Designated Contractor agrees that it will not settle any Claim, as described in this paragraph, in any manner that would impose any expense, penalty, obligation, or limitation on Railroad without the Railroad's prior written consent to the specific and fully disclosed expense, penalty, obligation or limitation. The Designated Contractor further agrees, at its expense, in the name and on behalf of the Railroad, at the Railroad's discretion and with counsel reasonably satisfactory to the Railroad, to adjust, settle or appear and defend all Claims made against Railroad.

Section 14.3 Proof of Designated Contractor Agreement. Furthermore, the Passenger Agency shall furnish the Railroad with evidence of the execution of such an agreement that satisfies the requirements in Section 14.2. This obligation includes providing initial proof of the agreement and subsequent evidence, as requested by Railroad, to demonstrate ongoing compliance with the specific terms and conditions outlined within the agreement between the Passenger Agency and the Designated Contractor.

Section 14.4 General. Nothing in this Agreement shall impose liability on Railroad for any Claims related to the independent acts or omissions of the Passenger Agency or any Designated Contractor. The fact that insurance is obtained by Passenger Agency or any Designated Contractor pursuant to Section 15 will not be deemed to release or diminish the liability of Passenger Agency or Designated Contractor under this Section 14; provided, however, the total liability under this Agreement for Passenger Agency shall not exceed the amount of insurance required under ***Exhibit L***, unless otherwise agreed to in writing by Passenger Agency. However, Designated Contractors do not have any liability limitations, unless otherwise specified in this Agreement.

Section 14.5 Survival of Liability Obligations. The obligations of Section 14 will survive any termination or expiration of this Agreement, including but not limited agreement by performance, implied-in-fact, course of dealing or otherwise.

Section 14.6 Reservation of Reservation of Defenses. AS BETWEEN THE RAILROAD AND PASSENGER AGENCY AND WITHOUT WAIVING ANY RIGHTS, DEFENSES, OR IMMUNITIES AVAILABLE TO RAILROAD AND PASSENGER AGENCY (INCLUDING IMMUNITIES UNDER THE COLORADO GOVERNMENT IMMUNITY ACT), NOTHING IN THIS SECTION 14 SHALL BE CONSTRUED TO LIMIT THE RESPECTIVE RIGHTS OF RAILROAD AND PASSENGER AGENCY TO ASSERT IN THE DEFENSE OF A CLAIM BROUGHT BY A THIRD-PARTY THAT THEY SHOULD NOT BE LIABLE FOR AN AMOUNT GREATER THAN REPRESENTED BY THE DEGREE OR PERCENTAGE OF FAULT ATTRIBUTABLE TO OTHER PARTIES OR NONPARTIES, INCLUDING RAILROAD AND PASSENGER AGENCY.

Section 15. MAINTENANCE OF INSURANCE

Section 15.1 Insurance Requirement. During the Term, Passenger Agency or any Designated Contractor, individually or through a combination of policies, shall keep in full force and effect insurance coverage of the same type, character, and coverage as described in *Exhibit L* ("Insurance Requirements"). Passenger Agency shall ensure that any Designated Contractor's insurance covers any Claims under Section 14.2. This obligation to maintain insurance coverage applies regardless of (a) any monetary caps on Passenger Agency's liability or limitations on Passenger Agency's liability to others under any state or federal law; or (b) any immunities from liability provided to Passenger Agency under any state or federal law.

Section 15.2 Proof of Insurance and Certificate. In accordance with Section 2.1, not less than thirty (30) days prior to the testing of Trains on the Rail Lines, Passenger Agency shall furnish to Railroad original certificates of insurance and policy endorsements, executed by a duly authorized representative of each insurer, showing compliance with the Insurance Requirements. The original certificates and endorsements shall be attached to this Agreement in *Exhibit M*. All subsequent certificates and endorsements are incorporated into this Agreement without requiring amendment.

Section 15.3 Failure to Maintain Required Coverage. In the event the coverage required by *Exhibit L* is not maintained, Railroad may partially or fully suspend the operation of Trains until such time the coverage required under *Exhibit L* is restored. Passenger Agency shall provide written notice within twenty-four (24) hours of any material change in insurance coverage such that the coverage is no longer in compliance with *Exhibit L*.

Section 16. REPORTS, RIGHT TO REVIEW AND AUDIT

Section 16.1 Reports. From time to time, upon the reasonable request of Passenger Agency, Railroad shall provide reports or other information in connection with and related to this Agreement. If such request is denied, Railroad shall promptly provide a written explanation for the denial. The Parties have identified the reports listed in *Exhibit N* that shall be provided consistent with the frequency stated therein.

Section 16.2 Audit of Passenger Agency. Passenger Agency agrees it may be subject to audit by Railroad, including evaluation of operations, performance, and costs. The scope of the audit shall be limited to matters and operations arising from, related to, or in connection with this Agreement.

Section 16.3 Audit of Third Parties. In the event Passenger Agency designates a Designated Contractor pursuant to Section 9, Passenger Agency must require such Designated Contractor to permit Railroad to audit the Designated Contractor. Such audit and evaluation shall be identical in scope to the audit set forth in Section 16.

Section 16.4 Audit of Railroad. Passenger Agency may, upon not less than thirty (30) days prior written notice to Railroad, conduct a financial audit of the Statement of Charges generated in accordance with Section 5.3, covering a period not more than one (1) year prior to the

date of the audit. Railroad agrees to make available to Passenger Agency such books and records as is necessary for Passenger Agency to conduct such audit. Neither Passenger Agency nor any Designated Contractor shall have any audit rights with respect to Railroad except as expressly provided in this Section 116. Such audit shall be conducted upon reasonable notice during reasonable business hours in a manner that minimizes any disruption to the audited Party and, in any event, must be completed within sixty (60) days of the audited Party receiving the written notice, unless the Parties agree otherwise. Passenger Agency shall be solely responsible for all costs incurred by all Parties in conducting an audit. Passenger Agency may, at its sole cost and expense, elect to use an independent third-party auditor to conduct the audit, in which event such auditor shall execute a confidentiality agreement in a form reasonably acceptable to Railroad prior to any Confidential Information of Railroad being provided or otherwise made available.

Section 16.5 Audit Procedure. The auditing Party shall provide written notice of intent to audit, identifying the specific issue being audited. The audited period may not extend further than one (1) year prior to the date on which the audited Party receives written notice of intent to audit. The audited Party shall make reasonably available the books, records, and other information necessary for the performance of the audit, as well as personnel required to explain the data or record-keeping, if required.

Section 16.6 Records. Passenger Agency and Railroad shall each maintain consistently applied, accurate, and complete books, records, and other materials to document the performance of each Party's obligations under this Agreement. If applicable, Passenger Agency shall require a Designated Contractor to abide by requirements of this Section 16.6.

Section 17. TERM AND TERMINATION

Section 17.1 Initial Term. The Initial Term shall commence on the Effective Date and expire on the Termination Date, unless earlier terminated or extended in accordance with the terms of this Agreement.

Section 17.2 Extension of Term.

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Section 17.3 Railroad's Right to Terminate.

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Section 17.4 Passenger Agency's Right to Terminate.

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Section 17.5 Surface Transportation Board. Notwithstanding the above, this Agreement shall terminate and the Parties shall terminate or modify the Lease Agreement if

Railroad secures authority from the Surface Transportation Board or any successor agency to discontinue or abandon common carrier freight service on the Rail Lines pursuant to Applicable Law. Railroad shall provide the Passenger Agency with prompt notice of any effort by Railroad to seek authority to discontinue or abandon common carrier freight service on the Rail Lines from the Surface Transportation Board or any such successor agency.

Section 17.6 Anticipatory Notice of Event of Default. No breach of this Agreement by either Party shall constitute an Event of Default and no action with regard to same may be instituted unless and until the Party asserting a breach provides notice to the other Party specifying the deficiency or deficiencies that, unless corrected or timely cured, will constitute an Event of Default on the part of the Party against which a breach is asserted.

Section 17.7 Effect of Termination. Upon the termination or expiration of this Agreement for any reason, all rights and privileges afforded to any Party under this Agreement shall cease, and no Party shall have any further obligations to the other under this Agreement, except those obligations that survive the termination pursuant to Section 19.18.

Section 18. DISPUTE RESOLUTION PROCESS

Section 18.1 Disputes. Any controversy or claim arising out of or relating to this Agreement, or the alleged breach thereof (collectively, "Dispute") shall be subject to this Section.

Section 18.2 Dispute Notice. Either Party may initiate a Dispute by transmitting written notice describing, in detail, the nature of the Dispute to the other Party ("Dispute Notice").

Section 18.3 Informal Negotiation. Within seven (7) business days of receiving a Dispute Notice, senior executives or their designee from each Party shall respond to the Dispute Notice and otherwise initiate prompt and diligent negotiations to resolve the Dispute. Unless the Parties agree otherwise, the Parties shall be afforded up to sixty (60) days after receipt of the Dispute Notice to resolve the Dispute ("Informal Negotiations"). The Parties agree to attempt to resolve the Dispute in good faith via Informal Negotiations.

Section 18.4 Permissive Mediation. If a Dispute is not resolved by Informal Negotiations and the amount in Dispute is less than fifty thousand dollars (\$50,000), then the Parties may jointly initiate non-binding mediation within thirty (30) days after the conclusion of the Informal Negotiation by submitting a Case Submission Form or otherwise initiating a mediation at JAMS ("Permissive Mediation"). The Parties agree to attempt to resolve the Dispute in good faith via Permissive Mediation, including (if applicable) execution of a voluntary settlement agreement. Nevertheless, any Party may refuse to participate in, withdraw from or suspend the Permissive Mediation at any time, for any reason which need not be provided to the other Party and without prejudice or legal rights or remedies available to such Party.

Section 18.5 Mandatory Mediation. If a Dispute is not resolved by Informal Negotiations and the amount in Dispute is fifty thousand dollars (\$50,000) or more, then the Parties shall jointly initiate mandatory non-binding mediation at JAMS within thirty (30) days after the conclusion of the Informal Negotiation by submitting a Case Submission Form to JAMS ("Mandatory Mediation"). If a joint initiation of Mandatory Mediation is deemed in good faith by a Party to be impracticable, such Party may initiate mediation at JAMS through the submission of

a Case Submission Form and may notify the other Party of the same on the same day. If neither Party submits a Case Submission Form nor otherwise initiates a mediation at JAMS within thirty (30) days after the conclusion of the Informal Negotiation, the Parties shall be deemed to have waived the Mandatory Mediation requirement. By written agreement, the Parties may waive Mandatory Mediation. The Parties shall endeavor to conclude the Mandatory Mediation within ninety (90) days of its initiation, including (if applicable) execution of a voluntary settlement agreement. The Parties agree to attempt to resolve the Dispute in good faith via Mandatory Mediation.

Section 18.6 Location of the Mediation. Regardless of whether Permissive or Mandatory Mediation is initiated and unless otherwise agreed to by the Parties, the mediation session(s) shall be conducted in-person and alternate between Denver, Colorado and Omaha, Nebraska. If the first Dispute Notice giving rise to the Dispute is initiated by Railroad, then the first session shall be held in Denver, Colorado. If the first Dispute Notice giving rise to the Dispute is initiated by Passenger Agency, then the first session shall be held in Omaha, Nebraska. Persons with authority to bind the Parties to a voluntary settlement agreement must be present at the mediation.

Section 18.7 Selection of the Mediator. Regardless of whether Permissive or Mandatory Mediation is initiated, the Parties will engage a single, neutral mediator. Proposed mediator must not be a current or former employee of either Party. The Parties will attempt to select a mutually agreeable mediator by proposing a list of three names to the other Party within ten (10) days of the initiation of the mediation. If the Parties are unable to agree on a mediator after twenty (20) days of the initiation of the mediation, then the Parties will request that JAMS assign a neutral mediator to the matter.

Section 18.8 Expenses. Regardless of whether Permissive or Mandatory Mediation is initiated, the Parties shall equally split the costs, expenses, and fees of the mediator. Each Party shall bear the costs, expenses, and fees of its own counsel, witnesses, experts, and any other related costs.

Section 18.9 No Discovery. Regardless of whether Permissive or Mandatory Mediation is initiated, there shall be no discovery throughout the mediation. The Parties may elect to informally exchange documentation.

Section 18.10 Mediator's Authority. Regardless of whether Permissive or Mandatory Mediation is initiated, the mediator has no authority to compel agreement or other resolution of the Dispute and will issue no written recommendations or conclusions, unless the Parties otherwise agree.

Section 18.11 Mediation Statement. For Mandatory Mediation, the Parties shall provide the mediator and the other Parties with written mediation statements at least seven (7) days prior to the scheduled mediation session. The written statements shall describe the Parties' positions, prior settlement positions, and provide any background documents (such as pleadings, court rulings, contracts, or expert reports) that are necessary for the mediator to understand the Dispute. The Parties may also provide the mediator with a separate confidential/private statement (i.e., a

statement that is not provided to the other Party) on issues or negotiating positions. No mediation statement is required for Permissive Mediation.

Section 18.12 Mediator's Oral Recommendation or Opinion. Upon the written request of both Parties, or on the initiative of the mediator, the mediator shall be authorized to provide an oral or written recommendation or opinion to resolve the Dispute. In that circumstance, the Parties may jointly decide to implement that recommendation or opinion but neither Party is obligated to do so. Such mediator's recommendation or opinion shall be confidential in nature and may not be used or disclosed outside of the mediation process for any other purposes.

Section 18.13 Mediator's Proposal Upon the written request of both Parties, the mediator shall be authorized to provide the Parties with a mediator's proposal. The Parties agree to consider such proposal in good faith. Such mediator's proposal shall be confidential in nature and may not be used or disclosed outside of the mediation process for any other purposes.

Section 18.14 Pendency of Dispute. Each Party shall continue performance under this Agreement during the pendency of a Dispute that is initiated (through submission of a Dispute Notice) ninety (90) days prior to the Termination Date. However, no Dispute shall affect the expiration or termination of this Agreement.

Section 18.15 Litigation. Subject to Section 18.17, no Party may initiate an adversarial legal proceeding unless or until the mediation requirements above are fulfilled.

Section 18.16 Confidential Settlement Communications. The mediation is a settlement negotiation and will be strictly confidential. No Party may disclose any statements made by any other participant in the mediation. Mediation discussions, written and oral communications, proposals, and any unsigned settlement agreements shall not be admissible in any court proceeding. The Parties agree to not call the mediator as a witness concerning the mediation or to provide any materials from the mediation in any court proceeding.

Section 18.17 Exemption of Repetitive Disputes. Notwithstanding any other provision in this Agreement, any Dispute shall be exempt from the dispute resolution process set forth herein if (a) the Dispute is the same as or substantially similar to a prior Dispute Notice filed within the previous twelve (12) months, and (b) the prior Dispute Notice was administered through the dispute resolution process prescribed in this Agreement; or (c) the Passenger Agency's Service inability to operate on the Route or an alternate route for more than thirty (30) days is caused by the Railroad, excluding Force Majeure Events, Discontinuance of Service, and Service Changes. Each Party shall maintain accurate records to identify and substantiate such instances of repetitive Disputes.

Section 18.18 Survival of the Dispute Resolution Process. The dispute resolution process set forth in this Section 18 shall survive and continue in force following the termination or purported termination of the Agreement.

Section 18.19 Dispute Resolution Timeline. The following deadlines are set forth as an illustrative timeline:

Action	Deadline
Respond to Dispute Notice and otherwise initiate Informal Negotiations	7 days after receipt of Dispute Notice
Conclude Informal Negotiations	60 days after receipt of Dispute Notice
Initiate Permissive Mediation (disputes valued at less than \$50,000)	Within 30 days after conclusion of Informal Negotiations
Initiate Mandatory Mediation (disputes valued at \$50,000 or more)	Within 30 days after conclusion of Informal Negotiations
Selection of Mediator: exchange initial list of proposed mediators; parties are to propose list of 3 names	Within 10 days after the initiation of mediation
Selection of Mediator: request appointment of a mediator if agreement could not be reached	Within 20 days after the initiation of mediation
Submit Mandatory Mediation Statement	7 days prior to the first scheduled mediation session
Conclude Mediation	Within 90 days after the initiation of mediation

Section 19. GENERAL PROVISIONS

Section 19.1 Confidentiality and Use Restrictions. The Receiving Party shall maintain the confidentiality of Confidential Information. However, the Receiving Party may disclose Confidential Information to: (a) its directors, officers, employees, agents, attorneys, and affiliates, to the extent such disclosure reasonably relates to the administration of the transactions contemplated by this Agreement; (b) its financial advisors and other professional advisors who agree to hold the Confidential Information confidential in accordance with the terms of this Section; (c) any federal or state regulatory authority having jurisdiction over the Receiving Party, pursuant to legal requirements or a court order; and (d) any other person or entity to whom such disclosure is necessary or appropriate: (1) to comply with any Government Requirement applicable to the Receiving Party; (2) to respond to any subpoena or other legal process; (3) in connection with any litigation to which the Receiving Party is a party; or (4) to enforce or protect the Receiving Party's rights and remedies under this Agreement. Responses to Freedom of Information Act, CORA, and similar requests that implicate Confidential Information shall be subject to the provisions of Section 19.7.

Section 19.2 Third Party Beneficiaries. This Agreement, is for the exclusive benefit of the Parties and not for the benefit of any third party, except that a Designated Contractor shall have all rights and only those rights to access and use the Rail Lines to operate the Service on behalf of the Passenger Agency as are described in this Agreement.

Section 19.3 Entire Agreement. Any exhibits, appendices, schedules, and attachments are incorporated into and made a part of this Agreement. This Agreement contains the entire

agreement of the Parties with respect to the subject matter hereto and supersedes all prior agreements or oral understandings between the Parties with respect to such subject matter.

Section 19.4 No Reliance. Each Party acknowledges that in executing this Agreement it is not relying on and has not relied on any representation or statement by the other Party or the other Party's representatives, other than statements contained in this Agreement.

Section 19.5 Assignment. Except as provided in this Section 19, this Agreement and any rights and obligations created by it may not be assigned in whole or in part by either Party without the prior written consent of the other Party. This Agreement may be assigned by a Party without the prior written consent of the other Party only: (a) as a result of a merger or corporate reorganization, consolidation, change of control, or sale of substantially all of its assets; (b) to an Affiliate of the assigning Party; (c) with respect to any public entity, the transfer of the responsibilities, duties, authority, rights, and obligation of such public entity to another public entity by operation of law; or (d) with respect to Passenger Agency, the transfer of responsibilities, duties, authority, rights, and obligation of such public entity as part of an Alternative Delivery Method. In the event of an assignment, this Agreement shall be binding upon and inure to the benefit of each of the transferees, successors, and assigns.

Section 19.6 Force Majeure Events. Notwithstanding anything to the contrary, each Party shall be temporarily excused from the performance of any of its obligations under this Agreement, except obligations involving indemnification, maintenance of insurance, or the payment of money to the other Party, during the time when such nonperformance is caused by a Force Majeure Event. In all cases, the Party asserting a Force Majeure Event has the basis for temporary excuse from performance must, as soon as practicable after learning of the conditions related to the Force Majeure Event, provide written notice of the Force Majeure Event to the other Party. The notice must explain the nature of the Force Majeure Event, what obligations in this Agreement it affects, the date the Force Majeure Event arose, and an estimate of how long the Force Majeure Event shall interfere with the noticing Party's ability to perform its obligations. The Party claiming an excuse from performance under this Agreement must promptly resume full performance of its obligations upon recovery from or cessation of the Force Majeure Event.

Section 19.7 Notice of Freedom of Information Act Requests. Passenger Agency shall promptly send to Railroad written notice of any request Passenger Agency receives for information relating to this Agreement pursuant to CORA or any request under similar federal, state, or local statute or regulation and, in any event, shall provide such notice not later than five (5) business days after receiving the request. In the event the request asks for information that Railroad has identified as confidential and/or proprietary, Passenger Agency will redact the confidential and/or proprietary information from any initial production pursuant to CORA, or similar federal, state, or local statute. If the requestor objects to the redaction, Passenger Agency will provide prompt notice to Railroad and Railroad may file an application to the appropriate court for determination of whether disclosure is required or exempted as provided for in CORA or similar law. If Railroad declines or fails to file an application to the appropriate court, Passenger Agency, in its sole and absolute discretion, may determine whether to produce the material subject to the dispute or proceed to the appropriate court on its own and Passenger Agency shall not be liable for release of records it deems responsive to the request or records it is ordered to release pursuant to a court order.

Section 19.8 Notices and Communications. All notices, demands, requests and other communications required or permitted hereunder shall be in writing, and shall be (a) personally delivered with a written receipt of delivery; (b) sent by a nationally recognized overnight delivery service requiring a written acknowledgement of receipt or providing a certification of delivery or attempted delivery; (c) sent by certified or registered mail, return receipt requested; or (d) sent by electronic delivery. All notices shall be deemed effective when actually delivered as documented in a delivery receipt; provided, however, that if the notice was sent by overnight courier or mail as aforesaid and is affirmatively refused or cannot be delivered during customary business hours by reason of the absence of a signatory to acknowledge receipt, then the first attempted delivery shall be deemed to constitute delivery. Each Party shall be entitled to change its designee and address for notices from time to time by delivering to the other Party notice thereof in the manner herein provided for the delivery of notices. All notices shall be sent to the addressee at its address set forth following its name below:

To Railroad:

Union Pacific Railroad Company
Attn: Katherine Novak
1400 Douglas Street, Mail Stop 1120
Omaha, Nebraska 68179
Telephone: (402) 544-5219
Email: knnovak@up.com

With a copy to:

Union Pacific Railroad Company
Attn: Josephine Jordan
1400 Douglas Street, Mail Stop 1580
Omaha, Nebraska 68179
Telephone: (402) 544-4554
Email: jjordanl@up.com

To State:

Colorado High Performance Transportation Enterprise
Attn: Director
2829 W. Howard Place
Denver Colorado, 80204
E-mail: piper.darlington@state.co.us

With a copy to:

Colorado Department of Law
Attn: Deputy Attorney General - Revenue & Regulatory Law
Section
1330 Broadway, Suite 1000
Denver, Colorado 80203
E-mail: lee.reichert@coag.gov

Section 19.9 Governing Law and Venue. Except where preempted by federal law, this Agreement shall be governed by and construed in accordance with the laws of the State of Colorado without regard to its conflict of law rules. The venue for any disputes under this Agreement shall be the United States District Court for the District of Colorado. The choice of venue by the Passenger Agency and Railroad to be mandatory and not permissive.

Section 19.10 Railroad Federal Rights, Immunities and Benefits. Nothing in this Agreement is intended to affect, diminish, waive or in any way prejudice any Railroad's rights, immunities, or benefits under applicable federal law, including without limitation those found in 49 U.S.C. Section 10501, as amended, titled "General jurisdiction" and any implementing regulations.

Section 19.11 Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed an original but all of which shall together constitute one and the same instrument.

Section 19.12 Amendments. This Agreement shall not be modified, amended, or altered without the written consent of both Parties.

Section 19.13 Non-Waiver. The failure of either Party to insist at any time upon the strict observance or performance of any of the provisions of this Agreement, or to exercise any right or remedy provided for in this Agreement, shall not impair any such right or remedy nor be construed as a waiver or relinquishment thereof.

Section 19.14 Authority to Execute. Each person who signs this Agreement represents and warrants that he or she has the full and complete power and authority to execute this Agreement on behalf of the Party for which he or she signs and to bind such Party to this Agreement.

Section 19.15 Binding Effect. The Parties agree that the terms of the Agreement are valid, legally binding, and enforceable against each Party and each Parties successors and/or permitted assigns.

Section 19.16 Severability. If any part of this Agreement is determined to be invalid, illegal, or unenforceable, such determination shall not affect the validity, legality, or enforceability of any other part of this Agreement, and the remaining parts of this Agreement shall be enforced as if such invalid, illegal, or unenforceable part were not contained herein.

Section 19.17 Survivability. The expiration or termination of this Agreement shall not affect, impair, or discharge any claims, obligations (including but not limited to the obligation to

maintain confidentiality, Section 14 Liability, pay, or defend), or benefits, which shall have accrued or are based upon acts, omissions, or events that shall have occurred during the Term.

Section 19.18 Governmental Immunity. Liability for claims for injuries to persons or property arising from the negligence of Passenger Agency, its Affiliates, employees and officials, shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, *et seq.* C.R.S. 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, contained in these statutes.

Section 19.19 Taxes. Passenger Agency is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from State and local government sales and use taxes under §§39-26-704(1), *et seq.*, C.R.S. (Colorado Sales Tax Exemption Identification Number 98-02565). Passenger Agency shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the state imposes such taxes on Railroad. Railroad shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Railroad may wish to have in place in connection with this Agreement.

[Signature Page(s) Follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

UNION PACIFIC RAILROAD
COMPANY

By: V. J. Vena
Name: V. James Vena
Title: Chief Executive Officer
Union Pacific Railroad Company

COLORADO HIGH PERFORMANCE
TRANSPORTATION ENTERPRISE
(D/B/A COLORADO
TRANSPORTATION INVESTMENT
OFFICE)

By: Piper Darlington
DocuSigned by:
1B0591C26F0B43A
Name: Piper Darlington
Title: Director
Colorado High Performance
Transportation Enterprise (d/b/a
Colorado Transportation Investment
Office) 5/1/2025

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.

OFFICE OF THE STATE CONTROLLER

Robert Jaros, State Controller
State Controller for authorized delegate)

By: Robert Jaros
Signed by:
D1E8210AD1E546A_
Date: 5/1/2025

STATE OFFICE OF RISK MANAGEMENT

State Risk Manager (or authorized Delegate)

By: 12:0
FBB7F60CBD11442-
Date: 5/1/2025

LEGAL REVIEW

**Philip J. Weiser, Colorado Attorney General
Attorney General (or authorized Delegate)**

M

By: (; ; d w f

519D52A0C2CC4ES...

Date: 5/1/2025

Signature Page to Passenger Rail Operating Agreement

List of Exhibits

Exhibit Number/Letter	Exhibit Title
Exhibit A	Route
ExhibitB	Authorization Notice Form
ExhibitC	Consists
ExhibitD	Performance Standards and Payments
ExhibitE	Schedules
Exhibit F	Condition Precedent
ExhibitG	Construction & Maintenance (Stations and Desired Real Estate)
ExhibitH	Service Change Request
Exhibit I	Statement of Charges
Exhibit J	Right of Entry
ExhibitK	Colorado State Law
Exhibit L	Insurance Requirements
ExhibitM	Insurance Certificates
ExhibitN	Reports

PASSENGER RAIL ACCESS AND OPERATING AGREEMENT

Exhibit A

STATIONS

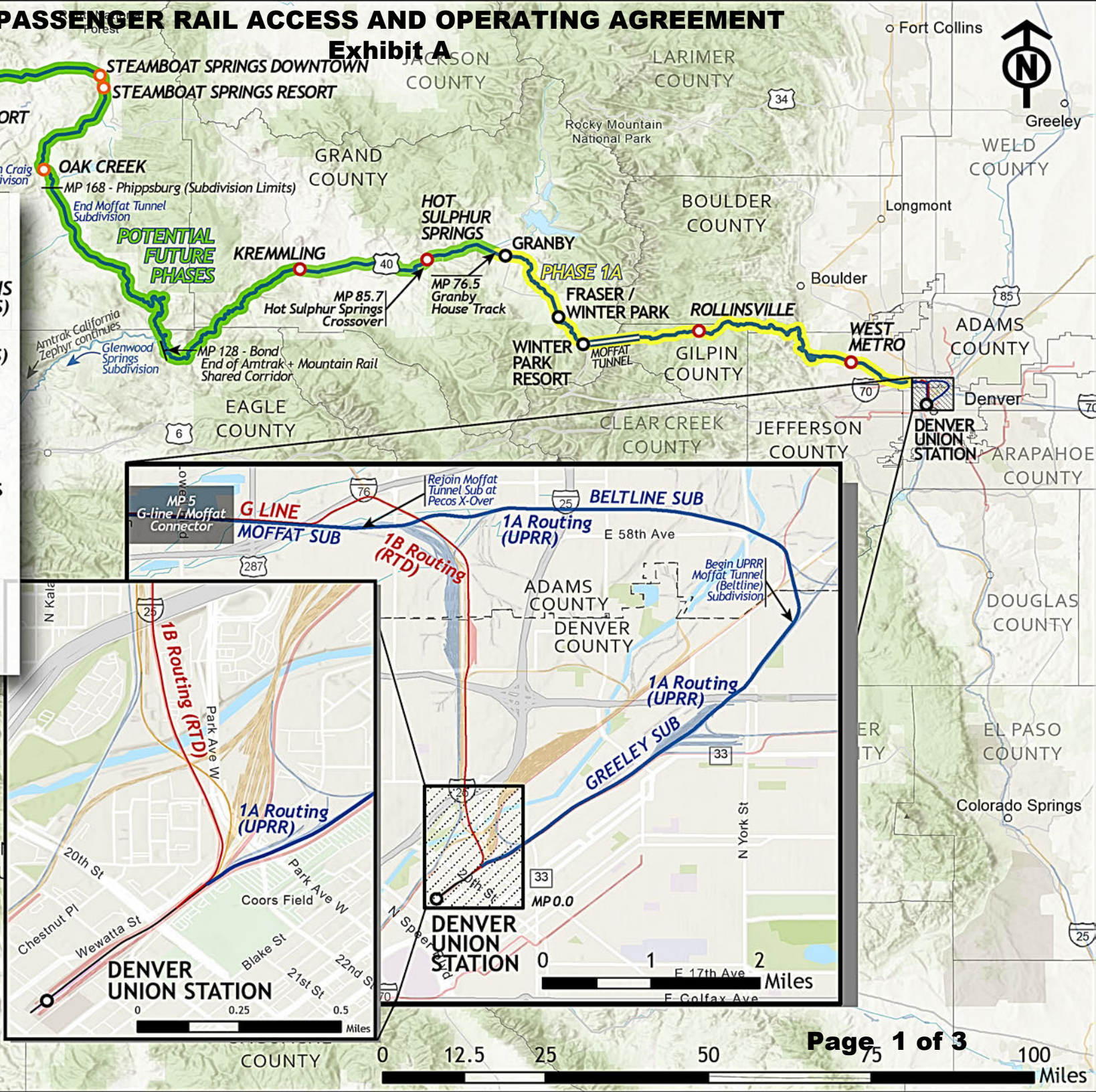
- EXISTING AMTRAK STATIONS (PHASE 1A)
- PROPOSED INFILL STATIONS (POTENTIAL FUTURE PHASES)
- CRAIG BRANCH STATIONS (POTENTIAL FUTURE PHASES)

PHASING

- PHASE 1A
- POTENTIAL FUTURE PHASES

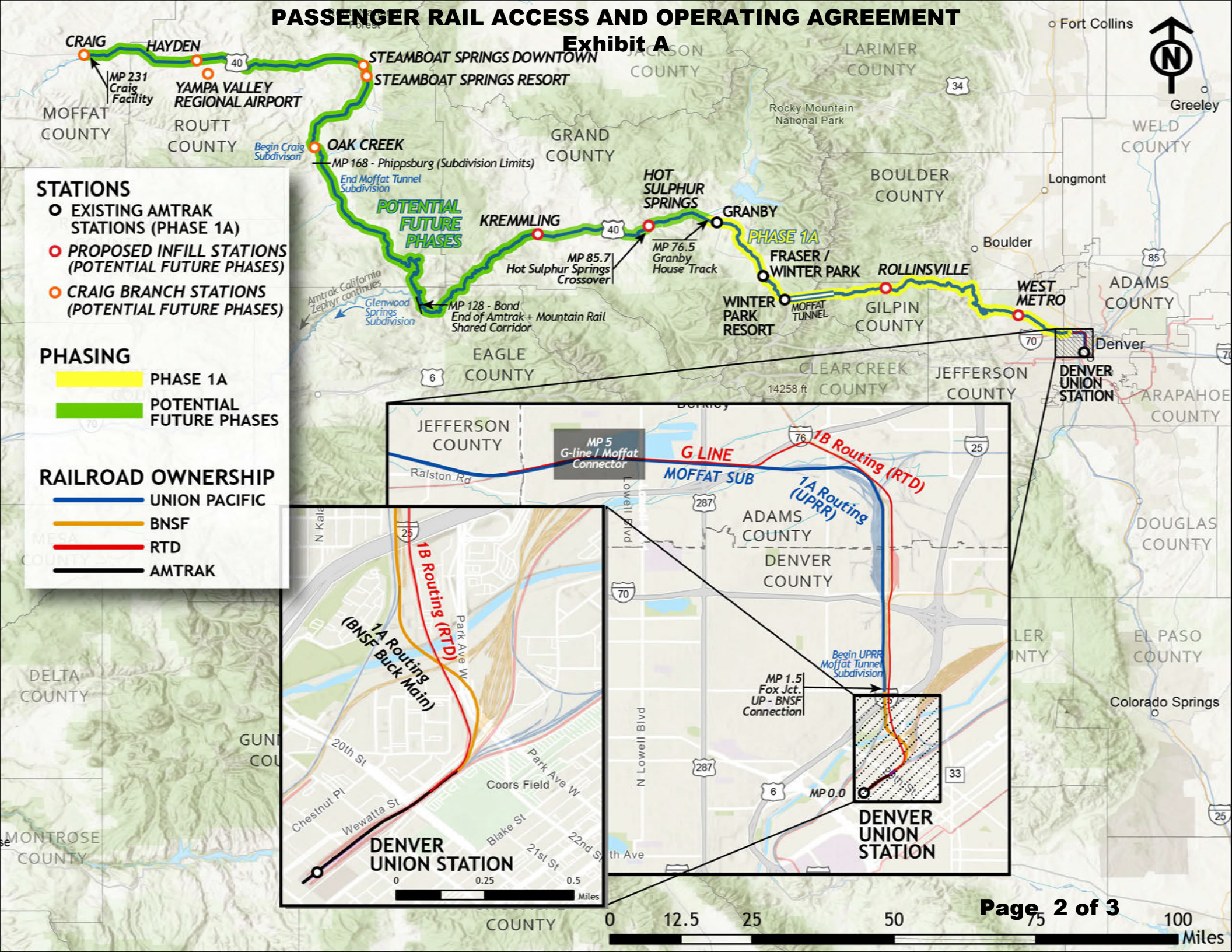
RAILROAD OWNERSHIP

- UNION PACIFIC
- BNSF
- RTD
- AMTRAK



PASSENGER RAIL ACCESS AND OPERATING AGREEMENT

Exhibit A

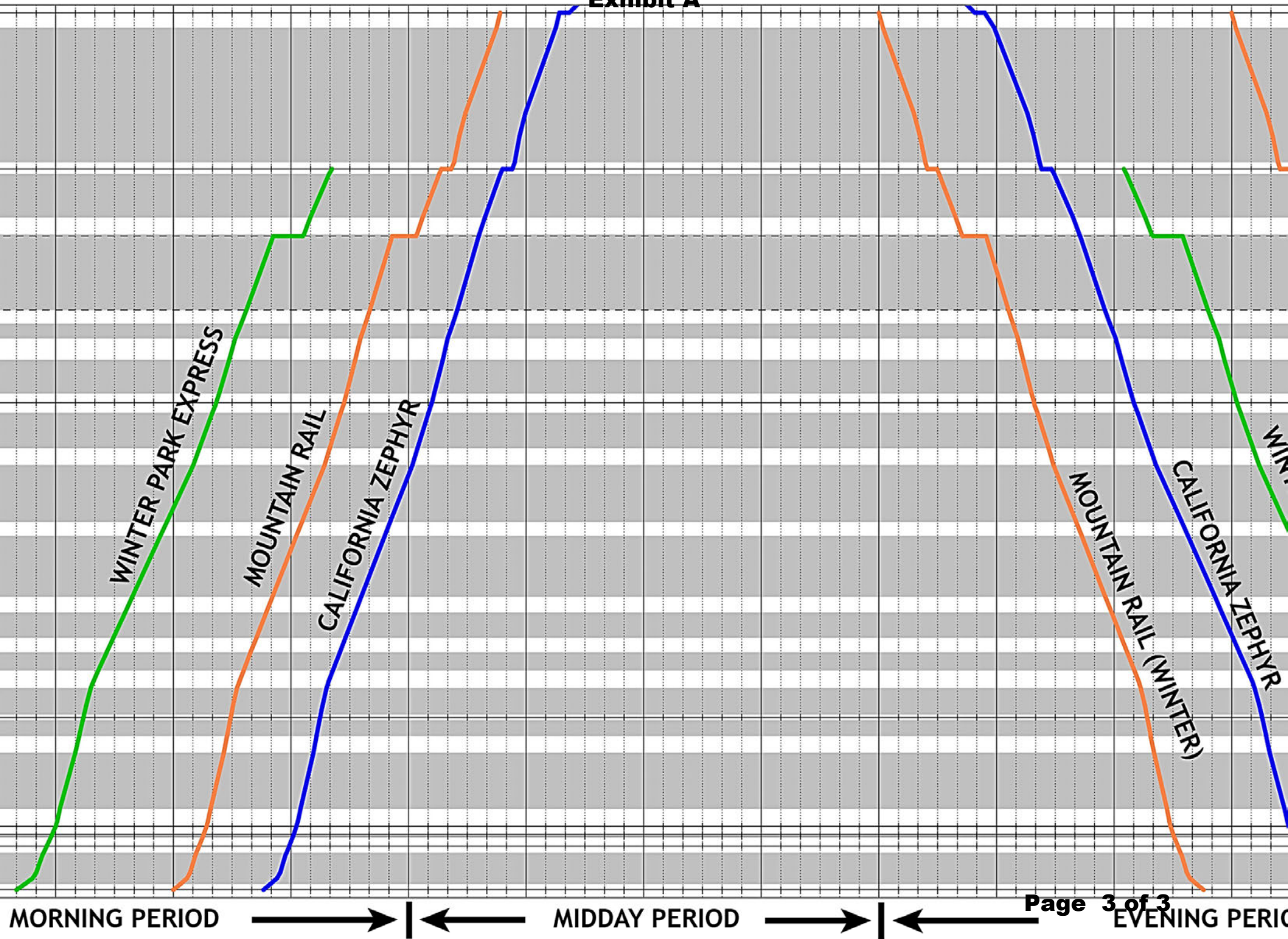


PASSENGER RAIL ACCESS AND OPERATING AGREEMENT

WESTBOUND TRAINS

Exhibit A

EASTBOUND TRAINS



PASSENGER RAIL ACCESS AND OPERATING AGREEMENT

AUTHORIZATION NOTICE FORM

EXHIBIT B

Date: _____

Work/Services ("Project") Description: _____

Project Location: _____

Subdivision: _____

Mile Post #: _____

Cost Estimate: _____ Authorized Amount: _____

Invoice Date: _____ Payable Date: _____

Attachments: ☐ Yes ☐ No

Description of Attachments:

Passenger Agency agrees and acknowledges that it is solely responsible and agrees to pay, in full, to Union Pacific Railroad Company the above stated Authorized Amount. The Authorized Amount is due and payable to Union Pacific Railroad Company on or before the payable date listed above.

PASSENGER AGENCY

By: _____

Title: _____

Date: _____

UNION PACIFIC RAILROAD COMPANY

By: _____

Title: _____

Date: _____

Passenger Rail Access and Operating Agreement

Exhibit C

Consists

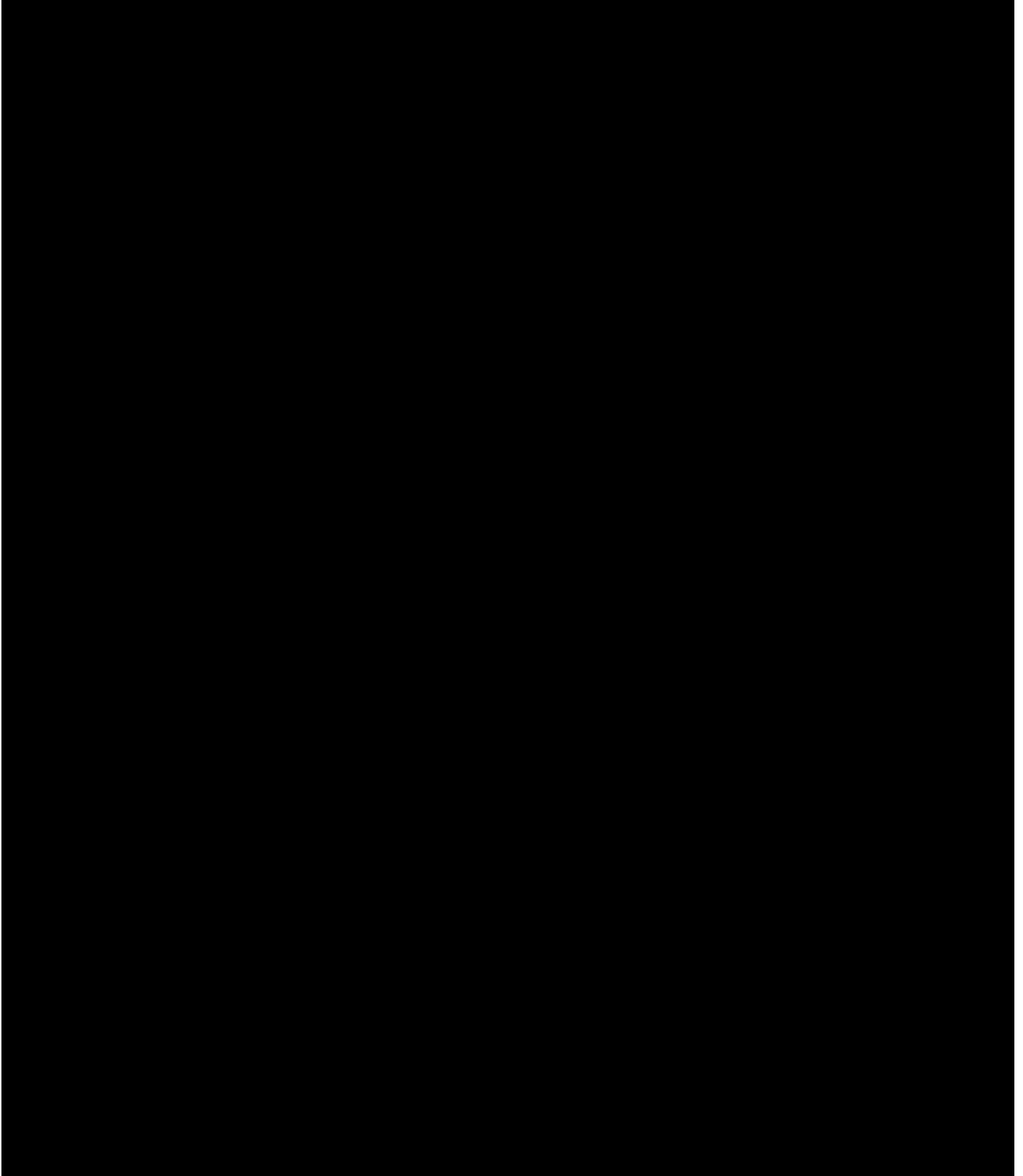
(Reserved)

Passenger Access and Operating Agreement

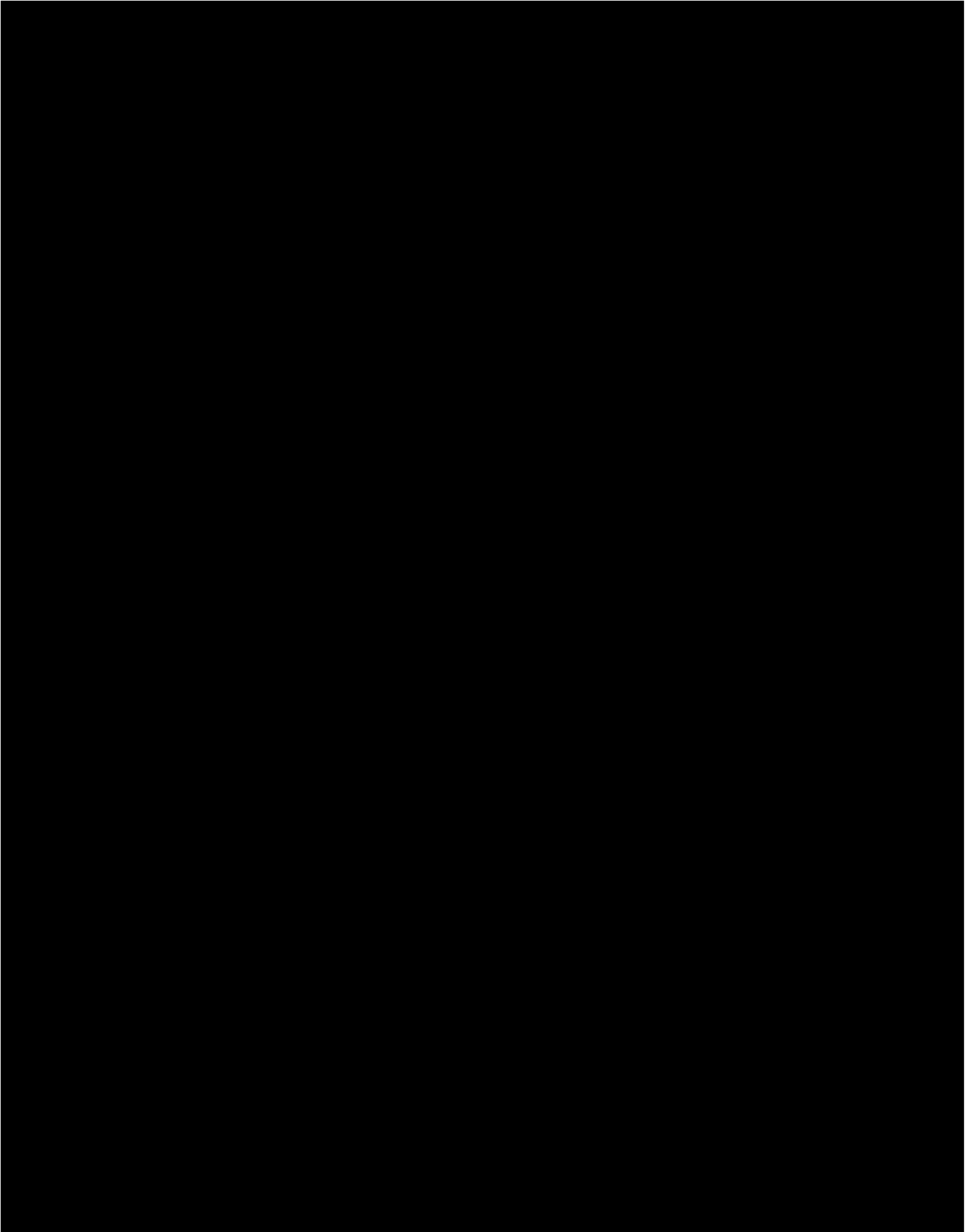
Exhibit D

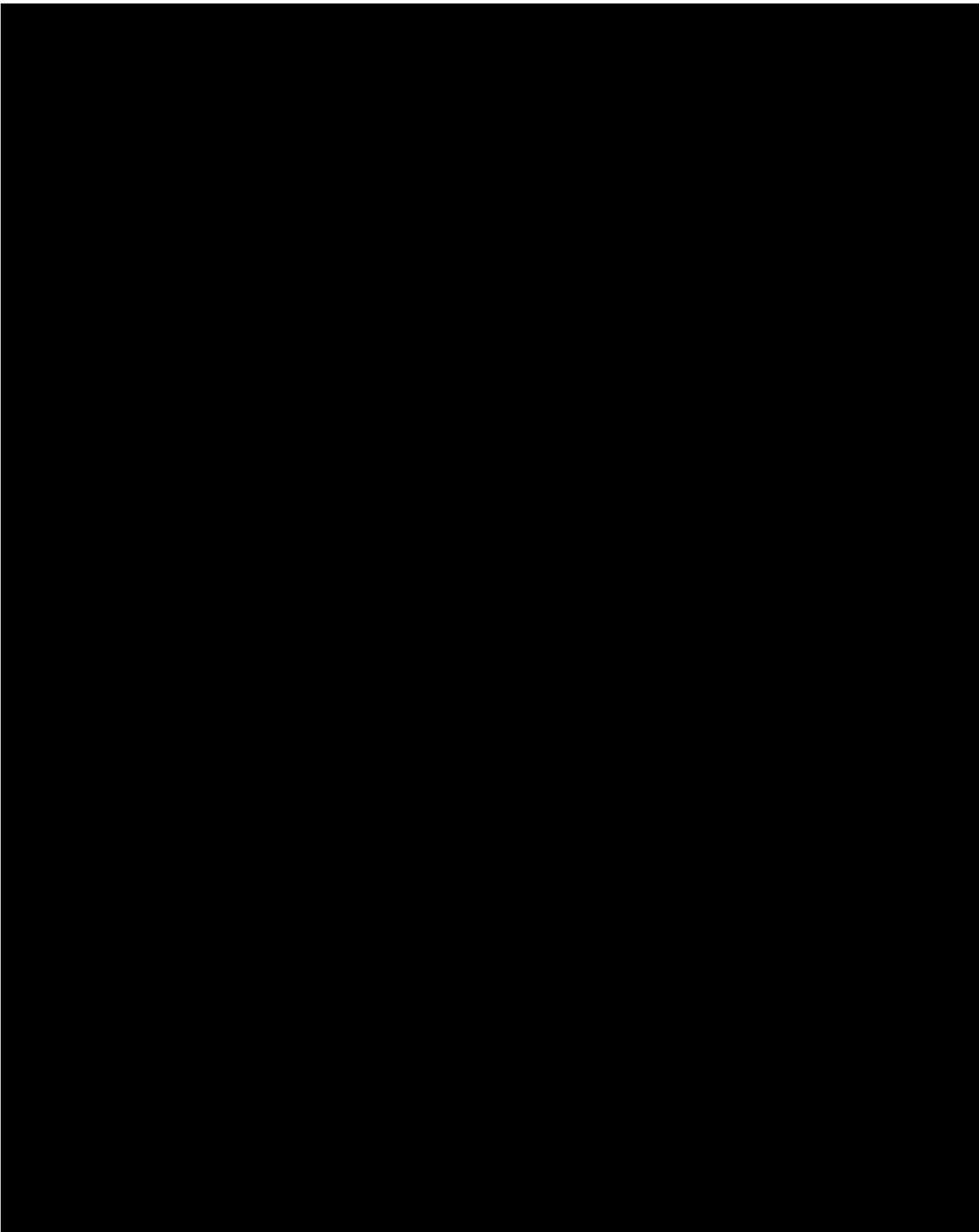
PERFORMANCE PAYMENTS
FOR OPERATION OF COLORADO MOUNTAIN RAIL TRAINS

UP Confidential









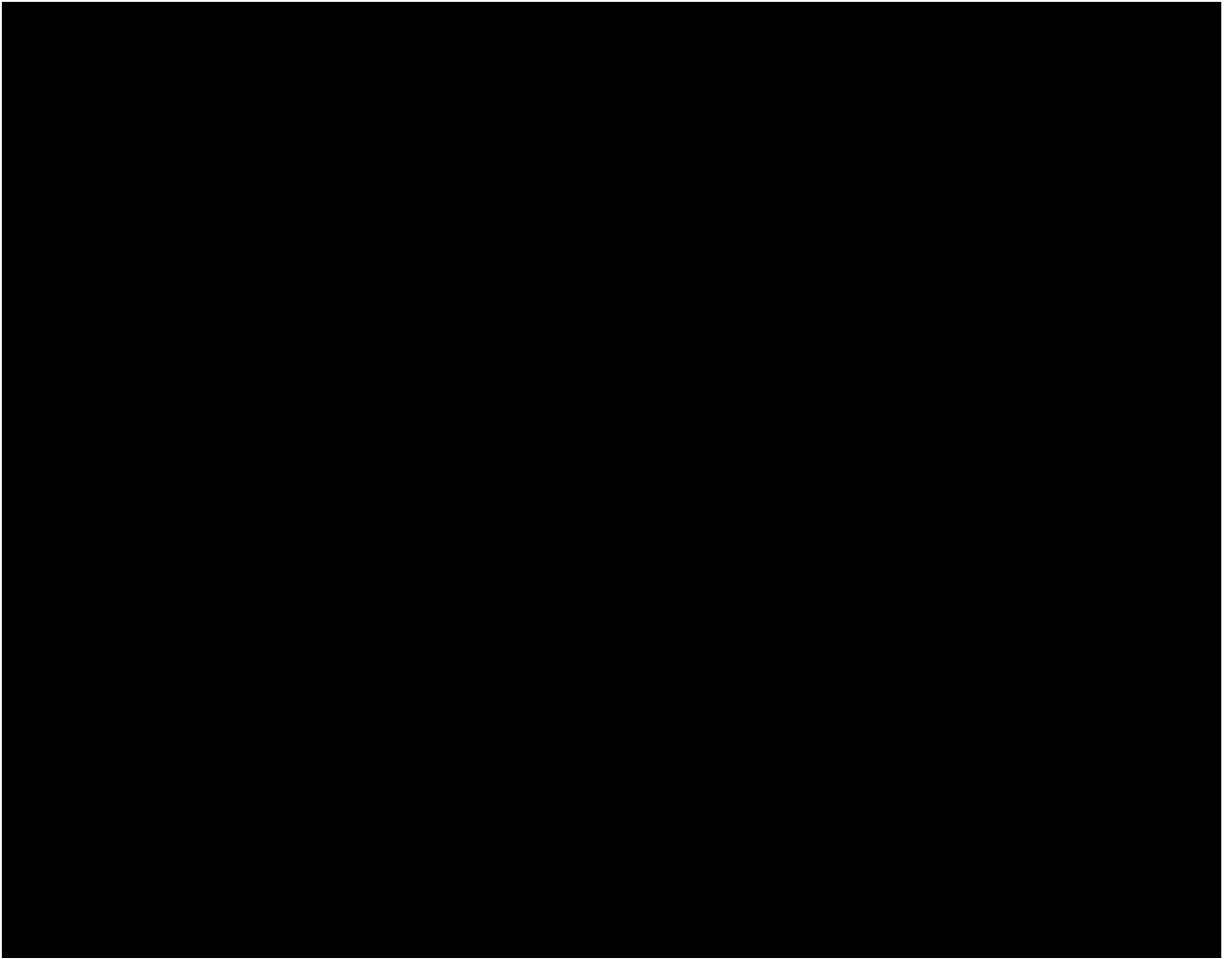


Table 1
Reserved

Passenger Rail Access and Operating Agreement

Exhibit E

Schedules

(Reserved)

PASSENGER RAIL ACCESS AND OPERATING AGREEMENT
EXHIBIT F

CONDITIONS PRECEDENT

Per Section 2 of the PROA, prior to the Service Initiation Date all conditions set forth below must be met and satisfied as follows:

- A. **Schedules and Consists:** No less than six (6) months prior to the Service Initiation Date, Exhibit C as described in Section 4.2 must be provided by the Passenger Agency and approved by Railroad.
- B. **Regulations and Rules:** No less than six (6) months prior to the Service Initiation Date, Passenger Agency must demonstrate it is able to comply with all Applicable Law and Railroad Requirements per Section 12.2.
- C. **Insurance:** No less than thirty (30) days prior to the testing of Trains on the Rail Lines, Passenger Agency shall furnish Railroad original certificates of insurance and policy endorsements, executed by a duly authorized representative of each insurer, showing compliance with the Insurance Requirements, as described in Section 15.1.
- D. **Reports:** No less than thirty (30) days prior to the Service Initiation Date, Exhibit N as described in Section 16.1 must be agreed to by the parties.
- E. **Routes:** The final route must be agreed to by the Parties no less than six (6) months prior to the Service Initiation Date, Exhibit A (Recitals – Paragraph D) must be agreed to by the parties.
- F. **Performance Payments:** No less than thirty (30) days prior to the Service Initiation Date, Exhibit D as described in Section 1.50 and 7.1 must be finalized with agreed-upon schedules and payment procedures by the parties.
- G. **Schedules:** The intended schedule is acknowledged and agreed upon in the PROA but will not be finalized until test runs and further due diligence is achieved. The final schedule must be provided by the Passenger Agency and approved by Railroad no less than six (6) months prior to the Service Initiation Date, Exhibit E as described in Section 1.46

The Parties acknowledge that the Passenger Agency desires to commence revenue service by November 1, 2026, pending procurement and selection of a Designated Contractor and necessary equipment for the Service. Therefore, the table below is a timeline, provided solely for illustrative purposes and not binding in anyway, for the

conditions stated herein to be satisfied for the achievement of revenue service by November 1, 2026.

Action	Submission of Requests	Response Period from date of Submission	Resolution from date of Submission
Consists	March 1, 2026	30 calendar days	60 calendar days
Regulations and Rule	March 1, 2026	30 calendar days	60 calendar days
Insurance	June 1, 2026	30 calendar days	30 calendar days
Reports	July 2026	30 calendar days	60 calendar days
Routes	Passenger Agency to provide Railroad with notice of final proposed route for phase 1A by March 1, 2026	30 calendar days	60 calendar days
Schedules	Passenger Agency to provide Railroad with notice of final proposed schedule for phase 1A by March 1, 2026	30 calendar days	60 calendar days

Passenger Access and Operating Agreement

EXHIBIT G

The PROA allows for the implementation of the Service as agreed upon by the Parties and specified within the PROA with annual usage not to exceed Five Hundred Six Thousand **(506,000)** train miles per year. Notwithstanding the phasing identified in Tables 1 and 2, the State may choose a shorter segment for any phase (e.g., replacing a Denver Union Station to Kremmling roundtrip with a Denver Union Station to Granby roundtrip). However, in no event will more than three (3) round trips be permitted through the Moffat Tunnel. In addition, the State may extend the Phase 1 train to Craig without starting Phase 2A if the Phase 2B capital improvements are provided.

Notwithstanding the phasing identified in Tables 1 and 2, the State may use train miles to run more than three roundtrips for regional service in the Yampa River Valley (Craig to Phippsburg corridor), assuming the capital improvements for Phase 3 have been provided. Passenger Rail Agency may add additional round trips at a rate to be determined by the Parties.

This Exhibit G defines the Parties' agreement for Phase 1A construction and timelines as stated in Section 3.6 of the Passenger Rail Access and Operating Agreement ("PROA"). The list of infrastructure projects required for Phase 1A and agreed to by the Parties is listed in Table 1.

Table 1: Phase 1A

Phase	Service	Required Capital Improvement	Phasing As of May 1, 2025
1A	Roundtrip Denver Union Station to Grand County Leave Denver in the morning and leave Grand County in the early evening.	Complete needed improvements in the Denver Terminal Area, including Denver storage and maintenance facility, (See Construction Project 1). Rehabilitation of House Tracks at the end of the Phase 1A service in Grand County (Granby or Kremmling), (See Construction Project 2).	Roundtrip with existing stops from Denver Union Station, the Platform at Winter Park Resort, the station in Fraser, and the station in Granby.

For phasing of the Service beyond Phase 1A, the routes, phasing, service, schedule, service and capital improvements contemplated at the time of execution of the PROA, see Table 2 below. The list of anticipated capital improvements shown in Table 2, is not intended to be an exhaustive list of capital improvements. The Parties are still analyzing the Service and the list may expand or contract prior to initiation of future phasing.

Table 3 identifies potential real estate the Passenger Agency may desire in support of the Service.

The Parties will work in good faith to negotiate for desired real estate. However, the list of desired real estate shown in Table 3, is not intended to be an exhaustive list of facilities. The Parties are still analyzing the Service and the list may expand or contract prior to the initiation of future phasing.

Table 2: Infrastructure Projects List for Phases 1b, 2, and 3

Phase	Service	Required Capital Improvement	Phasing Understanding As of May 1, 2025
1BA			1B - Contemplated to begin 1B by 2028. This phase would possibly use the RTD G Line and add stations with new platforms in West Metro, Rollinsville. It may also extend to Kremmling. Station improvements to 1A stops including pedestrian access to Granby Station may be completed prior to initiation
2A	Roundtrip Kremmling to Denver Union Station	New 15,000 ft siding at Henderson. Slide fences at designated locations to be jointly determined by the Parties.	Project Concept A is anticipated to be needed prior to commencing the second roundtrip. Project Concepts B, C, and D are anticipated to be needed prior to initiating service of a second-round trip to or from Grand County.
2B	Roundtrip Denver Union Station to Craig	Needed improvements to ensure tunnel clearance between Bond and Toponas. Track stabilization at designated locations Improved signals and Positive Train Control (PTC) on the Craig Branch. Slide fences at designated locations and other needed rockfall mitigation.	Project Concepts E, F, G and J are anticipated to be needed prior to initiating service to Craig from Denver.
3	Yampa Valley Service	Improved signals and PTC if not already installed. Rehabilitation or construction of storage tracks at end of service.	Service may begin from Craig to Oak Creek with only Project Concepts E and H. Additional project concepts are anticipated to be needed for connection to the Hayden Airport

Proposed Projects as noted above:

Construction Project 1 – Denver Storage Facility

Scope: Construction of required storage tracks, light maintenance facility, and other required initial infrastructure for storage and operation of trains from near the Denver Union Station facilities.

Construction Project 2 – Granby Storage Facility

Scope: Construction of new storage track and light maintenance and layover facility near Granby, at approx. MP 76.5, Moffat Tunnel Subdivision.

Project Concept A – Henderson Siding

Scope: Construction of 15,000 LF siding near Henderson on the UP Greeley Subdivision.

Project Concept B – G-Line/Moffat Connector

Scope: Construction of crossover between UP Moffat Tunnel Subdivision and RTD Commuter Rail's Gold Line near C&S Junction.

Project Concept C – Moffat Subdivision Rockfall and Resilience

Scope: Installation of rockfall detection and mitigation, as well as other resilience improvements to track structure and roadbed on the Moffat Tunnel Subdivision between Tolland and Eisle and Fraser Canyon (Tabernash to Granby).

Project Concept D – Hot Sulphur Springs

Scope: Construction of crossover and extension of siding at Hot Sulphur Springs.

Project Concept E – Craig Branch PTC

Scope: Installation of Positive Train Control on the Moffat Tunnel Subdivision between Bond and Phippsburg and on the Craig Subdivision between Phippsburg and Craig. Includes required upgrades to existing signal infrastructure for compatibility with PTC system and operational resilience. Also includes closing CTC gaps in Phippsburg Yard Limits and between the end of CTC at CPDS230 Evans to Craig.

Project Concept F – Craig Branch Tunnel Clearances

Scope: Construction of required repairs to tunnels and rock slopes along the Moffat Tunnel Subdivision between Bond and Toponas that enable safe movement of passenger coaches compliant with clearance requirements on the remainder of the Moffat Tunnel Subdivision.

Project Concept G – Craig Branch Rockfall and Resilience

Scope: Installation of rockfall detection and mitigation, as well as other resilience improvements to track structure and roadbed on the Moffat Tunnel Subdivision between Bond and Toponas.

Project Concept H – Craig Storage and Maintenance Facility

Scope: Construction of a fleet storage and maintenance facility in Craig.

Project Concept I- Rail Line Connection to the Hayden Airport and new Station

Possible Station Area Projects

Possible New Station Construction:

The following stations are anticipated for future design and construction. However, no specific commitment regarding the below listed stations has been made prior to the execution of the PROA.

- Arvada
- Rollinsville
- Hot Sulphur Springs
- Kremmling
- Oak Creek
- Steamboat Springs Resort
- City of Steamboat Springs
- Hayden
- Hayden Airport
- Craig

Service may operate with or without any of these stations. Stations may be infilled on existing services and may be constructed in advance of service implementation. The Parties acknowledge that the addition or absence of station stop(s) will impact run time and schedule length.

Possible Station Upgrade Construction:

Upgrades and improvements at the following stations may be desired, but no specific commitment has been made prior to the execution of the PROA:

- Winter Park Resort
- Fraser/Winter Park
- Granby

Table 3: Real Estate List

Phase	Desired Real Estate
1	1A. Denver Maintenance Facility in Denver Union Station area – Passenger Agency desires property at Denargo Wye. 1B. Land near Granby Station for improved pedestrian access.
2A	No current land is desired at this time.
2B	Potential land is needed near Steamboat Springs Art Depot station Potential Land is needed for Oak Creek Station located west of Sharp Ave through Bell Ave Potential Land is needed for Hayden town Station located west of Walnut St crossing Potential Land is needed for Hot Sulfur Springs station and Project Concept F Potential Land is needed to connect to a potential future station at the Hayden Airport Potential Land is needed for Craig station located on the south end of Yampa Ave
3	Potential land is needed for connection to Hayden Airport

**PASSENGER RAIL OPERATING AGREEMENT (“PROA”)
SERVICE CHANGE REQUEST**

Date: _____

Describe service change request: _____

Requested service initiation date: _____

If temporary service change, included requested service end date: _____

Attachments: ☐ Yes ☐ No

If attachments, describe attachments:

Any compensation changes (payments to Railroad): _____

This service change request is hereby incorporated into and shall become a part of the Agreement. Passenger Agency agrees and acknowledges that it is solely responsible and agrees to pay, in full, to Railroad any amounts associated with this service change request.

PASSENGER AGENCY:

UNION PACIFIC RAILROAD COMPANY

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Passenger Rail Access and Operating Agreement
Exhibit I - Statement of Charges

UP Confidential

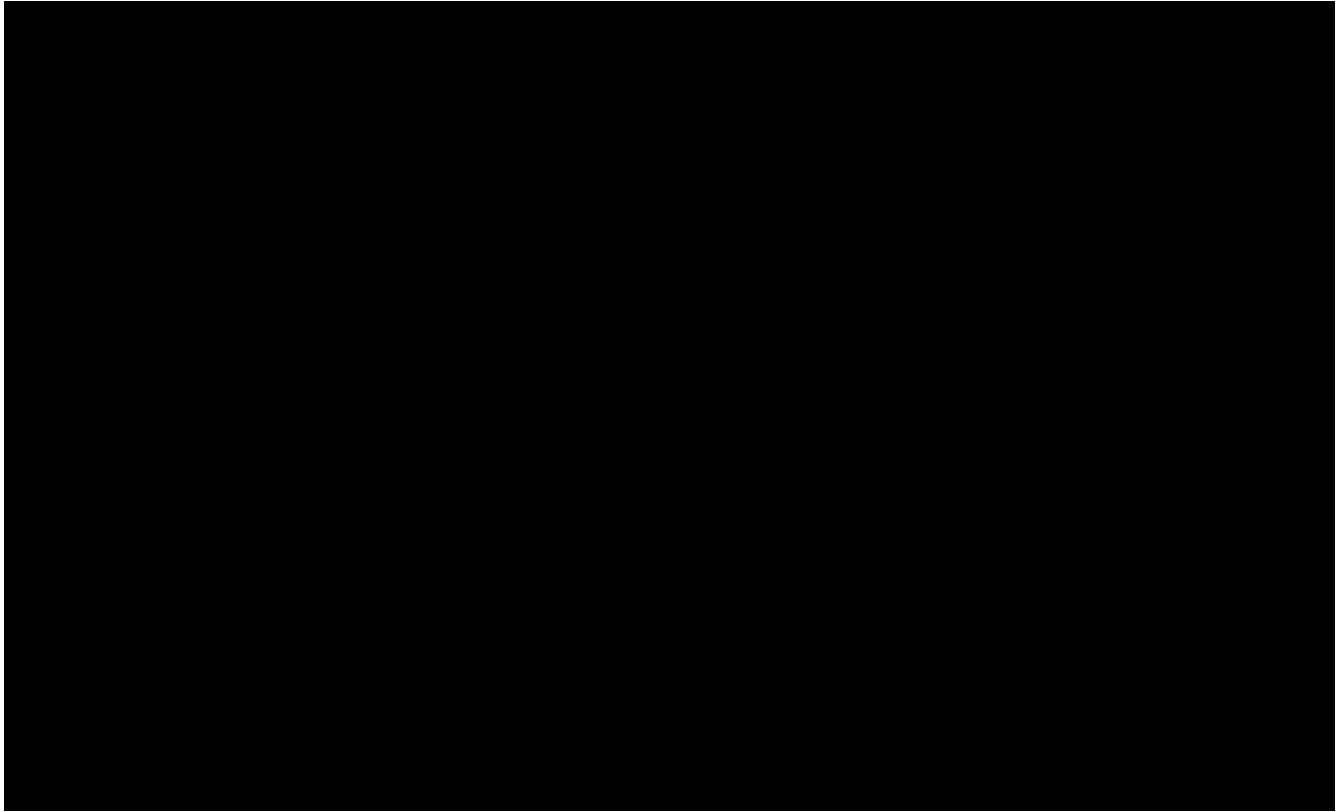


Exhibit I - 01 Franchise Access Facility

UP Confidential



Exhibit I - 02 Operations and Maintenance

UP Confidential

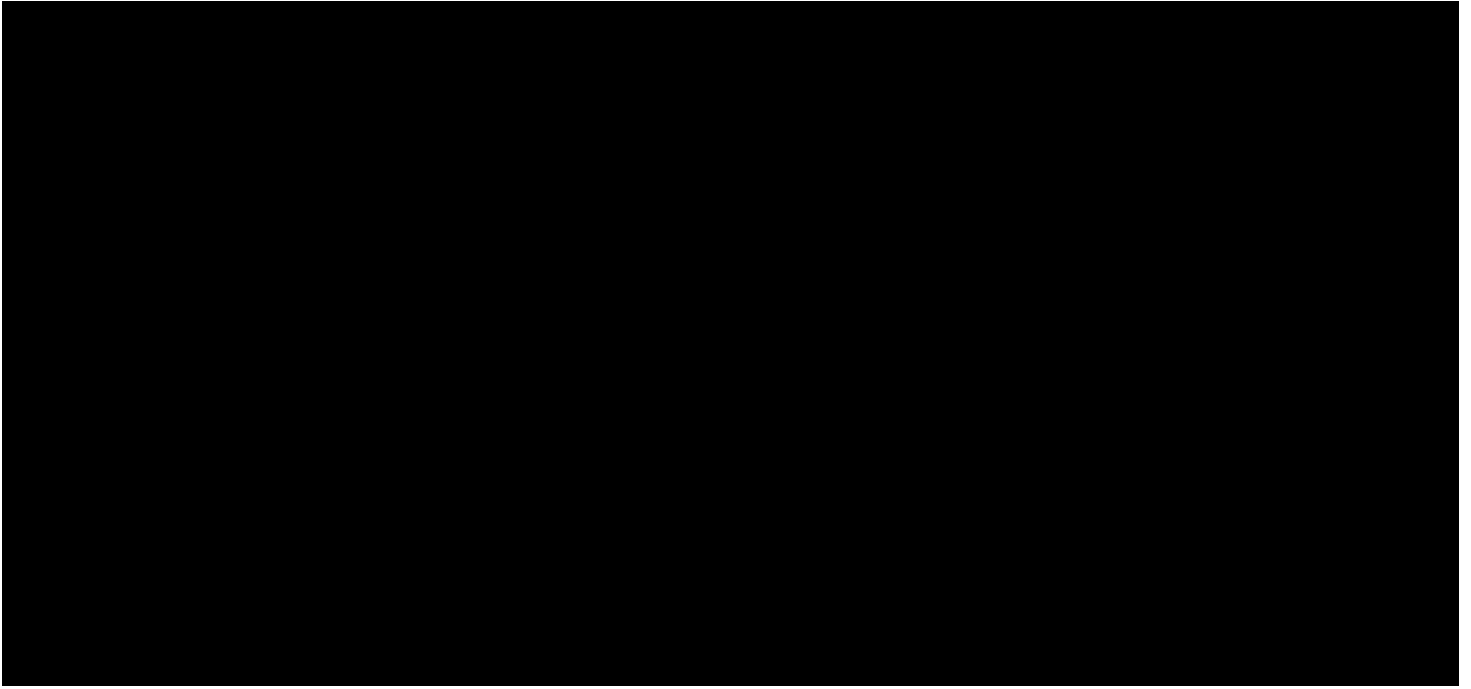


Exhibit I - 03 - Performance Payments

UP Confidential

Exhibit I - 04 Locomotive Leasing

Reserved

UP Confidential

UP Confidential

UP Confidential

Exhibit I - Grade Crossing Installation & Maintenance

Reserved

**Passenger Access and Operating Agreement
Exhibit J**

Contractor's Right of Entry Public Projects
Form Approved 02/09/2022

**CONTRACTOR'S
RIGHT OF ENTRY AGREEMENT**

THIS AGREEMENT is made and entered into as of _____ (the "Effective Date"), by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Railroad"); and _____, a _____ corporation ("Contractor").

RECITALS:

Contractor has been hired by _____ to perform work relating to _____ (the "Work") with all or a portion of such Work to be performed on property of Railroad in the vicinity of Railroad's Milepost [Category] on Railroad's [Comments] at or near DOT No. [Company Phone] located at or near Union Pacific Railroad, in [Company Address] County, State of [Company E-mail], as such location is in the general location shown on the print marked **Exhibit A**, attached hereto and hereby made a part hereof, which Work is the subject of a contract dated _____ between Railroad and the _____.

Railroad is willing to permit Contractor to perform the Work described above at the location described above subject to the terms and conditions contained in this agreement

AGREEMENT:

NOW, THEREFORE, it is mutually agreed by and between Railroad and Contractor, as follows:

ARTICLE 1 - DEFINITION OF CONTRACTOR.

For purposes of this agreement, all references in this agreement to Contractor shall include Contractor's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority. For purposes of clarity, Contractor agrees that any CIC (defined below) hired by Contractor is a subcontractor of Contractor and therefore included in the defined term Contractor pursuant to the foregoing sentence.

ARTICLE 2 - RIGHT GRANTED; PURPOSE.

Railroad hereby grants to Contractor the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the property described in the Recitals for the purpose of performing the Work described in the Recitals above. The right herein granted to Contractor is limited to those portions of Railroad's property specifically described herein, or as designated by the Railroad Representative named in Article 4.

ARTICLE 3 - TERMS AND CONDITIONS CONTAINED IN EXHIBITS B AND C.

The terms and conditions contained in **Exhibit B** and **Exhibit C**, attached hereto, are hereby made a part of this agreement.

ARTICLE 4 - ALL EXPENSES TO BE BORNE BY CONTRACTOR; RAILROAD REPRESENTATIVE.

A. Contractor shall bear any and all costs and expenses associated with any Work performed by Contractor (including without limitation any CIC), or any costs or expenses incurred by Railroad relating to this agreement.

Passenger Access and Operating Agreement

Exhibit J

Contractor's Right of Entry Public Projects
Form Approved 02/09/2022

B. Contractor shall coordinate all of its Work with the following Railroad representative or his or her duly authorized representative (the "Railroad Representative"):

C. Contractor, at its own expense, shall adequately police and supervise all Work to be performed by Contractor and shall ensure that such Work is performed in a safe manner as set forth in Section 7 of **Exhibit B**. The responsibility of Contractor for safe conduct and adequate policing and supervision of Contractor's Work shall not be lessened or otherwise affected by Railroad's approval of plans and specifications involving the Work, or by Railroad's collaboration in performance of any Work, or by the presence at the Work site of a Railroad Representative, or by compliance by Contractor with any requests or recommendations made by Railroad Representative.

ARTICLE 5 - SCHEDULE OF WORK ON A MONTHLY BASIS.

The Contractor, at its expense, shall provide on a monthly basis a detailed schedule of Work to the Railroad Representative named in Article 4B above. The reports shall start at the execution of this agreement and continue until this agreement is terminated as provided in this agreement or until the Contractor has completed all Work on Railroad's property.

ARTICLE 6 - TERM; TERMINATION.

A. The grant of right herein made to Contractor shall commence on the date of this agreement, and continue until _____, unless sooner terminated as herein provided, or at such time as Contractor has completed its Work on Railroad's property, whichever is earlier. Contractor agrees to notify the Railroad Representative in writing when it has completed its Work on Railroad's property.

B. This agreement may be terminated by either party on ten (10) days written notice to the other party.

ARTICLE 7 - CERTIFICATE OF INSURANCE.

A. Before commencing any Work and throughout the entire term of this Agreement, Contractor, at its expense, shall procure and maintain in full force and effect the types and minimum limits of insurance specified in **Exhibit C** of this agreement and require each of its subcontractors to include the insurance endorsements as required under Section 12 of **Exhibit B** of this agreement.

B. Not more frequently than once every two (2) years, Railroad may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

C. Upon request of Railroad, Contractor shall provide to Railroad a certificate issued by its insurance carrier evidencing the insurance coverage required under **Exhibit B**.

D. Contractor understands and accepts that the terms of this Article are wholly separate from and independent of the terms of any indemnity provisions contained in this Agreement.

E. Upon request of Railroad, insurance correspondence, binders, policies, certificates and endorsements

**Passenger Access and Operating Agreement
Exhibit J**

Contractor's Right of Entry Public Projects
Form Approved 02/09/2022

shall be sent to:

Union Pacific Railroad Company

[Insert mailing address]

Attn: _____

Project No. [Abstract]

ARTICLE 8 - PRECONSTRUCTION MEETING.

If the Work to be performed by the Contractor will involve the Railroad providing any flagging protection (or if a CIC is approved to provide flagging protection pursuant to the terms set forth herein) and/or there is separate work to be performed by the Railroad, the Contractor confirms that no work shall commence until the Railroad and Contractor participate in a preconstruction meeting involving flagging procedures and coordination of work activities of the Contractor and the Railroad (and any CIC, as applicable.)

ARTICLE 9. DISMISSAL OF CONTRACTOR'S EMPLOYEE.

At the request of Railroad, Contractor shall remove from Railroad's property any employee of Contractor who fails to conform to the instructions of the Railroad Representative in connection with the Work on Railroad's property, and any right of Contractor shall be suspended until such removal has occurred. Contractor shall indemnify Railroad against any claims arising from the removal of any such employee from Railroad's property.

ARTICLE 10. ADMINISTRATIVE FEE.

Upon the execution and delivery of this agreement, Contractor shall pay to Railroad **One Thousand Twenty Five Dollars (\$1,025.00)** as reimbursement for clerical, administrative and handling expenses in connection with the processing of this agreement.

ARTICLE 11. CROSSINGS; COMPLIANCE WITH MUTCD AND FRA GUIDELINES.

A. No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's trackage shall be installed or used by Contractor without the prior written permission of Railroad.

B. Any permanent or temporary changes, including temporary traffic control, to crossings must conform to the Manual of Uniform Traffic Control Devices (MUTCD) and any applicable Federal Railroad Administration rules, regulations and guidelines, and must be reviewed by the Railroad prior to any changes being implemented. In the event the Railroad is found to be out of compliance with federal safety regulations due to the Contractor's modifications, negligence, or any other reason arising from the Contractor's presence on the Railroad's property, the Contractor agrees to assume liability for any civil penalties imposed upon the Railroad for such noncompliance.

**Passenger Access and Operating Agreement
Exhibit J**

Contractor's Right of Entry Public Projects
Form Approved 02/09/2022

ARTICLE 12.- EXPLOSIVES.

Explosives or other highly flammable substances shall not be stored or used on Railroad's property without the prior written approval of Railroad.

IN WITNESS WHEREOF, the parties hereto have duly executed this agreement in duplicate as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY

By: _____

Title: _____

[Company Name of Contractor]

By: _____

Name: _____

Title: _____

Phone: _____

E-Mail: _____

**Passenger Access and Operating Agreement
Exhibit J**

Contractor's Right of Entry Public Projects
Form Approved 02/09/2022

EXHIBIT A
TO
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

Exhibit A will be a print showing the general location of the work site.

**Passenger Access and Operating Agreement
Exhibit J**

Contractor's Right of Entry Public Projects
Form Approved 02/09/2022

EXHIBIT B
TO
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

Section 1. NOTICE OF COMMENCEMENT OF WORK - RAILROAD FLAGGING - PRIVATE FLAGGING.

A. Contractor agrees to notify the Railroad Representative at least ten (10) working days in advance of Contractor commencing its Work and at least thirty (30) working days in advance of proposed performance of any Work by Contractor in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track.

B. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad approved flagman is provided to watch for trains. Upon receipt of such thirty (30)-day notice, the Railroad Representative will determine and inform Contractor whether a flagman need be present and whether Contractor needs to implement any special protective or safety measures.

C. Contractor shall be permitted to hire a private contractor to perform flagging or other special protective or safety measures (such private contractor being commonly known in the railroad industry as a contractor-in-charge ("CIC")) in lieu of Railroad providing such services or in concert with Railroad providing such services, subject to prior written approval by Railroad, which approval shall be in Railroad's sole and absolute discretion. If Railroad agrees to permit Contractor to utilize a CIC pursuant to the preceding sentence, Contractor shall obtain Railroad's prior approval in writing for each of the following items, as determined in all respects in Railroad's sole and absolute discretion: (i) the identity of the third-party performing the role of CIC; (ii) the scope of the services to be performed for the project by the approved CIC; and (iii) any other terms and conditions governing such services to be provided by the CIC. If flagging or other special protective or safety measures are performed by an approved CIC, Contractor shall be solely responsible for (and shall timely pay such CIC for) its services. Railroad reserves the right to rescind any approval pursuant to this Section 1, Subsection C., in whole or in part, at any time, as determined in Railroad's sole and absolute discretion.

D. If any flagging or other special protective or safety measures are performed by employees of Railroad and/or any contractor of Railroad, Railroad will bill Contractor for such expenses incurred by Railroad, unless Railroad and a federal, state or local governmental entity have agreed that Railroad is to bill such expenses to the federal, state or local governmental entity. If Railroad will be sending the bills to Contractor, Contractor shall pay such bills within thirty (30) days of Contractor's receipt of billing.

E. If any flagging or other special protective or safety measures are performed by Railroad or a CIC, Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this agreement.

F. The provisions set forth in this subsection are only applicable for Flagging Services performed by employees of Railroad: the rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with labor agreements and schedules in effect at the time the Work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the Work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional

Passenger Access and Operating Agreement

Exhibit J

Contractor's Right of Entry Public Projects
Form Approved 02/09/2022

charges on labor are also subject to change. If the wage rate or additional charges are changed, Contractor (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges. If flagging is performed by Railroad, reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Contractor may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Contractor must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Contractor will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30) days notice must then be given to Railroad if flagging services are needed again after such five-day cessation notice has been given to Railroad.

Section 2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED

A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Railroad to use and maintain its entire property including the right and power of Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by Railroad without liability to Contractor or to any other party for compensation or damages.

B. The foregoing grant is also subject to all outstanding superior rights (whether recorded or unrecorded and including those in favor of licensees and lessees of Railroad's property, and others) and the right of Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 3. NO INTERFERENCE WITH OPERATIONS OF RAILROAD AND ITS TENANTS.

A. Contractor shall conduct its operations so as not to interfere with the continuous and uninterrupted use and operation of the railroad tracks and property of Railroad, including without limitation, the operations of Railroad's lessees, licensees or others, unless specifically authorized in advance by the Railroad Representative. Nothing shall be done or permitted to be done by Contractor at any time that would in any manner impair the safety of such operations. When not in use, Contractor's machinery and materials shall be kept at least twenty five (25) feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroads tracks except at existing open public crossings.

B. Operations of Railroad and work performed by Railroad personnel and delays in the Work to be performed by Contractor caused by such railroad operations and Work are expected by Contractor, and Contractor agrees that Railroad shall have no liability to Contractor, or any other person or entity for any such delays. The Contractor shall coordinate its activities with those of Railroad and third parties so as to avoid interference with railroad operations. The safe operation of Railroad train movements and other activities by Railroad takes precedence over any Work to be performed by Contractor.

Section 4. LIENS.

Contractor shall pay in full all persons who perform labor or provide materials for the Work to be performed by Contractor. Contractor shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be created or enforced against any property of Railroad for any such Work performed. Contractor shall indemnify and hold harmless Railroad from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such Work done, labor performed, or materials furnished. If Contractor fails to promptly

Passenger Access and Operating Agreement

Exhibit J

Contractor's Right of Entry Public Projects
Form Approved 02/09/2022

cause any lien to be released of record, Railroad may, at its election, discharge the lien or claim of lien at Contractor's expense.

Section 5. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

A. Fiber optic cable systems may be buried on Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Contractor shall visit up.com/CBUD to complete and submit the required form to determine if fiber optic cable is buried anywhere on Railroad's property to be used by Contractor. If it is, Contractor will telephone the telecommunications company(ies) involved, make arrangements for a cable locator and, if applicable, for relocation or other protection of the fiber optic cable. Contractor shall not commence any Work until all such protection or relocation (if applicable) has been accomplished.

B. IN ADDITION TO OTHER INDEMNITY PROVISIONS IN THIS AGREEMENT, CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD RAILROAD HARMLESS FROM AND AGAINST ALL COSTS, LIABILITY AND EXPENSE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS AND EXPENSES) ARISING OUT OF ANY ACT OR OMISSION OF CONTRACTOR, ITS AGENTS AND/OR EMPLOYEES, THAT CAUSES OR CONTRIBUTES TO (1) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATIONS SYSTEM ON RAILROAD'S PROPERTY, AND/OR (2) ANY INJURY TO OR DEATH OF ANY PERSON EMPLOYED BY OR ON BEHALF OF ANY TELECOMMUNICATIONS COMPANY, AND/OR ITS CONTRACTOR, AGENTS AND/OR EMPLOYEES, ON RAILROAD'S PROPERTY. CONTRACTOR SHALL NOT HAVE OR SEEK RECOURSE AGAINST RAILROAD FOR ANY CLAIM OR CAUSE OF ACTION FOR ALLEGED LOSS OF PROFITS OR REVENUE OR LOSS OF SERVICE OR OTHER CONSEQUENTIAL DAMAGE TO A TELECOMMUNICATION COMPANY USING RAILROAD'S PROPERTY OR A CUSTOMER OR USER OF SERVICES OF THE FIBER OPTIC CABLE ON RAILROAD'S PROPERTY.

Section 6. PERMITS - COMPLIANCE WITH LAWS.

In the prosecution of the Work covered by this agreement, Contractor shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the Work including, without limitation, all applicable Federal Railroad Administration regulations.

Section 7. SAFETY.

A. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of any Work on Railroad property performed by Contractor. Contractor shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the Work. Contractor shall, at a minimum, comply with Railroad's then current safety standards located at the below web address ("Railroad's Safety Standards") to ensure uniformity with the safety standards followed by Railroad's own forces. As a part of Contractor's safety responsibilities, Contractor shall notify Railroad if Contractor determines that any of Railroad's Safety Standards are contrary to good safety practices. Contractor shall furnish copies of Railroad's Safety Standards to each of its employees before they enter Railroad property.

http://www.up.com/cs/groups/public/@uprr/@suppliers/documents/up_pdf_natedocs/pdf_up_supplier_safety_req.pdf

B. Without limitation of the provisions of paragraph A above, Contractor shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job.

C. Contractor shall have proper first aid supplies available on the job site so that prompt first aid services may

Passenger Access and Operating Agreement

Exhibit J

Contractor's Right of Entry Public Projects
Form Approved 02/09/2022

be provided to any person injured on the job site. Contractor shall promptly notify Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. Contractor shall have a nondelegable duty to control its employees while they are on the job site or any other property of Railroad, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any Work.

D. If and when requested by Railroad, Contractor shall deliver to Railroad a copy of Contractor's safety plan for conducting the Work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require Contractor to correct any deficiencies in the Safety Plan. The terms of this agreement shall control if there are any inconsistencies between this agreement and the Safety Plan.

Section 8. INDEMNITY.

A. TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS RAILROAD, ITS AFFILIATES, AND ITS AND THEIR OFFICERS, AGENTS AND EMPLOYEES (INDIVIDUALLY AN "INDEMNIFIED PARTY" OR COLLECTIVELY "INDEMNIFIED PARTIES") FROM AND AGAINST ANY AND ALL LOSS, DAMAGE, INJURY, LIABILITY, CLAIM, DEMAND, COST OR EXPENSE (INCLUDING, WITHOUT LIMITATION, ATTORNEY'S, CONSULTANT'S AND EXPERT'S FEES, AND COURT COSTS), FINE OR PENALTY (COLLECTIVELY, "LOSS") INCURRED BY ANY PERSON (INCLUDING, WITHOUT LIMITATION, ANY INDEMNIFIED PARTY, CONTRACTOR, OR ANY EMPLOYEE OF CONTRACTOR OR OF ANY INDEMNIFIED PARTY) ARISING OUT OF OR IN ANY MANNER CONNECTED WITH (I) ANY WORK PERFORMED BY CONTRACTOR, OR (II) ANY ACT OR OMISSION OF CONTRACTOR, ITS OFFICERS, AGENTS OR EMPLOYEES, OR (III) ANY BREACH OF THIS AGREEMENT BY CONTRACTOR.

B. THE RIGHT TO INDEMNITY UNDER THIS SECTION 8 SHALL ACCRUE UPON OCCURRENCE OF THE EVENT GIVING RISE TO THE LOSS, AND SHALL APPLY REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF ANY INDEMNIFIED PARTY, EXCEPT WHERE THE LOSS IS CAUSED BY THE SOLE ACTIVE NEGLIGENCE OF AN INDEMNIFIED PARTY AS ESTABLISHED BY THE FINAL JUDGMENT OF A COURT OF COMPETENT JURISDICTION. THE SOLE ACTIVE NEGLIGENCE OF ANY INDEMNIFIED PARTY SHALL NOT BAR THE RECOVERY OF ANY OTHER INDEMNIFIED PARTY.

C. CONTRACTOR EXPRESSLY AND SPECIFICALLY ASSUMES POTENTIAL LIABILITY UNDER THIS SECTION 8 FOR CLAIMS OR ACTIONS BROUGHT BY CONTRACTOR'S OWN EMPLOYEES. CONTRACTOR WAIVES ANY IMMUNITY IT MAY HAVE UNDER WORKER'S COMPENSATION OR INDUSTRIAL INSURANCE ACTS TO INDEMNIFY THE INDEMNIFIED PARTIES UNDER THIS SECTION 8. CONTRACTOR ACKNOWLEDGES THAT THIS WAIVER WAS MUTUALLY NEGOTIATED BY THE PARTIES HERETO.

D. NO COURT OR JURY FINDINGS IN ANY EMPLOYEE'S SUIT PURSUANT TO ANY WORKER'S COMPENSATION ACT OR THE FEDERAL EMPLOYERS' LIABILITY ACT AGAINST A PARTY TO THIS AGREEMENT MAY BE RELIED UPON OR USED BY CONTRACTOR IN ANY ATTEMPT TO ASSERT LIABILITY AGAINST ANY INDEMNIFIED PARTY.

E. THE PROVISIONS OF THIS SECTION 8 SHALL SURVIVE THE COMPLETION OF ANY WORK PERFORMED BY CONTRACTOR OR THE TERMINATION OR EXPIRATION OF THIS AGREEMENT. IN NO EVENT SHALL THIS SECTION 8 OR ANY OTHER PROVISION OF THIS AGREEMENT BE DEEMED TO LIMIT ANY LIABILITY CONTRACTOR MAY HAVE TO ANY INDEMNIFIED PARTY BY STATUTE OR UNDER COMMON LAW.

Passenger Access and Operating Agreement

Exhibit J

Contractor's Right of Entry Public Projects
Form Approved 02/09/2022

Section 9. RESTORATION OF PROPERTY.

In the event Railroad authorizes Contractor to take down any fence of Railroad or in any manner move or disturb any of the other property of Railroad in connection with the Work to be performed by Contractor, then in that event Contractor shall, as soon as possible and at Contractor's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed. Contractor shall remove all of Contractor's tools, equipment, rubbish and other materials from Railroad's property promptly upon completion of the Work, restoring Railroad's property to the same state and condition as when Contractor entered thereon.

Section 10. WAIVER OF DEFAULT.

Waiver by Railroad of any breach or default of any condition, covenant or agreement herein contained to be kept, observed and performed by Contractor shall in no way impair the right of Railroad to avail itself of any remedy for any subsequent breach or default.

Section 11. MODIFICATION - ENTIRE AGREEMENT.

No modification of this agreement shall be effective unless made in writing and signed by Contractor and Railroad. This agreement and the exhibits attached hereto and made a part hereof constitute the entire understanding between Contractor and Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the Work to be performed by Contractor.

Section 12. ASSIGNMENT - SUBCONTRACTING.

Contractor shall not assign or subcontract this agreement, or any interest therein, without the written consent of the Railroad. Contractor shall be responsible for the acts and omissions of all subcontractors. Before Contractor commences any Work, the Contractor shall, except to the extent prohibited by law; (1) require each of its subcontractors to include the Contractor as "Additional Insured" on the subcontractor's Commercial General Liability policy and Umbrella or Excess policies (if applicable) with respect to all liabilities arising out of the subcontractor's performance of Work on behalf of the Contractor by endorsing these policies with ISO Additional Insured Endorsements CG 20 10, and CG 20 37 (or substitute forms providing equivalent coverage; (2) require each of its subcontractors to endorse their Commercial General Liability Policy with "Contractual Liability Railroads" ISO Form CG 24 17 10 01 (or a substitute form providing equivalent coverage) for the job site; and (3) require each of its subcontractors to endorse their Business Automobile Policy with "Coverage For Certain Operations In Connection With Railroads" ISO Form CA 20 70 10 01 (or a substitute form providing equivalent coverage) for the job site.

**Passenger Access and Operating Agreement
Exhibit J**

Contractor's Right of Entry Public Projects
Form Approved 02/09/2022

**EXHIBIT C
TO
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT**

**Union Pacific Railroad Company
Insurance Requirements For
Contractor's Right of Entry Agreement**

During the entire term of this Agreement and course of the Project, and until all Project Work on Railroad's property has been completed and all equipment and materials have been removed from Railroad's property and Railroad's property has been clean and restored to Railroad's satisfaction, Contractor shall, at its sole cost and expense, procure and maintain the following insurance coverage:

- A. **Commercial General Liability** insurance. Commercial general liability (CGL) with a limit of not less than \$5,000,000 each occurrence and an aggregate limit of not less than \$10,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.
- Designated Construction Project(s) General Aggregate Limit ISO Form CG 25 03 03 97 (or a substitute form providing equivalent coverage) showing the project on the form schedule.

- B. **Business Automobile Coverage** insurance. Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$5,000,000 for each accident and coverage must include liability arising out of any auto (including owned, hired and non-owned autos).

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

- C. **Workers' Compensation and Employers' Liability** insurance. Coverage must include but not be limited to:
- Contractor's statutory liability under the workers' compensation laws of the state where the Work is being performed.
 - Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Contractor is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

- D. **Railroad Protective Liability** insurance. Contractor must maintain "Railroad Protective Liability" (RPL) insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage)

Passenger Access and Operating Agreement

Exhibit J

Contractor's Right of Entry Public Projects
Form Approved 02/09/2022

on behalf of Railroad as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. The definition of "JOB LOCATION" and "WORK" on the declaration page of the policy shall refer to this agreement and shall describe all WORK or OPERATIONS performed under this agreement. Contractor shall provide this agreement to Contractor's insurance agent(s) and/or broker(s) and Contractor shall instruct such agent(s) and/or broker(s) to procure the insurance coverage required by this agreement. A BINDER STATING THE POLICY IS IN PLACE MUST BE SUBMITTED TO RAILROAD BEFORE THE WORK MAY COMMENCE AND UNTIL THE ORIGINAL POLICY IS FORWARDED TO UNION PACIFIC RAILROAD.

- E. Umbrella or Excess insurance.** If Contractor utilizes umbrella or excess policies, these policies must “follow form” and afford no less coverage than the primary policy.
- F. Pollution Liability insurance.** Pollution liability coverage must be included when the scope of the Work as defined in the agreement includes installation, temporary storage, or disposal of any "hazardous" material that is injurious in or upon land, the atmosphere, or any watercourses; or may cause bodily injury at any time.

If required, coverage may be provided in separate policy form or by endorsement to Contractors CGL or RPL. Any form coverage must be equivalent to that provided in ISO form CG 24 15 "Limited Pollution Liability Extension Endorsement" or CG 28 31 "Pollution Exclusion Amendment" with limits of at least \$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

If the scope of Work as defined in this agreement includes the disposal of any hazardous or non-hazardous materials from the job site, Contractor must furnish to Railroad evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

Other Requirements

- G.** All policy(ies) required above (except business automobile, worker's compensation and employers liability) must include Railroad as “Additional Insured” using ISO Additional Insured Endorsements CG 20 10, and CG 20 37 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall not be limited by Contractor's liability under the indemnity provisions of this agreement. BOTH CONTRACTOR AND RAILROAD EXPECT THAT UNION PACIFIC RAILROAD COMPANY WILL BE PROVIDED WITH THE BROADEST POSSIBLE COVERAGE AVAILABLE BY OPERATION OF LAW UNDER ISO ADDITIONAL INSURED FORMS CG 20 10 AND CG 20 37.
- H.** Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this agreement, or (b) all punitive damages are prohibited by all states in which this agreement will be performed.
- I.** Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees for damages covered by the workers compensation and employers liability or commercial umbrella or excess liability obtained by Contractor required in this agreement where permitted by law. This waiver must be stated on the certificate of insurance.
- J.** Prior to commencing the Work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this agreement.

Passenger Access and Operating Agreement

Exhibit J

Contractor's Right of Entry Public Projects
Form Approved 02/09/2022

- K.** All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state where the Work is being performed.
- L.** The fact that insurance is obtained by Contractor or by Railroad on behalf of Contractor will not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this agreement. Damages recoverable by Railroad from Contractor or any third party will not be limited by the amount of the required insurance coverage

PASSENGER RAIL ACCESS AND OPERATING AGREEMENT
EXHIBIT K

Colorado State Laws

A. Colorado State Laws: Provisions specific to the State of Colorado and applicable to the Agreement are identified as follows:

1. **Fund Availability §24-30-202(5.5), C.R.S.** Any financial obligations of Passenger Agency payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
2. **Vendor Offset and Erroneous Payments §§24-30-202(1) and 24-30-202.4, C.R.S.** Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to state agencies for among other things: (i) unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, *et seq.*, C.R.S.; (ii) amounts required to be paid to the Unemployment Compensation Fund; and (iii) other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State's discretion, payments made to Railroad in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Railroad by deduction from subsequent payments under this Agreement, deduction from any payment due under any other contracts, grants or agreements between the State and Railroad, or by any other appropriate method for collecting debts owed to the State.
3. **Limitations on Payments.** Payments to Railroad are limited to the unpaid, obligated balance of the Contract Funds. Passenger Agency shall not pay Railroad any amount under this Agreement that exceeds the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Agreement. Railroad shall complete the work and any services as described in this Agreement and Passenger Agency shall have no liability to compensate Railroad for the delivery of any goods or the performance of any services that are not specifically set forth in this Agreement.
4. **Confidentiality Provisions.** Notwithstanding anything to the contrary in this Agreement, Railroad shall keep confidential, and cause all Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Railroad shall not, without prior written approval of the State or Passenger Agency, use, publish, copy, disclose to any third party, or permit the use by any third party of any State or Passenger Agency Records, except as otherwise stated in this Agreement,

permitted by law or approved in writing by the Passenger Agency. Railroad shall provide for the security of all Passenger Agency Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. Railroad does not intend to receive any PII, PHI, PCI, or CJI. However, that in the event that Railroad or any of its Affiliates desires to obtain any PII, PHI, PCI, or CJI, Railroad shall agree to be bound by the then-existing requirements for the handling these types of data.

- a. **“State Confidential Information”** means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII, PHI, PCI, CJI, Tax Information, and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the Passenger Agency to Railroad that (i) is subject to disclosure pursuant to CORA; (ii) is already known to Railroad without restrictions at the time of its disclosure to Railroad; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Railroad to the State; (iv) is disclosed to Railroad without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.
- b. **“State Records”** means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- c. **“Tax Information”** means federal and State of Colorado tax information including, without limitation, federal and State tax returns, return information, and such other tax-related information as may be protected by federal and State law and regulation. Tax Information includes, but is not limited to all information defined as federal tax information in Internal Revenue Service Publication 1075.
- d. **“CJI”** means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy, as amended and all Criminal Justice Records as defined under §24-72-302, C.R.S.
- e. **“PCI”** means payment card information including any data related to credit card holders’ names, credit card numbers, or other credit card information as may be protected by state or federal law.

- f. ***“PHI”*** means any protected health information, including, without limitation any information whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI includes, but is not limited to, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act.
 - g. ***“PII”*** means personally identifiable information including, without limitation, any information maintained by Passenger Agency about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §§24-72-501 and 24-73-101, C.R.S. ***“PII”*** shall also mean ***“personal identifying information”*** as set forth at § 24-74-102, et. seq., C.R.S.
- 5. **Use, Security, and Retention.** Railroad shall use, hold, and maintain State Confidential Information in compliance with any and all applicable laws and regulations only in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information. Railroad shall provide the State with access, subject to Railroad’s reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Railroad shall ensure that all State Records and Work Product in the possession of Railroad or any Subcontractors are protected and handled in accordance with the requirements of this Agreement, including the requirements of any Exhibits hereto, at all times. Upon the expiration or termination of this Agreement, Railroad shall return State Records provided to Railroad or destroy such State Records and certify to the State that it has done so, as directed by the State. If Railroad is prevented by law or regulation from returning or destroying State Confidential Information, Railroad warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.
- 6. **Other Entity Access and Nondisclosure Agreements.** Railroad may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Agreement. Railroad shall ensure all such agents, employees, assigns, and

Subcontractors sign agreements containing nondisclosure provisions at least as protective as those in this Agreement, and that the nondisclosure provisions are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Railroad shall provide copies of those signed nondisclosure provisions to the State upon execution of the nondisclosure provisions if requested by the State.

PASSENGER RAIL ACCESS AND OPERATING AGREEMENT

EXHIBIT L

- A. Insurance Covering Railroad Liability. PASSENGER AGENCY (or any Designated Contractor) will maintain Railroad Liability coverage at the per occurrence level set forth in the most recent Adjustment to Rail Passenger Transportation Cap promulgated by the Secretary of Transportation pursuant to 49 U.S.C. § 28103 or its amendments (as of 2020, \$323,000,000). PASSENGER AGENCY must obtain such policies or be named as an additional insured on any related policy obtained by any Designated Contractor hired by PASSENGER AGENCY to conduct passenger operations.
- B. Insurance Covering Commercial General Liability. Unless otherwise agreed to by Railroad, PASSENGER AGENCY (or any Designated Contractor) will maintain Commercial General Liability (CGL) coverage with a limit of not less than \$10,000,000 for each occurrence and an aggregate limit of not less than \$10,000,000, to be provided through any combination of primary and excess or umbrella liability insurance policies, with an obligation to reinstate in the event of an occurrence that utilizes the full per-occurrence limits. Every three years, PASSENGER AGENCY, RAILROAD, and any Designated Contractor(s) shall meet in good faith to discuss any appropriate adjustments to the policies under this paragraph.
- a. Contractual Liability Railroads ISO form CG 24 17 endorsement (or a substitute form providing equivalent coverage) must be included.
- C. Automobile Insurance. PASSENGER AGENCY will maintain Business Auto coverage written on ISO form CA 00 01 10 01, or a substitute form providing equivalent coverage, with a limit not less than adjusted limitation established pursuant to the Colorado Governmental Immunity Act for each accident. Passenger Agency will require any Designated Contractor provide coverage not less than \$10,000,000 for each combined single limit. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos). The policy must contain the following endorsements: (a) "Coverage For Certain Operations In Connection With Railroads" ISO form CA 20 70 10 01, or a substitute form providing equivalent coverage, showing "Union Pacific Railroad Company Property" as the Designated Job Site; and (b) Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90). Every three years, PASSENGER AGENCY, RAILROAD, and any Designated Contractor(s) shall meet in good faith to discuss any appropriate adjustments to the policies under this paragraph.
- D. Workers' Compensation and Employers' Liability Insurance. coverage that must include but not be limited to statutory benefits provided under the workers' compensation laws of Colorado set forth in CRS 8-41-101, et seq. Employers Liability with limits of at least \$1,000,000, \$1,000,000 each employee, and a policy limit of \$1,000,000 by disease. Employers' Liability may be self-insured so long as coverage retained provides the same coverage that would have been provided by required commercial insurance.

- E. Umbrella or Excess Insurance. If PASSENGER AGENCY (or any Designated Contractor) utilizes umbrella or excess policies to comply with limits of coverage required, such policies must “follow form” or as acceptable to Railroad and afford no less coverage than the primary policy.
- F. Form of Policies for Sections A, B, and E. All policies, whether Passenger Agency or any Designated Contractor, must include Railroad as “Additional Insured” using ISO Additional Insured Endorsement CG 20 26 or substitute forms providing equivalent coverage. The policies must be written on ISO occurrence form CG 00 01 12 04 or substitute forms providing equivalent coverage. If Passenger Agency (or any Designated Contractor) utilizes a claims-made form to meet this requirement, Passenger Agency (or any Designated Contractor) will warrant that any retroactive date applicable to coverage under the policy precedes the Effective Date. Passenger Agency (or any Designated Contractor) agrees to purchase an extended reporting period if the retroactive date is advanced or if the policy is canceled or not renewed and not replaced by another claims-made policy with the same (or an earlier) retroactive date during the term of the agreement. The policy must contain the following endorsements, which must be stated on the certificate of insurance: “Contractual Liability Railroads” ISO form CG 24 17 10 01, or a substitute form providing equivalent coverage, showing “Union Pacific Railroad Company Property” as the Designated Job Site. BOTH PASSENGER AGENCY AND RAILROAD EXPECT THAT RAILROAD WILL BE PROVIDED WITH THE BROADEST POSSIBLE COVERAGE AVAILABLE BY OPERATION OF LAW UNDER ISO ADDITIONAL INSURED FORM CG 20 26.
- G. Punitive Damages. Passenger Agency and Railroad acknowledge that 24-10-114(4)(b) C.R.S. limits punitive damages for Railroad.
- H. Waiver. PASSENGER AGENCY waives all rights against Railroad and its affiliates, shareholders, officers, employees, successors, assigns, subcontractors, representatives, or agents for the recovery of damages, whether by contribution, subrogation, or otherwise, to the extent these damages are covered by the policies described in this Exhibit.
- I. Primary and Non-Contributory. It is the intent of both parties that all insurance purchased by Passenger Agency (or any Designated Contractor) will be primary to any other insurance owned, secured, or in place by Railroad, which insurance shall not be called upon by PASSENGER AGENCY’S insurer to contribute in any way.
- J. Insurance Carrier. Railroad has sole discretion to accept or reject any insurance policy that is not written by an insurance company with a Best's Insurance Guide Rating of A- and Class VII, or better. All insurance carriers must be authorized to do business in the state(s) in which service is to be provided.

Passenger Rail Access and Operating Agreement

Exhibit M

Insurance Certificates

(Reserved)

Passenger Rail Access and Operating Agreement

Exhibit N

Reports

(Reserved)